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Wednesday
May 4, 1988

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Title 3 —

The President

Proclamation 5805 of April 29, 1988

Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to subsections 501(1) and (4), 502(c)(2), and sections 504 and 604 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2461(1) and (4), 2462(c)(2), 2464, and 2483), I have determined that it is appropriate to terminate the preferential tariff treatment under the Generalized System of Preferences (GSP) for articles that are currently eligible for such treatment and that are imported from Hong Kong, the Republic of Korea, Singapore, and Taiwan. I have determined that these countries are sufficiently advanced in economic development and improved in trade competitiveness that continued preferential treatment under the GSP is not warranted.

2. Subsections 501(1) and (4) of the Trade Act provide that, in affording duty-free treatment under the GSP, the President shall have due regard for the effect such action will have on furthering the economic development of developing countries and the extent of the beneficiary developing country's competitiveness with respect to eligible articles. Subsection 502(c)(2) provides that, in determining whether to designate any country a beneficiary developing country under this section, the President shall take into account the level of economic development of such country. Section 504 authorizes the President to withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or to any country upon consideration of the factors set forth in sections 501 and 502(c) of the Trade Act.

3. Pursuant to subsection 504(f) of the Trade Act (19 U.S.C. 2464(f)), I have determined that it is appropriate to terminate the preferential tariff treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Bahrain, Bermuda, Brunei Darussalam, and Nauru. Such termination is the result of my determination that the per capita gross national product for each such country for calendar year 1985 (calculated on the basis of the best available information, including that of the World Bank) exceeds the applicable limit provided in subsection 504(f).

4. Subsection 504(f) provides that if the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) for any beneficiary country for a calendar year subsequent to 1984 exceeds the applicable limit for the determination year in question, such country shall not be treated as a beneficiary developing country under this Act after the close of a 2-year period.

5. Previously, two of these countries, Brunei Darussalam and Singapore, were designated as members of an association of countries treated as one country for purposes of section 503(b)(2) of the Trade Act, as amended (19 U.S.C. 2463(b)(2)). In order to take into account the termination of benefits under the GSP for articles imported from these two countries, I have determined that it is appropriate to terminate the designations of Brunei Darussalam and Singapore as members of ASEAN and to modify general headnote 3(e)(v)(A) to the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) to reflect such termination. Further, in order to reflect the termination of benefits under the GSP for articles imported from Hong Kong, the Republic of Korea, Singapore, and Taiwan, I have determined that it is appropriate to delete from general

headnote 3(e)(v)(D) to the TSUS and from the pertinent TSUS items all references to particular products of these countries which are currrently excluded from preferential tariff treatment under the GSP.

6. Section 604 of the Trade Act authorizes the President to embody in the TSUS the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and laws of the United States of America, including but not limited to Title V and section 604 of the Trade Act, do proclaim that:

(1) General headnote 3(e)(v)(A) to the TSUS, setting forth those countries whose products are eligible for duty-free treatment under the GSP, is modified—

(a) by deleting "Bahrain", "Brunei Darussalam", and "Nauru" from the enumeration of independent countries, by deleting "Bermuda" from the enumeration of non-independent countries and territories, and by deleting "Brunei" from the enumeration of members of the Association of South East Asian Nations (ASEAN) and by inserting "except Brunei Darussalam" after "Association of South East Asian Nations (ASEAN)"; and

(b) by deleting "Korea, Republic of", "Singapore", and "Taiwan" from the enumeration of independent countries and by deleting "Hong Kong" from the enumeration of non-independent countries and territories, by deleting "Singapore" from the enumeration of members of the Association of South East Asian Nations (ASEAN) except Brunei Darussalam, and by modifying "Association of South East Asian Nations (ASEAN) except Brunei Darussalam" to read "Association of South East Asian Nations (ASEAN) except Brunei Darussalam and Singapore".

(2) No article the product of any such country and imported into the United States after the effective dates of this Proclamation shall be eligible for preferential tariff treatment under the GSP.

(3) General headnote 3(e)(v)(D) to the TSUS, listing those articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite the enumerated TSUS items for those articles, is modified as provided in Annex I to this Proclamation.

(4) The Rates of Duty Special column for each of the TSUS items enumerated in Annex II to this Proclamation is modified: (a) by deleting from such column for such TSUS items the symbol "A*" in parentheses, and (b) by inserting in such column the symbol "A" in lieu thereof.

(5) (a) Paragraph (1)(a) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1988.

(b) Paragraphs (1)(b), (3), and (4) of this Proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

Billing code 3195-01-M

ANNEX I

Modifications to General Headnote 3(e)(v)(D) of the TSUS

General headnote 3(e)(v)(D) is modified--

(a) by deleting the following TSUS item numbers and the countries set opposite these numbers:

202.66	Taiwan
204.40	Taiwan
206.30	Taiwan
206.98	Taiwan
207.09	Taiwan
222.50	Taiwan
240.14	Taiwan
256.60	Republic of Korea
337.40	Hong Kong Republic of Korea
355.81	Taiwan
386.14	Taiwan
389.61	Hong Kong Taiwan
408.72	Republic of Korea Taiwan
413.24	Republic of Korea
416.45	Taiwan
421.06	Taiwan
439.50	Singapore
445.42	Taiwan
532.22	Republic of Korea Taiwan
534.11	Taiwan
534.84	Taiwan
534.91	Taiwan
544.51	Taiwan
545.67	Taiwan
545.87	Taiwan
547.37	Taiwan
610.65	Republic of Korea
610.70	Taiwan
610.82	Republic of Korea Taiwan
610.86	Republic of Korea Taiwan
610.88	Taiwan
613.18	Taiwan
642.14	Republic of Korea
642.16	Republic of Korea
642.17	Republic of Korea
642.19	Republic of Korea
646.30	Republic of Korea
646.32	Republic of Korea
646.65	Taiwan
646.72	Taiwan
646.92	Taiwan
646.95	Taiwan
646.97	Taiwan
647.03	Taiwan
647.05	Taiwan
648.80	Hong Kong Taiwan
648.85	Taiwan
648.95	Taiwan
648.97	Taiwan
649.37	Taiwan
650.21	Taiwan
650.87	Hong Kong
650.89	Hong Kong Taiwan
651.21	Taiwan
651.31	Taiwan
651.37	Taiwan
651.46	Republic of Korea Taiwan
651.48	Taiwan
651.49	Taiwan
651.55	Taiwan
652.03	Republic of Korea
652.24	Taiwan
652.60	Taiwan
652.72	Republic of Korea
653.00	Republic of Korea Singapore Taiwan
653.35	Taiwan
653.37	Taiwan
653.38	Taiwan
653.39	Taiwan
653.45	Taiwan
653.48	Taiwan
653.52	Taiwan
653.90	Hong Kong
653.93	Taiwan
653.94	Republic of Korea
653.96	Taiwan
653.99	Taiwan
654.00	Taiwan
654.25	Taiwan
654.30	Republic of Korea Taiwan
654.35	Taiwan
654.40	Taiwan
654.45	Taiwan
654.50	Taiwan
654.60	Hong Kong Taiwan
654.65	Taiwan
654.75	Taiwan
657.24	Taiwan
657.25	Taiwan

ANNEX I (con.)

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(a)(con.)

657.35	Taiwan
657.40	Taiwan
657.80	Taiwan
660.97	Singapore
661.09	Singapore
661.35	Republic of Korea
661.94	Hong Kong Taiwan
672.16	Taiwan
674.31	Taiwan
674.34	Taiwan
674.35	Taiwan
674.42	Taiwan
676.20	Taiwan
676.30	Hong Kong Republic of Korea Taiwan
680.14	Taiwan
680.19	Taiwan
680.25	Taiwan
680.62	Singapore
682.37	Taiwan
682.55	Singapore
683.01	Republic of Korea Taiwan
683.32	Hong Kong
683.70	Hong Kong Taiwan
683.80	Hong Kong
684.10	Taiwan
684.25	Republic of Korea Singapore
684.35	Hong Kong
684.48	Hong Kong Taiwan
684.53	Taiwan
684.58	Republic of Korea Taiwan
684.59	Hong Kong Taiwan
684.70	Republic of Korea Taiwan
685.06	Taiwan
685.14	Hong Kong Republic of Korea Taiwan
685.16	Hong Kong Republic of Korea Taiwan
685.18	Republic of Korea
685.22	Hong Kong Republic of Korea
685.25	Republic of Korea Taiwan
685.28	Hong Kong Republic of Korea Taiwan
685.31	Republic of Korea Taiwan
685.39	Hong Kong Republic of Korea
685.40	Hong Kong Republic of Korea Taiwan
685.65	Singapore
685.73	Hong Kong
686.18	Taiwan
686.30	Taiwan
686.90	Republic of Korea
688.10	Taiwan
688.32	Republic of Korea
688.34	Hong Kong
688.41	Hong Kong Taiwan
692.60	Taiwan
696.10	Taiwan
696.35	Taiwan
696.40	Taiwan
696.50	Republic of Korea
703.72	Taiwan
705.82	Taiwan
705.83	Taiwan
706.45	Hong Kong
706.61	Hong Kong Taiwan
708.45	Taiwan
708.47	Hong Kong
709.40	Hong Kong
710.72	Taiwan
722.08	Hong Kong Republic of Korea Taiwan
722.11	Hong Kong Republic of Korea Taiwan
725.01	Republic of Korea
725.03	Republic of Korea
725.32	Taiwan
725.46	Republic of Korea Taiwan
725.50	Taiwan
726.25	Taiwan
727.11	Taiwan
727.23	Taiwan
727.25	Taiwan
727.35	Taiwan
727.41	Taiwan
727.47	Taiwan
727.59	Taiwan
727.65	Taiwan
727.70	Taiwan
727.86	Taiwan
728.22	Taiwan
730.94	Republic of Korea

ANNEX I (con.)

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(a)(con.)

731.70	Taiwan
732.52	Taiwan
732.60	Taiwan
732.62	Taiwan
734.10	Taiwan
734.15	Taiwan
734.20	Taiwan
734.25	Hong Kong
734.77	Republic of Korea Taiwan
734.86	Taiwan
734.87	Taiwan
734.88	Taiwan
734.91	Taiwan
735.07	Republic of Korea
735.09	Republic of Korea Taiwan
735.10	Taiwan
735.11	Taiwan
735.12	Taiwan
735.20	Republic of Korea Taiwan
737.14	Hong Kong
737.16	Hong Kong
737.23	Hong Kong
737.30	Republic of Korea
737.42	Republic of Korea
737.60	Taiwan
737.65	Taiwan
737.80	Hong Kong
737.93	Taiwan
737.96	Hong Kong
737.98	Hong Kong Taiwan
740.12	Hong Kong
740.13	Hong Kong
740.39	Taiwan
740.41	Hong Kong Republic of Korea Taiwan
741.25	Hong Kong
741.50	Hong Kong
745.32	Taiwan
745.45	Taiwan
745.70	Taiwan
750.20	Taiwan
750.22	Taiwan
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774.53	Taiwan
774.56	Taiwan
774.58	Republic of Korea Taiwan
790.03	Taiwan
790.10	Taiwan
790.39	Taiwan
790.55	Taiwan
790.60	Taiwan
790.70	Republic of Korea
791.15	Hong Kong Republic of Korea
791.60	Taiwan

(b) by deleting the following countries opposite the following TSUS items:

533.30	Republic of Korea Taiwan
545.53	Taiwan
610.84	Republic of Korea Taiwan
654.08	Taiwan
661.06	Hong Kong Taiwan
664.10	Taiwan
676.15	Republic of Korea Taiwan
676.56	Hong Kong Republic of Korea Taiwan
678.50	Hong Kong Republic of Korea Singapore Taiwan
682.60	Hong Kong Taiwan
685.33	Republic of Korea Singapore Taiwan

ANNEX I (con.)

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(b)(con.)

685.90	Taiwan
688.12	Taiwan
688.17	Taiwan
688.18	Taiwan
688.42	Hong Kong Republic of Korea Taiwan
692.32	Republic of Korea Taiwan
724.45	Republic of Korea
727.29	Taiwan
727.39	Taiwan
740.11	Hong Kong
740.14	Hong Kong
740.15	Hong Kong
772.51	Republic of Korea Taiwan

ANNEX II

Modifications in the TSUS of an Article's Preferential Tariff Treatment Designation under the GSP

For the following TSUS items in the Rates of Duty Special column delete the symbol "A*" and insert an "A" in lieu thereof:

202.66	651.31	682.55	727.11
204.40	651.37	683.01	727.23
206.30	651.46	683.32	727.25
206.98	651.48	683.70	727.35
207.09	651.49	683.80	727.41
222.50	651.55	684.10	727.47
240.14	652.03	684.25	727.59
256.60	652.24	684.35	727.65
337.40	652.60	684.48	727.70
355.81	652.72	684.53	727.86
386.14	653.00	684.58	728.22
389.61	653.35	684.59	730.94
408.72	653.37	684.70	731.70
413.24	653.38	685.06	732.52
416.45	653.39	685.14	732.60
421.06	653.45	685.16	732.62
439.50	653.48	685.18	734.10
445.42	653.52	685.22	734.15
532.22	653.90	685.25	734.20
534.11	653.93	685.28	734.25
534.84	653.94	685.31	734.77
534.91	653.96	685.39	734.86
544.51	653.99	685.40	734.87
545.67	654.00	685.65	734.88
545.87	654.25	685.73	734.91
547.37	654.30	686.18	735.07
610.65	654.35	686.30	735.09
610.70	654.40	686.90	735.10
610.82	654.45	688.10	735.11
610.86	654.50	688.32	735.12
610.88	654.60	688.34	735.20
613.18	654.65	688.41	737.14
642.14	654.75	692.60	737.16
642.16	657.24	696.10	737.23
642.17	657.25	696.35	737.30
642.19	657.35	696.40	737.42
646.30	657.40	696.50	737.60
646.32	657.80	703.72	737.65
646.65	660.97	705.82	737.80
646.72	661.09	705.83	737.93
646.92	661.35	706.45	737.96
646.95	661.94	706.61	737.98
646.97	672.16	708.45	740.12
647.03	674.31	708.47	740.13
647.05	674.34	709.40	740.39
648.80	674.35	710.72	740.41
648.85	674.42	722.08	741.25
648.95	676.20	722.11	741.50
648.97	676.30	725.01	745.32
649.37	680.14	725.03	745.45
650.21	680.19	725.32	745.70
650.87	680.25	725.46	750.20
650.89	680.62	725.50	750.22
651.21	682.37	726.25	750.40

ANNEX II (con.)

-2-

750.45
750.47
750.65
750.70
751.05
751.22
755.25
771.41
771.43
771.45
772.06
772.16
772.20
772.35
772.60
772.80
772.95
772.97
773.05
773.10
774.45
774.50
774.51
774.53
774.56
774.58
790.03
790.10
790.39
790.55
790.60
790.70
791.15
791.60

[FR Doc. 88-10001
Filed 5-2-88; 2:14 pm]
Billing code 3195-01-C

Presidential Documents

Proclamation 5806 of April 29, 1988

National Trauma Awareness Month, 1988

By the President of the United States of America

A Proclamation

We can do a great deal of good for ourselves and our fellow Americans the more we realize the toll traumatic injury takes each year in our country—and the more we understand that the extent of this toll is unnecessary, unacceptable, and preventable. National Trauma Awareness Month is an excellent chance for all of us to learn and to do more about the prevention and treatment of traumatic injury.

Traumatic injury is a major public health problem that mainly affects young people; it kills more Americans before age 34 than do all diseases combined. Each year, some 140,000 citizens lose their lives to traumatic injury, and 400,000 suffer severe and often permanently disabling brain or spinal cord injury. Some of the many causes include motor vehicle-related injuries, murder, suicide, and falls.

It is up to all of us to learn how to reduce the risk of traumatic injury to ourselves and our children. Citizens can initiate behavior changes and sustain them, and volunteer groups, civic organizations, private businesses, health care providers, researchers, academia, and government can all help discover and implement new and more effective ways of preventing and treating traumatic injury and of assisting victims and their families. Let us always remember that our efforts in this regard will be a blessing to ourselves, our families, and our neighbors.

The Congress, by House Joint Resolution 373, has designated May 1988 as "National Trauma Awareness Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1988 as National Trauma Awareness Month. I urge the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-10002
Filed 5-2-88; 2:15 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[Docket No. AO-210-A47]

Milk in the Southwest Plains Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Southwest Plains order by revising the pool plant provisions to provide that a distributing plant, which is located in the marketing area and packages and distributes primarily aseptically processed (UHT) fluid milk products, be a fully regulated plant under such order regardless of where the plant sells its fluid milk products. The changes are based on a proprietary handler's proposal that was considered at a public hearing held in Tulsa, Oklahoma, on February 17, 1988. The amendments are necessary to reflect current marketing conditions and to stabilize the regulatory and pricing situation for a UHT plant and thereby insure orderly marketing under the order. Cooperative associations representing more than the required two-thirds of the market's dairy farmers have indicated their support for the amended order.

EFFECTIVE DATE: May 1, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued January 13, 1988; published January 19, 1988 (53 FR 1370).

Emergency Final Decision: Issued March 29, 1988; published April 5, 1988 (53 FR 11092).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Southwest Plains order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southwest Plains marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than May 1, 1988. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The emergency final decision of the Assistant Secretary containing all amendment provisions of this order was issued on March 29, 1988 (53 FR 11092). The changes effected by this order will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective May 1, 1988, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southwest Plains marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

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

2. In § 1106.5, paragraph (c) is revised to read as follows:

§ 1106.5 Distributing plant.

* * * * *

(c) From which there is route disposition in the marketing area during the month, except that this requirement shall not apply to a distributing plant described in § 1106.7(e).

3. Section 1106.7 is revised to read as follows:

§ 1106.7 Pool plant.

Except as provided in paragraph (f) of this section, "pool plant" means:

(a) A distributing plant (other than one described in paragraph (e) of this section), from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from the plant; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 10 percent of such receipts.

(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk that is received from dairy farmers (including producer milk diverted from the plant pursuant to § 1106.13, but excluding milk diverted to such plant) and handlers described in § 1106.9(c) is transferred or diverted pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section, subject to the following:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through January shall continue to so qualify in each of the following months of February through August until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) or (e) of this section. A plant not meeting such 20 percent requirement in any month of such February–August period shall be qualified in any remaining month of such period only if transfers and deversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) or (e) of this section are not less than 50 percent of receipts or diversions, as previously specified.

(2) The operator of a supply plant that is located in the marketing area or in a county adjacent to the marketing area may include milk diverted pursuant to § 1106.13(c) from such plant to plants described in paragraph (a) or (e) of this section as qualifying shipments in meeting the supply plant's monthly shipping percentages. The diverted milk used in meeting such qualifying shipments shall be limited to the milk of dairy farmers from whom at least one day's production is physically received during the month at such supply plant. Diversions in excess of three-fifths of the shipping requirement shall not be included as qualifying shipments.

(c) Any plant located in the marketing area or in a county adjacent to the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and during the month, or the 12-month period ending with the immediately preceding month, 45 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) or (e) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (e) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The shipping standards in paragraphs (b) and (c) of this section may be increased or decreased temporarily up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping standards pursuant to this paragraph, such plant shall be a nonpool plant for such month if the operator files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1106.30.

(e) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant has route disposition (except filled milk) during the month in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at such plant, including producer milk diverted from such plant; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed fluid milk products.

(f) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part;

(5) A plant qualified pursuant to paragraph (b) of this section which has automatic pooling status under another Federal order; or

(6) That portion of a plant that is not approved by a duly constituted regulatory agency for the receiving, processing or packaging of any fluid milk product for fluid disposition and is physically separated from the portion of the plant having such approval.

Signed at Washington, DC, on April 29, 1988.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88-9912 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1951

Account Servicing Policies

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to eliminate the necessity for borrowers to attempt voluntary debt adjustement prior to being considered for deferral. The action is consistent with loan making and other loan servicing regulations, and is necessary to comply with the Court decision in *Coleman v. Lyng*, 663 F. Supp 1315 (DND 1987). The intended effect is to provide a more rapid response to applicant's requests, assist in the establishment of a positive working relationship with other lenders and achieve greater consistency with other FmHA regulations.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Bonnet, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5444, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 475-4020.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans and Farm Ownership Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Opeating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of Final Rule

On November 20, 1987, FmHA published a proposed rule in the **Federal Register** (52 FR 44607-44608) with a comment period ending December 21, 1987. No comments were received. The purpose of this final rule is to eliminate regulation inconsistencies concerning voluntary debt adjustment in deferral processing. The current FmHA procedure contained in Subpart A of Part 1951, § 1951.44(b)(5), requires that the borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors in accordance with Subpart A of Part 1903 in order to be considered for a deferral. This is in conflict with loan making and other servicing regulations where negotiation with other lenders occurs after considering other available servicing techniques.

Farmer Programs regulations allow unequal, balloon or partially set-aside installments without first attempting voluntary debt adjustment. FmHA special debt set-aside regulations found in Subpart A of Part 1951, 1951.41, allow for a partial interest-free set-aside with debt adjustment of the other creditors pursued only if FmHA authorities are insufficient to produce a positive cash flow.

The FmHA voluntary debt adjustment regulation found in Subpart A of Part 1903 states that it is not the policy of FmHA to assist borrowers or entities in avoiding the payment of any obligation, which is within their reasonable ability to pay and it is the debtors' responsibility to negotiate with their creditors after considering all available resources and income.

The option of voluntary debt adjustment is best used after all servicing options are tried and the borrower still needs additional help to allow the farm plan to cash flow.

The final rule will also assist in developing positive working relationships with the other lenders and will increase the incentive for them to cooperate in debt adjustments after the FmHA has attempted to assist the borrower to the full extent of its authority. Under the old regulation, the lenders would often initially refuse to adjust their debts, knowing that the FmHA must then proceed to consider deferral and negotiate for adjustment only when the plan still required it.

This policy will not directly injure the FmHA, due to loan interest continuing to accrue during the deferral; however, it will place more of the burden and associated loan risk of debt restructure on the Government and less on the other lenders. Nevertheless, this result is necessary to comply with the court decision in *Coleman v. Lyng*, 663 F. Supp 1315 (DND 1987), which states, it would be arbitrary and capricious for FmHA to have a regulation which attempts to have private lenders share in adjusting borrowers' debts before borrowers can qualify for an FmHA loan deferral.

List of Subjects in 7 CFR Part 1951

Accounting servicing, Credit, Loan programs-Agriculture, Loan programs-Housing and community development, Mortgages.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 270.

Subpart A—Account Servicing Policies

§ 1951.44 [Amended]

2. Section 1951.44 is amended by removing paragraph (b)(5).

Dated: March 21, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-9910 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facilities loan and grant servicing regulations to implement part of section 615 of The Agricultural Credit Act of 1987, (Pub. L. 100-233). This action is being taken to comply with section 615 of Pub. L. 100-233, which gives certain FmHA Water and Waste Disposal (WWD) and Community Facility (CF) borrowers a choice of the interest rate on their loans. Public Law 100-233 applies to WWD and CF loans closed or approved after October 1, 1981. This action is to establish the procedures for FmHA to service those loans closed after October 1, 1981, when a borrower requests a change of the loan interest rate as authorized by Pub. L. 100-233.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers, Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382-9589 or Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6314, Washington, DC 20250, telephone: (202) 382-1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, Jnue 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

This action implements FmHA's servicing of loans closed since October 1, 1981. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with Pub. L. 100-233 and any delay would be contrary to the public interest.

Public Law 100-233 requires that effective october 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA to WWD and CF borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Until Pub. L. 100-233, only WWD and CF borrowers whose loans were closed after November 12, 1983, had the choice of interest rate on their loans.

FmHA amends Subpart E of Part 1951 to service loans closed after October 1, 1981, to allow borrowers to request that their interest rate be changed and to administratively accomplish the resulting change in interest rate for WWD and CF loans. This action will bring existing FmHA Community Facility regulations into compliance with Pub. L. 100-233.

FmHA amends Subpart E of Part 1951 by revising § 1951.221 to authorize that, upon request of the borrower, FmHA will change the interest rate on a closed WWD or CF loan.

List of Subjects in 7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Servicing of Community Program Loans and Grants

2. In § 1951.221, paragraphs (a) and (b)(1) are revised read as follows:

§ 1951.221 Special provision for interest rate change.

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99-88 provides that any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrowers's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the

interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA based upon interest rate requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA office) contains a summary of the interest rate requirements for specific time periods.

Exhibit C of Subpart O of this Part (available in any FmHA office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) * * *

(1) FmHA servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification utilizing Exhibit G of this subpart (available in any FmHA office) will be made in writing at the earliest possible date and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA. The effect of the change on the loan account will also be fully explained to the borrower.

* * * * *

Date: March 9, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-9908 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1951

Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding deferral of existing OL, FO, SW, RL, EM, SL, RHR, and EE loans. This action is taken to establish Form FmHA 1951-56, Loan Deferral, as an official FmHA form. The intended effect is to provide for general distribution of the form to FmHA field offices.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Williams, System Accountant, Fiscal and Accounting on Division, FmHA, USDA, Finance Office, 1520 Market Steet, St. Louis, MO 63103, telephone (FTS) 8-279-6024.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only Internal Agency management. This action establishes Form FmHA 1951-56, "Loan Deferral," as an internal agency form to be used by field offices to notify the Finance Office that a borrower's loan is being deferred.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves only matters involving internal agency management, making publication for comment unnecessary and impractical.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of clarification, does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials.

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.428 Economic Emergency

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

2. Section 1951.44 is amended by revising paragraph (j)(1) to read as follows:

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.

* * * * *

(j) * * *

(1) If the deferral is approved, all loans being deferred will be rescheduled or reamortized or consolidated as applicable. Interest that has accrued will be added to the principal as of the date the new note(s) will be signed. This date will be the date of the beginning period of the deferral. All FmHA loans must be current on or before the date the note is signed except for vouchered recoverable cost items that cannot be rescheduled. All delinquent loans will be rescheduled, reamortized, or consolidated to bring the account current. The promissory note rescheduled, reamortized, or consolidated for the deferral will show "zero" as the installments due during the period of the deferral. The County Supervisor will determine the amount of interest that will accrue during the deferral period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on promissory note as the scheduled installment for the remaining period of the loan. The FMI for Form FmHA 1940-17 has examples (IV, V, and X) which explain this. The Finance Office will apply the payments made on the note in accordance with this subpart. The following addendum will be typed, completed, signed by borrower and attached to the promissory note:

Addendum For Deferred Interest

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of _____ percent. This agreement amends and attaches to the above note. $_____ of each regular

payment on the note will be applied to the interest which accrued during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

Borrower

Borrower

The Finance Office will be notified of the deferral by the County Office sending Forms FmHA 1965-22, 1965-23, 1951-6, and 1951-56, "Loan Deferral," to the Finance Office. The borrower will be notified by letter. The Finance Office will remove the borrower's name from the delinquency report and will set up a subaccount for interest that accrues during the deferral period.

* * * * *

Date: April 11, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-9909 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Parts 1951 and 1965

Security Servicing for Multiple Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding security servicing for Multiple Housing loans. This action is necessary in order to implement administrative changes regarding the completion of transfer documents, and to implement a new form for use with the Automated Multi-Housing Accounting System (AMAS). The intended effects of this action are to reduce errors in preparing the transfer docket and increase efficiency in processing the transfer under AMAS.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Carl Grate, Senior Loan Officer, Multiple Family Housing Servicing and Property Management (MHSPM) Division, Room 5321-S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, DC 20250, telephone: (202) 382-1617.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules.

This action, however, is not published for proposed rulemaking since it only involves matters concerning internal Agency management, making publication for comment unnecessary and impractical.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.405, Farm Labor Housing Loans and Grants, and 10.415, Rural Rental Housing Loans. For reasons set forth in the Final Rule related Notice(s) to 7 CFR 3015, Subpart V, this program/activity is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

General Information

1. The implementation of Form FmHA 1965-10 and the revision of Form FmHA 1965-9 will permit the transfer and loan assumption process to be more compatible with AMAS, which is already in use by the Agency.

2. The revision of Form FmHA 1965-9 is due to program and policy changes and removes obsolete data fields from the form. Also, this revision deletes the requirement for the District Office personnel (preparer) to send Form FmHA 1965-9 to the Finance Office. The Form becomes a legal document only.

3. The implementation of a new Form FmHA 1965-10 will provide input information. The new Form is to be used as an input document only and will be sent to the Finance Office in place of Form FmHA 1965-9.

List of Subjects

7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Loan programs—Housing and Community Development, Low- and moderate-income housing loans—Servicing, Mortgages.

7 CFR Part 1965

Administrative practice and procedure, low- and moderate-income housing—Rental, Mortgages.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.517 [Amended]

2. In § 1951.517, paragraph (b) (4) is amended in the last sentence after the phrase "Forms FmHA 1965-9" by adding the words "Form FmHA 1965-10."

3. In § 1951.517, paragraph (b) (4) (i) is amended in the last sentence after the phrase "Forms 1965-9" by adding the words "and 1965-10."

4. In § 1951.517, paragraph (b) (4) (ii) is amended by adding at the end of the last sentence the words "and Form FmHA 1965-10."

PART 1965—REAL PROPERTY

5. The authority citation for Part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing For Multiple Housing Loans

§ 1965.65 [Amended]

6. In § 1965.65, paragraph (b) (8) is amended in the first sentence by adding after the title "Multiple Family Housing Assumption Agreement" the following: "and Form FmHA 1965-10, 'Information on Assumption of Multiple Family Housing Loans,'".

7. In § 1965.65, paragraph (c) (11) is amended in the first sentence by removing the phrase "or 444-7" and in the next to last sentence by changing the phrase "Form FmHA 1965-9, Multiple Family Housing Assumption Agreement," to read "Form FmHA 1965-10 'Information on Assumption of Multiple Family Housing Loans.'"

8. In § 1965.65, paragraph (c) (12) is amended in the fourth sentence by changing the reference from "Form FmHA 1965-9" to "Form FmHA 1965-10."

9. In § 1965.65, paragraph (f) (2) is amended in the second sentence by changing the phrase "Form FmHA 1965–9" to read "Forms FmHA 1965–9 and 1965–10."

10. In § 1965.65, paragraph (f) (12) is amended by adding the following phrase to the list of forms after Form FmHA 1965–9 and before Form FmHA 1965–18:

* * * * *

FmHA 1965–10 Information on Assumption of Multiple Family Housing Loans 2–1–0.

* * * * *

Dated: March 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–9907 Filed 5–3–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF ENERGY

10 CFR Parts 420, 465, and 600

Class Deviation; Subawards Under the State Energy Conservation Program and Energy Extension Service Grant Program

AGENCY: Department of Energy.

ACTION: Notice of class deviation.

SUMMARY: The Department of Energy (DOE) announces that a class deviation has been approved which exempts subawards under the State Energy Conservation Program and Energy Extension Service grant program from the requirement that subawards must be "specifically authorized by statute or program rule" (10 CFR 600.3).

DATE: The class deviation is effective April 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Howard K. Mitchell, Office of Policy, Procurement and Assistance Management Directorate, Department of Energy, Washington, DC 20585, (202) 586–8190

Ernestine Gibson, Energy Management and Extension Programs, Conservation and Renewable Energy, Washington, DC 20585, (202) 586–8294.

SUPPLEMENTARY INFORMATION: As part of the Department's energy conservation mission, DOE fosters and promotes comprehensive state energy conservation plans by providing technical and financial assistance for specific state initiatives to conserve and improve efficiency in the use of renewable resources through the State Energy Conservation Program (SECP), 10 CFR Part 420. DOE also provides financial and technical assistance to the States through the Energy Extension Service (EES) program, 10 CFR Part 465, to stimulate, provide for and supplement programs for the conduct of evaluation, planning and other technical assistance and energy conservation efforts, including energy outreach activities of States.

Each year the Department receives applications from the States for these grant programs, and, because of the diversity of conditions among the various States, some contain requests to make subawards for purposes of planning and implementing a variety of local energy projects to local community organizations.

Subawards are not currently authorized either by statute or program rules under the SECP and EES programs in accordance with the 10 CFR 600.3 definitions of subaward; however, such subawards are necessary to achieve program objectives.

Therefore, the Director, Procurement and Assistant Management Directorate, has approved a class deviation in accordance with 10 CFR Part 600 to allow subawards under the SECP and EES grant programs.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 88–9820 Filed 5–3–88; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0634]

Delegation of Authority to General Counsel

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adding a new paragraph (13) to § 265.2(b), to delegate to the General Counsel, after consultation with supervisory staff, the authority to grant requests for temporary director interlocks under the Board's Regulation L for newly-chartered banking organizations, organizations in low-income areas or minority or women's banks.

It is expected that this delegation of authority will relieve the Board from having to act on matters that are more efficiently and effectively handled by Board staff.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202) 452–3420, or Thomas M. Corsi, Attorney, Legal Division (202) 452–3275. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment does not have particular effect on small entities.

Public Comment

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. A new paragraph (b)(13) is added to § 265.2 to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(b) * * *

(13) Under the provisions of § 212.4(b)(1) and (2) of this chapter, after consultation with the Staff Director of the Division of Banking Supervision and Regulation, to grant requests for temporary director interlocks under Regulation L for newly-chartered banking organizations, organizations in low-income areas or minority or women's banks.

By order of the Board of Governors of the Federal Reserve System, April 28, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9693 Filed 5-3-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM87-36-001, et al.; Order No. 481-A]

Interpretation of Comprehensive Plans Under Section 3 of the Electric Consumers Protection Act; Order on Rehearing

Issued: April 27, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of its final rule setting forth the Commission's interpretation of a Federal or state comprehensive plan under section 10(a)(2)(A) of the Federal Power Act, as amended by the Electric Consumers Protection Act of 1986. The Commission will treat as a comprehensive plan one that: Is prepared by an agency established pursuant to Federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located, authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Secretary of the Commission.

EFFECTIVE DATE: This order will become effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Kristina Nygaard, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing of its final rule [1] setting forth the Commission's interpretation of a Federal or state comprehensive plan under section 10(a)(2)(A) of the Federal Power Act (FPA),[2] as amended by the Electric Consumers Protection Act of 1986 (ECPA).[3] The Commission will treat as a comprehensive plan one that: Is prepared by an agency established pursuant to Federal law that has the authority to prepare such a plan, or by a state agency, of the state in which the proposed hydroelectric project is or will be located, authorized to conduct such planning pursuant to state law; is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and is filed with the Secretary of the Commission.

II. Background and Discussion

Section 10(a)(2)(A) of the FPA requires the Commission, in its hydropower licensing decisions, to consider, among other things:

(A) The extent to which the [proposed] project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—

(i) An agency established pursuant to Federal law that has the authority to prepare such a plan; or

(ii) The State in which the facility is or will be located.

The Commission issued a final rule stating its interpretation of such a comprehensive plan on October 26, 1987. The Commission received ten requests for rehearing of the rule.[4]

1. The interpretative rule exception to the APA

The final rule was issued without prior notice and comment under the interpretative rule exception to the Administrative Procedure Act (APA).[5] The APA generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register** and give interested persons an opportunity to comment on the proposed action before issuing a final rule.[6] These requirements, however, do not apply to "interpretative rules, general statements of policy, or rules of agency organization, procedure or practice * * *." [7] Most of the petitioners for rehearing argue that the final rule does not fall within the interpretative rule exception to the APA. They argue that the rule imposed requirements for these plans that were not contained in ECPA and that the rule was therefore not interpretative in nature.

The Commission disagrees. Since the final rule merely stated the Commission's interpretation of a comprehensive plan under ECPA, the Commission believes the rule was properly issued under the interpretative rule exception to the APA.

2. Comprehensive plan criteria

In the final rule, the Commission stated that Congress intended that a state plan would fall within the scope of section 10(a)(2)(A) of the FPA only if the plan were prepared and adopted pursuant to a specific act of the state legislature and were developed, implemented, and managed by the appropriate state agency. The final rule also codified the Commission's conclusion in *Fieldcrest Mills, Inc.*[8] that plans within the scope of section 10(a)(2)(A) should "reflect the preparers' own balancing of the competing uses of a waterway." The rule pointed out that the weight to be accorded any plan, whether or not it qualifies as a state comprehensive plan, depends on its supporting documentation, since Commission findings must be based on substantial evidence.[9] The rule then set forth general guidelines with respect to what type of plan would carry the most weight in the Commission's licensing decisions.

The petitioners assert that the final rule interprets section 10(a)(2)(A) incorrectly by drawing overly restrictive requirements for qualifying comprehensive plans. Their arguments are based on the statutory language of section 10(a)(2) and on its legislative history.

Five petitioners [10] point out that section 10(a)(2)(A) refers to

[1] Order No. 481, 52 FR 39905 (Oct. 26, 1987), III FERC Stats. & Regs. ¶ 30,773 (1987).

[2] 16 U.S.C. 803(a)(2)(A).

[3] Pub. L. No. 99-495, 100 Stat. 1234 (1986).

[4] The State of California *ex rel.* Resources Agency and the State Water Resources Control Board, the Commonwealth of Kentucky Department for Environmental Protection, the Vermont Agency of Natural Resources, the New York State Department of Environmental Conservation, the State of Minnesota Department of Natural Resources, and American Rivers *et al.* filed timely rehearing requests. The State of Montana, the State of Washington Department of Ecology, the Northwest Power Planning Council, and the State of Oregon filed requests for rehearing out of time. The Commission is considering these as requests for reconsideration.

[5] 5 U.S.C. 551 *et seq.* (1982).

[6] 5 U.S.C. 553(b)(A) (1982).

[7] *Id.*

[8] 37 FERC ¶ 62,264 (1986).

[9] *See* section 313(b) of the FPA, 16 U.S.C. 825*l*(b).

[10] State of California, Kentucky Department for Environmental Protection, Vermont Agency of

Continued

comprehensive plans "for improving, developing, *or* conserving" waterways (emphasis added), and that therefore these plans should not be required to balance all relevant public uses of the waterways. Rather, they reason that a plan, for example, that is concerned only with identifying reaches of rivers that should be protected from all forms of development should also qualify under section 10(a)(2)(A). These petitioners refer by way of contrast to the language of section 10(a)(1), which requires that projects to be licensed shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for a variety of beneficial public uses that are linked with the conjunctive "and," not the disjunctive "or." [11]

Two petitioners [12] also argue that requiring section 10(a)(2)(A) comprehensive plans to consider and balance all beneficial uses of a waterway renders "conflicting or redundant" the requirement of section 10(a)(2)(B) of the FPA that the Commission consider the "recommendations of * * * State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located * * *." California asserts that state comprehensive plans would always be subsumed within the state recommendations obtained pursuant to section 10(a)(2)(B).

Finally, American Rivers, *et al.* takes issue with the Commission's conclusion, as expressed in its order in *Fieldcrest Mills, Inc.* and in Order No. 481, that a comprehensive plan must be prepared and adopted pursuant to a specific act of the state legislature. American Rivers, *et al.* reasons that a comprehensive plan should qualify so long as a state agency is legally competent as a matter of state law to prepare such a plan.

The issue before the Commission is whether Congress, in enacting section 10(a)(2)(A) of ECPA, intended state and Federal comprehensive plans to consider and balance all relevant beneficial uses of a waterway, or whether Congress intended that such plans could deal with some, or only one, beneficial use.

The Commission recognizes that there is an ambiguity of intent reflected in the statutory language and the legislative history. However, it is not necessary to resolve this ambiguity, because, as a matter of policy, the Commission will accord section 10(a)(2)(A) treatment to state and Federal plans that consider one, or more, or all beneficial public uses of a waterway. In so doing, it will ensure that all state and Federal river programs and policies will be fully considered in the Commission's licensing decision.

With respect to the argument of American Rivers, *et al.* opposing the requirement of a specific act of the state legislature, the Commission's position was guided by the pre-passage remarks of Committee Chairman McClure, who stated that the provision would require the Commission to consider the extent to which a proposed plan was consistent with a state comprehensive plan "as established by an act of the State legislature and developed, implemented and managed by an appropriate State agency." [13] No state petitioner objected to the Commission's interpretation on this point. However, we are satisfied that, as the Senate Report states, the plan must merely be "prepared by appropriate agencies as authorized to conduct such planning pursuant to * * * State law." [14]

In sum, the Commission will treat as a comprehensive plan under section 10(a)(2)(A) of the FPA a plan that (1) is prepared by an agency established by Federal law that has the authority to prepare such a plan, or by a state agency authorized to conduct such planning pursuant to state law; (2) is a comprehensive study of one or more of the beneficial uses of a waterway or waterways; (3) articulates the standards applied, the data relied upon, and the methodology used; and (4) is filed with the Secretary of the Commission.

It also bears repeating that, as we stated in Order No. 481, even if a state or Federal plan does not qualify as a comprehensive plan under section 10(a)(2)(A), the Commission will consider the plan, as it considers all relevant studies and recommendations, in its public interest analysis pursuant to section 10(a)(1).

The Commission notes the Conference Report, which states: [15]

> [The bill] incorporates a new section 10(a)(2), expressly requiring FERC to consider comprehensive plans developed by other entities pursuant to State or Federal law, as well as recommendations of Federal and State agencies and Indian tribes with expertise on aspects of the public interest. It is not an exclusive list of values FERC must evaluate and address in order to satisfy its comprehensive planning responsibilities. However, it highlights the steps the Commission must take to inform itself regarding the needs and uses of the river in question. Other steps the Commission would have to take, depending on particular circumstances, include addressing fish and wildlife management and restoration plans for the river drainage and accom[m]odating the views of other interested parties.

Congress, in enacting ECPA, thus affirmed the Commission's "responsibility to resolve competing demands in the public interest." [16] This means that, whereas the Commission has the clear duty to give full consideration to the recommendations submitted in a licensing proceeding, no one recommendation—or comprehensive plan under section 10(a)(2)(A)—can veto a proposed project.[17] Moreover, the fewer the beneficial uses of a waterway that a state or Federal plan has considered and balanced, the less weight will be attached to a proposed project's inconsistency with the plan, since the Commission is required to consider and balance all beneficial uses of a waterway. The Commission therefore encourages states and Federal agencies to develop plans that study and balance as many uses as possible and provide as much data as possible. However, all plans, based on articulated standards and data, will assuredly enhance the Commission's decisionmaking process by giving it the benefit of the planners' analyses and policy judgments.

Because this order constitutes a new policy with respect to comprehensive plans under section 10(a)(2)(A) of the FPA, we will instruct the Director, Office of Hydropower Licensing, to mail a copy of this order to all state governors and appropriate Federal agencies. The Director will request the states and Federal agencies to file with the Commission the plans they believe meet the policy criteria set forth in this

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Natural Resources, Minnesota Department of Natural Resources, and American Rivers, *et al.*

[11] Section 10(a)(1) provides that projects to be licensed shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving *or* developing a waterway or waterways for the use *or* benefit of interstate or foreign commerce, for the improvement *and* utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e) * * *. [Emphasis added.]

[12] State of Oregon and State of California.

[13] 99 CONG. REC. S4140 (April 11, 1986).

[14] S. REP. NO. 99-161, 99th Cong., 1st Sess. 8-9 (1985). The Conference Report refers to comprehensive plans "developed by other entities pursuant to State or Federal law * * *." H.R. REP. NO. 99-934 at 22.

[15] H.R. REP. NO. 99-934 at 22.

[16] *Id.* at 25.

[17] *Cf. id.* at 23 ("Section 10(j) does not give [fish and wildlife] agencies a veto * * *"); Escondido Mutual Water Co. v. La Jolla Band, 466 U.S. 765, 777 (1984) (under Section 4(e), a Secretary administering a federal reservation "has no power to veto the Commission's decision to issue a license * * *").

order. The Director will, within a reasonable period of time, advise the filer whether a plan meets the policy criteria, and if not, why not. If necessary in order to make a determination, the Director may ask the filer to submit additional information with respect to a plan. The Commission staff will also be available, on request, to discuss comprehensive planning with state and Federal personnel.

As a final matter, the Commission notes the request of the Northwest Power Planning Council that the Commission clarify whether the Council's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan are comprehensive plans within the final rule. The Commission found that these two plans were comprehensive plans within the meaning of ECPA in *Utah Power & Light Company.*[18] The Commission is clarifying that, as a policy matter, it will treat the Council's Program and Plan as comprehensive plans under section 10(a)(2)(A).

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR Part 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; and National Environmental Policy Act, 42 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. Section 2.19 is revised to read as follows:

§ 2.19 State and Federal comprehensive plans.

(a) In determining whether the proposed hydroelectric project is best adapted to a comprehensive plan under section (10)(a)(1) of the Federal Power Act for improving or developing a waterway, the Commission will consider the extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by:

(1) An agency established pursuant to Federal law that has the authority to prepare such a plan, or

(2) A state agency, of the state in which the facility is or will be located, authorized to conduct such planning pursuant to state law.

(b) The Commission will treat as a state or Federal comprehensive plan a plan that:

(1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;

(2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and

(3) Is filed with the Secretary of the Commission.

[FR Doc. 88–9848 Filed 5–3–88; 8:45 am]

BILLING CODE 6717-01-M

[18] 40 FERC ¶ 61,139 (1987).

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18 CFR Part 16

[Docket No. RM87-7-000; Order No. 496]

Information To Be Made Available by Hydroelectric Licensees Under Section 4(a) of the Electric Consumers Protection Act of 1986

Issued April 28, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing final regulations governing the notice and information requirements that apply to an existing licensee of a hydroelectric power project subject to sections 14 and 15 of the Federal Power Act. The rule makes final the requirements in the Commission's interim rule in this docket relating to the manner and timing of licensee notification of intent to apply for a new license and to the information that a licensee must make reasonably available to the public upon notifying the Commission of its intention. The rule implements, in part, provisions added to the Federal Power Act by the Electric Consumers Protection Act of 1986.

EFFECTIVE DATE: This order will become effective June 3, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426 (202) 357–8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Final Order

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing final regulations governing the notice and information requirements that apply to an existing licensee of a hydroelectric power project subject to sections 14 and 15 of the Federal Power Act (FPA).[1] The rule makes final the requirements in the Commission's interim rule in this docket relating to the manner and timing of licensee notification of intent to apply for a new license and to the information a licensee must make reasonably available to the public upon notifying the Commission of its intention.[2] The rule implements, in part, provisions added to the Federal Power Act by the Electric Consumers Protection Act of 1986 (ECPA).[3]

II. Background

In ECPA, Congress amended the FPA to establish new procedures, timetables, and standards for the relicensing of projects subject to sections 14 and 15 of the FPA in order to promote greater competition in the relicensing process. Section 15(b)(1) of the FPA[4] requires an existing licensee to notify the Commission at least five years before the expiration of its license whether or not it intends to file an application for a new license. Section 15(c)(2) authorizes the Commission to adjust, by rule or order, the time period specified for the filing of a notice of intent when the expiration date of an existing license does not allow sufficient time for filing that notice five years before the expiration of the license. Section 15(b)(3) requires the Commission to provide public notice of an existing licensee's intention to file or not to file an application for a new license and to notify Federal and state fish and wildlife agencies of that intention.

Section 15(b)(2) of the FPA provides that at the time an existing licensee

[1] 16 U.S.C. 807–808 (1982 and Supp. 1987).

[2] Information to be Made Available by Hydroelectric Licensees Under section 4(a) of the Electric Consumers Protection Act of 1986, Docket No. RM87-7-000, Order No. 467, 52 FR 11,035 (Apr. 7, 1987), III FERC Stats. & Regs. ¶ 30,736 (Mar. 30, 1987), *as amended by* 52 FR 18,227 (May 14, 1987), III FERC Stats. & Regs. ¶ 30,742 (May 7, 1987).

[3] Pub. L. 99–495, 100 Stat. 1243 (Oct. 16, 1986).

[4] 16 U.S.C. 808(b)(1).

notifies the Commission of its intention under section 15(b)(1), it must make reasonably available to the public for inspection at its offices current maps, drawings, data, and any other information as the Commission will, by rule, require regarding the construction and operation of the licensed project. That section further provides that the information must include, to the greatest extent practicable, pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Section 15(b)(2) also provides that copies of the required information must be made available by the existing licensee at reasonable reproduction costs.[5]

Section 15(c)(1) of the FPA requires an existing licensee or a competitor to file an application for a new license with the Commission at least 24 months before the expiration of the existing license.

The Commission issued an interim rule on March 30, 1987, implementing some of the relicensing provisions enacted in ECPA.[6] The interim rule specifies the date by which a licensee must notify the Commission that it does or does not intend to file an application for a new license and the information a licensee must make reasonably available to the public for inspection and reproduction upon filing its notice of intent.

The interim rule became effective on May 7, 1987, without prior notice and comment, because a statutory deadline made prior notice and comment impracticable.[7] The Commission invited interested persons to submit their views on the interim rule for consideration before the Commission issued a final rule in this proceeding. The Commission modified the interim rule on its effective date to comply with recommendations of the Office of Management and Budget (OMB).[8]

III. Discussion

The Commission is issuing this rule to modify and make final the provisions of the interim rule concerning notice and information requirements. Changes to the requirements of the interim rule include specifying a commencement date for the period within which an existing licensee must file a notice of intent,[9] restricting the cultural resources information a licensee must make available to the public at the time it provides that notice of intent,[10] and expanding the types of conservation information that a licensee must make available.[11] The final rule retains the deadline for a licensee to file a notice of intent of five years before the expiration of an existing license.

The interim rule also included an introductory provision that defined terms and described the general applicability and purposes of the Commission regulations on the takeover and relicensing of licensed projects [12] and a provision specifying the deadline for an applicant to file an application for a new license.[13] The Commission is not making those provisions final in this rule because it will address these provisions in a separate rulemaking proceeding in Docket No. RM87-33-000.[14]

The Commission received 14 comments on the interim rule. Commenters included individual licensees, associations representing licensees, organizations representing Native Americans, and an association concerned with historic preservation.[15]

A. Time Period for Filing Notice of Intent

In general, the interim rule requires a licensee to file, at least five years before the expiration of the existing license, a notice stating whether or not it intends to file an application for a new license.[16] ECPA amended the FPA to establish this five-year deadline.[17] The final rule specifies a commencement date for the period within which a licensee must file a notice of intent, thereby limiting the filing to the six-month period before the statutory deadline. Specifically, the final rule provides that a licensee must file a notice of intent at least five, but not more than five and one-half, years before the expiration of its license.[18] The interim rule included certain transitional provisions for projects with existing licenses that expire before October 17, 1992.[19] These provisions are not retained in the final rule because the periods within which affected licensees were required to file notices of intent have passed.

Several licensees suggest that the Commission require a person other than an existing licensee to notify the Commission of its intention to file an application for a new license. Some of these commenters suggest that a nonlicensee applicant give this notification within six months after the Commission's public notice of the existing licensee's notification of intent to file or not to file an application for a new license.[20]

Section 15(b)(1) of the FPA, as amended by ECPA, contains explicit provisions regarding advance notification by a licensee of intent to file or not to file an application for a new license. There are no comparable provisions requiring notification by a nonlicensee applicant. The first requirement that the FPA imposes on a nonlicensee is that it file an application for a new license at least 24 months before the expiration of the term of the existing license, as required of all applicants by section 15(c)(1). The Commission believes that a notification requirement for a nonlicensee applicant, as suggested by the commenters, could be anticompetitive, as it would require the nonlicensee applicant to be

[5] The legislative history of ECPA indicates that the requirement for reimbursement of reproduction costs was not intended to apply to Federal and state fish and wildlife agencies. H.R. Rep. No. 507, 99th Cong., 2nd Sess. at 35 (March 25, 1986).

[6] 52 FR 11035 (Apr. 7, 1987).

[7] ECPA required the Commission to promulgate regulations regarding the information to be provided under the newly enacted section 15(b)(2) within 180 days of the date on which ECPA became law.

[8] OMB did not approve the requirements of the interim rule that a licensee compile information prior to the receipt of a request and that a licensee file with the Commission a statement of unavailability listing those items of required information that it could not make available, together with a statement of the reasons for their unavailability. The Commission revised the interim rule to require that a licensee make information available in a form that is readily accessible, reviewable, and reproducible, rather than that the licensee "compile" it in such a form (§ 16.16(c)(1)). The Commission also suspended the provision of the interim rule which required an existing licensee to file a statement of unavailability regarding required information (§ 16.16(d)(1)). *See* Interim Rule; Stay of Effective Date, 52 FR 18227 (May 14, 1987), III FERC Stats. & Regs. ¶ 30,742.

[9] Final rule, § 16.15(c).

[10] Final rule, § 16.16(d)(5).

[11] Final rule § 16.16(d)(6).

[12] Interim rule, § 16.1.

[13] Interim rule, § 16.14.

[14] Comments addressing these provisions in the interim rule will be incorporated into Docket No. RM87-33-000.

[15] Licensee commenters were Alabama Power Company, Eugene Water & Electric Board, Georgia Power Company, Pacific Gas and Electric Company, Nebraska Public Power District, Public Service Company of Colorado, and Southern California Edison Company. Associations representing licensees were Edison Electric Institute, California Public Agencies, and Wisconsin Utilities Association, Inc. Long Lake Energy Corporation commented as a competitor. Other commenters were the Native American Rights Fund, the National Congress of American Indians, and the Advisory Council on Historic Preservation.

[16] Interim rule, § 16.15.

[17] FPA, § 15(b)(1), 16 U.S.C. 808(b)(1) (Supp. 1987).

[18] Final rule, § 16.15(c)(1).

[19] The interim rule required an existing licensee with a license that expires on or after October 16, 1991, but before October 17, 1992, to file a notice of intent with the Commission by October 16, 1987, and required an existing licensee with a license that expires on or before October 15, 1991, to file a notice of intent with the Commission by August 5, 1987, if the licensee had not filed an application or a statement under § 16.3 before October 16, 1986. Interim rule, § 16.15(b) (2) and (3).

[20] Comments of Alabama Power Company (Alabama Power) at 2, Edison Electric Institute (EEI) at 10, Southern California Edison Company at 3, and Wisconsin Utilities Association at 1.

sufficiently prepared to proceed with a license application and to make a public statement as to its intentions at least four and one-half years prior to the expiration of a license. The statutory requirements that a licensee provide notice of its intent and make certain information available to the public are intended to promote competition in relicensing by allowing potential competitors to review and evaluate information concerning a project in order to determine whether to file an application for a license and to prepare an application if it decides to file one. A notice requirement for a nonlicensee applicant, for which there is no requirement in the FPA, would undermine the statutory intent of promoting competition. The Commission declines to adopt this suggestion.

B. Information To Be Made Available at the Time of Notification

A licensee must make available the required information whether or not it intends to file an application for a new license. In the final rule, the Commission generally retains the information requirements of the interim rule. Changes from the interim rule are discussed below.

1. *General requirements for information to be made available.*—a. *Period during which required information must be made available to the public.* The interim rule requires that a licensee make certain information reasonably available to the public upon filing its notice of intent with the Commission, but does not provide a termination date for the availability of the required information.[21] Two commenters suggest that the required information remain available until the deadline for filing an application for a new license; another commenter suggests that it remain available until six months after the deadline for filing competing applications, that is, until 18 months before the expiration of the existing license.[22]

The Commission agrees that a time limit should be placed on the availability of required information. The Commission believes, however, that any period of availability should be longer than those suggested by commenters. This information may be useful to competing applicants, interveners in relicensing proceedings, and the public. In addition to facilitating competition, the availability of the required information promotes informed public scrutiny of the hydroelectric relicensing process. Therefore, the Commission is requiring that the specified information must remain available until the termination of any relicensing proceeding.[23]

b. *Time period to be covered by required information.* The interim rule required that information relating to project generation and outflows and annual operation and maintenance costs "for the previous five years" be made available,[24] as well as reports on operation or maintenance problems "occurring within the last five years."[25] The Commission recognizes that the precise period intended to be covered by this information is ambiguous and clarifies in the final rule that information should cover the period beginning five years before the filing of a notice of intent.

Some licensees suggest that the coverage period for other required information, such as historical records, cultural data, and environmental, conservation, and recreation reports, should also be limited to the same five-year time interval preceding notification of intent.[26] However, these commenters recommend that this five-year limitation not be applied when the most recent data is more than five years old at the time a notice of intent is filed.

Long Lake Energy Corporation (Long Lake) claims that the five-year coverage period for information relating to generation data and operation and maintenance costs and problems is too short because it does not adequately show the manner in which a licensee has operated a project. Long Lake suggests that information concerning project costs, generation, and maintenance over the life of the project is relevant to an examination of a licensee's "track record" and states that nothing in section 15(b)(2) of the FPA or in the legislative history of ECPA supports limiting the period covered by the information to be made available. Long Lake recommends that the Commission remove the five-year limit and require that a licensee make available such information covering the entire life of the project.[27]

Section 15(b)(2) of the Federal Power Act states that an existing licensee must make current maps, drawings, data, and other information available at the time it gives notice of its intention to apply for a new license. The Commission interprets the word "current" to mean that the data provided will accurately describe the project and allow a meaningful assessment of it. The most meaningful generation, operations, and maintenance data are the most recent. The intended requirement of the interim rule that a licensee make available specified information in these categories covering the five-year period preceding the filing of its notice of intent is reasonable and the Commission is retaining it in the final rule. However, in order to ensure that available information remains current, the Commission is requiring a licensee to supplement the information covering that five-year period with any additional data developed after the filing of a notice of intent.[28]

The Commission also adopts in part commenters' suggestion that a licensee provide earlier data when there is no existing data covering the specified five-year period preceding the notice of intent. The final rule provides that a licensee must make available any report on operations or maintenance problems, other than routine maintenance, beginning with the five-year period preceding the notice of intent or the most recent five-year period for which data exists.[29]

With regard to certain other categories of data, the Commission believes that it is appropriate to require the provision of all existing records, with some non-temporal limitations.[30] All events and studies related to a project and involving cultural resources, fish and wildlife, recreation, or conservation may be relevant in the relicensing process and a record more than five years old may constitute the only documentation on these subjects. Accordingly, the Commission has placed no limit on the time period covered by these categories of documents.[31]

c. *Reports to be made available.* Several sections of the interim rule require a licensee to make "all existing reports" available for public inspection.[32] Licensee commenters express concern that the interim rule might be interpreted to require a licensee to search for and obtain reports by third parties that are not in the

[21] Interim rule, § 16.16(e).

[22] Comments of Alabama Power at 3, EEI at 13–14, and Southern California Edison at 1.

[23] Final rule, § 16.16(b)(2).

[24] Interim rule, § 16.16(b)(1) (iii) and (v).

[25] Interim rule, § 16.16(b)(2)(iii).

[26] Comments of Alabama Power at 3, EEI at 12–14, Southern California Edison at 2, and Wisconsin Utilities Association at 1–2.

[27] Comments of Long Lake at 5–7.

[28] Final rule, § 16.16(c).

[29] Final rule, § 16.16(d)(2)(iii).

[30] Records concerning archaeological resources and records concerning use of the project area by Native Americans are discussed further below.

[31] Final rule, § 16.16(d) (3), (4), (5), and (6).

[32] The following sections of the interim rule refer to "all existing reports": § 16.16 (b)(1)(v), (b)(2)(iii), (b)(3)(i), (b)(3)(ii), (b)(5)(i), (b)(6)(i), and (b)(6)(ii).

possession of the licensee.[33] They suggest that the rule be amended to require the provision of reports of which a licensee has knowledge, reports prepared or filed with the Commission by the licensee, or reports in the licensee's possession.

The Commission believes that reports prepared by third parties may contain information that is required to be made available under section 15(b)(2) of the Federal Power Act. However, the Commission did not intend that the interim rule impose on licensees the burden of searching the records of unrelated entities. Similarly, the intent of the final rule is to require a licensee to make available all required reports in its possession or control, whether those reports were prepared by the licensee or by third parties.

The Wisconsin Utilities Association asks the Commission to clarify the rule to specify whether reports that must be made available are those that exist when a licensee notifies the Commission of its intention to file or not to file an application for a new license or those that exist when information is requested by a member of the public.[34]

A licensee satisfies the public access requirement by providing information when a request is made. At that time, a licensee determines the existence and availability of a document and provides it to the requester within a reasonable period of time. Thus, a licensee is required to make available a report that exists when a request is made, even if that report were generated after the licensee filed its notice of intent.

d. *Unavailable information.* The Commission suspended the requirement of the interim rule that a licensee file a statement of unavailability regarding items of required information that it could not, for reasons beyond its control, make available to the public.[35] OMB had not approved this section, stating that the statutory intent of providing public access is satisfied by requiring a licensee to provide information when a request is made and by allowing the licensee to determine the existence and availability of the required information at that time. OMB noted the provision in the interim rule allowing a member of the public who believes that required information is being withheld to petition the Commission for assistance.[36]

The Eugene Water and Electric Board and Long Lake state that a licensee should be required to provide a statement of unavailability of information.[37] Several licensees disagree and cite the OMB failure to approve this requirement. The intent of section 15(b)(2) of the FPA is that a licensee make required information available within a reasonable time. The Commission expects that an existing licensee will make a good faith effort to provide required information in its possession or control and that if information is unavailable, a licensee will inform a requester of that fact within a reasonable period of time. The Commission believes that the requirement to file a statement of unavailability is unnecessary and has not included that requirement in the final rule. However, it is retaining a procedure similar to that established in the interim rule, allowing anyone who believes that a licensee is not making existing required information reasonably available to petition the Commission for assistance.[38]

e. *Proprietary information.* Georgia Power argues that a licensee should not be required to make available certain proprietary information such as future plans, studies of demand and need, particularized cost information, and the relation of particularized costs to the information, and the relation of particularized costs to the licensee's electric system as a whole.[39] No provision of the interim or final rule requires production of the types of information enumerated by the commenter.[40] The Commission expressly stated in the preamble to the interim rule that it does not believe that information concerning a licensee's future plans should be disclosed to the public before an application for a new license is filed. It further stated that release of this information may unfairly disadvantage the existing licensee and limited disclosure to public information pertaining to the existing project as licensed.[41] The Commission reaffirms these statements in this final rule.

2. *Specific categories of information.*—a *Correspondence.* The interim rule requires a licensee to make available all public correspondence on the licensed project and on certain specific topics.[42] Some licensee commenters state that these requirements are overly broad and unduly burdensome and that much of the required correspondence would be irrelevant to an evaluation of the current operation of a project.[43] The Edison Electric Institute (EEI) suggests that the Commission limit the required information to correspondence to which the licensee is a party and which relates to one of the party and which relates to one of the subject areas in § 16.16(d).[44]

The Commission believes that all correspondence relating to a project should be made available. These documents demonstrate in part how a licensee has used a public resource. This information is valuable not only to competitors, but also to the public, for whom relicensing constitutes an important opportunity to evaluate use of the nation's water resources. Thus, the Commission has not adopted the suggestion that a licensee be required to make available only correspondence to which it is a party.

Some licensees also suggest that licensees be permitted to make available correspondence on all subjects in a single correspondence file.[45] Correspondence is more likely than other categories of documents to be filed chronologically or by some method other than by subject matter. The Commission believes that making correspondence related to the project available satisfies the purposes of section 15(b)(2) of the FPA. Accordingly, in this final rule, the Commission is clarifying that a licensee may provide all required public correspondence in one file.[46]

[33] Comments of EEI at 12, Nebraska Public Power District at 1, Public Service Company of Colorado at 1–2, and Southern California Edison at 2.

[34] Comments of Wisconsin Utilities Association at 1.

[35] 52 FR 18,227 (May 14, 1987), suspending interim rule, § 16.16(d)(1).

[36] Interim rule, § 16.16(d)(2).

[37] Comments of Eugene Water & Electric Board at 1 and Long Lake at 9–11.

[38] Final rule, § 16.16(f).

[39] Comments of Georgia Power at 3.

[40] The interim rule sets out specific items of required information in § 16.16(b), 52 FR at 11039–11040. The cost information required consists of annual operation and maintenance costs and original project costs (§ 16.16(b)(1)(v). The comparable provision in the final rule is § 16.16(d)(1)(v).

[41] 52 FR at 11036.

[42] Under the interim rule, a licensee is required to provide all public correspondence relating to the existing project (§ 16.16(b)(1)(iv)); the safety and structural adequacy of the existing project (§ 16.16(b)(2)(v)); fish and wildlife resources within the project area (§ 16.16(b)(3)(iv)); energy conservation measures relating to the existing project (§ 16.16(b)(4)(ii)); recreation and land use resources within the project area (§ 16.16(b)(5)(iv)); and cultural resources within the project area (§ 16.16(b)(6)(iii)).

[43] Comments of EEI at 21, Public Service Company of Colorado at 2, and Southern California Edison at 3.

[44] Comments of EEI at 20–21.

[45] Comments of EEI at 21 and Southern California Edison at 3.

[46] Final rule, § 16.16(g).

b. *License applications, orders, issuing licenses, and appurtenant documents.* The interim rule requires a licensee to make available the original license application; the order issuing the license for the existing project, including approved Exhibit drawings; all orders issuing amendments to the license for the existing project; and all orders, issuing annual licenses for the existing project.[47]

EEI states that some licensees may be coming to the end of a second license term and suggests that the Commission require such licensees to make available only their licenses and appurtenant documents.[48] The Commission is not adopting this suggestion because it believes that pertinent information may be contained in a prior license and related documents. The Commission is requiring that a licensee make available the original and all subsequent licenses and appurtenant documents.[49]

c. *Data to verify operation of the project in accordance with license terms.* The interim rule requires licensees to make available all data necessary to enable the public to verify that the project has been and is being operated in accordance with the requirements of each license article, including minimum flow requirements, maximum ramping rates, reservoir elevation limitations, and environmental monitoring procedures.[50] The licensees state that it is the Commission, not the public, that must determine whether or not a licensee has complied with the terms and conditions of its license and that, regardless of the amount of data made available, the public may not be able to verify compliance.[51]

The Commission believes that information relevant to verifying compliance with license terms and conditions may be useful to competitors, interveners, and the general public. A competitor may seek such information to demonstrate that it should receive the new license. An intervener may use it to support one applicant over another or to seek revisions in the terms and conditions of a license. The general public may use this information to evaluate a licensee's stewardship of a waterway. Because information relevant to verifying compliance with license terms and conditions is useful to reviewers other than the Commission, the Commission retains the requirement that such information be made reasonably available to the public.[52]

Other licensees suggest that this section could be interpreted to require a licensee to conduct new studies to establish compliance with license articles. The Commission restates its position that a licensee will not be required to conduct an additional study to fulfill the information requirements of the final rule.

Long Lake requests that licensees be required to make available several additional categories of information. First, Long Lake suggests that all records pertaining to inspections, investigations, and enforcement actions undertaken by the Commission in connection with a project should be made available to the public because this information is relevant to a licensee's performance with respect to any project.

The Commission believes that the information provision requirements of the interim and final rules cover the types of records cited by Long Lake. For example, the interim and final rules require that licensees make available all public correspondence relating to the existing project and all existing reports on any operation or maintenance problems other than routine maintenance.[53] The Commission therefore declines to adopt an additional requirement.

Long Lake also suggests that a licensee be required to provide information concerning all of its hydroelectric projects when it files an application for a new license for any project. Long Lake believes that a licensee's level of performance at other hydroelectric facilities is an important indicator of its ability to operate and maintain the project for which the application is filed.[54] The Commission is not adopting this suggestion because performance at other hydroelectric projects is not a factor the Commission must consider in making its licensing decisions under either section 10 or section 15 of the FPA.[55]

d. *Conservation plans.* The interim rule requires a licensee that is an electric utility, or a state or a municipality that uses any of the power generated by the existing project to make available its plan to conserve electricity or encourage conservation by its customers.[56] EEI claims this requirement is too onerous because conservation plans are often lengthy documents which are frequently revised. EEI suggests that the Commission require that a licensee make available only current information concerning its energy conservation programs and that a licensee be allowed the discretion to provide either a current conservation plan or a detailed summary of the conservation initiatives it has undertaken. EEI also points out that a licensee may not have a single comprehensive plan covering all its activities in the energy conservation field.[57]

Section 4(e) of the FPA requires the Commission to give significant consideration to energy conservation issues in granting a hydroelectric project license.[58] The activities of a licensee with regard to conservation are of major importance in a relicensing proceeding. The Commission is thus retaining the requirement that a licensee's conservation plan be made available to the public and is broadening the requirement to include any other information pertinent to a licensee's efforts to conserve electricity or to encourage conservation by its customers. The Commission is expanding this information requirement because it recognizes that not all conservation information may be contained in a formal conservation plan.

e. *Project generation and outflow data.* The interim rule requires a licensee to make available a compilation of project generation and respective outflow data for the five years preceding a request, in time increments not to exceed one hour.[59] Several licensees state that some hydroelectric powerhouses are not metered for hourly readings and suggest that generation and outflow data be provided in the smallest increment recorded.[60] In the final rule, the Commission is requiring that project generation and outflow data be made available in increments not to exceed one hour, unless use of another time increment can be justified.[61]

f. *Recreational use reports.* The interim rule requires a licensee to make available all existing reports on past and current recreational uses of the project area.[62] Licensee commenters ask

[47] Interim rule, § 16.16(b)(1)(i).

[48] Comments of Alabama Power at 3–4 and EEI at 14–15.

[49] Final rule, § 16.16(d)(1)(i).

[50] Interim rule, § 16.16(b)(1)(ii).

[51] Comments of Alabama Power at 4, EEI at 15, and Georgia Power at 3.

[52] Final rule, § 16.16(d)(1)(ii).

[53] Interim rule, § 16.16 (b)(1)(iv) and (b)(2)(iii); Final rule, § 16.16 (d)(1)(iv) and (d)(2)(iii).

[54] Comments of Long Lake at 7–9.

[55] 16 U.S.C. 803 and 808 (1982 and Supp. 1987).

[56] Interim rule, § 16.16(b)(4)(i).

[57] Comments of EEI at 21–22.

[58] 16 U.S.C. 797(e) (Supp. 1987).

[59] Interim rule, § 16.16(b)(1)(iii).

[60] Comments of Alabama Power at 4, EEI at 15–16, and Southern California Edison at 2.

[61] Final rule, § 16.16(d)(1)(iii).

[62] Interim rule, § 16.16(b)(5)(i).

the Commission to require instead that a licensee make available its FERC Form No. 80 and any FERC-approved recreation plan.[63] The Commission believes, however, that documents other than FERC Form No. 80 and a FERC-approved recreation plan may contain useful information regarding recreational uses. The Commission also notes that not every project has an approved recreation plan and that the filing of FERC Form No. 80 is no longer required on an annual basis. The Commission therefore declines to revise the requirement that a licensee make available any report on past or current recreational uses of the project area.[64]

Several licensees claim that the appropriate term of art to describe the area within a project boundary is "project" or "project boundary" rather than "project area".[65] The Commission used the term project area in the sections of the interim rule requiring the provision of information concerning fish and wildlife resources, recreation and land use resources, and cultural resources. The Commission believes that project area is properly used to denote the area within a project boundary and it has retained that term in the final rule.[66]

g. *Reports on archaeological resources and use by Native Americans.* Several commenters object to the requirements of the interim rule that all existing reports documenting archaeological resources identified in the project area and historical and present use of the project and surrounding areas by Native Americans, as well as all public correspondence relating to cultural resources within the project area, be made available to the public.[67] The National Congress of American Indians and the Native American Rights Fund argue that compliance with the provisions of the interim rule would violate the privacy rights of Native Americans with regard to sacred sites and ceremonies and would increase the vulnerability of Indian burial sites to looting. The Edison Electric Institute suggests that disclosure of certain information would violate the spirit of the American Indian Religious Freedom Act of 1978.[68] Other commenters cite the Archaeological Resources Protection Act of 1979[69] and the National Historic Preservation Act of 1966,[70] which protect from disclosure information concerning the nature and location of certain archaeological and historic resources.

The Commission recognizes the desirability of protecting historic and Native American sites from undue damage. The Commission is modifying the provision of the interim rule to require that a licensee make available specified cultural resources information from which the licensee has deleted specific site or property locations, the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located.[71]

3. *Manner in which information is to be made available.*—a. *Copying charges.* The interim rule provided that an existing licensee must make requested copies of the required information available at reasonable costs of reproduction, not to exceed ten cents per page of photocopy, microform, or computer printout.[72] Several licensees commented generally that a charge of ten cents per page is unreasonable. Other commenters state that certain documents require to be made available for reproduction are of large or irregular size and require special duplicating techniques that may cost more than ten cents per page. They suggest that the Commission provide that a requester be charged the actual cost of duplication or "reasonable costs" of reproduction.[73]

The Commission agrees that a uniform fee of ten cents per page may not be reasonable in all circumstances and that a more equitable approach is to require a requester to reimburse a licensee for the actual costs of duplication. In this final rule, the Commission is requiring that a licensee charge a requester reasonable costs of duplication for reproducing documents that it is required to make available.[74]

b. *Location at which information must be made available.* The interim rule provides that required information must be made available at a licensee's principal place of business during regular business hours.[75] Some licensees suggest that the Commission allow a licensee the option of providing some or all of the information at other locations. Alternate locations suggested by commenters include the project site, other offices of the licensee, a public building such as a school or library, or some other facility near the project.[76] The Commission believes that making required information available at more than one site may be advantageous to both the licensee and the public. The Commission also believes that to permit a licensee to make portions of the required information available at several potentially widely scattered locations would place an undue burden on those seeking to review that information. The Commission concludes that there must be one location at which all the required information is available, although that location need not be the licensee's principal place of business. The final rule offers the alternative of making all the required information available at any other location or locations which may be more accessible to the public.[77]

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[78] requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the FRA, the Commission hereby certifies that the final rule regarding notification and information to be provided by a licensee, if promulgated, would not have a significant economic impact on a substantial number of small entities. or that, even if the rule were to have a significant economic impact on a substantial number of small entities, it would be to their benefit. The Commission believes that the entities affected by the rule do not fall within the class of "small entity." Even if the rule were to have a significant effect on a substantial number of small entities, however, the relicensing requirements in this final rule are necessary for the Commission to grant a new or nonpower license to an applicant at the expiration

[63] Comments of EEI at 16–17 and Southern California Edison at 2.

[64] Final rule, § 16.16(d)(4)(i).

[65] Comments of Alabama Power at 4 and EEI at 16–17.

[66] Final rule, § 16.16(d) (3), (4) and (5).

[67] Interim rule § 16.16(b)(6).

[68] 42 U.S.C. 1996 (1982). This section states that it is the policy of the United States to preserve rights of Native Americans to the exercise of their traditional religions, including the right of access to religious sites. It has been interpreted to require Federal agencies to consider Indian religious values, to obtain and consider Indian views, and to avoid unnecessary interference with Indian religious practices. *Wilson* v. *Block*, 708 F.2d 735 (D.C. Cir. 1983, *cert. denied* 464 U.S. 1056 (1984).

[69] 16 U.S.C. 470hh (1982).

[70] 16 U.S.C. 470w–3 (1982).

[71] Final rule, § 16.16(d)(5).

[72] Interim rule, § 16.16(c)(3).

[73] Comments of California Public Agencies at 3–4, EEI at 24–25, Georgia Power at 5, and Southern California Edison at 7.

[74] Final rule, § 16.16(e)(2). The Commission has exempted fish and wildlife agencies from payment of the costs of reproduction of required information. Final rule § 16.16(e) (3).

[75] Interim rule, § 16.16(c)(2).

[76] Comments of Alabama Power at 5 and EEI at 23.

[77] Final rule, § 16.16(e)(1)(i).

[78] 5 U.S.C. 601–612 (1982).

of an existing license term. An applicant may benefit substantially by obtaining a license.

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[79] and the Office of Management and Budget's (OMB) regulations[80] require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this final rule have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, Office of Management Systems and Analysis (202) 357-5600). Comments on the information collection provisions of this final rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have an effect on the human environment.[81] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[82] No environmental consideration is necessary for a proposal for the promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended.[83] The final rule is procedural in nature. It defines requirements for a licensee to provide notice of its intent to file or not to file an application for a new license and to make available to the public information concerning a project. Moreover, the final rule does not substantially change the effect of legislation and regulations being amended. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this final rule.

VII. Effective Date

This rule is effective June 3, 1988.

[79] 44 U.S.C. 3501-3520 (1982).

[80] 5 CFR 1320.13 (1986).

[81] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), to be codified at 18 CFR Part 380.

[82] *Id.*, to be codified at § 380.4.

[83] *Id.*, to be codified at § 380.4(a)(2)(ii).

List of Subjects in 18 CFR Part 16

Electric power.

In consideration of the foregoing, the Commission amends Part 16 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

1. The authority citation for Part 16 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99-495; Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 16.15 is revised to read as follows:

§ 16.15 Notification procedures under section 15 of the Federal Power Act.

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to notify.* In order to notify the Commission under section 15 of the Federal Power Act whether a licensee intends to file or not to file an application for new license, the licensee must file with the Commission an original and fourteen copies of a letter, that contains the following information:

(1) The licensee's name and address.

(2) The project number.

(3) The license expiration date.

(4) An unequivocal statement of the licensee's intention to file or not to file an application for a new license.

(5) The type of principal project works licensed, such as dam and reservoir, powerhouse, or transmission lines.

(6) Whether the application is for a power or nonpower license.

(7) The location of the project by state, county and stream, and, when appropriate, by city or nearby city.

(8) The installed plant capacity.

(9) The location or locations of all the sites where the information required under § 16.16 is available to the public.

(10) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used by the project is located;

(ii) Every city, town, Indian tribe, or similar local political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the project dam,

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is located and any Federal facility that is used by the project is located, or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is used by the project; and

(iv) Every other political subdivision in the general area of the project that there is reason to believe would be likely to be interested in, or affected by, the notification.

(c) *When to notify.* (1) Except as provided in paragraph (c)(2) of this section, if a license expires on or after October 17, 1992, the licensee must notify the Commission as required in paragraph (b) of this section at least five years, but no more than five and one-half years, before the existing license expires.

(2) The requirement in paragraph (c)(1) of this section does not apply if a licensee filed notice more than five and one-half years before its existing license expired and before the effective date of this rule.

(d) *Commission notice.* Upon receipt of the notification required under paragraph (b) of this section, the Commission will provide notice of the licensee's intent to file or not to file an application for a new license by:

(1) Publishing notice in the **Federal Register**;

(2) Publishing notice once every week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(3) Notifying appropriate Federal and state resource agencies and Indian tribes by mail.

3. Section 16.16 is revised to read as follows:

§ 16.16 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

(a) *Applicability.* This section applies to a licensee of an existing project subject to sections 14 and 15 of the Federal Power Act.

(b) *Requirement to make information available.* A licensee must make the information specified in paragraph (d) of this section reasonably available to the public for inspection and reproduction, from the date on which the licensee notifies the Commission pursuant to § 16.15(b) of this part until the date any

relicensing proceeding for the project is terminated.

(c) *Requirement to supplement information.* A licensee must supplement the information it is required to make available under the provisions of paragraph (d) with any additional information developed after the filing of a notice of intent.

(d) *Information to be made available.* A licensee must make the following information regarding its existing project reasonably available to the public as provided in paragraph (b) of this section:

(1) The following construction and operation information:

(i) The original license application and the order issuing the license and any subsequent license application and subsequent order issuing a license for the existing project, including

(A) Approved Exhibit drawings, including as-built exhibits,

(B) Any order issuing amendments or approving exhibits, and

(C) Any order issuing annual licenses for the existing project;

(ii) All data relevant to whether the project is and has been operated in accordance with the requirements of each license article, including minimum flow requirements, ramping rates, reservoir elevation limitations, and environmental monitoring data;

(iii) A compilation of project generation and respective outflow with time increments not to exceed one hour, unless use of another time increment can be justified, for the period beginning five years before the filing of a notice of intent;

(iv) Any public correspondence relating to the existing project;

(v) Any report on the total actual annual generation and annual operation and maintenance costs for the period beginning five years before the filing of a notice of intent;

(vi) Any reports on original project costs, current net investment, and available funds in the amortization reserve account;

(vii) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system or point of use; and

(viii) Any bill issued to the existing licensee for annual charges under section 10(e) of the Federal Power Act.

(2) The following safety and structural adequacy information:

(i) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(ii) Any independent consultant's reports required by Part 12 of the Commission's regulations and filed on or after January 1, 1981;

(iii) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five years preceding the filing of a notice of intent or within the most recent five-year period for which data exists, and associated costs of such problems under the Commission's Uniform System of Accounts;

(iv) Any construction report for the existing project; and

(v) Any public correspondence relating to the safety and structural adequacy of the existing project.

(3) The following fish and wildlife resources information:

(i) Any report on the impact of the project's construction and operation on fish and wildlife resources;

(ii) Any existing report on any threatened or endangered species or critical habitat located in the project area, or affected by the existing project outside the project area;

(iii) Any fish and wildlife management plan related to the project area prepared by the existing licensee or any resource agency; and

(iv) Any public correspondence relating to the fish and wildlife resources within the project area.

(4) The following recreation and land use resources information:

(i) Any report on past and current recreational uses of the project area;

(ii) Any map showing recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area, Land and Conservation Fund lands in the project area, and designated or proposed Federal or state wild and scenic river corridors in the project area;

(iii) Any documentation listing the entity responsible for operating and maintaining any existing recreational facilities in the project area; and

(iv) Any public correspondence relating to recreation and land use resources within the project area.

(5) The following cultural resources information:

(i) Except as provided in paragraph (d)(5)(ii) of this section, a licensee must make available:

(A) Any report concerning documented archaeological resources identified in the project area;

(B) Any report on past or present use of the project area and surrounding areas by Native Americans; and

(C) Any public correspondence relating to cultural resources within the project area.

(ii) A licensee must delete from any information made available under paragraph (d)(5)(i) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w-3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(6) The following energy conservation information under section 10(a)(2)(C) of the Federal Power Act, related to the licensee's efforts to conserve electricity or to encourage conservation by its customers including:

(i) Any plan of the licensee;

(ii) Any public correspondence; and

(iii) Any other pertinent information relating to a conservation plan.

(e) *Form, place, and hours of availability, and cost of reproduction.* (1) A licensee must make the information specified in paragraph (d) of this section available to the public for inspection:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, provided that all of the information is available in at least one location;

(ii) During regular business hours; and

(iii) In a form that is readily accessible, reviewable, and reproducible.

(2) Except as provided in paragraph (d)(3) of this section, a licensee must make requested copies of the information specified in paragraph (c) of this section available either:

(i) At its principal place of business or at any other location or locations that are more accessible to the public, after obtaining reimbursement for reasonable costs of reproduction; or

(ii) Through the mail, after obtaining reimbursement for postage fees and reasonable costs of reproduction.

(3) A licensee must make requested copies of the information specified in paragraph (d) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources without charge for the costs of reproduction or postage.

(f) *Unavailability of required information.* Anyone may file a petition with the Commission requesting access to the information specified in paragraph (d) of this section if it believes that a licensee is not making the information reasonably available for public inspection or reproduction. The

petition must describe in detail the basis for the petitioner's belief.

(g) *Public correspondence.* A licensee may compile and make available in one file all the public correspondence required to be made available for inspection and reproduction by § 16.16(d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(iv), and (d)(6)(ii).

[FR Doc. 88-9847 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. 78N-0434]

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Esmopal

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is amending the animal drug regulations by removing the regulation that reflects approval of the new animal drug application (NADA) for Esmopal. Esmopal is a new animal drug approved for injection into roasting chickens to produce more uniform fat distribution and to improve finish. This action is being taken because, as explained in a notice published elsewhere in this issue of the **Federal Register**, approval of the NADA is being withdrawn.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 1988 (53 FR 4214), CVM published an amended notice of opportunity for hearing on a proposal to withdraw approval of NADA 13-187, submitted by Mattox & Moore, Inc. (Mattox & Moore), for Esmopal (21 CFR 522.844).

CVM based the proposed action on section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)) on the grounds that (1) Esmopal is not shown to be safe for use because (a) new evidence provides a reasonable basis from which serious questions about the ultimate safety of Esmopal and the residues that may result from its use may be inferred, and (b) new evidence shows that Esmopal is no longer shown to be safe by adequate tests by all methods reasonably applicable, and (2) section 512(d)(1)(H) of the act applies to the drug because (a) new evidence shows that estradiol has been shown to induce cancer in animals, (b) it is impossible to determine whether the total residue of Esmopal is below the level of no carcinogenic concern, (c) there is no method approved by FDA by regulation that can measure the total residue of Esmopal at a concentration low enough to be of no carcinogenic concern, and (d) the residue concentration under conditions of use reasonably certain to be followed in practice cannot be shown to be at or below the concentration of no carcinogenic concern.

Mattox & Moore did not file a written appearance requesting a hearing and therefore waived the opportunity for a hearing.

In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of Mattox & Moore's NADA 13-187. Upon withdrawal of approval of a new animal drug application, the agency is required by section 512(i) of the act to remove the regulation that reflects the approval.

This final rule removes 21 CFR 522.844, which reflects approval of NADA 13-187, effective May 16, 1988.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C.) 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.844 [Removed]

2. Section 522.844 *Estradiol monopalmitate* is removed.

Dated: April 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-9869 Filed 5-3-88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 6H5481/R955; FRL-3374-6]

Pesticide Tolerances for Triflumizole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit combined residues of the fungicide triflumizole and its metabolites in or on certain feed items. Uniroyal Chemical Co., Inc., requested this rule to establish temporary maximum permissible levels for combined residues of triflumizole to permit marketing of certain feed commodities in connection with an experimental use of the fungicide on apples and grapes.

EFFECTIVE DATE: April 25, 1988.

ADDRESS: Written objections, identified by the document control number, [FAP 6H5481/R955], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 6, 1988 (53 FR 11314), in which it was announced that Uniroyal Chemical Co., Inc., had submitted a feed additive petition (FAP 6H5481) proposing the establishment of a feed additive regulation for the combined residues of the fungicide triflumizole (1-(1-(4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on apples, dried at 3.0 parts per million (ppm), apple pomace, wet at 1.0 ppm, apple pomace, dry at 3.0 ppm, grape juice at 1.0 ppm, grape pomace, wet at 4.0 ppm, grape pomace, dry at 1.0 ppm, raisins at 1.0 ppm, and raisin waste at 2.0 ppm. The petitioner had subsequently amended its petition to establish tolerances for the fungicide in or on the following commodities as follows: apple pomace at 2.0 ppm, grape pomace at 25.0 ppm, and raisin waste at

8.0 ppm. A feed additive regulation was proposed to permit the processing of apples and grapes which have been treated in connection with proposed EPA Experimental Use Permit No. 400-EUP-AU.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. By adding new § 561.444, to read as follows:

§ 561.444 Triflumizole.

A feed additive regulation is established to permit residues of the fungicide triflumizole (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)2-propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethyl-aniline moiety (calculated as triflumizole) in or on the following processed feeds when present therein as a result of application to grapes and apples in connection with an experimental use program, as follows:

Feeds	Parts per million
Apple pomace	2.0
Grape pomace	25.0
Raisin waste	8.0

[FR Doc. 88-9751 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 220, and 221

[Docket No. R-88-1338; FR-2448]

Multifamily Housing Mortgage Insurance—Regulation of Rents

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 425 of the of the Housing and Community Development Act of 1987. Section 425 requires HUD to regulate charges for accommodations (rents), facilities, and services for certain multifamily projects with HUD-insured project mortgages. Regulation must occur where (1) the mortgagor did not take steps, by December 1, 1987, to amend its regualtory agreement to incorporate rules changes published on April 19, 1983 and June 4, 1986, permitting mortgagors to set rental and other charges for their projects or to use alternative formulae for setting maximum project rentals; and (2) the project was receiving Section 8 assistance (other than Housing Certificates) as of December 1, 1987, or not less than one-half of the project units are cocupied by lower income families. HUD must control the rental and other charges for projects subject to section 425 as they were controlled immediately before the effective date of the April 19, 1983 rule—June 4, 1983. The effect of this rule will be to reinstitute controls on rents and charges for projects subject to section 425.

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rule implements section 425 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act). This provision requires HUD to regulate charges for accommodations (rents), facilities, and services for certain multifamily projects with HUD-insured mortgages. Regulation must occur where (1) the mortgagor did not take steps, by December 1, 1987, to amend its regulatory agreement to incorporate regulatory changes published on April 19, 1983 and June 4, 1986, permitting mortgagors to determine the rental and other charges for their projects or to use alternative formulae for setting maximum project rents; and (2)(A) the project was receiving Section 8 assistance (other than Housing Certificates) as of December 1, 1987, or (B) not less than half of the project units are occupied by lower income families.

1. The April 19, 1983 Rulemaking

On April 19, 1983, the Department published a rule changing the requirements for HUD control of rents and other charges for projects with mortgages insured under sections 207, 220, and 221 of the National Housing Act (NHA). (See 48 FR 16670, effective June 1, 1983.) Under section 207 of the NHA (before its later amendment by the Housing and Urban-Rural Recovery Act of 1983), HUD was required to regulate rents and other charges. Under sections 220 and 221 of the NHA, regulation of rents and other charges was discretionary with HUD, but the Department had elected to control charges for these programs as well. 24 CFR 207.19(e), 220.511, and 221.530 all required HUD's advance written approval for the establishment of any rental or other project charge. With respect to rental charges, HUD controlled these projects by a strict formula based on historical costs and a rate of return that was a fixed

percentage of the project's initial replacement cost.

The April 19 final rule made two principal changes in this regulatory scheme. First, the Department used its deiscretion under sections 220 and 221 of the NHA to deregulate rents and other charges in unassisted projects: mortgagors could set their project rents and other charges in accordance with the rental market in the area. Regulation of rents continued only for units receiving certain types of Section 8 assistance, projects receiving Section 8 Loan Management Assistance, and projects insured under section 221(d)(3) of the NHA. The regulation of certain charges for facilities and services continued for each of these units and projects, as well as for section 221(d)(4) elderly or handicapped projects.

Second, the Department implemented an alterantive rental formula for 24 CFR Part 207. The first part of the formula instituted a forward-budgeted (12-month) system of setting rents. This replaced the historical costs approach used under the old rule. The second part of the formula—the "deregulatory component—permitted mortgagors to obtain a realistic return on their investment in the project, based on the overall appreciation in the property's value. Under the second component, mortgagors could choose to determine rentals based on the lesser of (1) a current fair market value approach or (2) rents for comparable units in the area. HUD would approve rental adjustments determined under either the forward-budgeting or the "deregulatory" element of the formula, at the mortgagor's option.

The forward-budgeted element of the formula was also made applicable to projects that were insured under section 207, 220, or 221 of the NHA and that had Section 8 Loan Management Contracts under 24 CFR Part 886, Subpart A, and to assisted projects under sections 221(d)(3) and 236 of the NHA.

2. The June 4, 1986 Rule Making

On June 4, 1986, the Department published a second rule dealing with rents and other charges under sections 207, 220, and 221 of the NHA. (See 51 FR 20264, effective July 21, 1986.) The rule was primarily designed to implement section 431 of the Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act). Section 431 gave HUD discretion to deregulate rents and other charges for mortgages insured under section 207 of the NHA on or after November 30, 1983. The June 4 rule generally ended HUD's regulation of rents for section 207 projects with mortgages insured on or after that date. HUD regulation of these projects continued for rents and other charges for units occupied by Section 8 tenants and for subsidized projects refinanced pursuant to section 223(f) of the NHA.

Regulation also continued for project rents where the mortgagor opts for regulation in order to maintain the project's tax-exempt status or where the effect of HUD deregulation would be the imposition of State or local rent controls that State or local law previously held inapplicable because of HUD's rent regulation. In both of these situations, the maximum permissible rental charges are determined by the alternative section 207 formula established by the April 19, 1983 rule.

The rule gave mortgagors of projects that were insured under section 207, 220, or 221 of the NHA and that contained Section 8 Loan Management Assistance the option of having rent charges determined under the alternative section 207 formula, discussed earlier. It also added provisions (analogous to the section 207 provisions) for HUD rent regulation to maintain a project's tax-exempt status or to avoid applicability of State or local rent controls.

Section 425 of the 1987 Act

Section 425 applies where a mortgagor has not, as of December 1, 1987, executed (and filed a written request with HUD to enter into) an amendment to the project's regulatory agreement pursuant to the April 19, 1983 and June 4, 1986 rules, electing to deregulate rents or to use an alternative formula for determining the maximum allowable rents under those rules.

1. Section 207 of the NHA

In the case of section 207 of the NHA, section 425 of the 1987 Act covers the following situations:

a. The Alternative Rent Formula Under the April 19, 1983 Rule

Since only projects that were insured pursuant to a firm commitment issued before the effective date of the rule (June 1, 1983) would need a change in the regulatory agreement to use the alternative formula, section 425 applies only to these projects.

b. The Alternative Rent Formula for Projects With Section 8 Loan Management Units Established By the June 4, 1986 Rule

Since section 431 of the 1983 Act and the June 4 rule deregulated rents for mortgages insured on or after November 30, 1983 (including the rents for unassisted units in a project receiving Loan Management assistance), only mortgages insured before that date would need a regulatory agreement to use the alternative rent formulation. Thus, section 425 of the 1987 Act would only apply to projects with Section 8 Loan Management units where the project mortgage was insured before November 30, 1983.

2. Sections 220 and 221 of the NHA

Section 425 of the 1987 Act covers the following situations involving property with mortgages insured under section 220 or 221 of the NHA:

a. Deregulation of Rents and Other Charges Under the April 19, 1983 Rule

Since only projects that are insured pursuant to a firm commitment to insure issued before the effective date of the April 19 rule would require a change in the regulatory agreement to obtain deregulation, section 425 only covers those mortgages.

b. The Alternative Rent Formula For Projects With Section 8 Loan Management Units Estabished By the June 4, 1986 Rule

Again, section 425 of the 1987 Act applies only to mortgages insured pursuant to a firm commitment to insure issued before the effective date of the rule—July 21, 1986.

3. Summary of Coverage

Based on the foregoing, section 425 applies to the following situations:

a. Mortgages that are insured under section 207 of the NHA pursuant to a firm commitment to insure issued before June 1, 1983, where the mortgagor could have elected to use the alternative rent formula established by the April 19, 1983 rule.

b. Mortgages that are insured under section 220 or 221 of the NHA pursuant to a firm commitment to insure issued before June 1, 1983, where the mortgagor could have elected to deregulate charges for rents, facilities, or services under the April 19, 1983 rule.

c. Mortgages (1) that were insured (i) under section 207 of the NHA before November 30, 1983 or (ii) under section 220 or 221 of the NHA pursuant to a firm commitment to insure issued before July 21, 1986, and (2) that contained units receiving Section 8 Loan Management assistance, where the mortgagor could have elected to use the alternative rent formula established under the June 4, 1986 rule.

4. Changes That the 1983 and 1986 Rules Made to the Determination of Rents and Other Charges That Are Not Subject to Section 425

The 1983 and 1986 rules made the following changes in the way rents and

other charges are determined that are not subject to section 425:

a. *Forward-budgeted rent formula for Loan Management projects.* The April 19, 1983 rule established a forward-budgeted method for determining rent adjustments for projects with Section 8 Loan Management assistance under sections 207, 220, 221, and 236 of the NHA. Although this change liberalized the way rents were computed, it did not amount to a deregulation, and therefore, does not fall within section 425's coverage.

b. *Continued HUD rent regulation where necessary to maintain tax-exemption or to avoid rent control.* The June 4, 1986 rule established provisions for continued HUD control of rents to maintain the tax-exempt status of the project or to avoid State or local rent control laws by means of the alternative section 207 formula. Although these provisions use an alternative method for making rent determinations, they involve the continued regulation of projects that would not otherwise have been regulated. Section 425 runs the other way—it is concerned with imposing regulation on those projects that were formerly regulated and qualified for some measure of deregulation. Thus, section 425 does not apply to these provisions.

5. Coverage of Section 425

One point should be noted about the coverage of section 425(l). This criterion applies if:

> The project owner and the Secretary have not executed, *and* the project owner has not filed a written request with the Secretary to enter into an amendment to the regulatory agreement . . . (emphasis supplied)

The Department does not believe that the underscored "and" should be interpreted as requiring that project owners must meet *both* of the statutory elements—execution of an amendment *and* request for an amendment—to determine whether they fall within section 425's coverage. Such a reading seems inappropriate in the context of section 425(l) and makes little sense in the context of how changes in regulatory agreements are made.

It is true that in a simple declaratory sentence, use of the word "and" connecting two criteria should ordinarily be read conjunctively: *both* criteria must be met. Section 425(l), however, is framed as an "if * * * then" sentence: *if* project owners have not executed a change in their regulatory agreements, *and if* they have not filed a written request to HUD for a change, *then* HUD will control their project rents and other charges. The Department believes that this sentence structure is best interpreted as providing a *series* of criteria, *either* of which may be met for purposes of determining section 425's applicability. Under this reading, the "and" should not be viewed as a true conjunctive, but rather as a connector of two independent concepts: If the owner fails to execute an amendment to the regulatory agreement, then the inquiry moves to whether the owner asked HUD for the amendment. If the owner has done *neither*, then controls will be imposed under section 425.

This conclusion is supported by the fact that requiring the presence of *both* elements moots *one* of them. A request to HUD is the first step toward executing a change in the regulatory agreement: Viewed from the other end of the process, if a change has been executed in the agreement, then the owner must have made a request for the change to HUD. If the owner must *both* ask for a regulatory amendment *and* execute one, the request criterion is rendered meaningless, since the request is an included element in the more rigorous criterion of amendment execution. The Department does not believe that Congress intended such an unlikely result.

Therefore, the Department will determine section 425(l)'s applicability, based on whether a project owner (as of the requisite date) either has filed a written request with HUD to amend its regulatory agreement *or* has in fact executed such a change.

Other Criteria under Section 425

In addition to meeting the project mortgage criteria described above, projects subject to section 425 must meet the following conditions:

a. As of December 1, 1987, the project was receiving housing assistance payments under a Section 8 contract (other than under the Certificate Program), or

b. Not less than half of the project's units are occupied by lower income families (defined at 24 CFR 813.102).

With respect to the first element, projects covered are those with Section 8 contracts under 24 CFR Parts 880 (New Construction), 881 (Substantial Rehabilitation), 882, Subparts D and E (Moderate Rehabilitation), 883 (State Agency—New Construction and Substantial Rehabilitation), and 886, Subparts A and C (Loan Management and Property Disposition). Although not specifically excluded by section 425, the Department has opted to exclude the Housing Voucher program under section 8(o) of the U.S. Housing Act of 1937 from the coverage of the statute. The Department believes that failure to mention the Voucher Program was an oversight and that the program should be excluded along with its non-project-based cousin—the Certificate Program—that was explicitly excluded from section 425.

With respect to the second element, the Department will determine the lower income family occupancy rate of a project, on the basis of tenant income data submitted to HUD by the project owner as part of its submission to amend the regulatory agreement to use an alternative formula to determine project rents or to decontrol project rents. The Department believes that this approach, coupled with the notice of section 425's requirements that HUD will send to project owners and HUD's annual review of project operations, including a comparison of project income and gross potential rent, will ensure that project owners subject to section 425 meet the provision's requirements.

Regulation under Section 425

Section 425 requires HUD to control the rents and other charges on covered projects as they were controlled before April 19, 1983. The Department does not believe that the term "control" should be interpreted as requiring HUD to resurrect and implement every aspect of the rules for establishing project rents and other charges that existed before June 1, 1983—the effective date of the April 19 rule. As noted earlier, these rules determined project rents on the basis of historical project costs and a static rate of return. This approach imposed severe financial hardships on many projects, and prompted the Department to reform the rules for setting rents and other charges, begininng with the April 19 rule. The Department does not believe that in enacting section 425, Congress wished to jeopardize the financial stability of covered projects by requiring simple adoption of all pre-1983 rules for projects covered by section 425.

The Department believes, instead, that the term "control" must be construed in the context of section 425's propose. As noted earlier, Section 425 is designed to prevent project owners that failed to take steps to formalize the option of decontrolling their rents and other changes or determining their project rents by alternative means (as permitted by the 1983 and 1986 rules) from doing so after December 1, 1987. We believe that section 425's injunction that HUD "control" rents and other project charges as they were "controlled" before June 1983 means that owners subject to section 425 may

not now obtain HUD approval of these deregulatory options. It does not mean, however, that other changes in the 1983 and 1986 rules were not deregulatory in nature are unavailable to project owners covered by section 425.

One such provision is the forward-based budgeting system for unassisted section 207 projects (contained as an element of Part 207's alternative rent formula) and for assisted projects under sections 207, 220, 221(d)(3) and 236 of the NHA. As noted above, this system changed the way in which rents were determined for covered projects, by replacing the historical method of costs setting rents. This change in method, however, did not alter the fact that HUD continued to control the project rents, and thus, does not fall within section 425's ambit.

Therefore, the Department will permit project owners that are subject to section 425 to determine rental charges for their projects on the basis of the forward-based system originally established in the April 19, 1983 rule. This will help ensure the financial feasibility of the projects involved, and will ensure that all projects that have this feature—both subsidized and unsubsidized—are treated alike.

Consistent with these principles, the Department will "control" rents and other charges on covered projects, as follows. The establishment of rents and other charges for projects that are insured under section 207, 220, or 221 of the NHA and that section 425 subjects to the imposition of pre-June 1983 regulation may not exceed those that HUD approves in advance and in writing.

In approving these charges and later rent adjustments, HUD will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rentals to tenants. HUD will permit project owners to use the forward-based budgeting concept contained in § 207.19(e)(2)(ii)(A) to establish rentals. This provision provides that rental adjustments may not exceed:

(1) the sum of the most recent year's audited operating costs or, as appropriate, updated certified operating costs (taking into consideration reasonably anticipated increases in operating costs that will occur with 12 months of the anticipated effective date or the rent increase), and (2) the amount derived by applying the project's debt service factor to its original cost.

It should be noted that the forward-based budgeting option was installed as part of the alternative section 207 rent formula established by the April 19, 1983 rule. However, it was never included for unassisted Part 220 or 221 peojects. These authorities went directly from full-scale regulation to deregulation, without an interim step (such as for Part 207 and assisted projects) for forward-based budgeting. The Department will, however, make the forward-based budgeting provision available to unassisted Part 220 or 221 mortgagors who are subject to section 425's control.

Refunds of Excess Charges

The rule requires that any project owner that is subject to section 425 and that decontrolled its project's rents and other charges, or determined project rentals on the basis of an alternative rent formula, without executing an appropriate amendment to its regulatory agreement, must refund the difference (if any) between (1) the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and (2) the charges that project tenants would have paid for such items for the same period under the pre-June 1983 rules. The Department believes that provision for refunds is mandated by section 425's requirement that HUD control the charges for covered projects "after December 1, 1987."

Notice and Comment Rule Making

The Department believes that subjecting this rule making to notice and public comment before making it effective is unnecessary and contrary to the public interest. Implementation of section 425 of the 1987 Act does not involve a significant exercise of HUD discretion. The rule involves a limited class of multifamily projects that are readily identifiable on the face of section 425. It also specifies the precise rules for regulating rentals and other charges for covered projects—rules that were uniformly used for multifamily projects with mortgages insured under sections 207, 220, and 221 of the National Housing Act in prior years. In these circumstances, the public would have little upon which to comment, and any delay that notice and comment rule making would entail would unnecessarily prevent the Department from putting section 425's policies into place at the earliest possible time.

Other Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, production, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule deals with a relatively small number of mortgagors that meet section 425's requirements, some of whom will be small entities. It is not expected to affect a substantial number of small entities.

This rule was listed as sequence number 941 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13876) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.134 and 14.149.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Manufactured home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single Family Housing, Projects, Cooperatives.

Accordingly, 24 CFR Parts 207, 220, and 221 are revised to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

2. In § 207.19, paragraph (e)(1) is revised and a new paragraph (e)(9) is added, to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(e)(1) *Rents and Charges—Applicability.* Paragraphs (e)(2), (e)(3), and (e)(4) of this section apply to mortgages insured before November 30, 1983. Paragraphs (e)(3) and (e)(4) also apply to projects described in paragraphs (e)(5) (iii) and (iv) of this section. Paragraphs (e)(5) and (e)(6) of this section apply to mortgages insured on or after November 30, 1983. Paragraphs (e)(7) and (e)(8) of this section apply to mortgages insured both before and on or after November 30, 1983. Paragraph (e)(9) of this section applies to certain mortgages for which the Commissioner will regulate the charges for accommodations (rents), facilities, and services because of the mortgagor's failure, as of December 1, 1987, to request the Commissioner's aproval to use the alternative formulae in paragraphs (e)(2)(ii) and (iii) of this section for setting project rentals.

* * * * *

(9) *Regulation of charges for certain projects.* (i) The Commissioner will regulate, as provided in paragraph (e)(9)(ii) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(A) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine the maximum project rents on the basis of the following formulae:

(*1*) The alternative formula contained in paragraph (e)(2)(ii) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(*2*) The alternative formula contained in paragraph (e)(2)(iii) of this section for mortgages insured before November 30, 1983, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations).

(B)(*1*) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations) of this title; or

(*2*) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based on tenant income data supplied to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to use the alternative formulae for determining project rentals under paragraph (e)(2) (ii) or (iii) of this section.

(ii) For projects that meet the criteria in paragraph (e)(9)(i) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approves in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approve these charges and later rent adjustments on the same basis and in the same manner they were approved immediately before June 1, 1983, except that mortgagors may use the forward-based budgeting provision in paragraph (e)(2)(ii)(A) of this section for purposes of determining project rentals.

(iii) Any mortgagor that is subject to this paragraph (e)(9) and that determined project rentals on the basis of the alternative formulae contained in paragraph (e)(2) (ii) or (iii) of this section must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (e)(9)(ii) of this section.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENTS AREAS

3. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 220.511, paragraph (b) is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added, to read as follows:

§ 220.511 Supervision of mortgagors.

* * * * *

(b) Except as otherwise provided in paragraphs (c), (d), and (e) of this section, the mortgagor shall determine the charges for accommodations (rents), facilities, and services offered by the project.

* * * * *

(d) (1) The Commissioner will regulate, as provided in paragraph (d)(2) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(i) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine:

(A) The maximum charges for accommodations (rents), facilities, and services offered by the project under paragraph (b) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(B) The maximum project rents on the basis of the alternative formula contained in paragraph (c)(3) of this section for mortgages insured before July 21, 1986, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program, Special Allocations).

(ii) (A) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments

Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations); or

(B) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based upon tenant income data supplied to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to decontrol project rentals under paragraph (b) of the section or to use the alternative formula for determining project rentals under paragraph (c)(3) of this section.

(2) For projects that meet the criteria in paragraph (d)(1) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approve in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approved these charges and later rent adjustments on the same basis and in the same manner as they were approved immediately before June 1983, except that mortgagors may use the forward-based budgeting provision in 24 CFR 207.19(e)(ii)(A) for purposes of determining project rentals.

(3) Any mortgagor that is subject to this paragraph (d), that determined—

(i) The charges for accommodations (rents), facilities, and services offered by the project without the Commissioner's regulation (as provided by paragraph (b) of this section), or

(ii) Project rentals on the basis of the alternative formula contained in paragraph (c)(3) of this section, must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (d)(2) of this section.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

5. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 221.530, paragraph (a)(3)(vii) is redesignated as paragraph (a)(3)(viii) and a new paragraph (a)(3)(vii) is added, to read as follows:

§ 221.530 Supervision applicable to all mortgagors.

* * * * *

(a) * * *

(3) * * *

(vii)(A) The Commissioner will regulate, as provided in paragraph (a)(3)(vii)(B) of this section, the charges that a mortgagor may make for accommodations (rents), facilities, or services offered by a project insured under this part, if:

(*1*) As of December 1, 1987, the mortgagor and the Commissioner had not executed (or the mortgagor had not filed a written request with the Commissioner to enter into) an amendment to the regulatory agreement to the project, under which the mortgagor could elect to determine:

(*i*) The maximum charges for accommodations (rents), facilities, and services offered by the project under paragraph (a)(3) of this section for mortgages insured pursuant to a firm commitment to insure issued before June 1, 1983.

(*ii*) The maximum project rents on the basis of the alternative formula contained in paragraph (a)(3)(iv) of this section for mortgages insured before July 21, 1986, where the project contained units assisted under 24 CFR Part 886 (Section 8 Housing Assistance Payments Program, Special Allocations).

(*2*)(*i*) As of December 1, 1987, the project was receiving assistance under a Section 8 Housing Assistance Payments (HAP) Contract under Part 880 (Section 8 Housing Assistance Payments Program for New Construction), Part 881 (Section 8 Housing Assistance Payment Program for Substantial Rehabilitation), Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program for Moderate Rehabilitation), Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies), or Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations); or

(*ii*) Not less than 50 percent of the units in the project are occupied by lower income families (as defined in 24 CFR 813.102), based upon tenant income data to the Commissioner by the project owner as part of a submission to amend the regulatory agreement to decontrol project rentals under paragraph (c)(3) of this section or to use the alternative formula for determining project rentals under paragraph (c)(3)(iv) of this section.

(B) For projects that meet the criteria in paragraph (a)(3)(vii)(A) of this section, the mortgagor may make no charges for the accommodations (rents), facilities, or services offered by the project in excess of those that the Commissioner approved in writing before the project opened for rental. In approving these charges and later rent adjustments, the Commissioner will give consideration to providing for rental income necessary to maintain the economic soundness of the project and a reasonable return on investment, consistent with reasonable rents to tenants. The Commissioner will approve these charges and later rent adjustments on the same basis and in the same manner as they were approved immediately before June 1983, except that mortgagors may use the forward-based budgeting provision in 24 CFR 207.19 (e)(ii)(A) of this chapter for purposes of determining project rentals.

(C) Any mortgagor that is subject to this paragraph (d), and that determined

(*1*) the charges for accommodations (rents), facilities, or services offered by the project without the Commissioner's regulation (as provided by paragraph (c)(3) of the section, or

(*2*) project rentals on the basis of the alternative formula contained in paragraph (c)(3)(iv) of this section, must refund the difference (if any) between the charges that project tenants actually paid for accommodations (rents), services, and facilities after December 1, 1987, and the charges that project tenants would have paid for such items for the same period under paragraph (a)(3)(vii)(B) of this section.

* * * * *

Dated: April 6, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-9796 Filed 5-3-88; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 215 and 885

[Docket No. R-88-1376; FR-2452]

Rent Supplements; Federal Tenant Selection Preferences

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the part of section 168 of the Housing and Community Development Act of 1987 that repealed the requirement in the Rent Supplement program that HUD issue, at a project owner's request, a

certification as to whether an applicant for Rent Supplement assistance qualifies for a Federal tenant selection preference. This change makes the Rent Supplement program consistent with HUD's Public and Indian Housing and Section 8 assistance programs, in which determinations regarding an applicant's qualification for Federal preference are made by the PHA or the project owner, not by HUD. This rule also amends 24 CFR Part 885 to clarify that Federal preferences are applicable to section 202/8 projects. Finally, this rule corrects an error in 24 CFR 215.22(c)(6).

EFFECTIVE DATE: June 16, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 Telephone number (202) 426-3944. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This rule implements the part of section 168 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (the 1987 Act) that repealed the requirement in the Rent Supplement program that HUD issue a certificate, at the project owner's request, as to whether an applicant for assistance qualifies for a Federal tenant selection preference, by reason of the applicant's being involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. This change makes the Rent Supplement program consistent with HUD's Public and Indian Housing and Section 8 housing assistance programs, in which the PHA or project owner (not HUD) makes the determination whether an applicant for assistance qualifies for a Federal selection preference.

The other part of section 168 repealed the requirement that HUD issue a certificate as to an individual's or family's income for purposes of the Rent Supplement program. This income provision was never implemented in the Rent Supplement regulations, and, therefore, no rule change is needed to effect its repeal.

On January 15, 1988 (53 FR 1122), the Department published a final rule implementing the three Federal tenant selection preferences described above for a number of programs, including the Rent Supplement program. Section 215.22(m) of that rule implemented the part of section 168 of the 1987 Act that dealt with the Federal tenant selection preferences in the Rent Supplement program. This rule removes paragraph (m) of § 215.22.

The January 15, 1988 final rule omitted making the Federal preferences applicable to projects covered by 24 CFR Part 885, relating to projects that receive direct loans under section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the United States Housing Act of 1937.

The Department advised in a proposed rule published on December 9, 1987 (52 FR 46614) that it would "incorporate appropriate preference rule provisions in the final rule adding HAP contract and management provisions to Part 885". *Id.* at 46620. That final rule will be published later, but in the interim, HUD believes that the omission can be timely cured by this rule. (The final rule of January 15, 1988 will be effective no later than July 13, 1988. See 53 FR 1122.) Accordingly, this rule now makes the Federal preferences applicable to projects covered by Part 885, by adding a new § 885.7 cross-referencing to 24 CFR 880.613 "Federal selection preferences". When the final rule to follow the proposed rule of December 9, 1987 becomes effective (thus incorporating the full text of the preference rule provisions into Part 885), § 885.7 will be rendered redundant and will be removed in that rulemaking.

This rule also corrects an error in 24 CFR 215.22(c)(6)—a provision added by the preference rule published on January 15, 1988 (53 FR 1122, at 1143). The word "not" was inadvertently omitted in that rule from the paragraph's opening clause.

Notice and Comment Rulemaking

The Department believes that prior notice and comment is unnecessary to implement this rule. Section 168 of the 1987 Act is a simple repealer, and involves no exercise of discretion on the part of the Department. Similarly, the appropriateness of applying the Federal tenant preference requirements to Section 202/8 tenant selection cannot be questioned, and the content of the tenant preference policy expressed in HUD's January 15, 1988 final rule has already been the subject of public comment.

Findings and Certification

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. As noted in detail in the January 15, 1988 rule's discussion of "Administrative Burdens", the Department has taken great care to minimize the Preference Rule's burdens on all PHAs and project owners (including small entities), and does not believes that administering the preferences will involve significant costs over the long term.

The Catalog of Federal Domestic Assistance program numbers are 14.138, 14.149, and 14.157.

This rule was listed as sequence number 943 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13876) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 215

Grant programs—Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 885

Aged, Grant programs—housing and community development, Handicapped, Loan programs—housing and community development, Low and moderate income housing.

Accordingly, 24 CFR Parts 215 and 885 are amended as follows.

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 215.22 [Amended]

2. Section 215.22 is amended by removing, in paragraph (c)(6), the phrase "An applicant may qualify" and substituting in its place the phrase "An applicant may not qualify", and by removing paragraph (m) and redesignating paragraph (n) as a new paragraph (m).

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

3. The authority citation for 24 CFR Part 885 is revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In part 885, a new § 885.7 is added, to read as follows:

§ 885.7 Federal preferences.

The provisions of § 880.613 of this chapter are applicable to projects assisted under this part.

Date: March 24, 1988.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 88-9865 Filed 5-3-88; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL-3374-7]

State and Local Assistance; Grants for Construction of Wastewater Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Deviation to rule.

SUMMARY: Under 40 CFR 30.1001 and 30.1004, the Environmental Protection Agency (EPA) has issued a class deviation from several provisions of the construction grant regulations. The deviation implements three provisions of the Water Quality Act of 1987 enacted February 4, 1987. EPA issued this class deviation to implement these provisions prior to making the necessary regulatory changes.

DATE: This deviation was effective April 25, 1988. Also, EPA is developing a regulation to implement the provisions covered by this deviation, and, therefore, requests comments on the deviation. Comments should be submitted to the address noted below.

ADDRESS: Please submit comments to: Mr. William H. Kramer, Program Analysis Division (WH-546), 401 M Street SW., Washington, DC 20460, (202) 382-7256.

FOR FURTHER INFORMATION CONTACT: Mr. W. Scott McMoran, Grants Administration Division (PM-216F), 401 M Street SW., Washington, DC 20460, (202) 382-5268.

SUPPLEMENTARY INFORMATION: Under 40 CFR 30.1001 and 30.1004, the Environmental Protection Agency (EPA) has issued a class deviation from several provisions of its construction grant regulation (40 CFR Part 35, Subpart I). The deviation implements three provisions of the Water Quality Act (WQA) of 1987 enacted February 4, 1987, which amended Title II of the Clean Water Act (CWA), 33 U.S.C. 1281-1299. The three provisions covered under the class deviation are:

- Section 205(c) of the WQA which amends section 204(b)(1) to the CWA to allow grantees under EPA's wastewater treatment construction grant program to reduce the user charge rates for low income residential users.
- Section 204 of the WQA which adds a new section 203(f) to the CWA to allow EPA to award grants to fund certain design/build projects. Under a design/build project, grantees will award a single contract for the design and building of a treatment works. EPA approval of detailed specifications for the project is not required. To receive a design/build grant a project must have an estimated cost of less than $8,000,000 and be an aerated lagoon, trickling filter, stabilization pond, a sludge or wastewater land application system, slow rate (intermittent) sand filter, or subsurface disposal system. EPA will award only one grant for each design/build project, which must result in an operable facility. EPA will initially award a grant for the cost of supplementing the facilities plan to prepare a pre-bid package and then amend the design/build grant (only one time) after the grantee takes bids for the project. EPA will base the amount of the grant as amended on those bids and will not later increase the grant to provide for additional costs.
- Section 202(d) of the WQA which amends section 202(a)(3) of the CWA to authorize EPA to award grants for 100% of the cost of replacing or modifying failed rotating biological contractors (RBCs). The cost of replacing failed facilities is generally unallowable under EPA's regulation. This deviation permits Regional Administrators to award replacement grants for failed RBCs, as authorized by the Act. The RBC failure must not be the result of any person's negligence, and must have significantly increased the project's capital or operation and maintenance costs. In addition, the State must determine in accordance with its priority system that the project is entitled to funding, and each project must meet other conditions stated in the class deviation.

EPA will revise its construction grant regulation to reflect these provisions. For this reason, we are requesting comments on this class deviation by July 1, 1988.

The class deviation is published following this notice.

Date: April 21, 1988.

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

Date: March 22, 1988.

Lawrence J. Jensen,

Assistant Administrator for Water.

April 25, 1988.

Memorandum

Subject: Class Deviation from 40 CFR 35.2140(a) and (b), 35.2025(a), 35.2202(b), 35.2300, and Part 35, Subpart I, Appendix A, H.2.e.

From: Harvey G. Pippen, Jr., Director Grants Administration Division (PM-216F)

To: Regional Administrators, Regions I-X

The Water Quality Act of 1987 was enacted on February 4, 1987. The 1987 Act includes three technical provisions which we think should be implemented by class deviation prior to the necessary regulatory changes. These provisions—

- Change EPA's user charge requirements to allow grantees to include in their user charge systems lower rates for low income residential users;
- Authorize certain grantees to award single design/build contracts for design and building of specified, uncomplicated waste treatment systems; and
- Authorize EPA to award grants for the modification or replacement of rotating biological contactors (RBCs) that have failed to meet design performance specifications.

To implement the three provisions above, I am approving the following class deviation. Where the term "Regional Administrator" is used it may be read "State agency" where the function is delegated.

User Charge System—40 CFR 35.2140 (a) and (b)

Section 205(c) of the 1987 Act allows wastewater treatment construction grantees to include in their user charge systems lower rates for low income residential users after providing for public notice and hearing. I am approving a deviation from Section 35.2140(a) and (b) to allow grantees' user charge systems to include an optional class of low income residential users with incomes below a pre-established level if approved by the delegated State official or the EPA Regional Administrator.

The EPA definition of low income residential user is any residence with a household income below the Federal poverty level as defined in 45 CFR 1060.2 or any residence designated as low income under State law or regulation. Delegated States or the EPA Regional Administrator, as appropriate, will evaluate grantees' requests to establish their own definition of a low income residential user class.

Any user charge system establishing a lower rate for low income residential users must meet all other existing user charge system requirements including proportionality, public notice, and hearing. Any lower user charge rate for low income residential users must be defined as a uniform percentage of the user charge rate charged other residential users. The amount of any cost reductions afforded the low income residential class must be proportionately absorbed by all other user classes. The total revenues for the proper operation and maintenance (including replacement) of the facilities must not be reduced as a result of establishing a low income residential class. EPA has determined that grantees receiving construction grants after March 1, 1973, may implement this provision after providing for public notice and hearing and receiving the delegated State official's or EPA Regional Administrator's approval.

Design/Build—40 CFR 35.2025(a), 35.2202(b), and 35.2300

Section 204 of the 1987 Act authorizes EPA to award a grant for projects under which the grantee will award a single contract for design and building certain treatment works. I am approving deviations from §§ 35.2025(a), 35.2202(b) and 35.2300 to allow grantees to award such single contracts. States cannot use more than 20 percent of their allotments for such projects. *Also, EPA has determined it cannot award design/build grants from funds appropriated before February 4, 1987.*

Section 35.2025(a) requires that grants include an allowance for planning and design. This deviation allows Regional Administrators to award design/build grants which include an allowance only for facilities planning.

Section 35.2202(b) requires grantees to submit plans and specifications for EPA approval before initiating procurement action for building the project. This deviation waives the requirement for submittal and EPA approval of plans and specifications. (Some States may require State approval before issuing building permits or permitting other actions and this deviation does not change such State requirements.)

Section 35.2300 provides that EPA will pay the Federal share of allowable project costs incurred up to the date of the grantee's most recent payment request. Under this class deviation, to assure contract compliance, EPA will not pay more than 95 percent of the grant amount until after completion of building *and* final project approval by the Regional Administrator.

Design/build grants will be awarded under approved facilities plans and must meet the following requirements—

- The proposed treatment works must have an estimated total cost of $8,000,000 or less; and
- The proposed treatment works must be an aerated lagoon, trickling filter, waste stabilization pond, land application system (wastewater or sludge), slow rate (intermittent) sand filter or subsurface disposal system; and
- The grantee must procure the contract for a design/build project in accordance with 40 CFR Part 33. The grantee must use only the formal advertising method of procurement for design/build projects and award fixed price contracts. *(Costs of changes to the contract which increase the project cost will not be allowable.)*

Each design/build grant will include an allowance for facilties planning if the grantee did not receive a Step 1 grant. The amount of the facilities planning allowance is established as a percentage of the building cost as shown in Attachment 1.

In addition to the allowance for facilities planning (if applicable), each grant for design/build projects will include funds for the necessary and reasonable costs of supplementing the facilities plan to prepare a pre-bid package that is sufficiently detailed to insure that the bids received for the design/build work are complete, accurate, comparable, and will result in a cost effective operable facility. These supplemental costs may include, but are not limited to, the cost of preliminary borings and site plan, concept and layout drawing, schematic, general material, and major equipment lists and specifications, instruction to builders, general and special conditions, project performance standards and permit limits, applicable State or other design standards, any requirements for information to go into bid tabulation and analysis, and other contract documents, schedules, forms and certificates.

The grant will subsequently be amended once, before the design/build work is begun, to establish an amount agreed to as the maximum Federal contribution to the project based on a competitively bid document of basic design data and applicable standard construction specifications as well as *actual* reasonable and necessary costs for preparing the pre-bid package. *Applicants must take bids and select the lowest responsive, responsible bidder before the final grant amendment.* The amended grant will then include the guaranteed maximum lump sum price of the lowest responsive, responsible bidder and may also include lump sum costs for necessary and reasonable construction management, contract and/or project administration services, and contingencies. EPA will deobligate funds remaining after completion of the project and payment of the Federal share and return them to the State's allotment.

Construction management services may include, but are not limited to, detailed plan and specification review and approval, change order review and approval, resident inspection, shop drawing approval, preparation of an O&M manual and post construction activities required by the project performance certification requirements (40 CFR 35.2018). Contract and/or project administration activities may include, but are not limited to, review of contractor vouchers and payment requests preparation of monitoring reports, grant administration and accounting services, routine legal costs and cost of eligible real property.

Any procurement of services for supplementing the facilities plan to prepare the pre-bid package, as well as services for design/build, construction management, and contract or project administration must be in accordance with EPA procurement requirements (40 CFR, Part 33). The same architect or engineer that prepares the facilities plan may be retained to provide any or all of the pre-bid, construction management, and contract and/or project administration services provided the initial procurement met EPA requirements (40 CFR 33.715). The grantee may also provide any or all of

these services in accordance with 40 CFR 30.520. The design/build engineer or contractor, however, shall not provide any of the facilies planning or pre-bid services.

When awarding a grant for a design/build facility, the Regional Administrator shall assure that the grant agreement—

- Sets forth the building start and completion dates and includes a Federal payment schedule;
- Requires that the proposed treatment works will be an operable unit and will meet all requirements of Title II of the Clean Water Act and that the treatment works will be operated so as to meet the requirements of any applicable permit;
- Requires the grantee to obtain a bond from the contractor in an amount the Regional Administrator determines adequate the protect the Federal interest in the treatment works (see 40 CFR 33.265); and
- Includes other terms and conditions determined necessary by the Regional Administrator.

Rotating Biological Contactor Replacement—40 CFR Part 35, Subpart I, Appendix A, H.2.e.

Section 202(d) of the 1987 Act authorizes EPA to award 100% grants for the modification or replacement (M/R) of rotating biological contactors (RBCs), or portions of RBCs, which have failed to meet design performance specifications. To permit award of grants to replace or modify failed RBCs, I am approving a deviation from 40 CFR Part 35, Subpart I, Appendix A, H.2.e. *Costs incurred before award of an RBC grant for M/R are not allowable, except as allowed under 40 CFR 35.2118.*

This deviation allows the Regional Administrator to award a grant for 100 percent of the cost, including planning and design costs, of modification or replacement of RBCs which have failed to meet design performance specifications, provided:

- The applicant for an M/R grant demonstrates to the Regional Administrator's satisfaction, by a preponderance of the evidence, that the RBC failure is not due to the negligence of any person, including the owner of the POTW, the applicant, its engineers, contractors, equipment manufacturers, or suppliers. A judicial finding that failure is not attributable to a particular persons's negligence is one way to satisfy this requirement as to that person.
- For projects built using plans and specifications completed after September 1984, the Regional Administrator determines that the design considered the results of information published by EPA in May and September 1984 related to RBC failures. If the applicant failed to consider that information, it should be required to justify why. This is one consideration in determining whether the applicant was negligent.
- The RBC failure has significantly increased the project's capital or operation and maintenance costs.
- The M/R project meets all requirements of EPA's construction grant and other applicable regulations, including 40 CFR Parts 30, 32, 33 and 35;
- The M/R project is included within the fundable range of the State's annual project priority list; and
- The State certifies the project for funding from its regular (i.e., non-reserve) allotments and from *funds appropriated after February 4, 1987.*

Concur:

Lawrence J. Jensen,

Assistant Administrator for Water.

Date: March 22, 1988.

Concur:

Charles L. Grizzle,

Assistant Administrator for Administration and Resources Management.

Date: April 22, 1988.

Attachment.

Allowance for Facilities Planning Attachment 1

This table is for calculation of the facilities planning allowance under *design/build* grants only.

Building costs *	Allowance as a percentage of building cost
$100,000 or less	5.9262
120,000	5.7337
150,000	5.5061
175,000	5.3538
200,000	5.2250
250,000	5.0163
300,000	4.8516
350,000	4.7162
400,000	4.6019
500,000	4.4164
600,000	4.2701
700,000	4.1499
800,000	4.0483
900,000	3.9606
1,000,000	3.8837
1,200,000	3.7538
1,500,000	3.6003
1,750,000	3.4976
2,000,000	3.4109
2,500,000	3.2703
3,000,000	3.1595
3,500,000	3.0684
4,000,000	2.9915
5,000,000	2.8669
6,000,000	2.7686
7,000,000	2.6880
8,000,000	2.6198
Interpolate for other values.	

* Building cost is the sum of the allowable cost of (1) the initial award amount of the prime subagreement for building and designing the project; and (2) the purchase price of eligible real property.

[FR Doc. 88-9842 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300153A; FRL-3370-6]

Revocation of Tolerances for Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes the tolerances established for residues of 20 pesticide chemicals in or on certain raw agricultural commodities (RACs). This regulatory action is being taken by EPA to revoke tolerances for those pesticides which have no registered food uses. These pesticides either were never registered for food uses or if they were registered, the registrations were subsequently cancelled.

EFFECTIVE DATE: Effective on May 4, 1988.

ADDRESS: Written objections identified by the document control number [OPP-300153A] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Rosalind L. Gross, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 10, 1986 (51 FR 44487), which proposed the revocation of tolerances for residues of

20 pesticide chemicals which have no current food use registrations. These 20 chemicals are as follows: Aramite (2-(*p-tert*-butylphenoxy)-isopropyl 2-chloroethyl sulfite); sulphenone (*p*-chlorophenyl phenyl sulfone); ovex (*p*-chlorophenyl *p*-chlorobenzenesulfonate); chlorbenside (*p*-chlorobenzyl *p*-chlorophenyl sulfide); copper arsenate; magnesium arsenate; sodium arsenate; chloropropylate (isopropyl 4,4'-dichlorobenzilate); neodecanoic acid; *p*-chlorophenyl 2,4,5-trichlorophenyl sulfide; *O,O*-diethyl *O*-2-pyrazinyl phosphorothioate and its oxygen analog (diethyl 2-pyrazinyl phosphate); benzadox (benzamidooxyacetic acid); chlorbromuron (3-(4-bromo-3-chlorophenyl)-1-methoxy-1-methylurea); 1-chloro-2-nitropropane; fluorodifen (*p*-nitrophenyl-2-nitro-4-(trifluoromethyl)phenyl ether); secbumeton (2-(*sec*-butylamino)-4-ethylamino-6-methoxy-*s*-triazine); potassium arsenite; ethiolate (*S*-ethyl diethyl-thiocarbamate); glyphosine (*N,N*-bis(phosphonomethyl)glycine); and 2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate (pirimicarb).

No requests for referral to an advisory committee were received. Comments were received from authorities of the countries of Australia, Egypt, Portugal, and Thailand. The only chemicals which were subject to comment were fluorodifen and pirimicarb.

Australia acknowledged that the only current U.S. tolerance for pirimicarb is for potatoes. It was noted that in Australia, pirimicarb is approved for use on apples, citrus, hops, selected vegetables, alfalfa, medic pastures, and ornamental plants. Australia was concerned that the proposed tolerance revocation could adversely affect its export of fruits and hops to the United States. Accordingly, Australia requested that the United States establish action levels for residues of pirimicarb on fruit and hops in accordance with the maximum residue limits (MRLs) established by the Australian authorities or recommended by the Codex Alimentarius Commission.

Egyptian authorities stated that fluorodifen and pirimicarb were used in their country on raw agricultural commodities and the MRLs were recommended by the Codex Alimentarius Commission. They did not appear to object to the U.S. tolerance revocation for either pirimicarb or fluorodifen.

Comments from Portugese authorities indicated that pirimicarb is approved for use in Portugal in accordance with the MRLs established by the Food Agricultural Organization/World Health Organization (FAO/WHO). Portugese authorities requested that the U.S. establish tolerances for pirimicarb and other pesticides consistent with the MRLs established by the FAO/WHO.

Although noting that pirimicarb is imported into that country, authorities from Thailand did not have any specific comment on the proposed revocation.

The comments do not indicate that the revocation of the tolerances proposed by the December 10, 1986 (51 FR 44487) proposed rule would adversely impact any commodity currently imported into the United States. There does not appear to be any basis for the establishment of action levels for any of the tolerances subject to this revocation action.

The issue of a permissible level of pirimicarb on fruit and hops requires a tolerance petition because there are currently no U.S. tolerances for pirimicarb residues on fruit and hops.

Petitions to establish U.S. tolerances for pirimicarb and other pesticides may be submitted in accordance with the procedures specified in 40 CFR 180.7 and accompanied by the fees described in 40 CFR 180.33. Such a petition should be accompanied by the product chemistry, residue chemistry, and toxicology data for a food use chemical specified in 40 CFR Part 158. The requirements for a food additive petition, which are similar to those for a tolerance petition, are specified in 21 CFR 171.1 and 21 CFR 571.1.

EPA is committed to conforming U.S. tolerances for pesticide residues with Codex MRLs where reasonable and practicable. This commitment also applies to the establishment of action levels for persistent pesticides when U.S. tolerances are revoked. Differences may occur between U.S. tolerances (or action levels) and Codex MRLs because of a variety of factors such as differing use patterns, climatic conditions, data bases, differences in the limit of detection of the enforcement method, etc. Since an action level is not required for any of the 20 chemicals subject to this revocation action, consistency with the Codex MRLs is not at issue.

Based on the fact that there are no current food use registrations for any of the subject 20 chemicals, and no evidence which indicates that imported commodities will be adversely affected by this action, the Agency has determined that this revocation action is appropriate. As noted herein, the Agency is not recommending the establishment of action levels in place of these tolerances.

EPA is hereby revoking the existing tolerances for residues in or on all RACs for 20 pesticide chemicals as listed in 40 CFR Part 180. The pesticide chemical tolerances listed in 40 CFR Part 180 which are being revoked are as follows:

Section 180.107—Aramite (2-(*p-tert*-butylphenoxy)-isopropyl 2-chloroethyl sulfite).

Section 180.112—Sulphenone (*p*-chlorophenyl phenyl sulfone).

Section 180.134—Ovex (*p*-chlorophenyl *p*-chlorobenzenesulfonate).

Section 180.168—Chlorbenside (*p*-chlorobenzyl *p*-chlorophenyl sulfide).

Section 180.193—Copper arsenate (see also § 180.319 below).

Section 180.195—Magnesium arsenate.

Section 180.196—Sodium arsenate.

Section 180.218—Chloropropylate (isopropyl 4,4'-dichlorobenzilate).

Section 180.248—Neodecanoic acid.

Section 180.256—*p*-Chlorophenyl 2,4,5-trichlorophenyl sulfide.

Section 180.264—*o,o*-Diethyl *o*-2-pyrazinyl phosphorothioate and its oxygen analog (diethyl 2-pyrazinyl phosphate).

Section 180.270—Benzadox (benzamidooxyacetic acid).

Section 180.279—Chlorbromuron (3-(4-bromo-3-chlorophenyl)-1-methoxy-1-methylurea).

Section 180.286—1-Chloro-2-nitropropane.

Section 180.290—Fluorodifen (*p*-nitrophenyl-2-nitro-4-(trifluoromethyl)phenyl ether).

Section 180.319—Interim tolerances (copper arsenate).

Section 180.323—Secbumeton (2-(*sec*-butylamino)-4-ethylamino-6-methoxy-*s*-triazine).

Section 180.334—Potassium arsenite.

Section 180.343—Ethiolate (*S*-ethyl diethylthiocarbamate).

Section 180.354—Glyphosine (*N,N*-bis(phosphonomethyl) glycine).

Section 180.365—2-(Dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate (pirimicarb).

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for these 20 chemicals. This analysis is available for public inspection in Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

As explained in the proposal published December 10, 1986, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises.

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the December 10, 1986 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 5, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

§ 180.107 [Removed]

2. Section 180.107 is removed.

§ 180.112 [Removed]

3. Section 180.112 is removed.

§ 180.134 [Removed]

4. Section 180.134 is removed.

§ 180.168 [Removed]

5. Section 180.168 is removed.

§ 180.193 [Removed]

6. Section 180.193 is removed.

§ 180.195 [Removed]

7. Section 180.195 is removed.

§ 180.196 [Removed]

8. Section 180.196 is removed.

§ 180.218 [Removed]

9. Section 180.218 is removed.

§ 180.248 [Removed]

10. Section 180.248 is removed.

§ 180.256 [Removed]

11. Section 180.256 is removed.

§ 180.264 [Removed]

12. Section 180.264 is removed.

§ 180.270 [Removed]

13. Section 180.270 is removed.

§ 180.279 [Removed]

14. Section 180.279 is removed.

§ 180.286 [Removed]

15. Section 180.286 is removed.

§ 180.290 [Removed]

16. Section 180.290 is removed.

§ 180.319 [Removed]

17. By amending §180.319 to remove the entry for copper arsenate from the alphabetical listing therein.

§ 180.323 [Removed]

18. Section 180.323 is removed.

§ 180.334 [Removed]

19. Section 180.334 is removed.

§ 180.343 [Removed]

20. Section 180.343 is removed.

§ 180.354 [Removed]

21. Section 180.354 is removed.

§ 180.365 [Removed]

22. Section 180.365 is removed.

[FR Doc. 88-9294 Filed 5-3-88; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 7E3565, 7E3567, 7E3568/R951; FRL-3374-5]

Pesticide Tolerance for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodities asparagus, spinach, and endive. The Interregional Research Project No. 4 (IR-4) petitioned for these tolerances.

EFFECTIVE DATE: May 4, 1988.

ADDRESS: Written objections, identified by the document control number [PP 7E3565, 7E3567, 7E3568/R951], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, Washington, DC 20460.

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of March 9, 1988 (53 FR 7543), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petitions (PP) 7E3565, 7E3567, and 7E3568 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, requesting that the Administrator, pursuant to the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the herbicide (R)-2-[4-[[5-trifluoromethyl)-2-pyridinyl]oxy] phenoxy]-propanoic acid (resolved isomer of fluazifop-P-butyl), all expressed as fluazifop, in or on certain raw agricultural commodities as follows:

1. *PP 7E3565* on behalf of the Agricultural Experiment Stations of New Jersey and Washington in or on asparagus at 3.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Maryland, New Jersey, Oregon, and Washington based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

2. *PP 7E3567* on behalf of the Agricultural Experiment Stations of Arkansas, California, Connecticut, Maryland, North Carolina, Oklahoma, and Texas in or on spinach at 6.0 ppm.

3. *PP 7E3568* on behalf of the Agricultural Experiment Station of Florida in or on endive at 6.0 parts per million (ppm). The petitioner proposed that use on this commodity be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee

received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

2. Section 180.411 is amended in paragraph (c) by adding and alphabetically inserting the raw agricultural commodity spinach and in paragraph (d) by adding and alphabetically inserting the raw agricultural commodities asparagus and endive, to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
* * * * *	
Spinach	6.0
* * * * *	
(d) * * *	
Asparagus	3.0
* * * * *	
Endive	6.0
* * * * *	

[FR Doc. 88-9749 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7F3472/R956; FRL-3374-2]

Lactic Acid; Exemption From Requirement of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the plant growth regulator latic acid (2-hydroxypropanoic acid) when used in or on all raw agricultural commodities. This regulation was requested by Brea Agricultural Service, Inc.

EFFECTIVE DATE: May 4, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of December 3, 1986 (51 FR 43664), which announced that Brea Agricultural Service, Inc., Drawer 1, 1330 West Fremont, Stockton, CA 95201, had submitted a pesticide petition, PP 7F3472, proposing an exemption from the requirement of a tolerance for the plant growth regulator lactic acid (2-hydroxypropanoic acid) in or on all raw agricultural commodities.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemption from the requirement of a tolerance include an acute oral LD_{50} (median lethal dose) study (rat) with an LD_{50} of 4,936 milligrams (mg)/kilogram (kg) for males and 3,543 mg/kg for females. Subchronic/chronic toxicity and mutagenicity studies were waived. These waivers were based upon the following: (1) Lactic acid is a normal constituent of plants and animals; (2) it has been approved as an inert ingredient by EPA for application to plants (40 CFR 180.1001(c)); (3) the Food and Drug Administration (FDA) approved the use of lactic acid as generally recognized as safe (GRAS) ingredient in human foods with no limitation on amounts used other than good manufacturing practice (21 CFR 184.1061); and (4) residues of lactic acid resulting from the proposed uses will not be higher than is now allowed in food production, will not exceed normal physiological lactic acid levels in raw agricultural commodities, and will not exceed levels allowed from inert ingredient applications.

There are no desirable data lacking; therefore, there are no actions being taken to obtain additional data. No previous exemptions have been established for this chemical.

The calculation of an acceptable daily intake (ADI) is not relevant since an exemption from tolerances is being made. There are no known pending regulatory actions against registration of this active ingredient. None of the risk criteria listed in 40 CFR 154.7 for initiating a Special Review have been exceeded. The metabolism of lactic acid is adequately delineated. No analytical method for residues was submitted. Enforcement action is not expected for the exemption. Various well established clinical chemistry or Association of Official Analytical Chemists (AOAC) procedures are available in case of gross misuses. There are no expected lactic acid residue problems with meat, milk, poultry, eggs, drinking and irrigation water, and fish and shellfish.

Lactic acid is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought, and it is concluded that the exemption will protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is

requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: April 25, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

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

2. New § 180.1090 is added, to read as follows:

§ 180.1090 Lactic acid; exemption from the requirement of a tolerance.

Lactic acid (2-hydroxypropanoic acid) is exempted from the requirement of a tolerance when used as a plant growth regulator in or on all raw agricultural commodities.

[FR Doc. 88-9750 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-00260; FRL-3374-9]

Pesticide Tolerance for Iprodione on Lettuce; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment clarifies an amendment that established a tolerance for residues of the fungicide iprodione in or on lettuce by deleting a superseded tolerance. No new regulatory requirements are being imposed, and advance notice and public comment are unnecessary.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT:

Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a regulation, published in the **Federal Register** of February 3, 1988 (53 FR 3021), which amended 40 CFR 180.399(a) by establishing a tolerance of 25.0 parts per million (ppm) for the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidine-carboxamide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide], and its metabolite [3-(3,5-diclorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on lettuce at 25 parts per million. The amendment was intended to specify the sole tolerance for the commodity lettuce and to supersede the listing for lettuce (head) at 15 ppm. But the amendment inadvertently omitted specific amendatory language deleting "lettuce (head)" from § 180.399(a). This document addresses that omission by deleting the entry "lettuce (head)." And it further clarifies the current listing "lettuce (leaf)" to read as intended, i.e., "lettuce."

As this technical amendment merely clarifies a previous amendment and imposes no new regulatory requirements, advance notice and public comment are unnecessary. (21 U.S.C. 346a)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

§ 180.399 [Amended]

2. In § 180.399 *Iprodione; tolerances for residues,* paragraph (a) is amended in the list of commodities therein by removing the entry "Lettuce (head)" and its tolerance of 15 parts per million and specifying the current listing "Lettuce (leaf)" to read "Lettuce."

[FR Doc. 88-9843 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 150 and 153

[CGD 84-025]

Incinerator Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rules.

SUMARY: This document finalizes safety rules for incinerator vessels carrying liquid hazardous wastes in bulk for the purpose of incineration at sea. Existing regulations do not specifically address safety hazards unique to the operation of incinerator vessels. The rules in this document adopt standards for incinerator vessels in Chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (International Bulk Chemical Code) of the International Maritime Organization (IMO) as well as standards in existing safety regulations that apply to chemical tank vessels. These rules apply to vessels required to obtain an ocean incineration permit from the Environmental Protection Agency (EPA). EPA has proposed rules for obtaining a permit in EPA rulemaking docket FRL-2698-5.

DATES: This regulation is effective June 3, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1988.

ADDRESSES: A final regulatory evaluation has been prepared for this rulemaking and may be inspected and copied at the Marine Safety Council (G-CMC/21) at Room, 2110, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001 between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: CDR Ronald W. Tanner, Office of Marine Safety, Security, and Environmental Protection, telephone (202) 267-1217 from 7:30 a.m. until 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on August 25, 1986. Interested persons were given until October 25, 1986 to comment on the proposal. Sixteen comments were received. A Draft Evaluation of economic and environmental impact associated with the NPRM was prepared along with a statement announcing a finding of no significant environmental impact (FONSI). These documents were placed in the rulemaking docket and made available for public comment during the 60 day comment period provided for the NPRM. A specific statement giving public notice of the availability of the FONSI was also provided on December 29, 1986, and interested persons were given until February 12, 1987 to comment. Ten additional comments were received.

Drafting Information

The principal drafters of these regulations were LCDR David B. Crawford, Project Manager, and Mr. William R. Register, Project Counsel, Office of the Chief Counsel.

Background Information

Ocean incineration is a process for disposing of hazardous waste by high temperature destruction at sea. In a typical disposal operation, a tank vessel which has one or more specially designed incinerators receives hazardous waste at a port, transits to a designated burn site, burns the waste at the site, and then returns.

The Coast Guard, under 46 U.S.C. 3703, has responsibility for prescribing regulations of incinerator vessels as may be necessary for navigation, vessel safety, and safety of vessel personnel as well as for enhanced protection of the marine environment. These regulations may include, among other things, requirements for the design, construction, equipment, and operation of incinerator vessels. The Environmental Protection Agency (EPA) has general responsibilities relating to ocean incineration activities. These responsibilities include setting standards for incinerator emissions, issuance of ocean incineration permits, and the designation and management of ocean incineration sites. As referenced in this document, these regulations include certain provisions which have been developed taking into account corresponding provisions in EPA's notice of proposed rulemaking of February 28, 1985, (50 FR 8222) pertaining to ocean incineration permits. To the extent that EPA's proposal is modified in further rulemaking proceedings, the Coast Guard will evaluate these regulations to determine the need for updating revisions.

Technology concerning ocean incineration of hazardous waste originated in Europe in the late 1960's. As it developed, a need for specific requirements for incinerator vessels became increasingly apparent. Existing vessel safety requirements for tank vessels did not specifically address hazards associated with incinerators and incinerator spaces, the sources of ignition in these spaces, and the potential for release of hazardous wastes in these spaces during transfer from vessel cargo tanks to an incinerator. The International Maritime Organization (IMO) in recognizing and responding to this need, developed a set of comprehensive incinerator vessel requirements which have been included in Chapter 19 of the International Bulk Chemical Code (IBC). The Coast Guard actively participated in the development of Chapter 19. Input was also obtained from the U.S. Working Group on Bulk Chemicals of the Subcommittee on Safety of Life at Sea of the Shipping Coordinating Committee. The standards in Chapter 19 are widely accepted as being the best, most practicable safety standards available for incinerator vessels.

The IBC, including Chapter 19, became mandatory for states signatory to the 1974 International Convention for the Safety of Life at Sea, including the United States, on July 1, 1986. Chapter 19 contains detailed requirements relating to incinerator vessels and also incorporates applicable requirements of Chapter 1-16 of the IBC that apply generally to all chemical tank vessels. The requirements of Chapters 1-16 in turn incorporate provisions of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (Bulk Chemical Code), which was originally adopted in 1971 as a recommended international standard for all chemical tank vessels. The Coast Guard incorporated the Bulk Chemical Code into United States regulations in 1977. These requirements are currently published in 46 CFR Part 153.

The final rules in this document incorporate the provisions of Chapter 19 of the IBC into U.S. regulations. They are being adopted as measures to provide for the safety of incinerator vessels and their crews and for the protection of the marine environment, when transporting hazardous wastes and while operating at an incineration site.

At present, there is one potential United States flag incinerator vessel, APOLLO I. Another, APOLLO II, is currently under construction. The plans for both of these vessels have been approved by the Coast Guard and they will meet the level of safety provided by Chapter 19 of the IBC and these final regulations. Also, several inquiries have been received from prospective builders of other incinerator vessels.

Two foreign flag incinerator vessels, VULCANUS I and VULCANUS II, have requested EPA authorization to burn U.S. generated hazardous wastes. Both of these vessels are required by Pub. L. 97-389 (96 Stat. 1954, 46 U.S.C. 883) to undergo full inspection, including drydock inspections and internal examinations of the tanks and void spaces, and meet the same standards as U.S. vessels. The VULCANUS II was recently certified by the Coast Guard in accordance with Pub. L. 97-389 and was found to comply with the principal requirements in this notice, and the second vessel has applied for a certification. Pub. L. 97-389 also prohibits other foreign vessels (*i.e.*, foreign vessels not owned or under construction on May 1, 1982, by a corporation wholly owned by a citizen of the U.S.) from loading bulk hazardous wastes from U.S. ports for the purpose of incineration at sea.

Description of the Final Rules

(1) *Activities to be Regulated.* Incinerator vessels conduct two primary activities both of which are addressed in these final regulations. The first activity is to transport hazardous waste to an ocean incineration site. In this respect an incinerator vessel's operation is similar to any other tank vessel. The second activity involves the actual process of incineration. Incinerators pose hazards similar to other fired units on board ship such as boilers. In addition, the operation of transferring hazardous waste from the incinerator vessel's cargo tanks to an incinerator is an operation unique to incinerator vessels.

(2) *Regulatory Approach*—(a) *Transportation of Waste Material.* The regulatory approach for shipboard transportation of hazardous waste to an incineration site will be to apply, where appropriate, the existing requirements for chemical tank vessels that carry hazardous materials in bulk. The standards necessary to safely transport hazardous waste materials are essentially the same as those applied to the carriage of hazardous materials as cargo in bulk.

The principal safety regulations for all tank vessels are in Subchapter D of Title 46, Code of Federal Regulations, and § 150.220 of the final rules requires certification of compliance with those regulations. Examples of Subchapter D requirements include: firefighting systems, structural fire protection, lifesaving equipment, cargo venting systems, and ventilation systems.

For chemical tank vessels, the Subchapter D requirements are supplemented by requirements in Part 153 of Subchapter O of Title 46, Code of Federal Regulations. As stated above, these supplemental requirements incorporate provisions of the Bulk Chemical Code which are carried forward into Chapters 1–16 of the IBC and are also included in these final rules. Examples of these requirements are: vessel arrangements, cargo containment systems, cargo tank gauging, cargo pumps and pumprooms, monitors, alarms, and control systems, toxic vapor protection, emergency shutdown, and various cargo transfer and other operational procedures and controls.

In addition to the existing requirements in Subchapters D and O, specific requirements are also necessary to address construction and arrangement features concerning incinerators and incinerator spaces. These additional requirements are found in Chapter 19 of the IBC and have been included in the final rules.

(b) *Incineration of Wastes.* The regulatory approach for incineration of hazardous waste will be to apply requirements from 46 CFR Part 63 which relate to large water heating equipment and other large fired units on board ship. The hazards involved in using this equipment are essentially the same as those associated with shipboard incinerators. The principal purposes of the Part 63 requirements are to preclude the introduction of fuel or hazardous waste into an incinerator in the absence of an ignition source and to preclude the ignition of flammable vapor in amounts that would damage an incinerator or cause an explosion.

The final rules also include requirements from Chapter 19 of the IBC as measures to minimize hazards resulting from an accidental release of hazardous wastes from cargo piping during transfer to an incinerator. These additional requirements include automatic shutdown systems, electrical equipment requirements for equipment located in compartments containing cargo piping, ventilation requirements for spaces surrounding the incinerators, and special pumproom requirements.

Discussion of Comments and Changes Made in the Final Rules

Many of the commenters addressed both technical considerations as well as environmental concerns. Comments which are primarily technical are addressed below. The environmental concerns have been fully discussed in the Final Regulatory Evaluation, which is available for public inspection and copying in the docket, and are also summarized in this document.

a. Application of These Rules to Ships Carrying Hazardous Waste in Containers (Portable Tanks)

Three commenters expressed concern that the rules do not address carriage of wastes in containers, *i.e.*, portable tanks. Section 150.220 requires that each incinerator vessel be certificated as a tank vessel under Subchapter D of Title 46, CFR. Subchapter D in turn requires tank vessels to comply with the Coast Guard's regulations concerning carriage of hazardous materials in portable tanks (see 46 CFR 30.01–5 and 31.30.1). The portable tank regulations are extensive and are currently in 46 CFR Part 64 and 46 CFR Subpart 98.30. Subpart 64.95 of Part 64 also requires the cargo piping and hoses for portable tanks to meet applicable requirements in 46 CFR Part 56.

Proposed revisions to the portable tank regulations are being prepared for **Federal Register** publication in separate rulemaking (CGD 84–043) and will address principally a proposal to require use of DOT IM 101 and 102 portable tanks. This proposal would also apply to portable tanks carried on board incinerator vessels.

One of the commenters also suggested that § 150.400 be revised to allow alternative fire protection systems, such as water spray systems in lieu of a fixed foam system, on incinerator ships carrying hazardous wastes in containers. This comment has not been adopted. Using water to extinguish a fire in the cargo area of a tank vessel is not considered an adequate safety measure. Foam is more effective than water in cutting off oxygen supply to the fire.

One commenter also recommended that specific requirements be added to address handling and storage of portable tanks carrying dangerous cargoes at transfer facilities. Specific regulations which address this topic are in 33 CFR Part 126 (see, *e.g.*, 33 CFR 126.27 and 126.29) and the Coast Guard is currently preparing proposed rules in docket CGD 86–034 to apply present oil pollution prevention regulations in 33 CFR Parts 154–156 to both vessels and facilities involved in the transfer of hazardous substances.

b. Designation of Ship Type

Four comments questioned the requirement of assigning ship type II to incinerator ships. The comments recommended that the Coast Guard apply the maximum standard, type I, to these vessels because of the hazards of the wastes to be carried. One commenter also suggested in the alternative that, if type I construction is not to be required, the Coast Guard should require an adequate chemical analysis to be performed on the wastes to be carried to ensure no mixing of type I wastes with type II wastes.

The commenters' concerns with respect to type I versus type II construction were extensively analyzed and the determination was made to retain the requirement of assigning ship type II in the final rules. As explained in more detail below and in the Final Evaluation, requiring type I construction for all incinerator ships could not be justified because of the expectation that few types of wastes equivalent to type I cargoes will be carried on incinerator ships. With respect to the recommendation that a chemical analysis of wastes be conducted, the Coast Guard will be reviewing a waste analysis of each cargo to determine the degree of hazard involved. This review will supplement the EPA waste analysis requirements in proposed 40 CFR 234.16 and 234.58.

One of the commenters pointed out that Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) applies to incinerator vessels. The commenter noted that the 23rd session of the IMO Marine Environmental Protection Committee approved an interpretation of Annex II of MARPOL 73/78 which classifies an incinerator vessel's cargo as a Category A Noxious Liquid Substance (NLS). The commenter said that Category A is the most stringent classification and that the Coast Guard should therefore require the highest standards.

Tanker type, *i.e.*, type I, II, or III, is assigned based on the combined safety and environmental threat posed by the cargo to be carried, with particular emphasis being upon the immediate safety hazard posed to a vessel's crew and surrounding port area by a sudden release of the cargo. The pollution categories A, B, C, and D, as designated in Annex II of MARPOL, refer to the toxicity of a substance, *i.e.*, they refer to the extent that a substance, without regard to the extent of immediate threat to the crew or port area, will cause harm to marine life if released. Thus, a cargo can be rated as Category A (the most stringent category) for pollution prevention purposes, yet be carried as type II or III cargo on a type II or III vessel. There are very few Category A substances that would require carriage in a type I vessel. The assignment of Category A to a hazardous waste mixture will result primarily from the impracticability of establishing, in advance, a profile of the environmental hazard for each possible waste in the mixture.

A cargo containment system type is assigned for each chemical shipped in a chemical tanker. Regulations for chemical tankers in 46 CFR Part 153 include three levels of cargo containment systems: type I, II, and III (see 46 CFR 153.230–153.232). Applying a cargo containment type requirement to a chemical specifies the extent to which a ship carrying the chemical must survive damage conditions given in Table 172.135 of 46 CFR Part 172 and specifies the location of the tank carrying the chemical with respect to the ship's shell plating.

The ship type requirement for incinerator vessels (see 46 CFR 150.255) is based on IMO regulations which mandate type II double hulled construction for chemical tankers. As of April 6, 1987, when the provisions of Annex II of the International Convention for the Prevention of Pollution from Ships became effective, incinerator vessels must have at least a type II hull (double hull construction) to reduce the potential for discharges caused by collisions and groundings and also meet a two compartment damage stability standard.

It cannot be accurately anticipated at this time how many wastes requiring a type II containment system will be carried. Based on experience to date, the majority of wastes proposed for carriage have been type II or III. Because a substantial number of cargoes will require a type II system, the higher standard, *i.e.*, type II construction, rather than type III construction, is being required as the preferred option. Although some wastes may be made up of chemicals which, when shipped commercially, may be carried in a type III cargo containment system, IMO requirements and these regulations do not include provisions allowing carriage of hazardous wastes on incinerator vessels that have type III hulls. Specific provisions are not included for type III vessels since they cannot safely carry many of the type II hazardous wastes that the Coast Guard anticipates will be routinely transported. As explained in Appendix I to the Final Evaluation, vessels that have a type III hull are not required to meet certain standards required for type II construction.

In addition to the protection afforded by type II hulls, IMO standards and these rules preclude carriage of cargo in an incinerator vessel's wing tanks; whereas, on a type II chemical tanker the wing tanks could contain flammable chemicals. This feature improves survivability in collision situations by lowering the risk of fire. Therefore, a type II incinerator vessel will provide better protection than a type II chemical tanker.

It is unlikely that many types of wastes presenting hazards equivalent to those cargoes requiring a type I system will be proposed for incineration at sea. Consequently, requiring all wastes to be carried in type I hulls is not considered justified. Incinerator vessels typically carry mixtures containing many wastes components, some of which are highly hazardous from a health standpoint, but which are present only in low concentrations. The overall hazards of the mixtures are generally comparable to those of commercial products which are routinely transported on type II vessels. In addition, the type II standard is consistent with IMO requirements already set forth in Chapter 19 of the IBC.

As part of the EPA permitting process, the Coast Guard will be reviewing chemical waste mixtures to determine the degree of the cargo hazard. Peculiar hazards associated with the wastes may require imposition of specific controls and safeguards. The particulars of these controls and safeguards will be fully developed and analyzed as a part of the permitting process which will include an opportunity for public input pursuant to EPA's processing procedures set out in proposed 40 CFR Subpart C.

c. Environmental Impact

Several commenters on the NPRM and FONSI suggested that the environmental assessment prepared for this rulemaking did not contain a sufficient analysis of the environmental issues involved, and they urged instead that an environmental impact statement (EIS) be prepared.

Coast Guard internal procedures call for preparation of an environmental assessment as a first step in each proposed action having potential environmental consequences. Based upon that assessment, a finding is made as to whether the action will or will not have a significant impact on the environment and, if a significant environmental impact is expected, an EIS is then prepared. In this rulemaking the Coast Guard originally concluded that there would not be a significant environmental impact involved and, in accordance with our procedures, a finding of no significant impact (FONSI) was issued in lieu of preparing and EIS.

In response to the commenters' concerns, the environmental issues in this rulemaking were critically reexamined. These issues relate primarily to the need for operational limitations and controls during vessel transit, Type I vs Type II vessel construction, additional facility requirements, worker safety considerations, as well as specific concerns relating to individual safety requirements proposed in the rulemaking. Discussion of these various concerns appears throughout this document as well as in the Final Regulatory Evaluation.

Based upon the Coast Guard's reexamination, the environmental assessment for this rulemaking was extensively revised and the prior determination that there would be no significant environmental impact was reaffirmed. A copy of the revised environmental assessment and FONSI are included in the Final Regulatory Evaluation and may be obtained from the address listed above under **ADDRESSES.**

d. Operational Limitations and Controls

Six comments recommended that the rules should include specific operational limitations and controls concerning port transit and that these operational requirements should be made applicable to all ports. The NPRM proposed adoption of specific controls and limitations on a case by case basis as needed for specific ports.

Examples of port transit limitations and controls include: establishment of a moving safety zone, requirements for Coast Guard escort vessels, restriction of operations to daylight hours, weather and visibility restrictions, requirements for tug assistance, and a requirement to provide adequate advance notice before transferring hazardous waste to an

incinerator vessel. As explained in the revised environmental assessment, the Coast Guard has already developed a planned set of operational limitations and controls for possible incineration vessel operations from the ports of Mobile and Philadelphia. These planned controls and limitations are outlined in the assessment and, as evident from their description, they are somewhat different for each port because of differing port configurations and navigating conditions. By way of example, a requirement for tug assistance is contemplated for Philadelphia between the loading facility and the Delaware Memorial Bridge; whereas, in Mobile, a requirement for tug assistance is contemplated for operations inbound between the entrance to the Mobile river and the facility and outbound between the Facilty and the Theodore Ship Channel entrance. These examples illustrate the importance of considering local port conditions in establishing specific operational limitations and controls.

In response to the comments, the Coast Guard reconsidered the feasibility of establishing uniform nationwide controls, rather than port specific controls as originally proposed, and again concluded the case by case selection of appropriate controls is still the more effective approach. As illustrated above for the ports of Mobile and Philadelphia, individual port configurations and navigating conditions differ and require individual appraisal and tailored controls and limitations. Adoption of nationwide controls is simply not practicable and, as emphasized in the environmental assessment, imposition of port specific controls and limitations has a greater potential for decreasing transit risks than would a general set of nationwide controls.

e. Port Selection

One commenter suggested that not every port will be suited to accommodate incinerator vessels and recommended that the Coast Guard, in cooperation with EPA, take necessary steps to develop criteria for port selection. The selection of ports for transfer of hazardous materials currently being transported in bulk involves determinations made at the state and local levels in cooperation with affected business interests. The selection of ports for transfer of wastes to be incinerated at sea will be considered as a part of the EPA permitting process (see proposed 40 CFR 234.18 (February 28, 1985, 50 FR 8261)) and the Coast Guard will have an extensive input into that process as explained more fully in the EPA notice of proposed rulemaking.

f. Independent vs. Integral Tanks

Three commenters suggested that the Coast Guard prohibit the carriage of incinerator vessel cargo in integral tanks since these tanks would be subjected to the same stresses to which the hull is subjected. These comments have not been adopted. As part of the vessel's hull structure, integral tanks are designed to withstand the stresses transmitted by the hull. The integrity of integral tanks is not impaired by the presence of these stresses. In contrast, independent tanks are typically used for refrigerated and/or elevated temperature cargoes because of the thermal stresses imparted by these cargoes. Incinerator vessel cargoes, however, are not carried at temperature extremes and, therefore, can be carried safely in integral tanks.

g. Worker Safety

One commenter recommended that as part of the certification process for an incinerator vessel, the applicant should be required to submit a worker safety plan addressing the particular hazards encountered by workers involved in incineration at sea. The commenter noted that the Coast Guard is the dominant federal agency for occupational safety and health of seaman onboard inspected vessels under a Memorandum of Understanding between OSHA and the Coast Guard (see 48 FR 11365, dated March 17, 1983).

In analyzing this comment, the various worker safety considerations included in the proposed rules were reconsidered to assess their adequacy in providing effectively for shipboard worker safety both during shore to ship transfer, as well as during transit to the burn site and during the process of burning waste at the site. The worker safety considerations provided for in these rules include provisions concerning personal emergency and safety equipment (§ 150.395), eye protection (§ 150.450), protective clothing (§ 150.455), entry into spaces containing cargo vapor (§ 150.460), a comprehensive respiratory program (§ 150.460), screens around incinerator stacks (§ 150.330), as well as rules which take into account worker safety in transfer and burning of wastes e.g., operations instructions and test procedures to be utilized in burning (§ 150.365), prohibitions against entry on deck during burning (§ 150.457), and requirements for holding cargo transfer conferences (§ 150.500). Based on experience to date, these various provisions have been determined to provide adequately for workers safety on board incinerator vessels.

One commenter recommended that the final rules include a requirement to have a comprehensive program concerning labeling and warnings concerning the personnel hazards of the wastes to be carried. This comment has been adopted and § 150.430 has been revised to require cargo information similar to the information required for chemical tankers in 46 CFR 153.907.

One commenter recommended that the Coast Guard include a specific medical monitoring program for crew protection. Action on this comment has been deferred. The requirements in § 150.460 concerning entry into spaces containing cargo vapors and for a comprehensive respiratory program were based in part on the interim recommendations of a Coast Guard-sponsored study of workers in the chemical marine transportation industry. (The interim recommendations are included in the public docket.) The final report, which has not yet been issued, is expected to include specific recommendations on medical monitoring requirements. In addition, OSHA published in the **Federal Register** an interim final rule (see 51 FR 45654, dated December 19, 1986) to amend the OSHA standards for hazardous materials in Subpart H of 29 CFR Part 1910 by adding a new § 1910.120 containing employee protection requirements for workers engaged in hazardous waste operations. Paragraphs (e) and (f) of § 1910.120 provide standards for training and medical surveillance for workers engaged in hazardous waste operations. The Coast Guard intends to evaluate these OSHA standards in conjunction with the final results of the Coast Guard-sponsored study referenced above. The results of this evaluation will be the basis for determining whether additional rulemaking is needed concerning crew medical monitoring programs on incinerator vessels.

One commenter suggested that a requirement be added to provide decontamination stations at various locations on the ship to provide personnel protection against waste contamination resulting during routine transfer operations. The possibility for contamination during routine transfer operations is considered remote, except possibly under occasional circumstances set out in §§ 150.450 and 150.455. During these specified circumstances, the protective clothing and eye protection required by those sections must be worn. In the event that

contamination might otherwise occur during an emergency, emergency showers, as required in § 150.395, would be available for personnel use.

h. Compliance With IBC Requirements

Several comments noted that certain IBC requirements were not included in the proposed rules. It was not the Coast Guard's intent to exclude these requirements and they have been added to the final rules. The additions are contained in the following sections:

Section 150.205 Definitions.
Section 150.225 Required endorsement.
Section 150.255 (o), (p), and (q) Cargo containment system.
Section 150.340(h) Incinerator monitoring and alarms.
Section 150.385 Incinerator blower space.
Section 150.395(a)(3) Personnel emergency and safety equipment.
Section 150.402 Flammable vapor detectors.
Section 150.403 Toxic vapor detectors.
Section 150.432 Cargo Antidotes.
Section 150.520 Preparation for cargo transfer.

These additional rules are not expected to impose any additional appreciable costs over those incurred to comply with the remaining requirements in this rulemaking.

i. Section-by-Section Discussion of Other Changes Made

Other specific changes made to the NPRM are discussed section by section below along with a discussion of related comments. Minor corrections and clarifications are not discussed except where the rationale for a change is not otherwise self-evident.

Section 150.220 Inspection for Certificate of Inspection.

One commenter noted that the requirement in IBC Section 19.1.4 for taking corrosion into account during vessel surveys and determining the remaining wall thicknesses after required surveys could not be found in the proposed rules. Subchapter D of Title 46, CFR, addresses corrosiveness but does not include an inspection requirement for determining remaining wall thickness. A requirement for annual inspections has been added and incorporates the inspection requirements for boilers in 46 CFR Part 61.

Section 150.230 Carriage of bulk solid hazardous waste.

Six commenters recommended that carriage and burning of solids be prohibited and/or that specific requirements for solid hazardous waste cargoes be added. In accordance with these comments, § 150.230 and the applicability statement in § 150.200 has been revised in the final rules to emphasize that the requirements in this rulemaking apply only to carriage of liquid wastes in bulk and that only liquid wastes may be carried for the purpose of incineration at sea. If and when requests to carry solids are received or anticipated, consideration will be given to imposing specific requirements as needed to address particular hazards associated with carriage and burning of solids.

Section 150.255 Cargo containment system.

Paragraph (d)—Two commenters recommended that the requirement for a three-way valve be deleted or revised to accommodate incinerator designs in which separate fuel and cargo lines lead to each burner. The intent of the proposed rule was to require use of a three way valve in piping systems in which both fuel and cargo enter an incinerator burner through the same pipe. The requirement does not apply to systems in which cargo and fuel enter a burner through separate pipes. The final rules have been modified accordingly.

Section 150.270 Vessel Arrangements and § 150.457 Entry on deck in vicinity of Incinerators.

One commenter recommended that a provision equivalent to IBC § 19.3.7 requiring that the incinerator be located outside the external perimeter of the cargo area be included in the rules. This provision was proposed in § 150.270 of the proposed rules and has been retained in final rules.

One comment recommended adding a requirement to provide access to machinery spaces in the aft part of the incinerator vessel without having to walk on deck. The comment addresses a valid safety concern, but an alternative, less expensive solution has been adopted.

Operational prohibitions concerning access to the vicinity of the incinerator have been added in the final rules (see § 150.147) and these prohibitions should resolve the safety concerns evident in the commenter's recommendation.

Section 150.295 Cargo venting system.

One commenter recommended that the provisions on cargo venting systems in IBC Chapter 8 and § 15.12 be included in the final rules. These IBC provisions were incorporated into the chemical tanker rules (46 CFR Part 153) in 1977 and have been included in both the proposed and final rules in this rulemaking at § 150.295.

Paragraph (e)—One commenter questioned the need to have a Pressure-Vacuum (PV) valve between each tank and the connection to another tank's vent line on an incinerator vessel that only carries compatible wastes. The requirement for having a PV valve has been retained in the final rules. In addition to providing a safeguard against hazards associated with incompatible cargoes, the PV valve serves to isolate cargo tanks, one from the other, in the event of fire or explosion.

Paragraph (m)—One comment stated that high velocity vents should not be fitted with flame arrestors since flame arrestors would slow the speed of the vented gas thus preventing effective high velocity venting. This comment has been adopted.

Section 150.325 Pumproom respiratory requirements.

One commenter requested that a low pressure air supply system be required only for pumprooms not open to the atmosphere. This comment has not been adopted. Pumprooms are by definition closed spaces (see *e.g.*, 46 CFR 153.2, and the definition of "cargo handling space" in § 150.205 of these rules) and access to a low pressure air supply is essential to allow sustained work in those spaces. The same commenter also questioned the need for requiring enclosed spaces for cargo pumps. The requirement for having enclosed pumprooms applies to all tank vessels (see 46 CFR-32.60–20) and is necessary to isolate the pumps from sources of vapor ignition.

Sections 150.330–150.382 Incinerators and Controls

One commenter urged that the proposed rules relating to incinerator and system design should be made more stringent and comprehensive because of anticipated full flow rates being in the 1600–5500 gallon per hour range in lieu of the 3 gallons per hour range contemplated by the regulations for boilers and other vital systems in proposed 46 CFR Part 62 (upon which many of the requirements in proposed §§ 150.330–150.385 were based). The regulations in proposed Part 62 are derived from requirements applicable to propulsion boiler systems also having fuel rates in the range of 1600–5500 gallons per hour. These requirements are considered to be adequate to address safety concerns associated with fuel flow rates in anticipated incinerator designs.

Section 150.330 Incinerator construction.

One commenter recommended that the rules also should include specific

requirements for incinerators relating to design features which may affect the safety of shipboard personnel resulting from accidental spills, explosions, and emissions including, e.g., requirements concerning furnace design, operating conditions, combustion chamber geometry, etc. This recommendation has not been adopted. Imposing design restrictions for incinerators would inhibit innovation in this developing field. Further, all known incinerators that can be adopted for shipboard use are considered to be adequate for such use.

Two commenters questioned the reason for the outside surface temperature limit of 180°C(356°F). These comments noted that § 19.4.4 of the IMO IBC provides that the temperature rise should not adversely affect personnel safety and that the 180°C temperature was too high to prevent personnel injury.

This 180°C temperature requirement is provided as a structural fire protection measure. As provided in Subchapter D, 180°C is the temperature used to test the structural integrity of Class "A" bulkheads. However, the Coast Guard agrees that this requirement alone is not sufficient to prevent personnel injury. Accordingly, a requirement for a guard railing or protective screen to protect the crew from the external surface of the incinerator has been added to § 150.330. Additionally, an operating requirement has been added as § 150.457 which prescribes limitations on when personnel are allowed on deck in the aft part of the vessel during burning.

Section 150.335 Incinerator control and monitoring: general.

Paragraph (f)—One commenter noted that the proposal did not include the proposed requirements as set out in the **Federal Register** of September 23, 1985, at proposed § 62.25–30(a) for controls, alarms, and monitoring equipment to be used on all types of inspected vessels. This omission was inadvertent and the proposed § 62.25–30(a) has been included in this paragraph of the final rules.

Paragraph (i)—One commenter questioned the need to have back-up valves, i.e. master valves. This requirement has been retained as the back-up capability is considered to be a critical safeguard to allow for the immediate shutdown of whole systems during an emergency.

Section 150.350 Programming control.

Paragraph (b)—One commenter noted that the 25% maximum air flow during light off requirement would extinguish the flame during light off. The intent of this requirement was to provide an air-rich combustion chamber atmosphere. This comment has been adopted and paragraph (b) has been revised accordingly.

Section 150.370 Ventilation of cargo handling spaces, incinerator spaces and incinerator blower spaces.

Paragraph (c)—One commenter recommended that design or operating requirements be added to address hazards involved in the event of ventilation system failure. This comment has not been adopted. Section 150.365 requires that operating instructions include emergency instructions which would cover precautions involved in the event of such failures. Further required precautions are not considered necessary and are not required for other types of tank vessels.

Section 150.390 Emergency shutdown stations.

Paragraph (b)—Two commenters recommended that the first of the two emergency shutdown stations required by this section not be on the weatherdeck in the cargo area since personnel are seldom there during incinerator operation. One of the commenters also recommended that the location be changed to the bridge. Section 150.390 (b) has been revised in the final rules in accordance with these recommendations to require one of the emergency shutdown stations to be on the bridge. This requirement is also in IMO IBC § 19.5.4.

Section 150.395 Personnel emergency and safety equipment.

Paragraph (a)(2)—One commenter recommended that only 2 self-contained breathing apparatus (SCBA's) be required rather than 3, and that the 30 minute capacity for SCBA's be reduced. In support, the commenter suggested that the third apparatus is unnecessary since they are typically used in pairs with one person entering the dangerous situation while the other remains on standby. These comments have not been adopted. The regulations for chemical tankers (see 46 CFR 153.214(a) and (b)) require three SCBA's with 30 minute capacity and the IMO IBC, at §§ 14.2 and 19.3.1, for incinerator vessels, likewise require 3 SCBA's with sufficient breathing capacity to deal with an emergency situation for at least 20 minutes, which necessarily presupposes the additional time needed, *i.e.*, 10 minutes, to activate and deactivate the apparatus before entering and after departing the emergency situation.

Paragraph (g)(1)—Three commenters questioned the provision for the emergency escape breathing apparatus (EEBA). Two of the comments urged adoption of the IMO IBC requirement to require at least a 15 minute air supply and the third comment suggested that the requirement to provide one EEBA per crew member was excessive. One commenter also suggested that the air supply be of sufficient duration for use in an abandon ship situation. The IMO requirement for a 15 minute air supply has been adopted in the final rules. A requirement to have a longer air supply would entail use of bulky equipment which would substantially impair the wearer's ability to move in exiting the vessel or survive in the water in an abandon ship/survival situation. The intent of the rule is to provide an emergency supply in the event of a momentary blow-back or similar air-starvation situation. The requirement to have one EEBA per person is an IMO requirement and has been retained in the final rules. The EEBA is an important safety device which has also been required for several years on chemical tankers that carry hazardous substances which emit toxic vapors.

Section 150.442 Incinerator Stack Emissions and § 150.457 Entry on deck in vicinity of incinerators.

One commenter recommended that the rules include requirements on stack positioning and other design requirements that take into account the effect of combustion gases on air intakes, personnel work areas, and openings to these spaces, as provided in § 19.3.8 of the IMO IBC. These IMO IBC requirements have been incorporated into various provisions of the proposed and final rules. Section 150.270(b) contains specific requirements on placement of air intakes, as well as openings to accommodation spaces and service and machinery spaces, which take into account the effects of combustion gases on vessel personnel. Additional safeguards are also addressed in § 150.270(j), which requires stack positioning to be specifically approved by the Commandant, and in § 150.457, as added in the final rules, which contains operational prohibitions against entry on deck during incinerator operations.

Section 150.450 Eye Protection.

Paragraph (a)(2)—One commenter recommended that the requirement in § 150.450(a)(2) to wear tight-fitting goggles for eye protection while transferring cargo be deleted. This comment has not been adopted. The

requirement to wear goggles while transferring cargo, as well as while sampling cargo, opening a cargo tank, and making or breaking a cargo hose connection, has been in effect since 1977 and applied to transfers of all types of hazardous cargoes regulated under 46 CFR Subchapters D and O. This requirement is considered a basic, essential safety measure and is being retained in the final rules.

Section 157.507 Discharges.

Subsequent to the publication of the NPRM in this rulemaking, the IMO Marine Environmental Protection Committee (MEPC) issued an "Interpretation of Annex II of MAPROL 73/76 in respect of Incinerator Ships, MEPC 23/22." MEPC 23/22 classifies all incinerator cargo as Category A Noxious Liquid Substances (NLS's) and prohibits disposal of these cargoes from an incinerator vessel other than by means of incineration at sea or to an adequate reception facility. These MEPC provisions in effect impose an absolute prohibition against overboard discharges from incinerator vessels.

The Coast Guard recently published final regulations in 46 CFR Part 153 to implement the provisions of ANNEX II. See the **Federal Register** of March 12, 1987 beginning at page 7744 (52 FR 7444–7801). These regulations were generally made applicable to incinerator vessels but did not include specific implementation of the MEPC 23/22 interpretations and did not add specific provisions to the regulations for incinerator vessels in this rulemaking. One commenter to the Part 153 NPRM recommended that the Coast Guard incorporate the provisions of the MEPC 23/22 interpretations. This comment has been adopted in these final rules.

To implement Annex II and MEPC 23/22 for incinerator vessels, § 150.255, in both proposed and final rules, prohibits piping connecting any cargo piping to sea valves, *i.e.*, to discharge points to the sea, and § 150.507, as added to the final rules, imposes an obligation on the master to ensure against operational discharges of cargoes and cargo residues overboard to the sea. These provisions taken together adopt and clearly reinforce the international mandate to prohibit all overboard discharges from incinerator vessels.

Annex II and the implementing regulations in Part 153 include numerous requirements for vessels carrying Category A NLS cargoes. Specific provisions include requiring prewashing of cargo tanks before allowing overboard discharges, as well as requirements for a Cargo Record Book, a Procedures and Arrangements Manual, and use of a surveyor.

Because of the provisions of MEPC 23/22, however, none of those provisions apply or are needed for incinerator vessels. Accordingly, Part 153 has been revised to exclude incinerator vessels from its application and to make specific reference to the incinerator vessel regulations in this rulemaking (46 CFR Part 150). More specifically, the prewashing provisions in Annex II do not apply since incinerator vessels can not discharge wastes overboard. The remaining provisions in Annex II are not needed since they are already included in the proposed rules of the EPA or the Coast Guard. EPA's proposed § 234.60 (Monitoring and record requirements) and § 234.62 (Shiprider requirement) (50 FR 8268–8270) and § 150.430 (Shipping documents and Cargo Information) in these rules are equivalent to the surveyor, Cargo Record Book and Procedures and Arrangements Manual provisions in Annex II. Also, MEPC 23/22 expressly authorizes adoption of modified provisions in lieu of specific Annex II requirements to reflect specialized operations of incinerator vessels.

Final Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The evaluation provides a detailed explanation of the estimated costs of these regulations. The estimated costs for new construction are approximately $3 million per vessel with an expectation of a maximum of 3 incinerator vessels being built per year for the next 10–11 years. These costs take into account a potential savings to prospective shipowners of as great as $1 million per vessel over the $4 million cost per vessel required to meet current Coast Guard conditions for certification as an incinerator vessel. The savings will result from reducing the time needed for Coast Guard concept plan review in the certification process. The savings would be considerably reduced if several vessels were built to the same plans; however, this is not the usual practice.

Due to a lack of operational experience for incinerator vessels, it was not possible to quantify the extent to which these regulations affect the risk of explosion and fire aboard ships during the incineration process and the potential for exposure of the crew to toxic wastes. However, all known hazards are addressed by these regulations and the risks should be minimal.

These regulations, in conjunction with the EPA permit requirements as proposed in EPA docket FRL–2698–5, should result in an essentially negligible potential for harmful releases affecting coastal areas as a consequence of a vessel casualty. Based upon the information in the Final evaluation, the Coast Guard certifies that these rules will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking includes information collection requirements that have already been approved for all chemical tank vessels. These requirements are in § 150.225(b) and (e), § 150.235(b), § 150.240(b), § 150.365(a), § 150.415, § 150.430, § 150.435, and § 150.480 and are approved under OMB Approval No. 2115–0089. Other information collection requirements are in § 150.460 approved under OMB Approval No. 2115–0071, § 150.550 under OMB Approval No. 2115–0518, 150.365(b) under OMB Approval No. 2115–0548, and §§ 150.490 and 150.505 are approved under OMB Approval No. 2115–0078.

The information collection requirements in this rulemaking and their corresponding control numbers will be listed in 46 CFR § 150.105 concurrently with the publication of final rules.

List of Subjects in 46 CFR Parts 150 and 153

Hazardous materials transportation, Marine safety, Incinerator vessels, Incorporation by reference.

In accordance with the foregoing, Title 46 of the Code of Federal Regulations, Chapter I, Parts 150 and 153 are amended as follows:

PART 150—[AMENDED]

1. The authority citation for Part 150 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46.

2. By adding a new Subpart B to Part 150 to read as follows:

Subpart B—Requirements for Vessels Engaged in Bulk Hazardous Waste Incineration at Sea

General

Sec.
§ 150.200 Applicability.
§ 150.205 Definitions.
§ 150.210 Incorporation by reference.
§ 150.215 Non self-propelled vessels.
§ 150.220 Inspection for Certificate of Inspection.
§ 150.225 Required endorsement.
§ 150.230 Carriage of bulk solid hazardous waste.
§ 150.235 IMO Certificates for U.S. flag vessels.
§ 150.240 Equivalent standards.

Construction and Arrangements

§ 150.245 Hull type and damage stability.
§ 150.250 Electrical equipment.
§ 150.255 Cargo containment system.
§ 150.260 Separation of tanks from machinery, service and other spaces.
§ 150.265 Fore and aft location.
§ 150.270 Vessel arrangements.
§ 150.275 Ballast equipment.
§ 150.280 Bilge pumping system.
§ 150.285 Access to enclosed spaces and dedicated ballast tanks.
§ 150.290 Access to double bottom tanks serving as dedicated ballast tanks.
§ 150.295 Cargo venting system.
§ 150.300 Cargo tank gauging, Tank Overflow Control, High Level Alarms.
§ 150.305 Access to a cargo pumproom.
§ 150.310 Hoisting arrangement.
§ 150.315 Cargo pump discharge pressure gauge.
§ 150.320 Bilge pumping systems.
§ 150.325 Pumproom respiratory requirements.

Incinerator and Controls

§ 150.330 Incinerator construction.
§ 150.335 Incinerator control and monitoring: general.
§ 150.340 Incinerator monitoring and alarms.
§ 150.345 Combustion control.
§ 150.350 Programming control.
§ 150.355 Incinerator burner safety trip control.
§ 150.360 Incinerator safety trip control.
§ 150.365 Operating instructions and test procedures.
§ 150.370 Ventilation of cargo handling spaces, incinerator spaces and incinerator blower spaces.
§ 150.375 Ventilation of spaces not usually occupied.
§ 150.380 Incinerator space access.
§ 150.385 Incinerator blower space.

Equipment and Operations

§ 150.390 Emergency shutdown stations.
§ 150.395 Personnel emergency and safety equipment.
§ 150.400 Special requirements for fire protection.
§ 150.402 Flammable vapor detectors.
§ 150.403 Toxic vapor detectors.
§ 150.405 Inert gas system: General.
Sec.
§ 150.410 Inert gas system: Specific requirements.
§ 150.415 Certificates required to be on bridge.
§ 150.420 Limitation in the endorsement.
§ 150.425 Regulations required to be on board.
§ 150.430 Shipping documents and Cargo Information.
§ 150.432 Cargo Antidotes.
§ 150.435 Cargo piping plan.
§ 150.440 Cargo quantity limitations.
§ 150.445 Inerting system operation.
§ 150.450 Eye Protection.
§ 150.455 Protective clothing.
§ 150.457 Entry on deck in vicinity of Incinerators.
§ 150.460 Entry into spaces containing cargo vapor.
§ 150.465 Opening of tanks and cargo sampling.
§ 150.470 Storage of cargo samples.
§ 150.475 Illness, alcohol, drugs.
§ 150.480 Standards for marking of cargo hose carried onboard.
§ 150.485 Signals during cargo transfer.
§ 150.490 Warning signs during cargo transfer.
§ 150.495 Person in charge of cargo transfer.
§ 150.500 Cargo transfer conference.
§ 150.505 Loading information.
§ 150.507 Discharges.
§ 150.510 Cargo transfer piping.
§ 150.515 Connecting a cargo hose.
§ 150.520 Preparation for cargo transfer.
§ 150.525 Transfer of ship stores.
§ 150.530 Supervision of cargo transfer.
§ 150.535 Isolation of automatic closing valves.
§ 150.540 Terminal procedures.
§ 150.545 Inspection of personnel emergency and safety equipment.
§ 150.550 Reporting discharges of cargo.

General

§ 150.200 Applicability

This subpart prescribes rules that apply to vessels engaged in the incineration of liquid hazardous waste in bulk at sea.

Note: Regulations in 40 CFR Part 234 require these vessels to obtain an ocean incineration permit from the Environmental Protection Agency.

§ 150.205 Definitions.

In this subpart:

"Accommodation spaces" means halls, dining rooms, lounges, lavatories, cabins, staterooms, office, hospitals, cinemas, game and hobby rooms, pantries containing no cooking appliances, and similar permanently enclosed spaces.

"Approved" means approved by Commandant (G–MTH), U.S. Coast Guard.

"B" means the breadth of the vessel and is defined in § 42.13–15(d) of this chapter.

"Cargo" means liquid hazardous waste that is carried in bulk for the purpose of incineration at sea and that is a hazardous material, as determined in § 153.40 of this chapter, with a vapor pressure of less than 172 kPa (25 psig) at 37.8°C (100°F).

"Cargo area" means that part of a vessel that includes the cargo tanks, spaces adjacent to the cargo tanks, and the part of the deck over the cargo tanks and adjacent spaces.

"Cargo containment system" means a cargo tank, its cargo piping system, its venting system, and its gauging system.

"Cargo handling space" means an enclosed space that must be entered during a routine loading, carriage, or burning of cargo and that contains an element of the cargo containment system having a seal or packing to prevent the escape of cargo, such as a valve or cargo pump.

"Cargo piping system" means an incinerator vessel's permanently installed piping arrangement, including any valves and pumps, that carries cargo to or from a cargo tank.

"Closed gauging system" means an arrangement for gauging the amount of cargo in a tank that does not have any opening through which cargo vapor or liquid can escape, and includes a float and tape, a magnetically coupled float and indicator, or a radar system.

"Commandant" means Commandant of the U.S. Coast Guard. The term is often followed by a mailing code in parentheses. The mailing address should include any mailing code and should be written as follows: Commandant (mailing code), U.S. Coast Guard Washington, DC 20593–0001.

"Control space" is defined in § 30.10–19a of this chapter.

"Gas-tight" means all openings into the space must have metal closures that do not leak when tested with a fire hose stream at a pitot pressure of 207 kPa gauge (30 psig).

"IMO" means the International Maritime Organization.

"IMO Certificate" means a Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under the IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, Resolution MEPC 20(22), 1985, as amended, or an International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk issued under the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (International Bulk Chemical Code), Resolution MEPC 19(22), 1985, as amended.

"Incinerator" means a device, consisting of a burner assembly,

combustion chamber, and stack, used to thermally break down hazardous waste.

"Incinerator blower space" means an enclosed space containing a blower that supplies combustion air to an incinerator.

"Incinerator control room" means a gas-tight space where controls, alarms, and monitoring systems for the incinerator operation are located.

"Incinerator space" means a cargo handling space surrounding the burner assembly portion of an incinerator, where waste is introduced into it.

"Incinerator vessel" means a tank vessel constructed or converted to carry and burn hazardous waste at sea.

"Independent," as applied to a cargo piping, venting, or heating system means that the system is connected to no other system, and has no means available for connection to another system.

"Independent tank" means a cargo tank that is permanently affixed to the vessel, that is self-supporting, that incorporates no part of the vessel's hull, and that is not essential to the integrity of the hull.

"Integral tank" means a cargo tank that also is part of or is formed in part by the vessel's hull structure so that the tank and the hull may be stressed by the same loads.

"L" means the length of the vessel and is defined in § 42.13–15(a) of this chapter.

"Liquid" means each substance having a vapor pressure of 172 kPa or less at 37.8°C.

"Master" means the person-in-charge of a self-propelled or non-self-propelled incinerator vessel.

"OCMI" means "Officer in Charge, Marine Inspection," as defined in § 1.05(b) of this chapter.

"Pressure-vacuum (PV) valve" means a valve that is normally closed and which opens under a preset positive pressure or a vacuum.

"Separate" and "separated," as applied to a cargo piping, venting, heating or cooling system, means either an independent system or one that may be disconnected from all other systems by—

(1) Removing spool pieces or valves and blanking the open pipes ends; or

(2) Blocking each system interconnection with two blind flanges in series and providing a means of detecting leakage into the pipe section between the flanges.

"Service space" means a space outside the cargo area used for galleys, pantries containing cooking appliances, lockers, store room, workshops other than those forming part of the machinery spaces, and trunks to such spaces.

"Venting System" means a permanent piping arrangement leading from a cargo tank and used to control the flow of vapor to and from the tank.

§ 150.210 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), Washington, DC 20593.

(b) The materials approved for incorporation by reference in this subpart are:

American National Standards Institute, 1430 Broadway, N.Y, N.Y. 10018

ANSI B16.5–81, Pipe Flanges and Flange Fittings. This standard referenced in: § 150.480(a)(2).

ANSI B16.31–71, Non-Ferrous Pipe Flanges. This standard reference in: § 150.480(a)(2).

ANSI 287.1–79, Practice for Occupational and Educational Eye and Face Protection. This standard referenced in: §§ 150.395(g)(2) and 150.457(b)(2).

ANSI Z88.2–80, Practices for Respiratory Protection. This standard referenced in: §§ 150.395(h), 150.457(b)(3), and 150.460(b)(1).

National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

NFPA 306–1984, Control of Gas Hazards on Vessels. This standard referenced in: § 150.460(b)(1).

§ 150.215 Non self-propelled vessels.

Each non-self-propelled incinerator vessel must meet the requirements of this subpart and any additional requirements that the Commandant (G–MTH) may prescribe.

§ 150.220 Inspection for Certificate of Inspection.

(a) Each incinerator vessel must be certificated under Subchapter D of this chapter.

(b) During inspection for certification and reinspections held as provided in Subchapter D of this chapter, cargo containment systems must be inspected for corrosion and the remaining wall thicknesses determined in accordance with the method prescribed for boiler in § 61.05–10(f) of this chapter.

§ 150.225 Required endorsement.

(a) Each incinerator vessel must have its Subchapter D Certificate of Inspection endorsed as follows:

(1) "Inspected and approved for the carriage of Grade A and lower flammable or combustible liquids and hazardous waste for incineration"

(2) "Maximum specific gravity allowable: _____".

Note: Specific gravity is calculated in accordance with § 150.255(g).

(b) Each request for the endorsements required by this section must be submitted to one of the Coast Guard offices described in § 91.55–15 of this chapter.

(c) No incinerator vessel may load or carry cargo unless it has the endorsement required by this section.

(d) No endorsement will be issued unless the vessel meets the requirements of this subpart.

(e) The persons requesting an endorsement under paragraph (a) of this section must also transmit to the Coast Guard, when requested—

(1) Hull type calculations;

(2) The test procedure prescribed in § 150.370(b);

(3) The plans and information listed in § 150.295(g) and in § 54.01–18, § 56.01–10, § 91–55–5(a), (b), (d), (g), and (h), and § 110.25–1 of this chapter; and

(4) Any other vessel information, such as plans, design calculations, test results, certificates, and manufacturer's data needed to determine whether the vessel meets the requirements of this subpart.

§ 150.230 Carriage of bulk solid hazardous waste.

Bulk solid hazardous waste may not be carried on board an incinerator vessel.

§ 150.235 IMO Certificates for U.S. flag vessels.

(a) Subject to any amendments to the International Bulk Chemical Code, vessels that meet the requirements of this subpart are considered to meet the International Bulk Chemical Code requirements for obtaining an IMO Certificate of Fitness.

(b) Upon request made to the OCMI, the owner of an incinerator vessel may obtain an IMO Certificate of Fitness if the vessel has a valid Certificate of Inspection endorsed under § 150.225.

(c) The IMO Certificate of Fitness expires on the same date that the incinerator vessel's Certificate of Inspection expires.

Note: The IMO Certificate of Fitness is required for loading and transporting

hazardous waste from most foreign ports for incineration at sea.

§ 150.240 Equivalent standards.

Procedures for requesting alternatives and waivers are provided in § 153.10 of this subchapter.

Construction and Arrangements

§ 150.245 Hull type and damage stability.

(a) Each incinerator vessel must have either a type I or type II hull as required for vessels which must comply with Part 153 of this Chapter.

(b) Each incinerator vessel must meet the applicable stability requirements in Subpart F of Part 172 of this chapter for a type I or type II hull.

§ 150.250 Electrical equipment.

(a) Each incinerator vessel must meet Subchapter J of this chapter.

(b) Electrical equipment in an incinerator space or incinerator blower space that is not suitable for use in a Class I, Division 1 location or that does not meet the requirements of § 111.105 of this chapter must have interlocks sufficient to automatically de-energize the equipment upon ventilation system failure or loss of the pressure required by § 150.370.

§ 150.255 Cargo containment system.

(a) Each cargo containment system on a vessel must be no closer to the incinerator vessel's shell than 76 cm (approx. 29.9 in) and it may not be located in any part of the incinerator vessel subject to the damage described in Table 172.135 of this chapter for GROUNDING PENETRATION, Vertical extent from the baseline upward.

(b) Cargo piping must be located in those areas from which a containment system is excluded by paragraph (a) of this section unless the cargo piping:

(1) Drains back to its cargo tank under any condition of heel or trim resulting from the damage specified in § 172.135 of this chapter; and

(2) Enters the cargo tank above the liquid level for a full tank in any condition of heel or trim resulting from the damage specified in § 172.135 of this chapter.

(c) The cargo piping system must not be connnected to any sea valve.

(d) Fuel piping and cargo piping may be connected to one common pipe leading into an incinerator burner only if the point of connection has a three-way valve having at least "fuel", "cargo", and "off" positions. The fuel piping must include two automatic non-return valves with positive means of closure, or an equivalent arrangement. These valves must be located in the incinerator space.

(e) A cargo tank's relief valve setting must be not less than 21 kPa gauge (approx. 3 psig).

(f) All cargo pumps and valves located below the weatherdeck must be operable from on or above the weatherdeck.

(g) The cargo must be separated from any bunkers by at least two bulkheads, except that an oil fuel tank containing oil fuel used exclusively in the incineration process may be adjacent to a cargo tank.

(h) A tank containing liquid used for washing cargo tanks and cargo piping may be adjacent to a cargo tank.

(i) Each cargo containment system must be designed to withstand the maximum pressure that develops during an overfill of cargo having the maximum specific gravity endorsed on the vessel's Certificate of Inspection.

(j) Each independent tank must meet the following requirements:

(1) § 38.05–10(a)(1), (b), (d), and (e)(1) of this chapter.

(2) Its piping must penetrate the tank only through that part of the tank or dome extending above the weatherdeck.

(k) A cargo tank may be an integral tank.

(l) A cargo tank must have at least one covered manhole opening into the vapor space described in § 150.295

(m) An access trunk must be no less than 76 cm (approx. 29.9 in.) in diameter.

(n) The hatch of a cargo tank must:

(1) Be at the highest point of the tank; and

(2) Open on or above the weatherdeck.

(o) Aluminum, copper, alloys, zinc, galvanized steel, mercury and materials of construction having a melting point below 925° C (Approx. 1697° F) may not be used in the construction of a cargo containment system.

(p) Each cargo piping system must meet the the standards of Part 56 and 38.10–1(b), 38.10–1(e), and 38.1–10(a) of this chapter.

(q) Piping carrying cargo or cargo residue may not enter any machinery space except a cargo pumproom.

(r) Unless corrosion resistant materials are used, the corrosiveness of the cargo must be used to evaluate the corrosion allowance to be added to the calculated thickness when determining the scantlings of cargo containment systems.

§ 150.260 Separation of tanks from machinery, service and other spaces.

(a) To prevent leakage through a single weld failure, the following spaces must be separated from a cargo by two walls, two bulkheads, or a bulkhead and a deck not meeting in a cruciform joint:

(1) Machinery spaces.

(2) Service spaces.

(3) Accommodation spaces.

(4) Spaces for storing potable domestic or feed water.

(5) Spaces for storing edibles.

(b) Some examples of arrangements that may separate cargo from the spaces listed in paragraph (a) of this section are the following:

(1) Dedicated ballast tanks.

(2) Cargo pumprooms.

(3) Ballast pumprooms.

(4) Double walled piping or a piping tunnel.

§ 150.265 Fore and aft location.

Each cargo containment system must be located at least 0.05L aft of the forward perpendicular, but in no case forward of a collision bulkhead.

§ 150.270 Vessel arrangements.

(a) The following must be outside the cargo area:

(1) Accommodation spaces.

(2) Service spaces.

(3) Incinerator spaces.

(4) Control spaces.

(5) Incinerators.

(6) Machinery spaces.

(7) Incinerator control rooms.

(b) Except as allowed in paragraph (c) of this section, entrances, ventilation intakes and exhausts, and other openings to accommodation, service, or control spaces, must be located at a distance from the athwartship bulkhead facing the cargo area that is at least equal to the following:

(1) 3 m (approx. 10 ft) if the vessel is less than 75 m (approx. 246 ft) in length.

(2) L/25 if the vessel is between 75 and 125 meters (approx. 246 ft and 410 ft) in length.

(3) 5 m (approx 16.5 ft) if the vessel length is more than 125 m (approx. 410 ft) in length.

(c) Fixed port lights, wheelhouse doors, and windows need not meet the location requirements specified in paragraph (b) of this section if they are gastight.

(d) Portlights in the hull plating below the uppermost continuous deck and in the first tier of the superstructure must be a fixed type.

(e) Air intakes and openings into accommodation and service spaces must have metal closures that are gastight.

(f) The closures required by paragraph (e) of this section must be capable of being closed from inside the space.

(g) Each oil fuel containment system must be located inside the cargo area unless the fuel has a closed cup flashpoint above 60° C (140° F).

(h) The containment system for liquids used for washing cargo tanks or cargo piping must be located inside the cargo area.

(i) Pumproom bilge discharges and cargo tank and piping washings must be stored in a slop tank in the cargo area until incinerated or discharged to a reception facility. A cargo tank may be used as a slop tank.

(j) Each incinerator must be positioned in a manner approved by Commandant (G–MTH) for that vessel.

§ 150.275 Ballast equipment.

(a) Except for the arrangement described in paragraph (b) of this section, no piping that serves a dedicated ballast tank that is adjacent to a cargo tank may enter an engine room or accommodation space.

(b) Piping used only to fill a dedicated ballast tank adjacent to a cargo tank may enter an engine room or accommodation space if the piping has a valve or valving arrangement—

(1) Within the part of the incinerator vessel where a containment system may be located under § 150.265;

(2) That allows liquid to flow only towards that ballast tank (such as a check valve); and

(3) That enables a person to shut off the fill line from the weatherdeck (such as a stop valve).

(c) Except as prescribed in paragraph (d) of this section, pumps piping, vent lines, overflow tubes, and sounding tubes serving dedicated ballast tanks must not be located within a cargo containment system.

(d) Each vent line, overflow tube, and sounding tube that serves a dedicated ballast tank and that is located within a cargo containment system must meet § 32.60–10(e)(2) of this chapter.

§ 150.280 Bilge pumping system.

Bilge pumping systems for cargo pumprooms, slop tanks, and void spaces separated from cargo tanks by only a single bulkhead must be entirely within the locations where containment systems are permitted under § 150.265.

§ 150.285 Access to enclosed spaces and dedicated ballast tanks.

An access opening to an enclosed space or a dedicated ballast tank must meet the requirements for a cargo tank access in § 150.225(i), (j), and (k) if:

(a) The enclosed space or dedicated ballast tank is located within the cargo area of the vessel; or

(b) A part of a cargo containment system lies within the enclosed space or dedicated ballast tank.

§ 150.290 Access to double bottom tanks serving as dedicated ballast tanks.

(a) Except as prescribed in paragraph (b) of this section, access openings to double bottom tanks serving as dedicated ballast tanks must not be located within a cargo containment system.

(b) Each access opening to a double bottom tank that is a dedicated ballast tank and that is located within a cargo containment system must be:

(1) Enclosed in an access trunk extending to the weatherdeck;

(2) Separated from the cargo containment system by two manhole coverings; or

(3) Approved by the Commandant (G–MTH).

§ 150.295 Cargo venting system.

(a) Except as permitted paragraph (c) of this section, each cargo venting system must discharge—

(1) At the highest of the following points:

(i) 6 m (approx. 19.7 ft) above the weatherdeck.

(ii) B/3 above the weatherdeck.

(iii) 6 m (approx. 19.7 ft) above a walkway, if the walkway is within 6m (19.7 ft) horizontal radius from the vent discharge.

(2) At least 15 m (approx. 49.2 ft) from air intakes for, or openings into, accommodation and service spaces.

(b) Each venting system outlet must—

(1) Discharge vertically upwards; and

(2) Prevent precipitation from entering the vent system.

(c) The discharge point of the venting system must be located at least 3 m (10ft) above the weatherdeck or walkway if—

(1) The discharge is a vertical unimpeded jet;

(2) The jet has a minimum exit velocity of 30 m/sec. (approx. 98.4 ft/sec); and

(3) The high velocity vent has been approved by Commandant (G–MTH).

(d) Each venting system must terminate in the vapor space above the cargo when the cargo tank is filled to a 2 percent ullage and the incinerator vessel has no heel or trim.

(e) Each cargo tank must have a PV valve in its vent line. The PV valve must be located between the tank and any connection to another tank's vent line (such as a vent riser common to two or more tanks).

(f) The cross sectional flow area of any vent system segment, including any PV valve, must at no point be less than that of a pipe whose inside diameter is 6.4 cm (approx. 2.5 in.).

(g) Calculations must show that under conditions in which a saturated cargo vapor is discharged through a venting system at the maximum anticipated loading rate, the pressure differential between the cargo tank vapor space and the atmosphere does not exceed 28 kPa gauge (approx. 4 psig), or, for independent tanks, the maximum working pressure of the tank.

(h) A venting system must have no assembly that could reduce its cross-sectional flow area or flow capacity to less than that required in paragraph (f) of this section.

(i) Unless a cargo venting system at every point is level or slopes back to the cargo tank under all conditions or heel and trim allowed under § 150.505 of this chapter, the cargo vent system must have a drain valve at each low point (trap) in the vent line.

(j) Supports for a vent system must be adequate to take the weight of the vents off valves and fittings and to prevent excessive vibration and stresses on tank connections.

(k) Each pressure-vacuum relief valve must meet the requirements of Subpart 162.017 of this chapter.

(l) A cargo vent header, except a high velocity vent described in paragraph (c) of this section, must have a flame arrestor.

§ 150.300 Cargo tank gauging, Tank Overflow Control, High Level Alarms.

In this section, "Independent", as applied to two systems, means that one system will operate with a failure of any part of the other system.

(a) Each cargo containment system must have—

(1) A permanently installed closed gauging system that is independent of the high level alarm and the cargo overflow alarm or automatic shutdown systems, which are required by this section;

(2) A vapor return connection;

(3) A closed cargo sampling system; and

(4) A high level alarm—

(i) That gives an audible and visible alarm before the tank fills to 97 percent of its capacity;

(ii) That can be seen and heard at the location where cargo transfer is controlled and on the open deck;

(iii) Whose operation can be checked prior to each loading; and

(iv) That must be marked "HIGH LEVEL ALARM" in lettering as specified for the warning sign in § 150.490, so that the legend is visible from work areas in the part of the deck where the cargo containment systems are located.

(b) In addition to the cargo high level alarm meeting paragraph (a)(4)(i)–(iv),

each cargo containment system must have:

(1) A second high level (cargo overflow) alarm, or

(2) A system that automatically stops cargo flow to the tank (automatic shutdown system).

(c) The high level alarm and the cargo overflow alarm or automatic shutdown system must—

(1) Be independent of one another; and,

(2) Operate on loss of power.

(d) The cargo overflow alarm or the automatic shutdown system must operate early enough to—

(1) Stop the loading operation before the cargo tank overflows; and

(2) Avoid surge pressures that exceed the working pressure of the cargo piping system as prescribed in § 38.10–10(a) of this chapter.

(e) A tank overflow must be identified with the legend "TANK OVERFLOW ALARM" in lettering as specified for the warning sign in § 150.490.

(f) A tank overflow alarm must be audible and visible in that part of the deck where the containment systems are located and at the point where cargo loading is controlled.

(g) The automatic shutdown system or tank overflow alarm must be able to be checked at the tank for proper operation (for example, by electrically simulating an overfill at the tank gauge connections).

§ 150.305 Access to a cargo pumproom.

(a) The access door to a cargo pumproom must open onto the weatherdeck.

(b) The access way to a cargo pumproom and its valving must allow passage of a man wearing the breathing apparatus required by § 150.395(a)(2)(i).

(c) Each ladderway in a cargo pumproom must be free from obstructions by piping, framework, or other equipment.

(d) Cargo pumproom ladders and platforms must have guard railings.

(e) Each ladder to a cargo pumproom must have an incline from the horizontal of less than 60°.

§ 150.310 Hoisting arrangement.

(a) A cargo pumproom located below the weatherdeck must have a permanent hoisting arrangement with a lifting capacity of 2500 N (approx. 562 lbs) operable from a weatherdeck, for the removal of an unconscious person.

(b) A cargo pumproom located below the weatherdeck must have a 60 cm by 60 cm (approx. 2 ft by 2 ft) cross-sectional clearance through the hoistway.

§ 150.315 Cargo pump discharge pressure gauge.

Each cargo pump within a pumproom must have a discharge pressure gauge outside the pumproom.

§ 150.320 Bilge pumping systems.

(a) A cargo pumproom must have a bilge pumping system.

(b) The bilge pumping system must have—

(1) Complete remote operating controls outside the cargo pumproom; and

(2) An alarm that operates when the depth of liquid in the bilges exceeds 50 cm (approx. 20 in.).

(c) The discharge piping of the bilge pumping system must not be connected to any sea valve.

§ 150.325 Pumproom respiratory requirements.

(a) Each cargo pumproom must have a low pressure air supply system that provides breathing quality air for use with the breathing apparatus in the pumproom.

(b) The low pressure air supply system described in paragraph (a)(1) of this section must—

(1) Run from fixed air bottles to the pumproom;

(2) Have an air compressor to recharge the fixed air bottles;

(3) Have connections in the pumproom suitable for use with the breathing apparatus required in § 150.395(a)(2)(i); and

(4) Have the air capacity to enable two men to work in the pumproom for at least one hour each without using the cartridges for the breathing apparatus required in § 150.395(a)(2)(i).

Incinerator and Controls

§ 150.330 Incinerator construction.

(a) Each incinerator stack must be constructed of steel with enough bricklining and insulation so that the temperature on its outside surface does not exceed 180°C (356°F) during burning.

(b) Calculations must show that the incinerator, including its structural supports, is designed to withstand a static angle of heel of 30° and the dynamic loading prescribed in § 38.05–2(d) of this chapter.

(c) A guard rail or screen must be installed on deck around the exterior of each incinerator stack at a sufficient distance from the stack and with enough protective covering or insulation to prevent personnel injury during burning. In determining the distance and insulation, the outside surface temperature of the incinerator stack must be taken as 180°C (356°F).

§ 150.335 Incinerator control and monitoring: general.

(a) Each incinerator must have—

(1) Monitoring and alarms that meet § 150.340;

(2) Combustion control that meets § 150.345;

(3) Programming control that meets § 150.350;

(4) Safety trip control that meets §§ 150.335 and 150.360.

(b) Systems that perform the functions listed in paragraphs (a)(1) through (a)(4) of this section must perform all assigned tasks continuously, *i.e.*, the detection of unsafe conditions must not prevent continued control of monitoring of other conditions.

(c) Inadvertent grounding of an electrical or electronic control or alarm system must not cause false signals or safety trip control bypassing.

(d) Programmable control or alarm system logic must not be altered after initial testing without the approval of the cognizant OCMI. Control and automatic alarm systems must be provided with means, acceptable to the cognizant OCMI, of ensuring that setpoints remain within the safe operating range of the equipment.

(e) Operating programs for microprocessor-based or computer-based control, alarm and monitoring systems must—

(1) Be stored in non-volatile memory;

(2) Automatically operate on supply power resumption; and

(3) Not rely on mechanical devices.

(f) All incinerator controls and all alarm and monitoring equipment must be of a type suitable for the marine environment and its intended application, and be designed and constructed to operate indefinitely under the following conditions:

(1) Inclinations from the vertical—

(i) Static 15° list; and

(ii) Dynamic 22.5° roll and simultaneous 7.5° pitch.

(2) Temperatures of—

(i) 0°C to 60°C in enclosures;

(ii) 0°C to 50°C in machinery spaces and spaces with forced cooling;

(iii) −40°C to +55°C on weather decks; and

(iv) 0°C to 40°C otherwise.

(3) System supply variations of—

(i) ±10% voltage;

(ii) ±5% frequency; and ±20% fluid pressure.

Note: Considerations should include normal dynamic conditions that might exceed these values, such as switching, valve closure, power supply transfer, starting, and shutdown.

(4) Relative humidity of 0 to 100%.

(5) Vibrations and accelerations of—

(i) ±1.6mm from 2Hz to 25Hz and ±4g from 25 Hz to 100 Hz for equipment mounted on or adjacent to rotating or reciprocating machinery; and

(ii) ±1mm from 2 Hz to 13.2 Hz and ±0.7g from 13.2 Hz to 80 Hz for all other equipment.

(g) All control systems must be so designed that, as far as practicable, failure of equipment causes safe and immediate incinerator shutdown.

(h) Safety trip controls must require manual reset before renewed operation of the incinerator.

(i) Each pipe leading to an incinerator burner, if that pipe carries fuel or cargo or both, must be provided with a burner valve that is operated by the programming controls and automatically closed by the burner safety trip control and the incinerator safety trip control. Each incinerator burner must also be provided with one or more back-up valves to stop flow of fuel and cargo to the incinerator upon actuation by the incinerator safety trip control. Burner back-up valve shutoff must occur within 4 seconds of the detection of an unsafe condition or operation of an emergency shutdown station control. These valves must also be manually operable at the incinerator.

(j) Low voltage electronics must be designed with due consideration for static discharge, electromagnetic interference, fungal growth, and contact corrosion.

§ 150.340 Incinerator monitoring and alarms.

(a) Operation of a safety trip control described in §§ 150.355 and 150.360 must be alarmed at the incinerator space and the incinerator control room, if any; otherwise, in the vessel's control space.

(b) Manual incinerator control locations, including remote manual control and local manual control, must be provided with the instrumentation necessary for safe operation from that location.

(c) Visual alarm displays must initially indicate the malfunction without operator intervention.

(d) If the remote instrumentation installed does not provide a continuous display, readings must be obtainable with minimal effort by the operator.

(e) Failure of an incinerator automatic control, remote control, or alarm system must be immediately alarmed in the incinerator space, the incinerator control room, and in the vessel's control space.

(f) Alarms must be provided in each incinerator space to indicate failure to maintain the pressure differential required by § 150.370(c) of this chapter.

(g) Alarms must also be provided to indicate when temperature on the surface of the incinerator exceeds 180 °C (356 °F) during burning. The alarms must be in each incinerator control room and in the vessel's control space.

(h) If a cargo tank is required to be inerted under § 150.410, alarms must be provided to indicate when the pressure in the vapor space of an inerted cargo tank is less than 0.07 bar gauge (7 kPa, approx. 1 psig). An alarm must be in each incinerator control room and in the vessel's control space.

(i) All alarm systems must—

(1) Have no means to reduce or eliminate the annunciated signal other than the manual acknowledgement device;

(2) Be continuously powered;

(3) Be provided with a means to test audible and visual annunciators;

(4) Be able to simultaneously indicate more than one alarm condition if multiple inputs are provided:

(5) Visually annunciate until the alarm is manually acknowledged and the alarm condition is cleared;

(6) Audibly annunciate until manually acknowledged;

(7) Not prevent annunciation of subsequent alarms because of previous alarm acknowledgement;

(8) Automatically reset to the normal operating condition only after the alarm has been manually acknowledged and the alarm condition is cleared; and

(9) Clearly distinguish between normal, alarm, and acknowledged alarm conditions.

§ 150.345 Combustion control.

(a) Automatic combustion control must provide the air-fuel-cargo relationships necessary for complete and safe combustion under all normal light off and operating conditions, but in no case less than 3% excess air.

(b) If combustion control is not automatic, the programming controls and safety trip control must provide a level of safety equivalent to automatic combustion control.

§ 150.350 Programming control.

Programming control must provide a specific sequence of interlocks for the safe ignition and normal shutdown of the incinerator burners. The programming control must prevent ignition if unsafe conditions exist and must include the following minimum sequence of events and interlocks:

(a) *Prepurge.* Incinerators must undergo a continuous purge of the combustion chamber to make sure of a minimum of 5 changes of air. The purge must occur immediately prior to the trial for ignition of fuel oil in the initial burner of an incinerator. All registers and dampers must be open. The prepurge must be complete before fuel oil trial for ignition of the initial burner.

(b) *Trial for ignition and ignition of fuel oil.* Total incinerator air flow during light off must provide an air-rich combustion chamber atmosphere. The burner igniter must be in position and proven energized before admission of fuel to the incinerator. The igniter must remain energized until the burner flame is established and stable, or until the trial for ignition period ends. The trial for ignition period must not exceed 5 seconds. Failure of the burner to ignite during a trial for ignition must automatically actuate the burner safety trip controls.

(c) *Post-purge.* Immediately after normal shutdown of the incinerator, an automatic purge of the incinerator equal to the volume and duration of the prepurge must occur. Following shutdown caused by the conditions listed in § 150.360, the air flow to the incinerator must not automatically increase. Post-purge in such cases must be under manual control.

§ 150.355 Incinerator burner safety trip control.

(a) Each burner must be provided with at least one flame detector.

(b) The burner fuel oil and cargo valves must automatically close when—

(1) Loss of burner flame occurs;

(2) Actuated by the incinerator safety trip control;

(3) The burner is not properly seated or in place;

(4) Trial for ignition fails; or

(5) The burner flame detector fails.

§ 150.360 Incinerator safety trip control.

Each incinerator must be provided with a safety trip control that automatically closes its burner fuel and cargo valves upon—

(a) Inadequate air flow to support complete combustion;

(b) Loss of control power;

(c) Manual trip operation in the incinerator space or the emergency shutdown station of § 150.390(c);

(d) Loss of flame at all burners; or

(e) Control system failure.

§ 150.365 Operating instructions and test procedures.

(a) Normal and emergency operating instructions must be provided for all remote and automatic control systems, and must include safety precautions, as applicable. Specific emergency operating instructions must be posted at incinerator control locations.

(b) A written Coast Guard approved test procedure for periodically verifying

the operational conditions required by § 150.335–§ 150.360 must be retained aboard the vessel.

§ 150.370 Ventilation of cargo handling spaces, incinerator spaces and incinerator blower spaces.

(a) Except as provided in paragraphs (c) and (d) of this section, each cargo handling space must have a permanent forced exhaust ventilation system.

(b) Except as provided in paragraph (d) of this section, each cargo handling space ventilation system must meet the following:

(1) Each ventilation system exhaust duct must discharge no less than 10 m (approx. 32.8 ft) from openings into, or ventilation intakes for, accommodation or service spaces.

(2) Each ventilation system must not recycle vapors from ventilation discharges.

(3) Except for the space served by the ventilation duct, each ventilation duct must not pass through a machinery room, an accommodation space, or working space.

(4) Each ventilation system must be operable from outside the space it ventilates.

(5) Each ventilation system must be sized to change the air in the ventilated space at least 45 times per hour.

(6) Each ventilation system must not allow air to stagnate in any part of a ventilated space.

(7) Each ventilation system must be able to exhaust air from both above and below the deck plates of a ventilated space.

(c) The ventilation system for an incinerator space must be permanent, be of a positive pressure type, and keep the pressure in the space greater than the pressure in the incinerator.

(d) The ventilation system for an incinerator blower space must be permanent, be of a positive pressure type, and be independent of other air supply systems and the ventilation system—

(1) Must provide a pressure greater than the pressure within the incinerator; and

(2) Must change the air in the space at least 20 times per hour based on the total volume of the incinerator blower space.

§ 150.375 Ventilation of spaces not usually occupied.

(a) Each incinerator vessel must have portable ventilation equipment that fits the mount required in paragraph (b)(1) of this section.

(b) Each enclosed space within the cargo area that does not have a permanent ventilation system meeting § 150.370(b) must have—

(1) A mount for the portable mechanical ventilation equipment required by this section; and

(2) Either permanent ventilation ductwork connected to the mount and arranged to supply air to the extremities of the space; or

(3) An attachment for temporary ductwork at the mount with enough ductway in the ventilated space and temporary ductwork stowed aboard the vessel to supply air to the extremities of the space.

§ 150.380 Incinerator space access.

(a) Two accesses must be provided to each incinerator space. One of these must be from the weather deck. If an incinerator control room is provided adjacent to the incinerator space, it must have at least one access to the weatherdeck and at least one access that is not to the incinerator space.

(b) Each access opening to an incinerator space must be fitted with a self-closing gas tight door.

§ 150.385 Incinerator blower space.

If an incinerator blower space has access to an incinerator space, it must also have access to the weatherdeck.

Equipment and Operations

§ 150.390 Emergency shutdown stations.

(a) Each incinerator vessel must have at least two emergency shutdown stations.

(b) One emergency shutdown station must be located in the vessel's navigating bridge.

(c) The second emergency shutdown must be located in the incinerator control room.

(d) Each emergency shutdown station must have the controls necessary to stop—

(1) All pumps supplying cargo and oil fuel to the incinerator; and

(2) The flow of cargo from the cargo area.

(e) Each emergency shutdown station must be marked as described in § 150.490 (c), (d), and (e) with the legend "EMERGENCY SHUTDOWN STATION".

§ 150.395 Personnel emergency and safety equipment.

(a) Each incinerator vessel must have the following:

(1) Two stretchers or wire baskets complete with equipment for lifting an injured person from a pumproom or a cargo tank.

(2) In addition to any similar equipment required by Subchapter D of this chapter, three each of the following:

(i) A 30 minute self-contained breathing apparatus of the pressure demand type, approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health, with five refill tanks or cartridges of 30 minutes capacity each.

(ii) A set of coveralls or large apron, boots, long sleeved gloves, and goggles, each made of materials resistant to the cargo endorsed on the Certificate of Inspection.

(iii) A steel-cored lifeline with harness.

(iv) An explosion-proof lamp.

(3) First aid equipment including oxygen resuscitators.

(b) Each incinerator vessel must have at least two safety equipment lockers.

(c) One safety equipment locker must be adjacent to the emergency shutdown station required by § 150.390(b). This locker must contain one set of the equipment required by paragraph (a)(1) of this section and two of the sets required by paragraph (a)(2) of this section.

(d) The second safety equipment locker must be adjacent to the second emergency shutdown station required by § 150.390. This locker must contain the remaining equipment required by paragraph (a) (1) and (2) of this section.

(e) Each safety equipment locker must be marked as described in § 150.490 (c), and (d) with the legend "SAFETY EQUIPMENT."

(f) Each incinerator vessel must have a shower and an eyewash fountain that:

(1) Operate in any ambient temperature;

(2) Maintain the water at a temperature between 0 °C and 40 °C (approx 32 °F and 104 °F);

(3) Are located on the weatherdeck; and

(4) Are marked "EMERGENCY SHOWER" so that the legend is visible from work areas in the part of the deck where the cargo containment systems are located.

(g) Each incinerator vessel must have on board for each crew member:

(1) A fifteen minute or greater self-contained compressed air breathing apparatus for emergency escape approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health.

(2) If the emergency escape breathing apparatus does not protect the eyes from vapor, a set of goggles that meets the specifications of ANSI Practice for Occupational and Educational Eye and Face Protection, Z87.1(1979).

(h) Each incinerator vessel must have a comprehensive respiratory program meeting ANSI Practices for Respiratory Protection, Z88.2(1980) including approval, use, and maintenance of all respiratory equipment.

§ 150.400 Special requirements for fire protection.

(a) With the exception of the vent riser, each part of a cargo containment system exposed on the weatherdeck must be covered by a fixed foam system.

(b) The incinerator space must be fitted with a fixed foam system. The area protected must meet the requirements of § 34.17–5(a)(1) of this chapter.

(c) Each fire protection system required by this section must meet Part 34 of this chapter or be specifically approved by the Commandant (G–MTH).

§ 150.402 Flammable vapor detectors.

(a) Each incinerator vessel must have two vapor detectors that meet 35.30–15(b) of this chapter.

(b) At least one of the vapor detectors in paragraph (a) of this section must be portable.

§ 150.403 Toxic vapor detectors.

If available for the cargo carried, each incinerator vessel must have two toxic vapor detectors able to measure vapor concentrations in the range of the time weighted average (TWA) for the cargo. One of the vapor detectors must be portable and may be a direct reading detector tube instrument. These vapor detectors may be combined with those required by § 150.402 of this subpart.

§ 150.405 Inert gas system: General.

A permanent inert gas system must be provided for—

(a) Each cargo tank having a fill or circulation line that terminates higher than 10cm or the radius of the line above the bottom of the tank, whichever is greatest; and

(b) Each cargo tank washed with flammable or combustible solutions.

§ 150.410 Inert gas system: Specific requirements.

When required by § 150.405, an inerting system must—

(a) Maintain the vapor space of the containment system in an inert state;

(b) Have a pressure control system that—

(1) Prevents the inert gas system from raising the cargo tank pressure to more than the relief valve settings; and

(2) Maintains at least a 3.5 kPa gauge (approx. 0.5 psig) pressure within the containment system.

(c) Has storage or generating capacity for enough inerting gas to replace that normally lost through tank breathing and relief valve leakage, but in no case an amount less than five percent of the tank's capacity when measured with the gas at −18 °C (approx. 0 °F) and a pressure equal to the cargo tank's relief valve setting; and

(d) Has connections for any supplemental gas supply necessary to maintain the inert gas pressure described in paragraph (b) of this section while supplying cargo to the incinerator for burning.

§ 150.415 Certificates required to be on bridge.

Each incinerator vessel must have its endorsed Certificate of Inspection posted on the bridge.

§ 150.420 Limitation in the endorsement.

No person may operate an incinerator vessel unless the vessel is operated in compliance with all limitations in the endorsement on the incinerator vessel's Certificate of Inspection.

§ 150.425 Regulations required to be on board.

No person may operate an incinerator vessel unless the most recent editions of this subpart and Subchapter D of this chapter are on board.

§ 150.430 Shipping documents and Cargo Information.

(a) No person may operate an incinerator vessel without copies of the EPA Uniform Hazardous Waste Manifest (EPA Form 8700–22 and 8700–22a) required in 40 CFR 262 and the waste analysis required in 40 CFR 234.58 both being on the bridge of the vessel.

(b) The master shall ensure that the following information for each cargo listed on the EPA Uniform Hazardous Waste Manifest required in paragraph (a) of this section is readily available to those persons on the incinerator vessel engaged in cargo operations:

(1) Name of the cargo as listed on the EPA Uniform Hazardous Waste Manifest.

(2) A description of the cargo's appearance and color.

(3) Hazards in handling the cargo.

(4) Any special handling procedures for the cargo.

(5) Procedures to follow if the cargo spills or leaks.

(6) Procedures for treating a person exposed to the cargo.

(7) A list of fire fighting procedures and extinguishing agents effective with cargo fires.

(8) Loading point.

(9) Approximate quantity of cargo.

(10) Tank in which the cargo is located.

§ 150.432 Cargo Antidotes.

No person may operate an incinerator vessel unless the vessel has on board the most recent edition of the *Medical First Aid Guide for Use in Accidents Involving Dangerous Goods* published by IMO/WHO/ILO.

§ 150.435 Cargo piping plan.

No person may operate an incinerator vessel unless the vessel has an approved cargo piping plan that—

(a) Shows all cargo piping on the vessel;

(b) Shows all cargo valving, pumps, and other equipment that is used during cargo transfer;

(c) Shows the cargo tanks;

(d) Shows any modification necessary to any cargo containment system that is to be separated from other cargo containment systems to handle cargo that is incompatible with cargo handled in the other systems; and

(e) Emphasizes the piping and equipment described in paragraphs (a), (b) and (d) of this section by using contrasting colors, line widths or similar methods.

§ 150.440 Cargo quantity limitations.

No person may load a cargo tank or operate an incinerator vessel that carries a cargo tank containing in excess of 3000 m^3 (approx. 105,932 ft^3) of cargo.

§ 150.445 Inerting system operation.

The master shall ensure that the inert gas system required by § 150.405(a) is in use and operating correctly.

§ 150.450 Eye Protection.

(a) The master shall ensure that each person wears a face mask or tight-fitting goggles for eye protection against splashing or spraying cargo if that person is—

(1) Sampling cargo;

(2) Transferring cargo;

(3) Making or breaking a cargo hose connection; or

(4) Opening a cargo tank for purposes of tank cleaning by opening a Butterworth hatch, ullage hatch, cargo tank hatch, or similar opening.

(b) The master shall ensure that each person wears a face mask or tight-fitting goggles for eye protection against splashing or spraying cargo if the person is—

(1) In the area of the deck where the cargo tanks, cargo piping, and cargo handling spaces are located while a cargo transfer is taking place; or

(2) In a cargo handling space, an enclosed space adjacent to a cargo tank,

or a space containing part of a cargo containment system while cargo transfer is taking place.

§ 150.455 Protective clothing.

(a) The master shall ensure that every person in the cargo area who is involved in cargo sampling, opening a cargo tank, transferring cargo, or making or breaking cargo connections wears coveralls or a large apron, boots, and gloves.

(b) The master shall ensure that each person described in § 150.450(b), in addition to the clothing required by paragraph (a) of this section, wears any other protective clothing the master believes necessary to protect the person from the cargo's hazards.

§ 150.457 Entry on deck in vicinity of incinerators.

(a) No person may be on deck in the aft part of the vessel during burning without the permission of the master.

(b) Before permitting a person on deck in the vicinity of the incinerators during burning, the master shall make sure that the person—

(1) Carries a fifteen minute or greater self-contained compressed air breathing apparatus for emergency escape approved by the Mining Safety and Health Administration (formerly the Mining Enforcement and Safety Administration) and the National Institute for Occupational Safety and Health;

(2) If the emergency escape breathing apparatus does not protect the eyes from vapor, carries a set of goggles that meets the specifications of ANSI Practice for Occupational and Educational Eye and Face Protection, Z87.1(1979);

(3) Is trained in the matters set forth in section 7 of ANSI Z88.2 concerning proper use of the equipment to be used;

(4) Is made aware of, in understandable terminology, of the dangers of heat from the stack and the effects of exposure to the incinerator stack emissions; and

(5) While on deck in the aft part of the vessel in the vicinity of the incinerators, is closely monitored by an officer assigned for that purpose.

§ 150.460 Entry into spaces containing cargo vapor.

(a) No person may enter a cargo tank, cargo handling space, or enclosed space in the cargo area without the permission of the master.

(b) Before permitting anyone to enter a cargo tank, cargo handling space, or other enclosed space in the cargo area, the master shall make sure that—

(1) The atmosphere of the space is tested in accordance with procedures in NFPA 306, "Control of Gas Hazards on Vessels" to ensure that it contains at least 19.5 percent oxygen by volume, flammable concentration in air less than 10% of the Lower Explosive Limit (LEL), and toxic contaminant concentrations less than the Threshold Limit Value (TLV) as recommended by the American Conference of Governmental Industrial Hygienists (ACGIH), or, in the alternative, that those entering the space

(i) Wear the type of respiratory equipment required for the atmosphere as specified in ANSI Z88.2;

(ii) Follow the procedures in section 6 of ANSI Z88.2 concerning proper selection of a respirator and individual fit testing;

(iii) Are trained in the matters set forth in section 7 of ANSI Z88.2 concerning proper use of the equipment to be used; and

(iv) Are made aware of, in terminology understandable to the personnel entering the atmosphere, of the generally recognized short and long term harmful effects of exposure to the atmosphere involved.

(2) A deck safety watch is in attendance when any person is in the tank or space and that an officer closely supervises the entire operation; and

(3) The results of the test required in paragraph (b)(1) of this section are logged in the vessel's Official Log Book.

§ 150.465 Opening of tanks and cargo sampling.

(a) Except as provided by paragraph (b) of this section, the master shall ensure that all cargo tank hatches, ullage openings, and tank cleaning openings are tightly closed at all times.

(b) The master may authorize the opening of a cargo tank to clean it.

(c) The master shall make sure that cargoes are sampled only through the controlled sampling arrangement required by § 150.300 of this chapter.

§ 150.470 Storage of cargo samples.

(a) The master shall make sure that any cargo samples are stored in—

(1) A designated and ventilated space in the cargo area of the vessel; or

(2) An area approved by the Commandant (G–MTH) for the stowage of cargo samples.

(b) The master shall make sure that cargo sample bottles are stored—

(1) In a way that prevents shifting of the sample bottles when the vessel is at sea;

(2) In bins or containers constructed of materials that are resistant to the cargo samples; and

(3) Apart from other sample bottles containing incompatible cargo.

§ 150.475 Illness, alcohol, drugs.

The master shall ensure that no person participates in cargo related operations who appears to be intoxicated by alcohol or drugs or to be so ill as to be unfit for the particular operation.

§ 150.480 Standards for marking of cargo hose carried on board.

No person may mark a hose assembly used to transfer cargo to or from a vessel as meeting the standards of this section unless the hose assembly meets the following requirements:

(a) Each hose assembly must have—

(1) Fully threaded connections;

(2) Flanges that meet standard B16.5, Steel Pipe Flanges and Flange Fittings, or standard B16.31, Nonferrous Pipe Flanges, of the American National Standards Institute; or

(3) Quick-connect couplings that are acceptable to the Commandant (G–MTH).

(b) Each hose assembly must be marked with the—

(1) Date of manufacture;

(2) Working pressure described in paragraph (d) of this section;

(3) Date of the last test made as prescribed in paragraph (e) of this section; and

(4) Manufacturer's recommended maximum and minimum temperatures.

(c) A cargo hose assembly must have a minimum bursting pressure as stated by the manufacturer of at least 5152 kPa gauge (approx. 750 psig).

(d) The working pressure marked on a hose must meet the following:

(1) Be at least 1030 kPa gauge (approx. 150 psig).

(2) Not exceed 20 percent (one fifth) of the manufacturer's stated bursting pressure.

(3) Not exceed the manufacturer's recommended working pressure.

(4) Not exceed the test pressure used in the latest test under paragraph (e)(3) of this section.

(e) A cargo hose assembly must be inspected and tested by placing it in a straight, horizontal position so that its entire external surface is accessible. It must be ascertained that the hose assembly—

(1) Has no loose covers, kinks, bulges, soft spots, and no gouges, cuts, or slashes that penetrate any hose reinforcement;

(2) Has no external and, to the extent internal inspection is possible with both ends of the hose open, no internal deterioration; and

(3) Does not burst, bulge, leak, or abnormally distort under static liquid

pressure at least 1½ times the recommended working pressure.

§ 150.485 Signals during cargo transfer.

The master shall ensure that the incinerator vessel displays a red flag in the day and a red light at night when transferring cargo while fast to a dock.

§ 150.490 Warning signs during cargo transfer.

(a) When transferring cargo to the vessel, the master shall ensure that the incinerator vessel displays a warning sign at the gangway facing the shore so that it may be seen from the shore and another warning sign facing outboard toward the water so that it may be seen from the water.

(b) Each warning sign must have the following legends.

(See figure 150.490):

(1) Warning.

(2) Dangerous Cargo.

(3) No Visitors.

(4) No Smoking.

(5) No Open Lights.

(c) Each letter must be block style, black on a white background.

(d) Each letter must—

(1) Be 7.5 cm (approx. 3 in.) high;

(2) Be 5 cm (approx. 2 in.) wide except for "M" and "W" which must be 7.5 cm (Approx. 3 in.) wide and the letter "I" which may be 1.3 cm (approx. ½ in.) wide; and

(3) Have 1.3 cm (approx. ½ in.) stroke width.

(e) The spacing must be—

(1) 1.3 cm (approx. ½ in.) between letters of the same word;

(2) 5 cm (approx. 2 in.) between words;

(3) 5 cm (approx. 2 in.) between lines; and

(4) 5 cm (approx. 2 in.) at the borders of the sign.

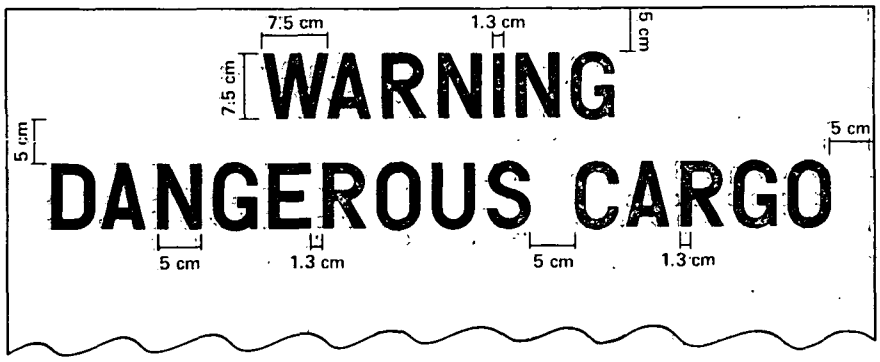

Figure 1 - Minimum Dimensions for Warning Sign

Figure 150.490—Minimum Dimensions for Warning Sign

§ 150.495 Person in charge of cargo transfer.

(a) The master shall ensure that cargo transfer operations are supervised by a person designated as a person in charge of cargo transfer under 33 CFR 155.710.

(b) No person may make connections for cargo transfer or transfer cargo unless he has authorization from the person in charge of cargo transfer.

§ 150.500 Cargo transfer conference.

(a) Before making connections for cargo transfer, the person in charge of cargo transfer shall confer with the person supervising the cargo transfer at the facility.

(b) The person in charge of cargo transfer shall discuss the important aspects of the transfer operation, such as the following, with the supervisor at the facility:

(1) The cargo to be transferred.

(2) The cargo loading rates marked on the cargo piping plan or the maximum safe transfer rates.

(3) The critical or hazardous stages of the transfer operation.

(4) The emergency procedures in case of a spill.

(5) A procedure for shutdown of shore pumps, shore valves, and vessel's valves that prevents piping system pressures from exceeding those for which the piping system is designed.

§ 150.505 Loading information.

Each incinerator vessel must have a manual containing information that enables the master to load and ballast the vessel while keeping structural stresses within design limits.

§ 150.507 Discharges.

(a) The master of an incinerator vessel shall ensure that there are no operational discharges of cargo (including without limitation cargo residues from tank washings, pumproom bilges, ballast tanks, and slop tanks) from the vessel to the sea.

(b) Cargo and cargo residues on an incinerator vessel may be disposed of only by incineration at sea or by discharge to an adequate reception facility as defined in 33 CFR 153.2.

§ 150.510 Cargo transfer piping.

The person in charge of cargo transfer shall ensure that—

(a) Cargo is transferred to or from a cargo tank only through the vessel's cargo piping system;

(b) Vapor not returned to shore through the incinerator vessel's vapor return system is discharged at the height required for the vessel's cargo vent riser in § 150.295 of this chapter.

(c) All cargo vapor is returned to shore through the valved connection on the venting system if:

(1) The transfer terminal has vapor return equipment; and

(2) The vapor return equipment is adequate to handle the vapor expected from the tank.

§ 150.515 Connecting a cargo hose.

The person in charge of cargo transfer may not authorize the connection of a hose to a cargo containment system unless—

(a) That person ensures that the cargo will not weaken or damage the hose;

(b) The hose is marked as meeting the standards of § 150.480;

(c) The date of the hose's last pressure test is within one year of the date on which the hose is used to transfer cargo;

(d) The recommended working pressure marked on a hose used for discharge meets or exceeds the working pressure marked on the cargo piping at the hose connection; and

(e) The cargo's temperature is within the manufacturer's recommended maximum and minimum hose temperatures.

§ 150.520 Preparation for cargo transfer.

The person in charge of cargo transfer may not begin or continue cargo transfer unless the following conditions are met:

(a) No fires or open flames are on deck or in compartments near the hose connections.

(b) Any electrical bonding of the vessel incinerator vessel to the transfer facility is made before the cargo transfer piping is joined.

(c) The transfer connections have enough slack to allow for vessel movement.

(d) The transfer connections are supported by tackles.

(e) The cargo high level alarms, tank overflow alarms and overflow control systems are functioning correctly when the cargo is loaded.

(f) Joints and couplings are gasketed and mated tightly.

(g) Flanges are bolted tightly.

(h) No repair work is underway in areas where cargo vapors may collect.

(i) Cargo valves are properly set.

(j) Venting system bypass valves are set for cargo transfer and are operating properly.

(k) All scuppers are plugged.

(l) Smoking is limited to safe places.

(m) Fire fighting and safety equipment is ready.

(n) Discharge containment as required by 33 CFR 155.310 is in place and periodically drained to a cargo tank. Spray shields on the flanges of the manifold connections must also be provided.

(o) The person in charge of cargo transfer is in effective communication with the transfer terminal.

(p) The person in charge of the transfer terminal has acknowledged that the transfer terminal is ready to transfer.

(q) Pressures within the cargo transfer and containment systems do not exceed the pressure ranges for which the transfer hose and containment systems are designed.

(r) No vessels that would hazard cargo transfer are alongside the incinerator vessel.

§ 150.525 Transfer of ship stores.

The person in charge of cargo transfer may neither begin nor continue the transfer of a cargo while ship's stores are transferred unless transfer of ship's stores does not hazard transfer of the cargo.

§ 150.530 Supervision of cargo transfer.

The person in charge of cargo transfer shall—

(a) Supervise the operation of cargo system valves;

(b) Monitor the cargo loading rate to ensure it does not exceed that stated on the cargo piping plan; and

(c) Monitor the cargo level in the tanks to make sure they do not overflow.

(d) Ensure that the amount of cargo in a tank does not exceed the tank's capacity at any ambient temperature between −18°C (approx. 0°F) and 46°C (approx. 115°F).

§ 150.535 Isolation of automatic closing valves.

The person in charge of cargo transfer may not isolate automatic closing valves described in § 150.300 of this chapter from a cargo containment system.

§ 150.540 Terminal procedures.

Upon completion of the transfer operation, the person in charge of cargo transfer shall ensure that—

(a) The cargo transfer connections are closed off;

(b) The transfer lines and hoses are drained of cargo, either into the tank or back to the transfer terminal;

(c) Any electrical bonding between the vessel and the shore facility is broken only after the cargo hose is disconnected; and

(d) Each vent system is returned to its nonloading configuration.

§ 150.545 Inspection of personnel emergency and safety equipment.

The master shall ensure that the personnel emergency and safety equipment required by § 150.395 of this chapter is inspected every 30 days and found to be in good condition and operating properly.

§ 150.550 Reporting discharges of cargo.

The master shall ensure that any overboard discharges of cargo are reported in the manner prescribed for oil and hazardous substances in 33 CFR 151.45 (c), (d), (g), and (h).

PART 153—[AMENDED]

3. Section 153.1 is amended by revising paragraph (a)(3) and adding a new paragraph (a)(4), to read as follows:

§ 153.1 Applicability.

* * * * *

(a) * * *

(3) The ship is an offshore supply vessel carrying the cargo under Subpart 98.31 of the chapter; or

(4) The ship is an incinerator vessel regulated under Part 150 of this subchapter.

* * * * *

Date: March 16, 1988.

P.A. Yost,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 88-6125 Filed 5-3-88; 8:45 am]

BILLING CODE 4912-14-M

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-225]

Organization and Delegation of Powers and Duties; Federal Highway Administrator et al.

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document delegates to the Federal Highway Administrator the authorities vested in the Secretary of Transportation by the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, 100 Stat. 3207-170, relating to commercial drivers' licenses, commercial drivers' license information system, and Federal disqualifications, and the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17, 101 Stat. 132, concerning the construction and financing of highways, administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, and other matters.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Whitehorn, Office of the General Counsel, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Since these amendments relate to Departmental management, procedures, and practice, notice and comment on them are unnecessary and they may be made effective in fewer than thirty days after publication in the **Federal Register.**

The Secretary has determined that certain authority vested in him by the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-750, 100 Stat. 3207-170, relating to limitation on number of commercial drivers' licenses, establishment of a commercial driver's license information system, Federal disqualifications, commercial motor vehicle safety grants, and other matters should be delegated to the Federal Highway Administrator.

Also, certain authority vested in the Secretary by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17, 101 Stat. 132, relating to the construction and financing of highways, administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act,

and other matters should be delegated to the Federal Highway Administrator as set forth below.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies) organization and functions (Government agencies).

In consideration of the foregoing, Chapter I, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322.

2. Section 1.45 is amended by revising paragraph (e)(2) to read as follows:

§ 1.45 Delegations to all Administrators.

* * * * *

(e) * * *

(2) Any such additional guidance is approved prior to issuance by the Federal government's designated lead agency, the Federal Highway Administration (see § 148(cc)), in coordination with the Assistant Secretary for Policy and International Affairs.

3. Section 1.48 is amended by revising paragraphs (b)(29) and (b)(34); (c)(1) and (c)(2); adding paragraph (c)(20); removing and reserving paragraph (i); adding paragraph (v); revising paragraphs (q), (s), and (cc) as set forth below. The introductory text of the section and the introductory text of paragraphs (b) and (c) are reprinted for the convenience of the reader.

§ 1.48 Delegations to the Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

* * * * *

(b) Administer the following sections of Title 23, U.S.C.:

* * * * *

(29) 201 through 205, 210, 212, 214 through 218, (Chapter 2);

* * * * *

(34) 318 through 321, inclusive; and

* * * * *

(c) Administer the following laws relating generally to highways:

(1) Sections 105, 107(c) through (e), 123(a) and (b), 124(c), 126(d) through (g), 138(c), 140, 142 through 145, 147 through 154, 167, and 171, and Title IV, as amended (as it relates to matters within the primary responsibility of the Federal Highway Administrator), of the Surface Transportation Assistance Act of 1978, Pub. L. 95–599, 92 Stat. 2689; and sections 502–504, Title V, of the Highway Revenue Act of 1978.

(2) Sections 103, 104, 111(b), 128(b), 131, 135, 136, 141, 147, 149, 154, 158 through 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93–87, 87 Stat. 250; Pub. L. 93–643, 88 Stat. 2281).

* * * * *

(20) Sections 103(e), 105(a) through (g), 106(a), and (b), 110(b), 114(d), 117(f), 120(c) and (d), 123(g) and (i), 133(f), 134, 136, 137, 139 through 145, 146(b), 147(c), 149(a) through (f), (h), (i), (k), 151 through 157, 164, and 208 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, 101 Stat. 132).

* * * * *

(i) [Reserved]

* * * * *

(q) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and section 8(a) (as it relates to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92–434, 86 Stat. 731).

* * * * *

(s) Exercise the authority vested in the Secretary by sections 101, 118, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93–643, January 4, 1975, 88 Stat. 2281).

* * * * *

(v) Carry out the functions vested in the Secretary by the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99–570, 100 Stat. 3207–170.

* * * * *

(cc) Prescribe regulations, as necessary, at Parts 24 and 25 of this title, to implement Pub. L. 91–646, 84 Stat. 1894, and any amendments thereto, as appropriate, in coordination with the Assistant Secretary for Policy and International Affairs, and carry out all other functions vested in the Secretary by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894, and any amendments thereto.

(dd) [Reserved]

(ee) [Reserved]

Issued on April 20, 1988.

Jim Burnley,

Secretary of Transportation.

[FR Doc. 88–9873 Filed 5–3–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

49 CFR Part 350

Commercial Motor Carrier Safety Assistance Program; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) is amending the regulations contained in 49 CFR Part 350 that implement the Motor Carrier Safety Assistance Program (MCSAP). The technical amendments included in this document update the current regulations to reflect current statutory authority, funding authorizations, and removal of inapplicable years and any mention of future fiscal years.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Nalley, Office of Motor Carrier Safety Field Operations, (202) 366–2946, or Ms. Julie A. White, Office of Chief Counsel, (202) 366–1353, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97–424, 96 Stat. 2097, codified in relevant part at 49 U.S.C. App. 2301–2304 (1982 and Supp. III 1985), was signed by the President on January 6, 1983. This Act authorized the Secretary of Transportation to provide grants to all eligible States for the development of programs for the enforcement of Federal or compatible State motor carrier safety regulations. The Motor Carrier Safety Assistance Program (MCSAP), which was established under section 402 of the STAA, is an ongoing cooperative endeavor between the Federal Government and the States to enforce uniform Federal and State safety and hazardous materials transportation regulations applicable to commercial motor vehicles and their operators.

On August 31, 1983, a Notice of Program Implementation, interim final rule, was published in the **Federal Register** with Docket No. MC–108 (48 FR 39455). Its purpose was to establish interim procedures for the MCSAP until the final rule set forth the rationale for the program, selected a formula distribution as a method of distributing funds, established requirement dates for the fiscal year 1984 program and

solicited public comments to the interim procedure.

On January 27, 1984, an amendment to the interim final rule was published in the **Federal Register** (49 FR 3476). Its purpose was to provide for discretionary redistribution, by the Federal Highway Administrator, of appropriated funds unallocated in the first year of the MCSAP for State enforcement plans that demonstrated a particular need and to request public comment. The FHWA published a second amendment providing for a waiver, upon request, of the State matching share which would otherwise be required to be provided by the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas as a condition of their participation in the MCSAP and requested public comments.

On September 27, 1984, the final rule was published in the **Federal Register** (49 FR 38134). The rule established the requirements for a grant program whereby States could apply for funding to develop or implement a motor carrier safety program. It specified the type of information applications must contain and the procedures that must be followed in submitting the application and carrying out the program. The rule provided a breakdown of the funding distribution and examples of the types of costs incurred which would be eligible for proportionate reimbursement.

The present statutory reference is the Surface Transportation Assistance Act of 1982 which authorized the grant program through fiscal year 1987. The Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99–570, 100 Stat. 3207–170, codified in relevant part at 49 U.S.C. App. 2304 authorized continuation of spending through 1991. The regulations contained in 49 CFR Part 350 are being amended to reflect accurately the current statutory authority for funding authorizations.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The amendment in this document is primarily technical in nature and is needed solely to update the regulations to reflect current statutory authority. For these reasons and since this rule imposes no additional burdens on the States or other Federal agencies, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reasons, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information due to the technical nature of the document. Accordingly, this final rule is effective upon publication in the **Federal Register.**

Since this amendment makes no substantive change to the regulation, a full regulatory evaluation is not required. For the same reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 350

Highways and roads, Motor Carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 20.217, motor carrier safety.)

Issued on April 27, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby amends 49 CFR Part 350 as set forth below.

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. The authority citation for Part 350 is revised to read as follows:

Authority: Secs. 401–404, Surface Transportation Assistance Act of 1982, Pub. L. 97–424, 96 Stat. 2097, 2154 (49 U.S.C. App. 2301–2304); Sec. 12014, Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99–570, 100 Stat. 3207–170 (49 U.S.C. App. 2304) 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. Section 350.21(e)(2) is revised to read as follows:

§ 350.21 Distribution of funds.

* * * * *

(e) * * *

(2) Less than $225,000, provided the SEP supports that level of funding.

* * * * *

[FR Doc. 88–9769 Filed 5–3–88; 8:45 am]

BILLING CODE 4910-22-M

National Transportation Safety Board

49 CFR Part 831

Accident/Incident Investigation Procedures

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: By this revision, the Board is adopting investigation procedures for accidents in the surface modes of transportation. The revision consists mainly of an extension of the published procedures for the field phase of the investigation of aircraft accidents to highway, marine, pipeline, and railroad accidents. The revisions will also incorporate into the published rules more of the Board's statutory authority concerning investigations.

EFFECTIVE DATE: June 3, 1988.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, 202–382–6540, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594.

SUPPLEMENTARY INFORMATION: In 1950, the Civil Aeronautics Board (CAB), the Safety Board's predecessor in the exercise of aircraft accident investigation functions, first published its procedural rules for aircraft accident hearings (15 FR 6440, September 23, 1950). When the Safety Board was formed in 1967, it adopted the CAB's Rules of Procedure in Aircraft Accident Investigation Hearings (32 FR 7139, May 11, 1967). In 1970, the Safety Board issued rules for surface transportation accident hearings (35 FR 13574, August 26, 1970). In 1971, the Safety Board published regulations for the field investigation of aircraft accidents. (36 FR 7139, March 13, 1971). This revision will complete the development and implementation of rules for both hearings and field investigations of accidents in all modes of transportation.

In the foregoing rulemakings, the CAB and Safety Board stressed that the new regulatory provisions did not prescribe new procedures but merely codified procedures which the agencies had followed for some time. Likewise, these amendments do not constitute a change in the Safety Board's process of accident investigation. The Safety Board in surface investigations has followed informally the published procedures for aircraft accident investigations, and this revision will advise the public of the procedures the Safety Board has employed for years in surface investigations.

The references to aircraft are deleted from section 831.1 which will now make Part 831 applicable to all modes of transportation. Section 831.2 covering the responsibility of the Safety Board is divided into three paragraphs. Former paragraphs (a) and (b) of § 831.2 apply to aviation and will remain intact but have been consolidated into a single paragraph, paragraph (b) is new and

spells out the Safety Board's accident investigation responsibility for marine, pipeline, rail and highway, and paragraph (c) sets forth the Board's authority to investigate any other transportation accident, which, in judgment of the Safety Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974. The references to civil aircraft in § 831.4 are deleted in order to extend these sections to all modes of transportation. In addition, a statement often used by the Board to describe accident investigations has been added to § 831.4, namely, such investigations are fact finding proceedings which are not conducted for the purpose of determining the rights or liabilities of any person, and the investigations are not subject to the Administrative Procedure Act. A new section designated 831.5 has been added to reflect the statutory provision (49 U.S.C. 1903(A)(1)) respecting the priority of Safety Board investigations vis-a-vis other Federal agencies.

Former §§ 831.5, 831.6, 831.7, and 831.8 have been renumbered 831.6, 831.7, 831.8, and 831.9, respectively. Section 831.9 which spells out the authority of Safety Board representatives has been rewritten and divided into three paragraphs. The Safety Board's statutory inspection authority (49 U.S.C. 1903(b)(2)) which applies to all modes of transportation is spelled out in paragraph (a). An explicit reference to medical and hospital records has been added to that paragraph to reflect the Safety Board's longstanding treatment of such information as coming within the ambit of the power to inspect files and records relevant to the investigation. Paragraphs (b) and (c) of § 831.9 are new and they set forth the Safety Board's authority to examine and test physical evidence. The testing authority is separated into aviation and surface accidents because of the differences in that authority. *Compare* 39 U.S.C. 1441(e) with § 1903(B)(2). In paragraph (c), the word "vessel" has been added to the statutory list of the type of items the Safety Board can examine and test in connection with surface investigations. When the Safety Board sought and Congress granted the authority to test physical evidence in nonaviation investigations, there was no indication of an intent to exclude marine accidents. In addition, the Safety Board considers the word "vehicle" in the statute to embrace vessel. The Safety Board believes that the inclusion of the word "vessel" in the regulation is an interpretative rule, and therefore, does not require notice and comment.

A new provision designated as § 831.10 has been added to incorporate in the regulations the Safety Board's existing authority (49 U.S.C. 1441(c) and 1903(b)(5)) to order an autopsy or seek other tests of any person who dies as a result of having been involved in a transportation accident.

Section 831.11 (formerly § 831.9) has been amended to add in paragraph (d) the substance of section 304(a) of the Independent Safety Board Act of 1974, as amended, which provides for the participation of other Federal agencies in Safety Board investigations. All references to aircraft have been deleted from § 831.12 (formerly § 831.10) to make it applicable to all modes of transportation. Finally, former §§ 831.11 and 831.12 have been renumbered as §§ 831.13 and 831.14, respectively. The Safety Board wishes to take this opportunity to encourage persons to make use of the provision in § 831.14 for submitting proposed findings before the Safety Board considers the probable cause. The Safety Board welcomes and carefully considers proposed findings that are filed. Any person who is interested in submitting proposed findings in a given accident can obtain the deadlines for the Safety Board's receipt of such findings from the investigator-in-charge.

Since the amendments to Part 831 are procedural in nature and an interpretative rule, notice and public procedure hereon are not required.

Under the criteria of the Regulatory Flexibility Act, the Safety Board has determined that these amendments will not have a significant economic impact on a substantial number of small entities because the amendments will not impose a regulatory burden on any entity.

List of Subjects in 49 CFR Part 831

Administrative practice and procedure, Aircraft, Aviation safety, Investigations.

Accordingly, 49 CFR Part 831 of the Safety Board's rules is revised to read as follows:

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

Sec.
831.1 Applicability of part.
831.2 Responsibility of Board.
831.3 Authority of Directors.
831.4 Nature of investigation.
831.5 Priority of Board investigations.
831.6 Request to withhold information.
831.7 Right of representation.
831.8 Investigator-in-charge.
831.9 Authority of Board representatives.
831.10 Autopsies.
831.11 Parties to the field investigation.
831.12 Access to and release of wreckage, records, mail, and cargo.
831.13 Flow and dissemination of accident information.
831.14 Proposed findings.

Authority. Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 et seq.); and the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 et seq., as amended by 95 Stat. 1065 (49 U.S.C. 1901 et seq.).

§ 831.1 Applicability of part.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all accident or incident investigations, conducted under the authority of title VII of the Federal Aviation Act of 1958, as amended, and the Independent Safety Board Act of 1974. Rules applicable to accident hearings and reports are set forth in Part 845.

§ 831.2 Responsibility of Board.

(a) *Aviation.* (1) The Board is responsible for the organization, conduct and control of all accident investigations involving civil aircraft, or civil and military aircraft, within the United States, its territories and possessions. It is also responsible for investigation of accidents which occur outside the United States, and which involve U.S. civil aircraft or civil and military aircraft, at locations determined to be not in the territory of another state (i.e., in international waters).

(2) Certain aviation field investigations are conducted by the Federal Aviation Administration (FAA), pursuant to a request to the Secretary of the Department of Transportation, effective February 10, 1977 (see appendix to Part 800 of this chapter),[1] but the Board determines the probable cause of such accidents. Under no circumstances shall investigations conducted by the Board be considered joint investigations in the sense of sharing responsibility. However, in the case of an accident or incident involving civil aircraft of U.S. registry or manufacture in a foreign state which is a signator to Annex 13 to the Chicago Convention of the International Civil

[1] The authority of a representative of the Federal Aviation Administration during such field investigations shall be the same as that of a Board investigator under this part.

Aviation Organization, the state of occurrence is responsible for the investigation. If it occurs in a foreign state which is not bound by the provisions of Annex 13 to the Chicago Convention, the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

(b) *Surface.* The Board is responsible for the investigation of railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train (see Part 840 of this Chapter); major marine casualties and marine accidents involving a public and nonpublic vessel or involving Coast Guard functions (See Part 850 of this Chapter); highway accidents, including railroad grade-crossing accidents, which it selects in cooperation with the States; and pipeline accidents in which there is a fatality or substantial property damage.

(c) *Other accident.* The Board is also responsible for the investigation of an accident which occurs in connection wtih the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of the Independent Safety Board Act of 1974.

§ 831.3 Authority of Directors.

The Director, Bureau of Accident Investigation, or the Director, Bureau of Field Operations, subject to the provisions of § 831.2, may order an investigation into any accident or incident.

§ 831.4 Nature of investigation.

Accident or incident investigations are conducted by the Board in order to determine the facts, conditions, and circumstances relating to each accident or incident and the probable cause thereof and to ascertain measures which will best tend to prevent similar accidents or incidents in the future. The investigation includes the field investigation, report preparation, and, where ordered, the public hearing. Accident investigations are factfinding proceedings with no formal issues and no adverse parties and are not subject to the provisions of the Administrative Procedure Act (Pub. L. 89–554, 80 Stat. 384 (5 U.S.C. 554 *et seq.*)). Such investigations are not conducted for the purpose of determining the rights or liabilities of any person.

§ 831.5 Priority of Board investigations.

Any investigation of an accident (except marine) [2] conducted by the Safety Board shall have priority over all other investigations of such accident conducted by other Federal agencies. The Safety Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Safety Board's determination of the probable cause of the accident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident. The Safety Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

§ 831.6 Request to withhold information.

Any person may make written objection to the public disclosure of information contained in any report or document filed, or of information obtained by the Board, stating the grounds for such objection. The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information can be withheld under the provisions of an exemption to the Freedom of Information Act (Pub. L. 93–502, amending 5 U.S.C. 552) and its release is not found to be in the public interest (see Part 801).

§ 831.7 Right of representation.

Any person interrogated by an authorized representative of the Board during the field investigation shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

§ 831.8 Investigator-in-charge.

The designated investigator-in-charge organizes, conducts, and controls the field phase of investigation. He shall assume responsibility for the supervision and coordination of all resources and of the activities of all personnel, both Board and non-Board, involved in the onsite investigation.

[2] The joint regulations of the Board and Coast Guard for the investigation of marine casualties are set forth in Part 850 of this Chapter.

§ 831.9 Authority of Board representatives.

(a) *General.* Any employee of the Board, upon presenting appropriate credentials is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things necessary for proper investigation. Upon demand of an authorized representative of the Board and presentation of credentials issued to such representative, any Government agency, or person having possession or control of any transportation vehicle or component thereof, any facility, equipment, process or controls, relevant to the investigation, or any pertinent records and memoranda, including all documents, papers, medical files, hospital records, and correspondence now or hereafter existing and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an aircraft accident/incident, other accident, overdue aircraft, study, or investigation pertaining to safety or the prevention of accidents. Authorized representatives of the Board may interrogate any person having knowledge relevant to an aircraft accident/incident, other accident overdue aircraft, study, or special investigation.

(b) *Aviation.* Any employee of the Board upon presenting appropriate credentials is authorized to examine and test to the extent necessary any civil aircraft, aircraft engine, propeller, appliance, or property aboard an aircraft involved in an accident in air commerce.

(c) *Surface.* (1) Any employee of the Board, upon presenting appropriate credentials, is authorized to test or examine any vehicle, vessel, rolling stock, track, pipeline component, or any part of any such item when such examination or testing is determined to be required for purposes of such investigation.

(2) Any examination or testing shall be conducted in such a manner so as not to interfere with or obstruct unnecessarily the transportation services provided by the owner or operator of such vehicle, vessel, rolling stock, track, or pipeline component, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the transportation accident, consistent with the needs of the investigation and with the cooperation of such owner or operator.

§ 831.10 Autopsies.

The Board is authorized to obtain, with or without reimbursement, a copy of the report of autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board. The investigator-in-charge, on behalf of the Board, may order an autopsy or seek other tests of such persons as may be necessary to the investigation, provided that to the extent consistent with the needs of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

§ 831.11 Parties to the field investigation.

(a) The investigator-in-charge may, on behalf of the Director, Bureau of Accident Investigation, or the Director, Bureau of Field Operations, designate parties to participate in the field investigation. Parties to the field investigation shall be limited to those persons, government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel to actively assist in the field investigation.

(b) Participants in the field investigation shall be responsive to the direction of the appropriate Board representative and may be relieved from participation if they do not comply with their assigned duties or if they conduct themselves in a manner prejudicial to the investigation.

(c) No party to the field investigation designated under § 831.9(a) shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party.

(d) Section 701(g) of the Federal Aviation Act of 1985, as amended, provides for the appropriate participation of the Administrator in Board investigations, and section 304(a) of the Independent Safety Board Act of 1974, as amended, provides for the appropriate participation of other Federal agencies in Board investigations. Thus, components of the Department of Transportation, and, when appropriate, other Federal agencies, will normally be a party to field investigations and will have the same rights and privileges and be subject to the same limitations as other parties.

§ 831.12 Access to and release of wreckage, records, mail, and cargo.

(a) Only the Board's accident investigation personnel and persons authorized by the investigator-in-charge, the Director, Bureau of Accident Investigation, or the Director, Bureau of Field Operations to participate in any particular investigation, examination or testing shall be permitted access to wreckage, records, mail, or cargo which is in the Board's custody.

(b) Wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records.

§ 831.13 Flow and dissemination of accident information.

(a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the Board Member present at the accident scene, the representative of the Board's Office of Public Affairs, or the investigator-in-charge.

(b) All information concerning the accident or incident obtained by any personnel participating in the field investigation shall be passed to the investigator-in-charge, through appropriate channels. Upon approval of the investigator-in-charge, parties to the investigation may relay to their respective organization information which is necessary for purposes of prevention or remedial action. Under no circumstances shall accident information be released to, or discussed with, unauthorized persons whose knowledge thereof might adversely affect the investigation.

§ 831.14 Proposed findings.

Any person, Government agency, company, or association whose employees, functions, activities, or products were involved in an accident under investigation may submit to the Board, prior to its consideration of probable cause, proposed findings to be drawn from the evidence produced during the course of the accident investigation, a proposed probable cause, and proposed safety recommendations designed to prevent future accidents.

Signed at Washington, DC on this 12th day of April, 1988.

Jim Burnett,

Chairman.

[FR Doc. 88-9870 Filed 5-3-88; 8:45 am]

BILLING CODE 7533-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1143 and 1150

[Ex Parte No. 471]

Commission Proceedings; Filings of Pleadings, Applications, etc.; Copy Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rules: Correction.

SUMMARY: The Commission adopts rules to specify a uniform number of copies of pleadings and other documents to be filed in Commission proceedings. The number of required copies now ranges from 1 to 24. The Commission has determined that in most proceedings it requires an original and 10 copies of each pleading, application or other document to ensure that sufficient copies are available for its use. The Commission's final rule was published in the **Federal Register** on March 29, 1988 at 53 FR 10095. This notice corrects the authority citations that were listed for 49 CFR Parts 1143 and 1150.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley: (202) 275-7292; (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Part 1143

Administrative practice and procedure, Buses, Intergovernmental relations.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

PART 1143—[CORRECTED]

1. The authority citation for 49 CFR Part 1143 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11501(e) and 5 U.S.C. 553.

PART 1150—[CORRECTED]

2. The authority citation for 49 CFR Part 1150 correctly continues to read as follows:

Authority: 49 U.S.C. 10321, 10901 and 10505; 5 U.S.C. 553 and 559.

Noreta R. McGee,

Secretary.

[FR Doc. 88-9838 Filed 5-3-88; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 953 and 958

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 953 and 958 for the 1988–89 fiscal period established for each order. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by May 16, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos. 953 [7 CFR Part 953] and 958 [7 CFR Part 958], regulating the handling of potatoes grown in Southeastern States and onions grown in Idaho-Eastern Oregon. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674], hereinafter referred to as the Act.

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

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

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

There are approximately 60 handlers of Southeastern potatoes and 30 handlers of Idaho-Eastern Oregon onions, under these marketing orders and approximately 160 potato producers and 340 onion producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such period. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Southeastern Potato Committee met on April 14, 1988, and unanimously recommended a 1988–89 budget of $11,000. The proposed budget is $1,000 more than last year due to an office salary increase. The recommended assessment rate is one cent per hundredweight, twice last year's rate to allow adequate reserves in times of shortfalls in production. Based on anticipated fresh shipments of an estimated 1.4 million hundredweight the recommended rate of assessment, along with reserve and interest income, should provide adequate funds for program operations.

The Idaho-Eastern Oregon Onion Committee met on April 13, 1988 and unanimously recommended a 1988–89 budget of $1,038,500 and an assessment rate of nine cents per hundredweight. About 80 percent of the budget or $829,267 is to fund production research, domestic promotion and advertising, and export development activities. Funds for all three areas have been increased over last year, for a total increase of $191,967. The administrative portion of the budget, $132,724 is up $27,129 from last year. A new item, that was not listed in the 1987–88 budget is $25,000 for capital improvements. This is to purchase a new computer system, carpeting and furniture for the office. The recommended assessment rate of nine cents per hundredweight is unchanged from that established in recent years. The combined expected assessment income of $648,000 added to approximately $27,500 in interest and $363,000 from the reserve, would be adequate to cover budgeted expenses. At the end of the 1988–89 fiscal period, estimated reserves will be $125,000, well within the marketing order limitations of one year's budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of

uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for both programs need to be expedited. The committee needs to have sufficient funds to pay their expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 953 and 958

Marketing agreements and orders, potatoes (Virginia, North Carolina), onions (Idaho, Oregon).

For the reasons set forth in the preamble, it is proposed that §§ 953.245 and §§ 958.232 be added as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for both 7 CFR Parts 953 and 958 continues to read as follows:

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

2. New §§ 953.245 and §§ 958.232 are added to read as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

§ 953.245 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized and an assessment rate of $0.01 per hundredweight of potatoes is established for the fiscal period ending May 31, 1989. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OR

§ 958.232 Expenses and assessment rate.

Expenses of $1,038,500 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: April 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–9913 Filed 5–3–88; 8:45 am]

BILLING CODE 3410–03–M

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7 CFR Part 1040

[Docket No. AO-225-A39]

Milk in the Southern Michigan Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Southern Michigan order proposed by four dairy farmer cooperatives.

The cooperatives' proposals would change the location adjustment provisions to replace the current seven pricing zones with three zones, and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction thereof. The location adjustments apply to Class I milk prices to handlers and to uniform prices to producers.

Under another proposal, handlers would pay to producers or their cooperatives a 10-cent per hundredweight direct delivery differential for producers milk direct-shipped from farms to pool plants located in Macomb, Oakland and Wayne Counties. Currently, two direct delivery differentials (four cents and ten cents) apply in portions of Wayne and Oakland Counties. Another proposal would change from 0.113 to 0.115 times the butter price as the factor used for computing the butterfat differential.

The cooperatives claim the proposed changes are needed to reflect current marketing conditions.

DATE: The hearing will convene at 9:00 a.m. on May 24, 1988.

ADDRESS: The hearing will be held at the Ramada Inn-Airport, 8270 Wickham Road, Romulus, Michigan 48174 (313) 729–6300.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Inn-Airport, 8270 Wickham Road, Romulus, Michigan 48174 (313) 729–6300, beginning at 9:00 a.m., on May 24, 1988, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

PART 1040—[AMENDED]

The authority citation for 7 CFR Part 1040 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Michigan Milk Producers Association, Independent Cooperative Milk Producers Association, National

Farmers Organization, Inc., and Southern Milk Sales, Inc.:

Proposal No. 1

§ 1040.52 [Amended]

In § 1040.52, revise paragraph (a)(1) to read as follows:

(a) * * *

(1) *Zone rates.* For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

Michigan Counties

Zone I—No Adjustments

Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw and Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser Townships).

Zone II—5 Cents

Allegen, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph and Van Buren.

Zone III—7 Cents

Bay (all townships excluded from Zone I), Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newago, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

* * * * *

Proposal No. 2

§ 1040.52 [Amended]

Amend § 1040.52(a)(2) by changing "one cent" to "2.25 cents."

Proposal No. 3

§ 1040.75 [Amended]

Amend § 1040.75 by removing and reserving paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

(a) * * *

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

* * * * *

Proposal No. 4

§ 1040.74 [Amended]

Amend § 1040.74 by changing "0.113" to "0.115".

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Marvin Baumer, 2684 W. Eleven Mile Road, Berkley, Michigan 48072, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Southern Michigan Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on April 29, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-9916 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Business and Industrial Guaranteed Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulations governing eligible and ineligible loan purposes relating to Business and Industrial (B&I) loans. Existing B&I regulations prohibit assistance for agricultural production, subject to certain exceptions. FmHA proposes to reduce the list of exceptions to avoid duplication of effort.

DATES: Written comments must be received on or before June 3, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348 South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this request will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Bowles, Loan Specialist, Business and Industry Division, Room 6321-S, Farmers Home Administration, USDA, 14th and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 475-3811.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor". This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of enterprises based in the United States to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed according to 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422 and is subject to the provisons of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Discussion of Proposed Rule

Under existing B&I program regulations, FmHA may not guarantee loans for agricultural production activities. Such activities are assisted through other programs of FmHA (Farmer Programs) which utilize human and other resources especially suited for assistance to the agricultural production sector. There are several exceptions to the exclusion of agricultural production from B&I assistance. One of these exceptions is for commercial custom feedlots.

Commercial custom feedlot activities are clearly a part of agricultural production. There is no legislative authority supporting the exception permitting B&I assistance.

Additionally, FmHA experience with loans in this area has not been satisfactory. Since 1976, there have been 19 feedlot loan applications or preapplications submitted. Of the 19, 13 were either withdrawn or rejected, often after considerable expenditure of scarce FmHA resources. Six loans have been guaranteed since 1976. Of those, only one remains active. All five others have been closed out, one having failed.

For these reasons, FmHA proposes to delete the exception for commercial custom feedlots, 7 CFR 1980.411(a)(9), and make necessary technical and conforming amendments to subpart E of Part 1980.

List of Subjects in 7 CFR Part 1980

Loan programs—business and industry, Rural development assistance, Rural areas.

Therefore, Title 7, Chapter XVIII of the Code of Federal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Business and Industrial Loan Program

§ 1980.411 [Amended]

2. Section 1980.411 is amended by removing paragraph (a)(9) and redesignating paragraph (a)(10) through (a)(16) as (a)(9) through (a)(5).

3. Section 1980.412 is amended by removing paragraph (e)(15) and redesignating paragraph (e)(6) as (e)(5) and by revising the introductory text of paragraph (e) to read as follows:

§ 1980.412 Ineligible loan purposes.

* * * * *

(e) For agricultural production which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial, custom feedlots), breeding, hatching, control, and/or management of farm and domestic animals. Exceptions to this definition are:

* * * * *

§ 1980.414 [Amended]

4. Section 1980.414(b) is amended by changing the reference "§ 1980.411(a) (13) and (14)" to read "§ 1980.411(a) (12) and (13)."

§ 1980.451 [Amended]

5. Section 1980.451(i)(19) is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)."

§ 1980.452 [Amended]

6. Section 1980.452, Administrative, paragraph C is amended by changing the reference "§ 1980.411(a)(12)" to read "§ 1980.411(a)(11)".

Dated: April 15, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-9911 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N-0038]

Appropriate Testing Procedures for Over-the-Counter Sunscreen Drug Products; Reopening of Administrative Record; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Reopening of the administrative record; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 26, 1988, the period for submission of comments on the testing procedures for determination of the sun protection factor (SPF) value and related claims of over-the-counter (OTC) sunscreen drug products. This action responds to a request to extend the comment period.

DATE: Comments by May 26, 1988.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1987 (52 FR 33598), FDA issued a notice of a public meeting and reopening of the administrative record to discuss final product testing of sunscreen drug products. This notice of a public meeting and reopening of the administrative record is part of the ongoing review of OTC drug products conducted by the agency. The public meeting was held on January 26, 1988, and interested persons were given until April 26, 1988, to submit comments in response to the meeting.

Because of the complexity of the various issues, especially questions relating to statistical analysis, and the need to reconcile the views of a number of interested parties, a manufacturers' association informed the agency that it would not be able to adequately respond before the comment period closes on April 26, 1988. The association, therefore, requested a 30-day extension of the comment period until May 26, 1988, to allow adequate time to assemble the necessary data and other information and to prepare comments in response to the public meeting.

FDA has carefully considered the request and believes an extension of the time period to allow full opportunity for informed comments on the testing procedures is in the public interest. Accordingly, the period for submission of comments is extended to May 26, 1988. Comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 27, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-9810 Filed 5-2-88; 9:23 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300188; FRL-3374-3]

Definitions and Interpretations; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to add a commodity definition for marjoram that would define majoram for tolerance purposes and to clarify and update the relationship between the general commodity term "majoram" and the specific raw agricultural commodities classified as "*Origanum* ssp." This proposal was requested by the Interregional Reserach Project No. 44 (IR-4).

DATE: Comments, identified by the document control number, [OPP-300188], must be received on or before June 3, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 2060

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20660.

Offices location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted this request to EPA on behalf of Dr. Robert H. Kupelian, National Director and the IR-4 Technical Committee.

IR-4 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding "marjoram" to the general category of commodities listed in column A and defining the genreal commodity term for tolerance purposes by inserting the corresponding raw agricultural commodites "*Origanum* spp. (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram)" in the specific commodities listing in column B. Additionally, it is proposed that 40 CFR 180.34(f)(9)(xix) (A) and (B), a listing of the herbs and spices crop group and its representative commodities, be revised to make it consistent with the general commotidy definition for marjoram.

The IR-4 requested these amendments in order to clarify and update the relationship between the general commodity term "marjoram" and the specific raw agricultural commodities classified as "*Origanum* spp."

The EPA agrees that these raw agricultural commodities are botanically and culturally similar and should be combined in a common commodity definition for pesticide tolerance purposes. Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR Part 180 would protect the public health. Therefore, it is proposed that 40 CFR 180.1(h) and 40 CFR 180.34(f)(9)(xix) (A) and (B) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number [OPP-300188]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 21, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

2. Section 180.1(h) is amended by adding a definition for marjoram, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Marjoram.....	*Origanum* spp. (includes sweet or annual marjoram, wild marjoram or oregano, and pot marjoram).
* * * * *	

3. Section 180.34 is amended by revising paragraph (f)(9)(xix), to read as follows:

§ 180.34 Tests on the amount of residue remaining.

* * * * *

(f) * * *

(9) * * *

(xix) *Herbs and spices group*—(A) *Commodities.* Anise (aniseed) (*Pimpinella anisum*); balm (*Melissa officinalis*); basil (*Ocimum basilicum*); borage (*Borago officinalis*); burnet (*Sanguisorba minor*); camomile (*Anthemis nobilis*); caraway (*Carum carvi*); catnip (*Nepeta cataria*); chives

(*Allium schoenoprasum*); clary (*Salvia sclarea*); coriander (*Coriandrum sativum*); costmary (*Chrysanthemum balsamita*); cumin (*Cuminum cyminum*); curry leaf (*Murraya koenigii*); dill (*Anethum graveolens*); fennel (Italian and sweet) (*Foeniculum vulgare*); fenugreek (*Trigonella foenumgraecum*); horehound (*Marrubium vulgare*); hyssop (*Hyssopus officinalis*); marigold (*Calendula officinalis*); marjoram (*Origanum* spp.) (including sweet or annual marjoram, wild marjoram or oregano, and pot marjoram); nasturtium (*Tropaeolum majus*); pennyroyal (*Mentha pulegium*); rosemary (*Rosmarinus officinalis*); rue (*Ruta graveolens*); sage (*Salvia officinalis*); savory, summer and winter (*Satureja* spp.); sweet bay (bay leaf) (*Laurus nobilis*); tansy (*Tanacetum vulgare*); tarragon (*Artemesia* draculunculus); thyme (*Thymus* spp.); wintergreen (*Gaultheria procumbens*); woodruff (*Galium odorata*); wormwood (*Artemesia absinthium*).

(B) *Representative commodities.* Basil, chives, dill, marjoram or other *Origanum* spp., and sage.

* * * * *

[FR Doc. 88-9754 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300186; FRL-3374-4]

Methidathion; Proposed Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the tolerance for residues of the insecticide methidathion by removing the existing tolerances for residues in or on the raw agricultural commodities grapefruit, lemons, and oranges, and by establishing a tolerance for the crop grouping citrus fruits (except mandarins) and a tolerance for mandarins, thereby consolidating and expanding the existing tolerances and making the proposed citrus tolerance consistent with that set by the Codex Alimentarius Commission.

DATE: Written comments, identified by the document control number [OPP-300186], must be received on or before June 3, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may by disclosed publicly be EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Dennis H. Edwards, Jr., Product Manager (12), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: Tolerances have been established for residues of methidathion in or on various raw agricultural commodities, including grapefruit, lemons, and oranges. These are representative commodities for the crop grouping citrus, and U.S. tolerances are being revised to the grouping citrus (except mandarins) at 2.0 parts per million (ppm) and for mandarins at 6.0 ppm. Ragarding the residue situation, the Agency has concluded that risks associated with citrus crop grouping uses will not be any greater than the risk associated with the uses for grapefruit, lemons, and oranges. The proposed citrus crop group tolerance will be consistent with the tolerance set by Codex Alimentarius Commission (CAC) for this crop grouping. Codex Alimentarius Commission is concerned with the development of international food standards including tolerances for pesticide residues in food. The purpose of this organization is, in general, to protect consumer health and ensure fair practices in the food trade while fostering the movement of agricultural products across international boundaries. In this Codex process, countries are asked to set tolerances in accordance with the Codex limits. To the extent possible, EPA tries to ensure that the tolerances promulgated under the Federal Food Drug and Cosmetic Act are consistent with those set by Codex. Conformity with Codex can, of course, only be achieved where the tolerance level complies with the criteria of the Federal Food Drug and Cosmetic Act.

On January 13, 1983, the Agency issued a document, "Guidance for the Reregistration of Pesticide Products Containing Methidathion" in which the Agency set forth its comprehensive position on the conditions and requirements for registration of all existing and future products containing this pesticide. All data required by that document have been submitted and are currently being evaluated. The Agency will issue a Final Registration Standard and Tolerance Reassessment (FRSTR) document for methidathion this year.

The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year rat feeding study with a NOEL of 4 ppm (0.2 mg/kg/day); a 2-year dog feeding study with a NOEL of 4 ppm (0.1 mg/kg/day); a 2-generation rat reproduction study with a reproductive NOEL of 5 ppm (0.25 mg/kg/day); a rabbit teratology study with a maternal NOEL of 6 mg/kg/day and a developmental NOEL > or = 12 mg/kg/day; and a rat teratology study with a maternal NOEL of 1 mg/kg/day and a developmental NOEL > or = 2.25 mg/kg/day; and a 2-year mouse feeding/oncogenicity study with a NOEL for systemic effects at 1.6 mg/kg/day and liver tumors observed in male animals at 7.5 mg/kg/day dose level. Gene mutation, chromosomal aberrations and direct DNA damage tests were negative for mutagenic effects.

The Agency had previously reviewed another oncogenicity study in mice, which was conducted by Industrial Bio-Test Laboratories. This study indicated statistically significant increases in the frequency of hepatocellular adenomas in male mice at the high-dose level of 100 ppm (15 mg/kg/day). However, the study was determined to be invalid because of unacceptable methodologies, including partial degradation of methidathion in the diets, low survival of the animals, and deficiencies in animal husbandry. The Methidathion Registration Standard issued in 1983 required two replacement oncogenicity studies. The replacement 2-year rat oncogenicity study indicated no increase in neoplastic lesions in either sex at any dose, but the results of the replacement 2-year mouse oncogenicity

study did show an increase in the incidence of combined benign and malignant hepatocellular tumors in male mice at the high dose level of 16.1 mg/kg/day (100 ppm). Based on the mouse study, the Agency has classified methidathion as a possible human carcinogen (Group C). The qualitative designation "C" refers to EPA's weight-of-the-evidence classification, which in this case shows methidathion to be a "possible human carcinogen." This classification is based on the Agency's Guidelines for Carcinogenic Risk Assessment, published in the **Federal Register** of September 24, 1986 (51 FR 33992). Additional evidence from short-term tests or structure-activity relationships were not supportive of a higher classification.

In reaching this conclusion, the Toxicology Branch Peer Review Committee considered the following information:

1. The positive carcinogenic effects were found in only one species, the mouse; and one sex, the male.

2. Tumors were discovered in animals exposed to very high doses. Adenomas (benign epithelial tumors) were only considered to be biologically significant at 16.1 mg/kg/day (HDT); carcinomas were increased at 7.5 mg/kg/day but were significant only at 16.1 mg/kg/day; combined adenoma/carcinoma were significantly increased at 50 ppm (7.5 mg/kg/day) and 100 ppm (16.1 mg/kg/day).

3. The rat was negative for oncogenic effects at all dose levels, i.e., 0,4,40 or 100 ppm (equivalent to 0,0.2, 2 or 5 mg/kg/day respectively).

4. There are no close structural analogs with oncogenic concerns identified.

5. Methidathion is not mutagenic in several acceptable studies (in vitro point mutation assays, both mammalian and bacterial; nuclear anomaly test; SCE; dominant lethal test).

The evidence as a whole (i.e. 1 species 1 sex, common tumor; no increase in proportion of malignant tumors, or apparent shortening of time to tumor; lack of mutagenicity or structure activity relationship) is not considered strong enough to warrant a quantitative estimation of human risk. In addition, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) agreed that the weight of evidence for oncogenicity supports a Category C designation for methidathion.

The acceptable daily intake (ADI), based on a 2-year dog feeding study (NOEL = 1 mg/kg/day and using a 100-fold safety factor) is calculated to be .001 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) for existing tolerances is calculated to be 0.005571 mg/kg of body weight/day. The current action will increase the TMRC by 0.000083 mg/kg of body weight/day (1.49 percent increase). The increase in dietary exposure to residues of methidathion resulting from the proposed use on citrus crop grouping and mandarins is considered to pose a negligible incremental risk in dietary exposure (1.49 percent increase in the TMRC)

Although the TMRC based on all established tolerances for methidathion exceeds the ADI, the Agency believes that the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all of the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Most treated crops have residue levels which are below the established tolerance level.

3. Residues are frequently reduced when foods are processed or prepared for human consumption.

In conjunction with the upcoming Final Registration Standard and Tolerance Reassessment (FRSTR) for methidathion, data regarding the nature of the residue in plants and animals and the magnitude of the residue in raw agricultural commodities, including citrus fruits, are being reevaluated to determine their compliance with current Agency guidelines and policies. Therefore, in the FRSTR, additional data may be required to ascertain the adequacy of the proposed tolerances for residues in or on citrus fruits (except mandarins) and mardarins. Currently, the residue of concern for the proposed tolerances is considered to be the parent compound, methidathion per se. An adequate analytical method, gas liquid chromatography using a flame photometric detector, is available for enforcement purposes. The enforcement methodology is available in the Food and Drug Administration (FDA) Pesticides Analytical Manual, Volume II.

Based on the above considerations, the Agency has concluded that the tolerance would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register**, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300186]. All written comments filed in response to this petition will be available in the Information Services Section at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-621), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 24, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

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

2. In § 180.298(a), by deleting the entries for grapefruit, lemons, and oranges and by adding new entries for citrus fruits (except mandarins) and mandarins, to read as follows:

§ 180.298 Methidathion; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Citrus fruits (except mandarins)	2.0

Commodities	Parts per million
* * * * *	
Mandarins	6.0
* * * * *	

[FR Doc. 88-9755 Filed 5-3-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 763

[OPTS-62036E; FRL-3374-8]

Asbestos; Release of Information for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments on documents placed into public docket.

SUMMARY: EPA is providing an opportunity for public comment on four major documents concerning substitutes for asbestos. These documents are: The Health Hazard Assessment of Non-Asbestos Fibers, the Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers, the Durable Fiber Exposure Assessment, and the Durable Fiber Industry Profile and Market Outlook.

DATES: Comments on the four documents must be received on or before June 14, 1988.

ADDRESS: Submit written comments, identified by the docket control number (OPTS-62036E), in triplicate to: TSCA Public Docket Office (TS-793), Attention: TSCA Docket Officer, Rm. NE-G004, Office of Toxic Substances, Environmental Protection Agency 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202 554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 29, 1986 (51 FR 3738), EPA proposed a rule under section 6 of TSCA which would ban immediately the manufacture, import, and processing of certain asbestos products, and would phase out the remaining products over a 10-year period. This proposal outlined several options for implementing the ban and phase out and allowed 5 months for public comment. EPA received approximately 200 written comments. EPA received further public comment on the proposal in legislative and cross-examination hearings held in July and October of 1986.

On April 1, 1988, EPA requested comment on four major documents to be used to support its rulemaking for the ban and phase out of certain uses of asbestos (53 FR 10546). The deadline for comments on these documents is May 31, 1988. The four asbestos support documents were: The Asbestos Exposure Assessment, the Asbestos Modeling Study, the Nonoccupational Asbestos Exposure Report, and the Regulatory Impact Analysis.

Today, EPA is placing four additional documents concerning substitutes for asbestos in the public rulemaking docket for comment: The Health Hazard Assessment of Non-Asbestos Fibers, the Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers, the Durable Fiber Exposure Assessment, and the Durable Fiber Industry Profile and Market Outlook. The Health Hazard Assessment of Non-Asbestos Fibers evaluates the potential hazard of major non-asbestos fibers. The Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers was used to develop the Health Hazard Assessment Document. The Durable Fiber Exposure Assessment summarizes information concerning exposure during primary and secondary manufacturing, and consumer use of major non-asbestos fibers. The Durable Fiber Industry Profile and Market Outlook assesses the important physical and chemical properties, production characteristics, commercial uses, and market outlooks of major non-asbestos fibers.

After reviewing these four documents, interested persons may submit comments on them EPA's consideration. The deadline for comments on these documents is June 14, 1988. The four documents added today set forth well documented analyses based on factual information obtained from public and private sources. In particular, persons are encouraged to take this opportunity to point out any factual inaccuracies and omissions in the data set forth in these documents. Any such comments should reference the appropriate document and state with specificity any factual problems with data that led to EPA's conclusions and provide specific information or references to support the comments. The Agency will consider any such comments and supplement or modify the analysis if appropriate.

This notice is intended to advise the public of the availability of these four documents. Comments should be limited to the information in the documents which are the subject of this notice and the notice published on April 1, 1988. It is unnecessary to duplicate previous comments on the proposed rule except to the extent they are affected by these four documents.

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 28, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-9845 Filed 5-3-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[BERC-444-P]

Medicaid Program; Eligibility of Qualified Severely Impaired Individuals Who Work

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations to specify, for Medicaid coverage, a permanent eligibility group of qualified individuals who, although severely impaired, work and demonstrate ability to perform substantial gainful activity and who are considered to be Supplemental Security Income (SSI) beneficiaries. It also would specify how SSI payments made to certain institutionalized individuals are to be disregarded as income under Medicaid for a limited period. The amendments would conform the regulations to provisions of the Omnibus Budget Reconcilation Act of 1986 and the Employment Opportunities for Disabled Americans Act.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on July 5, 1988.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-444-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following locations:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD

In commenting, please refer to file code BERC–444–P. Comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (301) 966–4464.

SUPPLEMENTARY INFORMATION:

Background

Under section 1902(a)(10)(A)(i)(II) of the Social Security Act (the Act), Supplemental Security Income (SSI) beneficiaries under title XVI of the Act are automatically entitled to Medicaid coverage as cash assistance recipients in States with Medicaid programs unless a State chooses to apply more restrictive eligibility requirements than SSI under the provisions of section 1902(f) of the Act. Under section 1902(f) of the Act, States may apply more restrictive eligibility requirements than SSI to aged, blind, or disabled individuals, provided these more restrictive requirements are no more restrictive than those applied under their approved State Medicaid plan in effect on January 1, 1972. In States that elect to use more restrictive criteria, individuals receiving SSI are not automatically entitled to Medicaid coverage by virtue of their eligibility for SSI benefits. These individuals must apply for and be determined eligible for Medicaid under the State's more restrictive requirements as discussed in detail later in this preamble.

Under section 1619 of the Act, certain blind and severely impaired disabled individuals who work and who otherwise would be ineligible under SSI because of their earnings are given special title XVI benefits and retain SSI beneficiary status for purposes of Medicaid eligibility. Specifically, under section 1619(a) of the Act, disabled individuals who would otherwise have lost SSI because they work and demonstrate the ability to perform substantial gainful activity in spite of severe medical impairments may continue to receive special SSI benefits if they continue to be financially eligible for SSI benefits based on their income. Under section 1619(b), disabled individuals whose income is too high to retain financial eligibility for the special SSI benefit under section 1619(a) (or Federally administered State supplementary payments where applicable) and blind individuals who lose regular SSI payments (and/or Federal administered State supplementary payments) are allowed to continue to receive Medicaid benefits under certain specified conditions. We refer to these individuals as being "in section 1619(b) status." Section 1619 was originally intended as a work incentive demonstration program, effective from January 1, 1981 through December 31, 1983. In 1984, the provisions of section 1619 were extended without modification through June 30, 1987 by Pub. L. 98–460.

For purposes of Medicaid, disabled individuals receiving cash benefits under section 1619(a) of the Act and blind and disabled individuals determined to be in section 1619(b) status are considered to be SSI beneficiaries. If a State covers individuals receiving SSI payments (non-section 1902(f) State) and has an agreement under section 1634 of the Act to have the Social Security Administration (SSA) determine Medicaid eligibility, these individuals are not required to file a separate application with the Medicaid agency—their SSI eligibility automatically confers Medicaid eligibility. If a State covers SSI beneficiaries but does not have a section 1634 agreement with SSA, these individuals must file an application with the Medicaid agency and be found eligible by the agency in order to receive Medicaid benefits. In States that cover individuals under more restrictive Medicaid eligibility requirements than those under SSI under the authority of section 1902(f), an individual's eligibility status under section 1619 does not automatically confer Medicaid eligibility. These individuals must file a separate application for Medicaid with the Medicaid agency and be determined eligible under the State's eligibility criteria, some, if not all, of which are more restrictive than those under SSI.

Provisions of the Omnibus Budget Reconciliation Act of 1986

In anticipation of the sunset of provisions of section 1619 of the Act on June 30, 1987, Congress, in the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99–509, enacted on October 21, 1986, established a mandatory categorically needy Medicaid eligibility group of qualified severely impaired individuals who meet the section 1619 eligibility criteria to ensure continued Medicaid for these individuals. Section 9404 of OBRA '86 amended section 1902(a)(10)(A)(i)(II) of the Act to provide that, in addition to individuals receiving SSI already provided for under that section, States must provide Medicaid eligibility for individuals who are qualified severely impaired individuals as defined in a new section 1905(q) of the Act. The new section 1905(q) defined a qualified severely impaired individual as an individual under age 65—

(1) Who, for the month preceding the first month in which section 1905(q) applies to the individual—

- Received an SSI payment under section 1611(b) on the basis of blindness or disability; a supplementary payment under section 1616 of the Act or under section 212 of Pub. L. 93–66 on the basis of blindness or disability; a payment of monthly benefits under section 1619(a); or a supplementary payment under section 1616(c)(3); and
- Was eligible for medical assistance under the State's approved Medicaid plan; and

(2) With respect to whom the Secretary determines that—

- The individual continues to be blind or continues to have a disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all nondisability-related requirements for eligility for SSI benefits;
- The income of the individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments);
- The lack of eligibility for Medicaid benefits would seriously inhibit his ability to continue or obtain employment; and
- The individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI (including any federally administered State supplementary payments), Medicaid, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

The statutory language of OBRA '86 used to describe qualified severely impaired individuals in section 1905(q) of the Act is virutally identical to the language describing individuals under the provisions of section 1619(b) of the Act. The latter authority would have expired on June 30, 1987. The new section 1905(q) also provides that an

individual who is eligible for medical assistance under section 1619(b) in June 1987 is also considered a qualified severely impaired individual for as long as the individual meets the requirements of section 1905(q)(2) of the Act. Shortly after OBRA '86 was enacted, Congress passed the Employment Opportunities for Disabled Americans Act (EODAA), Pub. L. 99-643, on November 10, 1986. Section 2 of EODAA made section 1619 permanent. Thus, individuals who are eligible or who become eligible under section 1619 for SSI benefits and thus are entitled to Medicaid will continue to be eligible for these benefits after June 30, 1987. EODAA also made some conforming and technical amendments to sections 1619 (a) and (b) of the Act to reflect the permanent nature of this special benefits program.

The enactment of section 2 of EODAA made superfluous the OBRA '86 amendment establishing section 1905(q) of the Act. In addition, section 7 of EODAA revised section 1619(b) and section 1902(f) of the Act. Under these revisions, States using more restrictive Medicaid eligibility requirements than SSI under the authority of section 1902(f) of the Act must provide mandatory categorically needy Medicaid coverage to certain disabled and blind individuals covered under section 1619 of the Act. These are individuals who either (1) qualify for cash benefits under section 1619(a) of the Act, or (2) are determined by SSA to be in section 1619(b)(1) status and were eligible for Medicaid under the State's approved Medicaid plan in the month immediately preceding the first month in which they qualified for benefits under section 1619(a) or went into section 1619(b)(1) status.

Sections 2 and 7 of EODAA and section 9404 of OBRA '86 are effective on July 1, 1987, without regard to whether or not final regulations have been issued, except in two instances. If the Secretary determines that State legislation (other than legislation appropriating funds) is required in order for the State's Medicaid plan to meet these legislative requirements, the State Medicaid plan will not be considered as failing to comply with the requirements of title XIX solely on the basis of its failure to meet the legislative requirements until 60 days after the close of the first regular session of the State legislature that begins after November 10, 1986 with respect to seciton 7 of EODAA, and until the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after October 21, 1986, with respect to section 9404 of OBRA '86.

A State that believes it will need to enact State legislation in order to implement the provisions of section 9404 of OBRA '86 and section 7 of EODAA will also need to demonstrate this to HCFA. The State must submit documentation that substantiates the claim, such as a State's attorney general's opinion, to the HCFA Regional Office. This documentation should identify and describe the relevant current State statutes and provide the State's justification and basis for the need for additional legislation in order to implement the provisions.

Implementation of Legislative Changes

In States covering SSI beneficiaries, Medicaid eligibility is granted on the basis of an individual's SSI beneficiary status. The group of "qualified severely impaired individuals" created by section 9404 of OBRA '86 is considered to be equivalent to the group of individuals who are in section 1619(b) status and, as such, are considered to be SSI beneficiaries. Thus, in States covering SSI beneficiaries, we propose to continue to apply the policy in existence before OBRA '86 and EODAA that provided automatic Medicaid coverage to individuals in section 1619 status who are considered to be SSI beneficiaries

In States that use more restrictive eligibility criteria than SSI under section 1902(f) of the Act, an individual's SSI beneficiary status does not confer Medicaid eligibility. Prior to OBRA '86 and EODAA, section 1902(f) States were not required to provide automatic Medicaid eligibility to SSI recipients or individuals considered to be SSI beneficiaries, such as under section 1619 of the Act. This provision has now changed. Section 7 of EODAA amended section 1619(b) and section 1902(f) of the Act to provide that, in section 1902(f) States, an individual who qualifies for benefis under section 1619(a) of the Act or meets the requirements of section 1619(b)(1) of the Act, as determined by SSA, and who was eligible for Medicaid under the State's more restrictive Medicaid eligibility criteria in the State approved Medicaid plan in the month immediately preceding the first month in which the individual meets the conditions for section 1619 (a) or (b)(1) status, and continues in section 1619 (a) or (b)(1) status, must be covered as mandatory categorically needy under Medicaid. In this context, we propose to interpret the provision in section 1619(B)(3)(B) that the individual was eligible for medical assistance under the State plan approved under title XIX (in the reference month for purposes of Medicaid eligibility) to mean that the State must verify that the individual actually had been determined eligible for Medicaid as either categorically or medically needy in the (reference) month immediately preceding the first month of section 1619 (a) or (b)(1) status without having to satisfy any additional conditions. We do not interpret this to mean that the individual must have actually used Medicaid services during the reference month. Generally, an individual would be considered eligible during the reference month is a Medicaid card was issued to him for that month.

In order for an individual to remain eligible for Medicaid in section 1902(f) States under the amendments made by section 7 of EODAA, the individual must continue to be eligible under section 1619 (a) or (b)(1). Thus, if the individual loses section 1619 (a) or (b)(1) status, or if there is a break in this status, Mdicaid eligibility would not be afforded under section 1619(b)(3) of the Act for the months when he was not eligible under section 1619 (a) or (b)(1). (Although the individual would not be protected by section 1619(b)(3), he might become eligible for Medicaid on some other basis, such as under a State's medically needy program. If the individual is considered for eligibility on some other basis, he would need to satisfy the State's more restrictive eligibility requirements imposed under section 1902(f).) If the individual returns to section 1619 (a) or (b)(1) status, continued Medicaid coverage would be determined by the eligibility test for the initial month of section 1619 eligibility. For example—

An individual is in a section 1902(f) State and first enters section 1619 (a) or (b)(1) status in September 1987. The individual was eligible for medical assistance in August 1987 and remained in section 1619 (a) or (b)(1) status until November 1987 when his resources exceeded the SSI resource eligibility standard.

Since the individual was eligible for Medicaid in August 1987 (the month immediately preceding the month in which the individual first went into section 1619 status) and is in section 1619 status from September through October 1987, the individual must be provided Medicaid by the section 1902(f) State for the months of September and October 1987 under the requirements of section 7 of EODAA. Since the individual was not in section 1619 status in November 1987 (due to excess resources), he is not eligible for Medicaid in November on the basis of section 7 of EODAA.

It is not clear from the statute or the legislative history of EODAA whether, in the phrase "month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such

requirements" in section 1619(b)(3), the term "first month" means the first month in an individual's life in which he qualified for section 1619 (a) or (b)(1) benefits or status or the first month of the individual's current continuous section 1619 (a) or (b)(1) entitlement. Therefore, we propose to allow States maximum flexibility in providing Medicaid coverage to these severely impaired individuals. We propose to provide States with two options in determining the first month of section 1619 (a) or (b)(1) eligibility (the reference month) in cases where an individual has more than one period of eligibility under section 1619 (a) or (b)(1)—that is, situations where ther are breaks in section 1619 (a) or (b)(1) status, such as when an individual returns to regular SSI status under section 1611 after a period of ineligibility, becomes ineligible under section 1611 of the Act, or becomes ineligible for section 1619(a) benefits or loses section 1619(b)(1) status altogether. The option that the Senate chooses must be applied to all individuals. Under the first option, the first month of section 1619 (a) or (b)(1) status would be the first month of the first period the individual went into this status—that is, there are no periods of section 1619 (a) or (b)(1) status occurring prior to this period. Under the second options the first month of section 1619 (a) or (b)(1) status would be the first month the individual went into this status in the most recent period of eligibility under section 1619. The following example illustrates the application of these options.

Example:

Situation: An individual is in a section 1902(f) State and first went into section 1619(a) or (b)(1) status in March 1984. In May 1986, the individual stopped working and returned to regular SSI status under section 1611 of the Act. In November 1987, he began working again and returned to and continued in section 1619(a) or (b)(1) status. He was eligible for medical assistance in February 1984. He was *not* eligible for medical assistance in October 1987. The individual applies for medical assistance under section 1619 as made permanent by section 7 of EODAA for months beginning November 1987.

Option 1: If the State chooses the first option—Since the individual was eligible for Medicaid in February 1984 (the month preceding the first month of section 1619 status of the first period of eligibility under section 1619) and went into and continued in section 1619 status in November 1987, the State must provide Medicaid to the individual for November 1987 and continuing months (so long as the individual remains in section 1619 status). This applies, regardless of the fact that the individual was not eligible for medical assistance in October 1987 (the month preceding the most recent period of section 1619 status).

Option 2: If the State chooses to apply the second option—Since the individual was not eligible for medical assistance in October 1987 (the month preceding the most recent period of section 1619 status), he is not eligible for Medicaid under the amendments made by section 7 of EODAA. (If, in this case, the individual had been eligible for medical assistance in October 1987, he would be eligible for Medicaid under section 7 of EODAA.

Under section 1616 of the Act, States may make supplementary payments to individuals in addition to the basic Federal SSI payment. Section 1616(c)(3) of the Act also provides States the option of making supplementary payments to individuals eligible under section 1619 of the Act. These optional State supplementary payments are administered either by SSA or the State making the payment. Under the changes made by EODAA to section 1619 of the Act, only federally administered payments (that is, basic Federal SSI benefits and federally administered State supplementary payments) are considered by SSA in determining eligibility under section 1619(a) and (b)(1). SSA does not consider State administered optional State supplementary payments in determining whether an individual is eligible under section 1619(a) and (b)(1). Specific regulations governing eligibility requirements as determined by SSA under section 1619(a) and (b)(1) are located in 20 CFR Part 416, Subpart B.

In States that have agreements with the SSA under section 1634 of the Act to determine Medicaid eligibility of SSI beneficiaries, individuals determined to be in section 1619(a) or (b)(1) status will be automatically determined eligible for Medicaid without the need to apply to the Medicaid State agency for Medicaid benefits. In States that cover individuals receiving SSI but do not have section 1634 agreements with SSA, individuals in section 1619(a) or (b)(1) status will need to file a separate application with the State Medicaid agency in order to obtain Medicaid benefits. In these cases, the State Medicaid agency will need to notify individuals of their potential eligibility for Medicaid under the section 1619(a) or (b)(1) provisions and their need to file an application in order to receive Medicaid.

In States that apply more restrictive criteria than SSI requirements under section 1902(f), individuals who have been determined by SSA to be eligible under section 1619(a) or in section 1619(b)(1) status also must apply to the State Medicaid agency for Medicaid benefits. If SSA determines that an individual is in section 1619(a) or (b)(1) status, the State agency in 1902(f) States then would determine if these individuals are eligible for Medicaid as mandatory categorically needy under the more restrictive requirements of the State's approved Medicaid plan in accordance with the provisions of section 1619(b)(3) as added by section 7 of EODAA.

With respect to individuals in section 1619(a) or (b)(1) status who do not meet the Medicaid eligibility requirements as mandatory categorically needy under the provisions of section 1619(b)(3), section 1902(f) States also have the option of treating these individuals under the State's more restrictive criteria in the same manner in which they treat other SSI beneficiaries. These States may, at their option, disregard some or all of the income that individuals in section 1619(a) or (b)(1) status have which is in excess of the SSI income eligibility level. Depending on whether the State applies an income level that is the same as or lower than the SSI categorically needy income level, this could result in these individuals obtaining eligibility for Medicaid without the need for any spenddown or after meeting a reduced spenddown. (If a section 1902(f) State uses a more restrictive definition of disability than SSI's, neither this optional treatment of income nor the mandated eligibility under section 1619(b)(3) (which requires that the individual must have been Medicaid eligible in the month before he assumed section 1619(a) or (b)(1) status) would result in providing Medicaid for an individual who does not meet the more restrictive definition of disability.) The State agency is required to notify those individuals in section 1619(a) or (b)(1) status who are not determined eligible for Medicaid as categorically needy under the State's more restrictive criteria of the potential for Medicaid eligibility under the provisions of section 1619(b)(3) and the need to apply to the Medicaid agency in order for the State to determine their Medicaid eligibility as categorically needy.

States will need to ascertain only an individual's section 1619(a) or (b)(1) status as determined by the SSA through, for example, the use of the SSI State Data Exchange (SDX) System. For section 1902(f) States and those States that do not have section 1634 agreements, we have issued instructions that specify how to determine an individual's status under section 1619 through use of the SDX system and how to determine the first month that an individual went into such status, since the system does not indicate the first month of section 1619 status.

Additional Related Legislative Change

Prior to EODAA, under section 1611(e)(1)(A) of the Act, when an SSI beneficiary entered a hospital, extended care facility, skilled nursing facility, or intermediate care facility in which a substantial portion of the cost of care (that is, over 50 percent) was paid by Medicaid, the individual's monthly Federal SSI benefit was limited to a maximum of $25 beginning with the first full calendar month the individual was in the institution. Individuals whose countable income exceeded $25 were not eligible for a Federal SSI payment.

Section 3 of EODAA amended section 1611(e)(1) of the Act by adding a new section 1611(e)(l)(E) to provide that individuals eligible under section 1619(a) or (b) in the month preceding the first full month of institutionalization in a hospital, extended care facility, skilled nursing facility, intermediate care facility, or public medical or psychiatric facility remain eligible for SSI based on the full Federal SSI benefit rate under section 1611(b) of the Act for the first full month of institutionalization and, if they remain institutionalized, for the subsequent month. This additional receipt of SSI payments is intended for the individual's use in meeting expenses outside the institution (e.g., maintaining his place of residence). Section 1611(e)(l)(E)(iii) of the Act, as amendment by EODAA, indicates that any individual who "under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care facility is permitted to retain" the increased SSI benefit for one month (or two months, as appropriate) will be considered an eligible individual or spouse for purposes of SSI. We will consider that an institution that has a Medicaid provider agreement with the State will have satisfied the requirement under section 1611(e)(l)(E)(iii) of the Act for the "agreement" and no further agreement is necessary to meet this condition. This is because under 42 CFR 435.733(c)(5) the State's payment to the institution would not be reduced by the amounts paid under section 1611(e)(l)(E) and under 42 CFR 447.15 the State plan must already require the provider to accept the State's Medicaid payment rate (including the recipient's share) as payment in full for Medicaid services it provides. By agreeing to participate in the Medicaid program, the insitution cannot collect the higher SSI benefit payment amount from the individual when the State has increased its payment to the institution by this amount.

Section 3 of EODAA also amended section 1902 of the Act to add a Medicaid State plan requirement to provide that any SSI benefits paid under the new section 1611(e)(l)(E) of the Act to an individual who is eligible for Medicaid and who is in a hospital, skilled nursing facility, or intermediate care facility must be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility. This provision is effective on July 1, 1987.

Provisions of the Proposed Regulations

We propose to amend § 435.120 of the Medicaid regulations to incorporate as a permanent eligibility group the new qualified severely impaired group of individuals for mandatory Medicaid coverage as individuals who are considered to be receiving SSI under section 1619 of the Act by removing the June 30, 1987 expiration date. We also would amend § 435.121 relating to coverage of individuals in States using more restrictive eligibility criteria than SSI to provide for the mandatory coverage of individuals who are eligible under section 1619(a) or (b)(1) and who met the State's more restrictive Medicaid eligibility requirements in the month before the month they became eligible under section 1619(a) or (b)(l). The proposed revised § 435.121 also would specify the option of the section 1902(f) State to consider individuals who are beneficiaries under section 1619(a) or who have section 1619(b)(l) status to have income equal to, but not less than, the SSI Federal benefit rate.

We propose to amend §§ 435.725 and 435.733 to provide for the disregard of the SSI benefit paid under section 1611(e)(1)(E) in determining the amount of any post-eligibility contribution by the individual to the cost of services provided by the hosptial, skilled nursing facility, or intermediate care facility.

In addition, we propose to make a technical change to §435.120. Section 2 of Pub. L. 97–123 repealed section 1622 of the Act. Section 1622 of the Act provided entitlement to minimum benefits under SSI for certain individuals who lost eligibility for minimum social security benefits but excluded these individuals from being considered as SSI recipients for purposes of other provisions of the Act, including eligibility for Medicaid. This exclusion from being eligible on the basis of receipt of SSI is reflected in the existing regulations under §435.120(b). We propose to delete this paragraph (b) to conform the regulations to repeal of section 1622 of the Act.

Response of Public Comments

Because of the large number of public comments that we usually receive on notices of proposed rulemaking, we cannot respond to the correspondence individually. However, we will respond to all public comments received on this NPRM in the preamable to the final regulations when the final regulations are issued.

Impact Statement

Executive Order 12291 and Regulatory Flexibility Act of 1980 (Pub. L. 96–354)

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that meet one of the E.O. criteria for a major rule; that is, that would be liekly to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant impact on a substantial number of small entities. For purposes of the RFA, State Medicaid agencies and individuals who will be affected by this proposed rule are not considered as small entities.

This proposed rule codifies in regulations statutory provisions that are already in effect. The Statutory changes, which expand Medicaid eligibility groups, will increase Medicaid program expenditures independently of the promulgation of this rule. The rule, in itself, would not affect Medicaid program expenditures.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, we have not prepared a regulatory flexibility analysis.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a

substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hosptial as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Paperwork Reduction Act of 1980 (Pub. L. 96-511)

These proposed regulations do not impose information collection or reporting requirements that are subject to review by the Office of Management and Budget under the authority of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 435 would be amended as follows:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.120 is revised to read as follows:

§ 435.120 Individuals receiving SSI.

Except as allowed under § 435.121, the agency must provide Medicaid to aged, blind, and disabled individuals or couples who are receiving or are deemed to be receiving SSI. This includes individuals who are—

(a) Receiving SSI pending a final determination of blindness or disability;

(b) Receiving SSI under an agreement with the Social Security Administration to dispose of resources that exceed the SSI dollar limits on resources; or

(c) Receiving benefits under section 1619(a) of the Act or in section 1619(b) status (blind individuals or those with disabling impairments whose income equals or exceeds a specific Supplemental Security Income limit). (Regulations at 20 CFR 416.260 through 416.269 contain requirements governing determinations of eligibility under this provision.) For purposes of this paragraph (c), this mandatory categorically needy group of individuals includes those qualified severely impaired individuals defined in section 1905(q) of the Act.

3. Section 435.121 is revised to read as follows:

§ 435.121 Individuals in States using more restrictive requirements for Medicaid than the SSI requirements.

(a) *Option for use of more restrictive eligibility criteria.* The agency may use Medicaid eligibility requirements for the aged, blind, or disabled that are more restrictive than the eligibility requirements for SSI. The agency may be more restrictive in defining blindness or disability, more restrictive in setting financial requirements for income or resources, or both. The requirements may apply to the aged or the blind or the disabled, or to any combination. For example, the agency may use a more restrictive definition of disability for those applying for Medicaid as disabled and a more restrictive income requirement for those who apply as aged, but provide Medicaid to all individuals receiving SSI on the basis of blindness.

(b) *Mandatory coverage of severely impaired individuals who work.* If the agency uses more restrictive eligibility requirements for aged, blind, and disabled individuals than SSI, it must provide Medicaid to individuals who—

(1) Qualify for benefits under section 1619(a) or are in eligibility status under section 1619(b)(1) of the Act as determined by SSA; and

(2) Were eligible for Medicaid under the more restrictive criteria in the State's approved Medicaid plan in the reference month—the month immediately preceding the first month in which they became eligible under section 1619 (a) or (b)(1). Under this provision, the State may elect to use as the reference month for determining Medicaid eligibility for all individuals under section 1619 of the Act, the month immediately preceding either the first month of the most recent period of eligibility under section 1619 or the first month of the first period of section 1619 eligibility.

(c) *Special requirements.* If an agency uses more restrictive requirements under this section—

(1) Each requirement may be no more restrictive than that in effect under the State's Medicaid plan on January 1, 1972, and no more liberal than that applied under SSI or an optional State supplement program that meets the conditions of § 435.230;

(2) In determining financial eligibility of an individual in the category to which the more restrictive requirements apply, the agency must deduct, from the individual's income, his SSI payment, any optional State supplement, and incurred medical expenses as specified in § 435.732; and

(3) For purposes of counting income, with respect to individuals who are receiving benefits under section 1619(a) of the Act or are in section 1619(b)(1) status but who do not meet the requirements of paragraph (b)(2) of this section, the agency may disregard some or all of the amount of the individual's income that is in excess of the SSI Federal benefit rate under section 1611(b) of the Act.

(d) The following sections of this part apply to the agency's use of more restrictive eligibility requirements:

(1) Section 435.135, treatment of individuals who receive OASDI cost-of-living increases.

(2) Section 435.330, medically needy coverage.

(3) Section 435.530, more restrictive definitions of blindness.

(4) Section 435.540, more restrictive definitions of disability.

(5) Sections 435.731 through 435.733, more restrictive income and resource requirements.

(6) Sections 435.812, 435.823, 435.831, and 435.841, medically needy financial eligibility requirements.

4. In § 435.725, paragraph (c) is republished and a new paragraph (c)(5) is added to read as follows:

§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* In reducing its payment to the institution, the agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(5) SSI benefits paid under section 1611(e)(1)(E) of the Act to individuals who receive care in a hospital, skilled nursing facility, or intermediate care facility.

* * * * *

5. In § 435.733, paragraph (c) is republished and a new paragraph (c)(5) is added to read as follows:

§ 435.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) *Required deductions.* The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.

* * * * *

(5) SSI benefits paid under section 1611(e)(1)(E) of the Act to individuals who receive care in a hospital, skilled nursing facility, or intermediate care facility.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714–Medical Assistance Programs)

Dated: December 9, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 21, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88–9875 Filed 5–3–88; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88–7]

Service Contracts; "Most-Favored-Shipper" Provisions

AGENCY: Federal Maritime Commission.

ACTION: Availability of finding of no significant impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 88–7 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATE: Petitions for review are due May 16, 1988.

ADDRESS: Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 88–7 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 88–7 the Commission proposes to amend its service contract regulations to prohibit the use of contract clauses that affect the rate charged under a service contract by referencing rates offered or published by other carriers or conferences, whether in their service contracts or their tariffs. However, contract clauses that adjust a service contract rate by referencing a rate in the contract carrier's or conference's own tariffs or service contracts would continue to be permitted (see proposed rule at 53 FR 8775).

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88–9836 Filed 5–3–88; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: May 26, 1988.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss the establishment of marketing areas, submarketing areas, selling schedules, opening dates, and related matters for the 1988 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street, SW., P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: April 29, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-9915 Filed 5-3-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Gulf World, Inc. (P160D)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Gulf World, Inc., 15412 West Alternate Highway 98, Panama City Beach, Florida 32407.
2. *Type of Permit:* Public Display.
3. *Name and Number of Marine Mammals:* Atlantic bottlenose dolphin (*Tursiops truncatus*), 6.
4. *Type of Take:* Capture/maintain.
5. *Location of Activity:* Gulf of Mexico from Panama City to Cape San Blas.
6. *Period of Activity:* 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33720.

Date: April 28, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 99-9884 Filed 5-3-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Marine World Foundation (P172B)

On March 4, 1988, notice was published in the **Federal Register** (53 FR 7002) that an application had been filed by the Marine World Foundation, Marine World Parkway, Vallejo, California 94589 for a permit to take ten (10) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on April 29, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices;

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: April 27, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 88-9885 Filed 5-3-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; National Zoological Park, Smithsonian Institution (P6K)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal

Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Dr. John Francis, National Zoological Park, Smithsonian Institution, Washington, D.C. 20008.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Juan Fernandez fur seals (*Arctocephalus philippii*) 40; southen sea lions (*Otaria byronia*) 20.

4. Type of Take: The applicant proposes to import milk samples collected from the above listed species for analysis at the National Zoo. Of the 60 specimens taken, no more than 10 of each species will involve recapture of a previously taken animal. Analysis of the milk samples will address the question of whether or not milk fat content follows a clinal variation correlating with the duration of maternal care and latitude.

5. Location and Duration of Activity: Argentina and Chile over a 4-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, Federal Bldg., 14 Elm Street, Gloucester, Massachusetts 01930.

James E. Douglas, Jr.,

Deputy Assistant Administrator, National Marine Fisheries Service.

Date: April 28, 1988.

[FR Doc. 88–9886 Filed 5–3–88; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended); and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, May 23, 1988: Beginning 2:00 p.m.

Place: Center for Naval Analyses auditorium, First Floor, 4401 Ford Avenue, Alexandria Virginia.

Type of meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive and consider statements on the subject of "Improving the Competitiveness of the U.S. Flag Merchant Marine," to include consideration of ODS and other subsidies, issues of merchant marine cost and efficiency, foreign competition and subsidy, unfair foreign practices, measures to promote and support the U.S. Flag merchant marine, and maritime-related research and development, and related issues. Individuals or organization desiring to present oral testimony must notify the Executive Director in writing by May 13, 1988, and must provide 40 copies of written testimony no later than May 18. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Arthur D. Baker, III, of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on May 18, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–9894 Filed 5–3–88; 8:45 am]

BILLING CODE 3820–01–M

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

DATES AND TIMES: Tuesday, May 24, 1988; Beginning 2:00 p.m.

PLACE: Center for Naval Analyses auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

TYPE OF MEETING: Open.

CONTACT PERSON: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268, Telephone (202) 756–0411.

PURPOSE OF MEETING: To receive and consider statements on the subject of "Obtaining, Sustaining, and Modernizing Ships for Strategic Sealift," to include consideration of "Procure and Charter" and "Build and Charter" programs, construction in foreign shipyards, Title XI and CCF programs, offshore or

foreign registries, needs for and uses of active and reserve fleets, and related issues. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing by May 13, 1988, and must provide 40 copies of written testimony no later than May 18. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Robert Nevel of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on May 18, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-9895 Filed 5-3-88; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Visa Requirements for Certain Wool Textile Products Produced or Manufactured in Uruguay

April 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: May 5, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: Under the terms of the current Bilateral Textile Agreement and export visa arrangement between the Governments of the United States and Uruguay, the two governments agreed that shipments of wool apparel products in Category 444 are no longer subject to visa requirements.

Copies of the bilateral agreement and the visa arrangement are available from the Textile Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 50 FR 6232, published in the **Federal Register** on February 14, 1985 and 51 FR 19244, published on May 28, 1986.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 29, 1988.

Commissioner of Customs, *Department of Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive of February 8, 1985, as amended, which directed you to prohibit entry of certain specified categories of cotton and wool textile products, produced or manufactured in Uruguay for which the Government of the Republic of Uruguay has not issued an appropriate export visa or exempt certification.

Effective on May 5, 1988, shipments of wool apparel in Category 444 which are exported from Uruguay on or after May 5, 1988, need not be accompanied by an export visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-9822 Filed 5-3-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange; Proposed Amendments Relating to the Oats Futures Contract and a Proposal to Recommence Trading in That Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Changes.

SUMMARY: The Minneapolis Grain Exchange ("MGE" or "Exchange") has submitted for the oats futures contract a number of proposed changes in the standards and procedures relating to the delivery of oats, including amendments to the delivery points and quality standards. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. In addition, the MGE has submitted a proposal to recommence trading in the oats futures contract, which now is dormant within the meaning of Commission Regulation 5.2. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before June 3, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the MGE oats futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to the oats futures contract that would:

(1) Increase the number of grades of oats deliverable on the futures contract (the currently deliverable grades are No. 1 and No. 2 heavy oats), change the existing par specification for the No. 1 heavy oats grade to a 3 cent per bushel premium, and specify that oats with more than 14% moisture are not deliverable. The existing and proposed deliverable grades of oats and their corresponding price differentials are shown below:

Grade	Differentials [1]	
	Current	Proposed
	(cents per bushel)	
No. 2 Heavy Oats	par	par
No. 1 Oats	—	par
No. 1 Extra Heavy Oats	—	+7
No. 2 Extra Heavy Oats	—	+4
No. 1 Heavy Oats	par	+3
No. 2 Oats [2]	—	−3

Grade	Differentials [1]	
	Current	Proposed
No. 2 Oats [3]	—	−6

[1] Under the proposal, bright oats shall carry no additional premium or discount.
[2] 36 lb. minimum test weight.
[3] 34 lb. minimum test weight.

(2) Specify that delivery in satisfaction of futures contracts must be at regular warehouses located in the Minneapolis/St. Paul switching district. Current provisions allow delivery in regular warehouses located in Duluth, Minnesota and Superior, Wisconsin, as well as Minneapolis/St. Paul.

(3) Limit trading and delivery to lots of 5,000 bushels, or multiples thereof, rather than permitting delivery in units of 5,000 or 1,000 bushels, or multiples thereof, as currently specified in the contract.

(4) Increase the maximum daily price fluctuation limit for the contract to 10 cents from 6 cents per bushel with provision for expansion of the base limit to 15 cents per bushel rather than the current 9 cents per bushel.

(5) Establish a minimum price fluctuation limit for trading in the contract of one-fourth (¼) cent per bushel.

(6) Specify trading for delivery in the calendar months of March, May, July, September, and December.

(7) Establish trading hours for the contract of 9:30 a.m. to 1:15 p.m. (Minneapolis time).

With regard to these proposals to amend the contract, the MGE noted that:

Over the past two decades the production of Oats has tended to concentrate in the agricultural regions of North Dakota, South Dakota, Minnesota, Iowa and Wisconsin. The crop has become more specialized as an ingredient in feed over the years and has contracted in size from about a 40 million acre harvest in the 1950s to a 10 to 12 million acre harvest crop in recent years. The cash market has reflected this most noticeably. Whereas two decades ago the cash market movement from a wider area of Oats producing regions in the United States found active markets in Chicago, Duluth and Minneapolis/St. Paul, the market has shifted rather dramatically in favor of Minneapolis/St. Paul. The Minneapolis/St. Paul market now accounts for the greatest share of cash Oats trading in the United States * * *.

Due to the decided predominance of Minneapolis and St. Paul in the cash market for Oats in the United States relative to Chicago and Duluth and other less important markets, the Minneapolis Grain Exchange believes that this proposal to relist its presently dormant Oats futures contract and to amend it as noted above would provide a benefit to the Oats industry participants as well as to the general public. The Minneapolis Grain Exchange attests that the terms and conditions noted above will provide for a smooth market which will better enable participants to hedge their cash and anticipated cash positions and to provide a more effective pricing tool for the industry to improve economic efficiency in the Oats industry. Further, the Exchange believes that the terms and conditions of its Oats futures contract are in conformity with cash market practices and will provide for a deliverable supply that will not be conducive to price manipulation or distortion and that this supply can reasonably be expected to be available to the short trader and saleable by the long trader at its market value in normal cash market channels.

The oats futures contract is not currently listed for trading and is dormant under Commission Regulation 5.2. Under Regulation 5.2, an exchange must submit for Commission review and approval, pursuant to section 5a(12) of the Commodity exchange Act (Act) and Commission Regulation 1.41(b), an appropriate bylaw, rule, regulation or resolution to recommence trading in a dormant contract. Accordingly, the Exchange has submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to list additional months in the contract.

The Commission is seeking comment on the proposed amendments and with respect to the MGE's proposal to recommence trading in the oats contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by the specified date.

Issued in Washington, DC, on April 29, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 9863 Filed 5-3-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DIA Defense Intelligence College Board of Visitors; Closed Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College.

ACTION: Closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday-Thursday, May 3-5, 1988; 9:00 a.m. to 4:00 p.m. on May 3-4; 9:00 to 11:00 a.m. on May 5.

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert De Gross, Provost, DIA Defense Intelligence College, Washington, DC 20340-5485. (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1988.

[FR Doc. 88-9825 Filed 5-3-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: June 15, 1988; 8:30 a.m. to 3:30 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1988.

[FR Doc. 88-9826 Filed 5-3-88; 8:45 am]

BILLING CODE 3810-01-M

Inspector General

Membership of the DoD Inspector General (IG) Performance Review Board

AGENCY: Department of Defense Inspector General.

ACTION: Notice of Membership of the DoD IG Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Inspector General. The publication of the PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Inspector General.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald R. Sandaker, Chief, Management-Employee Relations and Development Branch, Personnel & Security Division, Inspector General, 400 Army Navy Drive, Arlington, VA, (202) 693-0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the enclosed are names of executives who have been appointed to serve as members of the Performance Review Board. They will serve a one year renewable term effective on July 1, 1988.

April 28, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Terry L. Brendlinger
Katherine A. Brittin
Jackie R. Crawford
James H. Curry
Daniel R. Foley
William K. Keesee
Robert J. Lieberman
Jack L. Montgomery
Robert A. Pennisi
Donald E. Reed
William F. Thomas
Richard W. Townley
Stephen A. Trodden
Derek J. Vander Schaaf

[FR Doc. 88-9824 Filed 5-3-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

DATE: This proposed action will be effective June 3, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the record system manager identified in the record system notice set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202-2803. Telephone: (202) 694-3027; Autovon: 224-3027.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22286) May 29, 1985 (DoD Compilation)
FR Doc. 85-27008 (50 FR 47087) November 14, 1985
FR Doc. 86-7574 (51 FR 11803) April 7, 1986
FR Doc. 86-10687 (51 FR 17508) May 13, 1987
FR Doc. 86-27868 (51 FR 44665) December 11, 1986
FR Doc. 86-27813 (51 FR 44668) December 11, 1986
FR Doc. 86-27814 (51 FR 44670) December 11, 1986
FR Doc. 86-27815 (51 FR 44672) December 11, 1986
FR Doc. 87-13688 (52 FR 22837) June 16, 1987

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on April 25, 1988 to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 28, 1988.

DUSDP 06

SYSTEM NAME:

Defense Personnel Security Research & Educational Center Research Files.

SYSTEM LOCATION:

Records in the system are located at three sites: Defense Personnel Security Research & Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940-2481; Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940-3231; and Data Center, Naval Postgraduate School, Monterey, CA 93943.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Department of Defense (DoD) civilian employees, military members, and DoD contractor employees who have or had security clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of cleared individuals, DD Forms 398 and 398-2, background investigations, responses from interviews and questionnaires.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 781-887, Internal Security Act of 1950; Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons; Executive Order 10450, Security Requirements for Government Employment; Executive Order 10865, Safeguarding Classified Information Within Industry; Executive Order 12333, United States Intelligence Activities; Executive Order 12356, National Security Information; and 5 U.S.C. 301, Departmental Regulations, which authorizes DoD Directive 5210.79, "Defense Personnel Security Research and Education Center (PERSEREC)," and DoD Regulation 5200.2-R, "DoD Personnel Security Program Regulation."

PURPOSES:

To perform research and analyses for (1) evaluating and improving DoD

personnel security procedures, programs, and policies; (2) assisting in providing training, instruction, and advice on personnel security subjects for DoD Components; (3) encouraging cooperative research within and among DoD Components on projects having DoD-wide implications in order to avoid duplication; (4) addressing items of special interest to personnel security officials within DoD Components; and (5) identifying areas in the personnel security field that warrant more intense scrutiny.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed to the following users for the stated purposes: Federal, State, and local government agencies if necessary to obtain information from them; a Congressional office in response to an inquiry made at the request of the record subject; General Services Administration and National Archives and Records Administration for records management inspections authorized by 44 U.S.C. 2904 and 2906. See also the blanket routine uses set forth at the beginning of this agency's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVAL:

Records may be retrieved by name, Social Security number, or military service number.

SAFEGUARDS:

Records are stored under lock and key, in secure containers, or on electronic media with intrusion safeguards. Research results are not identifiable to any specific individual.

RETENTION AND DISPOSAL:

Information is retained for the life of the research project: When no longer needed for the project, paper records are shredded and computer media are erased or degaussed.

SYSTEM MANAGER AND ADDRESS:

Director, Defense Personnel Security Research & Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940-2481

NOTIFICATION PROCEDURE:

An individual may determine if the record system contains information retrieved by his or her personal identifier by contacting the system manager at the address listed above and providing sufficient proof of identity such as full name, Social Security number, date and place of birth, military service number (if service was before 1968), military or civilian status while associated with the Department of Defense, place and data of DoD or contractor employment, or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the system manager listed above and must contain sufficient information to identify the individual, such as the identifying information listed under "Notification Procedure," above.

CONTESTING RECORDS PROCEDURES:

Rules for contesting the contents of records pertaining to an individual are contained in Office of the Secretary of Defense Administrative Instruction Number 81 (32 C.F.R. Part 286b) and may be obtained from the system manager identified above.

RECORD SOURCE CATEGORIES:

Information is obtained from the Defense Central Investigations Index, military records, DoD civilian employment and military personnel records, Defense Investigative Service records, a records of the Departments of Justice and Treasury, and interviews with and questionnaries completed by record subjects.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-9823 Filed 5-3-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy; DoD

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of Navy and are made available for licensing by the Department of the Navy.

Requests for copies of patent applications cited should be directed to the Office of the Chief of Naval Research, Code OOCCIP, 800 North Quincy Street, Arlington, Virginia 22217-5000 and must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001.

Patent Application 054,977: Bloch-Line Memory Element and RAM Memory; filed 27 May 1987.

Patent Application 386,367: Crosstie Random Access Memory System; filed 8 June 1982.

Patent Application 386,388: Crosstie Random Access Memory Element Having Associated Read/Write Circuitry; filed 8 June 1982.

Patent Application 386,389: Crosstie Random Access Memory Element and a Process for the Fabrication Thereof; filed 8 June 1982.

Patent Application 505,617: Enhanced Crosstie Random Access Memory Element and a Process for the Fabrication Thereof; filed 20 June 1983.

Date: April 29, 1988.

W.R. Babington, Jr.,

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

[FR Doc. 88-9813 Filed 5-3-88; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-05-LNG]

Distrigas Corp.; Application To Import Liquefied Natural Gas From Algeria

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for amended authorization to import liquefied natural gas from Algeria.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 15, 1988, Distrigas Corporation (Distrigas) filed an application to amend its current authorization to allow it to import the remaining authorized cargoes of liquefied natural gas (LNG) from Algeria at market responsive prices not to exceed $2.50 from MMBtu, and to extend its authorization beyond May 15, 1988.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than May 11, 1988.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8116.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: On March 4, 1988, in DOE/ERA Opinion and Order No. 228 (Order No. 228), the ERA authorized Distrigas to import up to five cargoes of LNG pursuant to the terms of a contract amendment between Distrigas and Sonatrach, the Algerian national energy corporation. The amended authorization allowed Distrigas to import the LNG at a sales price of up to $2.50 per MMBtu for the first three cargoes and up to $2.00 per MMBtu for the next two cargoes, plus, in each case, bunkers and port charges. The authorization further stipulated that the LNG cargoes should be imported by May 15, 1988, and that Distrigas would have to receive prior written approval from the ERA before any LNG could be imported after that date.

On April 15, 1988, Distrigas informed the ERA that, in response to changing market conditions, it had renegotiated the purchase price of the first cargo of LNG from Sonatrach to a lower price of $2.20 per MMBtu and intended to further renegotiate the purchase price of subsequent cargoes to be market responsive, but not to exceed $2.50 per MMBtu, plus bunkers and port charges. Distrigas also requested an extension of the May 15, 1988, deadline in which to import the remainder of the five authorized cargoes. Distrigas asked for expedited processing of its request.

In response to Distrigas' request for a modification of its authorization, the ERA issued a letter to Distrigas on April 28, 1988, informing it that the importation of the first three cargoes of LNG at negotiated prices not to exceed $2.50 per MMBtu was consistent with Distrigas' current authorization and no further ERA action was necessary. Therefore, this proceeding only involves Distrigas' request to extend the term of its authorization beyond May 15, 1988, and to import the last two cargoes of LNG at negotiated prices not to exceed $2.50 per MMBtu, but which may exceed the $2.00 per MMBtu currently authorized.

In order that the ERA be able to make a decision on Distrigas' application as soon as possible after May 15, 1988, and because all of the current parties in this docket were served with copies of Distrigas' amended application as well as copies of this notice and of the April 28, 1988, letter, the ERA has decided to shorten the normal comment period in this proceeding. Comments shall be filed with the ERA by May 11, 1988, and responses to comments shall be filed on May 18, 1988.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person not already a party to this proceeding who wishes to become a party to the proceeding and to have written or oral comments considered as the basis for any decision on the applications must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., May 11, 1988. Response to any written comments filed pursuant to notice must be filed no later than 4:30 p.m., e.d.t., May 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Distrigas' application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 28, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-9937 Filed 5-3-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[CP87-451-004, et al.]

Change in Date for Technical Conference to Discuss Procedures for Environmental Review; Northeast U.S. Pipeline Projects.

April 29, 1988

AGENCY: Federal Energy Regulatory Commission; Energy.

ACTION: Notice of Environmental Technical Conference.

SUMMARY: On April 22, 1988, the Federal Energy Regulatory Commission issued a Notice of Technical Conference to discuss procedures for environmental review (53 FR 15118). The Notice indicated that the technical conference would be held on May 12, 1988 at 9:00 a.m. The Notice should have indicated that the technical conference will be held on May 16, 1988 at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: John S. Leiss, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street

NE., Washington, DC 20426. (202) 357-9021.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9849 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-361-000 et al.]

Florida Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 29, 1988.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER88-361-000]

Take notice that on April 22, 1988, Florida Power & Light Company (FPL) tendered for filing revised rates and the following: (1) Support Schedules C and F, which have been updated to reflect current costs of providing service under Schedules A and B of the referenced contract filing in Docket No. ER80-58; and (2) Attachment No. 2, Support Information as described in Article III of the Offer of Settlement in Docket No. ER80-58.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER88-362-000]

Take notice that on April 22, 1988, Public Service Electric and Gas Company (PSE&G) tendered for filing as a rate schedule the Capacity Sale Agreement (Agreement) between PSE&G and Potomac Electric Power Company (PEPCO). The Agreement, dated as of April 11, 1988, provides for PSE&G to sell capacity from certain of its generating units to PEPCO.

The term of the Agreement begins on June 1, 1988 and continues until December 31, 1988. The parties request that the commission waive its standard notice period and allow the Agreement to become effective on June 1, 1988.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Electric and Gas Company

[Docket No. ER88-360-000]

Take notice that on April 22, 1988, Public Service Electric and Gas Company (PSE&G) tendered for filing as a rate schedule the Capacity Sale Agreement (Agreement) between PSE&G and Atlantic City Electric Company (AE). The Agreement, dated as of March 28, 1988, provides for PSE&G to sell capacity from certain of its generating units to AE.

The term of the Agreement begins on June 1, 1988 and continues until May 31, 1990. The parties request that the Commission waive its standard notice period and allow the Agreement to become effective on June 1, 1988.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota)

[Docket No. ER88-359-000]

Take notice that on April 21, 1988, Northern States Power Company (Minnesota) tendered for filing the Supplement No. 2 to the Interconnection and Interchange Agreement between Northern States Power Company (NSP) and the City of New Ulm.

The Supplement No. 2 to the Interconnection and Interchange Agreement (Supplement) provides for a firm power sale to the City of New Ulm concurrent with the inservice of additional interconnection facilities between NSP and the City, and terminating with the April 1995 billing period. The Interconnection and the Interchange Agreement is on file with the Commission; it is designated as FERC Rate Schedule No. 398.

NSP requests this Supplement become effective on April 20, 1988 and therefore, requests waiver of the Commission's notice requirements.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER82-769-011]

Take notice that on March 11, 1988, Minnesota Power & Light Company tendered for filing, pursuant to Commission letter dated February 3, 1988, a refund report.

Copies of this filing have been served upon the Cooperative Power Assocation and to the Minnesota Public Utilities Commssion.

Comment date: May 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Encogen Two Partners, Ltd.

[Docket No. QF88-344-000]

On April 14, 1988, Encogen Two Partners, Ltd. (Applicant), c/o Enserch Development Corporation, Two World Trade Center, New York, New York 10048-0752, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Nestle Food Corporation Plant in Freehold, New Jersey. The facility will consist of two combustion turbine generators, two waste heat recovery steam generators, and an automatic extraction steam turbine generator. Thermal energy recovered from the facility will be used for food processing in the plant. The net electric power production capacity of the facility will be 99,562 KW. The primary source of energy will be natural gas. Construction of the facility will begin in the first quarter of 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 825 North Capitol 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 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 this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9892 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP-343-000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP88-343-000]

April 28, 1988.

Take notice that on April 20, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-343-000 a request pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) to reassign the

maximum daily quantities of gas that Tennessee may deliver to The Berkshire Gas Company (Berkshire) at the existing North Adams Sales Delivery Point, under Applicant's blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant states that Berkshire has requested that the daily Quantity Limit at the North Adams Sales Delivery Point in Berkshire County, Massachusetts be reassigned from 10,260 to 11,317 Dth. Applicant claims that the reassignment is necessary to provide Berkshire with increased operational flexibility. Applicant states that no additional facilities authorization will be required to effectuate the reassignment.

Applicant does not proposed to increase or decrease the total daily and/or annual quantities that it is authorized to deliver to Berkshire. Applicant asserts that the reassignment is not prohibited by Applicant's currently effective tariff and that it has sufficient capacity to accomplish the deliveries specified in the request without detriment or disadvantage to any of Applicant's other customers.

Comment date: June 13, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-342-000]

April 28, 1988.

Take notice that on April 19, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed on Docket No. CP88-342-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service on behalf of Intercon Gas, Inc. (Intercon), a marketer of natural gas, under is blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that pursuant to a Gas Transportation Agreement dated April 8, 1988, Northern would transport up to 184,000 MMBtu of natural gas per day for Intercon from fourteen (14) points of receipt in offshore Texas and offshore Louisiana to eight (8) points of delivery in offshore Texas, Texas and offshore Louisiana. Northern further states that construction of facilities would not be required to provide the proposed service.

Comment date: June 13, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Alabama-Tennessee Natural Gas Company

[Docket No. CP88-346-000]

April 28, 1988.

Take notice that on April 20, 1988, Alabama-Tennessee Natural Gas Company (A-T), P.O. Box 918, Florence, Alabama 35631, filed a certificate application in Docket No. CP 88-346-000 pursuant to section 7(c) of the Natural Gas Act requesting a limited-term certificate of public convenience and necessity to perform a transportation service for Champion International Corporation (Champion), all as more set forth in the application which is on file with the Commission and open to public inspection.

A-T proposes to implement the service pursuant to the terms and conditions of a transportation contract between A-T and Champion dated December 1, 1987. It is indicated that A-T has agreed to transport up to twelve billion Btu of natural gas per day on an interruptible basis for a term of one year from the date of initial deliveries. A-T states that the transportation contract provides that shipper will cause gas to be delivered to the facilities of Tennessee Gas Pipeline Company (Tennessee), Columbia Gulf Transmission Company (Columbia), or Tennessee River Intrastate Gas Company, Inc. (TRIGAS), for redelivery to A-T. A-T indicates that it would receive such gas at the existing points of interconnection between the facilities of A-T and Tennessee located in Alcorn County, Mississippi and/or Colbert County, Alabama, and/or an existing point of interconnection between the facilities of A-T and Columbia located in Alcorn County, Mississippi, and/or the existing point of interconnection of the facilities of A-T and TRIGAS located in Colbert County, Alabama. It is indicated that TRIGAS would receive gas from Texas Eastern Transmission Corporation for redelivery to A-T. A-T states that it would redeliver to Champion a thermally equivalent quantity of gas at an existing point of interconnection between the facilities of A-T and Champion.

A-T proposes to charge rates provided by its Rate Schedule IT ranging from a maximum of 10.41 cents per Mcf to a minimum of 0.53 cents per Mcf.

Comment date: May 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP88-341-000]

April 29, 1988.

Take notice that on April 19, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-341-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the certificate issued in Docket No. CP86-586-000 on April 30, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 1, 1988, it proposes to transport up to 60,000 dekatherms per day equivalent of natural gas on an interruptible basis for Chevron from points of receipt listed in Exhibit "A" of the agreement to redelivery points also listed in Exhibit "A". The subject transportation service would involve interconnections between Trunkline and various transporters. Trunkline states that it would receive the gas at various existing points on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Bridgeline Gas Distribution Company and Monterey Pipeline Company in various Louisiana parishes for their system supplies.

Trunkline further states that the maximum daily and annual quantities would be equivalent to 60,000 dekatherms and 3,650,000 dekatherms, respectively. Trunkline advises that service under § 284.223(a) commenced March 1, 1988, as reported in Docket No. ST88-3033 (filed March 31, 1988).

Comment date: June 13, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP88-351-000]

April 29, 1988.

Take notice that on April 21, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP88-351-000 an application pursuant to section 7(b) of the Natural Gas Act as amended, seeking authorization for partial abandonment of sales service to Alabama Gas Corporation (Alagasco), all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

Southern seeks authority to abandon 30,000 Mcf of sales service to Alagasco, effective March 3, 1988.

It is stated that Southern, as seller, and Alagasco, as buyer, are parties to a Sales Service Agreement dated September 19, 1969, for the sale and purchase of natural gas. Southern states that it is currently authorized to sell and deliver to Alagasco an aggregate contract demand of 424,441 Mcf of natural gas. Southern was initially authorized to sell natural gas to Alagasco by Order dated October 6, 1942, issued in Docket Number G-296, it is asserted. Southern states that it commenced providing self-implementing transportation service pursuant to Section 311 of the Natural Gas Policy Act of 1978 on December 1, 1987, and by letter dated December 22, 1987, Alagasco requested to convert 30,000 Mcf of its firm sales entitlements to firm transportation service. Accordingly, it is stated that Southern and Alagasco have entered into a Service Agreement dated March 3, 1988, providing for a transportation demand of 30,000 Mcf under Southern FT Rate Schedule. Southern therefore requests that it be authorized to abandon 30,000 of its certified sales service to Alagasco effective March 3, 1988. Southern states that it does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of this portion of sales service to Alagasco.

To reflect this conversion of sales service to firm transportation, it is stated that Southern and Alagasco have executed a revised Exhibit A to the Sales Service Agreement between Alagasco and Southern reducing Alagasco's total contract demand to 394,441 Mcf. Southern states that the revised Exhibit A will be filed by Southern promptly upon the receipt of the authorization requested herein.

Comment date: May 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP88-350-000]

April 29, 1988.

Take notice that on April 21, 1988, Southern Natural Gas Company (Southern) filed in Docket No. CP88-350-000 an application pursuant to section 7(b) of the Natural Gas Act as amended, seeking authorization for partial abandonment of sales service to Mississippi Valley Gas Company (Mississippi Valley), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern seeks authority to abandon 14,000 Mcf of sales service to Mississippi Valley, effective February 24, 1988.

It is stated that Southern, as seller, and Misssisippi Valley, as buyer, are parties to a Sales Service Agreement dated September 12, 1969, for the sale and purchase of natural gas. Southern states that it is currently authorized to sell and deliver to Mississippi Valley an aggregate contract demand of 97,064 Mcf of natural gas. Southern was initially authorized to sell natural gas to Mississippi Valley by Order dated October 6, 1942, issued in Docket Number G-296, it is asserted. Southern states that it commenced providing self-implementing transportation service pursuant to Section 311 of the Natural Gas Policy Act of 1978 on December 1, 1987, and by letter dated January 22, 1988, Mississippi Valley requested to convert 14,000 Mcf of its firm sales entitlements to firm transportation service. Accordingly, it is stated that Southern and Mississippi Valley have entered into a Service Agreement dated February 24, 1988, providing for a transportation demand of 14,000 Mcf under Southern's FT Rate Schedule. Southern therefore requests that it be authorized to abandon 14,000 Mcf of its certified sales service to Mississippi Valley effective February 24, 1988. Southern states that it does not propose to abandon any of its pipeline facilities in conjunction with the abandonment of this portion of sales service to Mississippi Valley.

To reflect this conversion of sales service to firm transportation, it is stated that Southern and Mississippi Valley have executed a revised Exhibit A to the Sales Service Agreement between Mississippi Valley and Southern reducing Mississippi Valley's total contract demand to 83,064 Mcf. Southern states that the revised Exhibit A will be filed by Southern promptly upon the receipt of the authorization requested herein.

Comment date: May 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9893 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-169-035]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that CNG Transmission Corporation, formerly Consolidated Gas Transmission Corporation (Consolidated), on April 25, 1988, filed the following revisions to First Revised Volume No. 1 of its FERC Gas Tariff: Second Substitute Original Sheet Nos. 85 and 121.

Consolidated states that the proposed effective date is Dec. 1, 1987. The tariff sheets are being filed to comply with the Letter Order issued March 24, 1988, by the Director of the Office of Pipeline and Producer Regulation in this docket.

Copies of the filing were served upon parties to Docket No. RP85-169 and Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All motions or protests should be filed on or before May 6, 1988. 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 the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9850 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on April 25, 1988 certain revised and alternate revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1988.

ESNG states that the proposed revised tariff sheets reflect an overall rate increase of $2.4615 per dt in the Demand Charge 1 under the CD-1, CD-E and G-1 Rate Schedules and an overall rate increase of $ .5042 per dt in the Commodity Charge under the CD-1, CD-E and G-1 Rate Schedules.

ESNG states that the proposed alternate revised tariff sheets reflect an overall rate increase of $.0044 per dt in the Demand Charge 1 under the CD-1, CD-E and G-1 Rate Schedules and an overall rate increase of $.3801 per dt in the Commodity Charge under the CD-1, CD-E and G-1 Rate Schedules.

ESNG also tendered certain other revised tariff sheets included in Appendix G and Appendix H, attached to the filing. Such sheets are also proposed to be effective May 1, 1988. ESNG states that the purpose of these revised sheets is to (1) eliminate from ESNG's tariff language relating to Incremental Pricing and (2) make minor revisions to ESNG's CD-1, CD-E and G-1 Rate Schedules as they relate to ESNG's LSS and CWS Rate Schedules.

ESNG states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at ESNG's main office at 350 South Queen Street in Dover, Delaware.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9851 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-001]

Natural Gas Pipeline Co. of America; Correction to Filing

April 28, 1988.

Take notice that on April 18, 1988, Natural Gas Pipeline Company of America (Natural) filed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 2, correcting the tariff sheets filed on March 31, 1988, which inadvertently designated the proposed tariff sheets to be part of its FERC Gas Tariff, Third Revised Volume No. 2, in Docket No. RP88-94-000.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets as submitted herein to become effective May 1, 1988, the effective date requested in Natural's original filing submitted on March 31, 1988.

Natural states that a copy of this filing is being mailed to its jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP88-94-000.

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 5, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9852 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-41-002 RP85-13-019, RP87-27-003 and RP81-47-015]

Northwest Pipeline Corp.; Tariff Filing and Refund Report

April 29, 1988.

Take notice that on April 20, 1988, Northwest Pipeline Corporation (Northwest) tendered for filing the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Volume No. 1

Revised Second Amended Thirty-Ninth Revised Sheet No. 10, Substitute Third Amended Thirty-Ninth Revised Sheet No. 10, First Amended Twenty-First Revised Sheet No. 10-A, Second Amended Twenty-First Revised Sheet No. 10-A, Third Revised Sheet No. 71, First Revised Sheet No. 72.

Northwest states that it is filing Revised Second Amended Thirty-Ninth Revised Sheet No. 10 in response to the Commission's January 29, 1988 Order in Docket Nos. RP88-41-000, RP85-13-000

and RP87-27-000 to reflect a reduction in Northwest's sales rates caused by the reallocation of costs between Northwest's Rate Schedule T-1 and its sales rate schedules. Northwest also states that it is filing First Amended Twenty-First Revised Sheet No. 10-A in response to the Commission's March 21, 1988 Order in Docket Nos. RP88-41-001, RP85-13-017 and RP87-27-002 to allow Northwest to recover the additional costs that were reallocated to Rate Schedule T-1. Northwest requests that the two tariff sheets be made effective April 1, 1988 and February 1, 1988, respectively.

Northwest also states that it is filing substitute Third Amended Thirty-Ninth Revised Sheet No. 10 that would supersede Revised Second Amended Thirty-Ninth Revised Sheet No. 10 referenced above. Substitute Third Amended Thirty-Ninth Revised Sheet No. 10 also would reflect the reduction in Northwest's sales rates and is needed because on March 31, 1988 Northwest filed a restatement of its Base Tariff Rates in Docket No. RP88-47-002, to be effective May 1, 1988. Northwest also is filing Second Amended Twenty-First Revised Sheet No. 10-A to reflect the new fuel reimbursement percentage on Northwest's system, to be effective April 1, 1988.

Northwest further states that it is filing Third Revised Sheet No. 71 to include general and overhead expense items, as allocated to Rate Schedule T-1, pursuant to the Commission's Order issued August 4, 1987 in Docket No. RP81-47-005. Northwest states that it is filing First Revised Sheet No. 72 simply because the addition to Third Revised Sheet No. 71 caused existing language to be shifted from Third Revised Sheet No. 71 to First Revised Sheet No. 72. Both sheets are proposed to be effective February 1, 1988.

Northwest finally states that it is filing a refund report, also in response to the Commission's March 21 Order, that reflects refunds with interest to its jurisdictional sales customers for the period from May 1, 1985 to March 31, 1988.

Northwest states that copies of the filing have been mailed to all its customers and affected state regulatory 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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9853 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-007]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that on April 25, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff Sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective May 25, 1988:

First Revised Sheet No. 30Z.1
Second Revised Sheet No. 45R.9
Original Sheet No. 45R.9a
Frist Revised Sheet No. 53I.35
Original Sheet No. 53I.35a
First Revised Sheet No. 53I.36
First Revised Sheet No. 53I.39
First Revised Sheet No. 53I.51
First Revised Sheet No. 53I.55

Southern states that on October 30, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedules FT and IT. Southern filed subsequent revisions to said tariff sheets through filings submitted on December 14, 1987, February 29, 1988, March 16, 1988 and March 31, 1988. Southern herewith files the above-reference revised tariff sheets to allow shippers to add or delete delivery points or change the maximum daily delivery quantity for a point on a more flexible basis. Southern has requested that the revised sheets be made effective May 25, 1988.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-9854 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1651-001]

Swift Creek Power Co., Inc.; Existing Licensee's Intent To File an Application for New License

April 29, 1988.

Take notice that on September 8, 1987, licensee for the Swift Creek Project No. 1651 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Swift Creek Project No. 1651 will expire on November 30, 1992. The project is located on the Swift Creek in Lincoln County, Wyoming, has a total capacity of 1,550 kw, and occupies federal lands within the Bridger-Teton National Forest.

The principal project works currently licensed for Project No. 1651 are comprised of two separate developments consisting of the following:

(1) The upper development consists of a concrete dam about 22 feet high and 100 feet long; a reservoir with negligible storage capacity; a 48-inch diameter penstock about 7,000 feet long; a surge tank; a powerhouse with two turbine-generators, each rated at 400 kw capacity; electrical facilities to include the 2.4 kv generator leads, the 2.4/12.5 kv step-up transformer bank, and the 12.5 kv transmission line about 1.1 miles long connecting the two developments; and appurtenant facilities; and

(2) The Lower development (formerly Project No. 910) consists of an earth-rockfill dam about 30 feet high and 360 feet long; a reservoir with negligible storage capacity; a powerhouse with two turbine-generators, one-rated at 250 kW and the other rated at 500 kW; electrical facilities to include the 0.480 kV generator leads, the 0.480/12.5 kV step-up transformer bank, and a 12.5 kV

transmission line about 300 feet long; and appurtenant facilities;

Under section 15(c)(1) of the Act, as amended by the Electric Consumers Protection Act of 1986, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 1990.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE, Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-9855 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-81-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 29, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 26, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet No. 310
Substitute First Revised Sheet No. 311
Substitute First Revised Sheet No. 330
Substitute First Revised Sheet No. 331
Substitute First Revised Sheet No. 333
Substitute First Revised Sheet No. 334
Substitute First Revised Sheet No. 337
Substitute First Revised Sheet No. 404
Substitute First Revised Sheet No. 677
Substitute First Revised Sheet No. 736

Texas Eastern states that the purpose of this filing is to make the revisions to its March 24, 1988 tariff filing in Docket No. RP88-81-000 as required by the Commission's April 22, 1988 "Order Accepting For Filing and Suspending Tariff Sheets Subject to Refund and Conditions, Establishing Hearing, and Consolidating Proceedings" (April 22 Order). Texas Eastern states that its March 24, 1988 filing was accepted subject to refund and conditions imposed by the Commission's April 22 Order. Ordering Paragraph (B) requires Texas Eastern to modify and refile certain of its tariff sheets submitted on March 24, 1988 within 15 days of the issuance of the April 22 Order. In compliance with the April 22 Order, but without prejudice to Texas Eastern's right to seek rehearing of the April 22 Order, Texas Eastern states that it has made the following tariff changes:

(1) Sheet Nos. 330 and 331 have been revised to incorporate into Section 3.2 of Rate Schedule IT-1 the interruptible transportation tender requirement established in *Tennessee Gas Pipeline Company*, 38 FERC Par. 61,233 at 61,740-41 (1987).

(2) Sheet No. 337 has been revised so that Section 12 of Rate Schedule IT-1 clearly grants Buyer the right to nominate the new MDRO and MDDO in the event the MDTQ of a service agreement is to be reduced.

(3) Sheet No. 404 has been revised to delete the requirement that the sum of all MDRO's must not exceed the MDTQ.

(4) Sheet Nos. 310, 311, 333 and 334 have been revised to modify the penalty sections of Rate Schedules FT-1 and IT-1.

(5) Sheet Nos. 677 and 736 have been revised to modify the termination provisions of the FT-1 and IT-1 service agreements to eliminate language which would have required the Buyer to agree not to protest or otherwise oppose Texas Eastern's termination of the agreement.

The proposed effective date of the above listed tariff sheets is April 22, 1988, the effective date of the initial tariff sheets filed in this proceeding.

Texas Eastern also advises the Commission that effective April 26, 1988 Texas Eastern is accepting self-implementing transportation requests pursuant to Rate Schedule FT-1 and IT-1. Texas Eastern further advises the Commission that Texas Eastern will comment self-implementing transportation for requesting shipper, who have submitted a valid transportation request, as soon as appropriate service agreements under Rate Schedules FT-1 or IT-1 are executed by Shippers. The text of the telegram sent to the parties of record in Docket No. RP88-81-000 is included in the filing.

Copies of the filing were served on Texas Eastern's 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, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before May 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR. Doc. 88-9856 Filed 5-3-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3369-5]

Buried Valley Aquifer System, Ohio, Sole Source Aquifer Petition; Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that, under section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the petitioned portion of the Buried Valley Aquifer System of the Great Miami/Little Miami River Basins of Southwestern Ohio, hereafter called the Buried Valley Aquifer System (BVAS), is the sole or principal source of drinking water in the petitioned area, and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the BVAS area and its principal recharge zone will be subject to EPA's review to insure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: Because the economic and regulatory impact of this action will be minimal, this determination will be effective as of the date it is signed by the Regional Administrator.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG-TUB8, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312-353-1435.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C, 300f, 300h-3(e), Pub. L. 93-523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to the U.S. EPA Regional Administrators.

On November 25, 1987, EPA received a complete petition from the Miami Valley Regional Planning Commission of Dayton, Ohio, which petitioned EPA to designate the BVAS as a Sole Source Aquifer.

On December 22, 1987, EPA published notice to announce a public comment period regarding the petition. The public was permitted to submit comments and information on the petition until February 22, 1988. A public meeting, scheduled during this period, was cancelled due to lack of written response challenging the aquifer's eligibility for designation. Cancellation was coordinated through the petitioner with concurrence by Regional Counsel.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under section 1424(e) are: (1) Whether the BVAS is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The BVAS currently serves as the "sole source" of drinking water for approximately 920,600 residents, of Preble, Dark, Champaign, Miami, Montgomery, Logan, Clark, Greene and Shelby Counties.

2. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available, cost-effective potential source capable of replacing the drinking water needs of the communities and individuals that presently rely on the aquifer.

3. The Buried Valley Aquifer System is an unconfined to semi-confined aquifer that transmits water through unconsolidated glacial deposits. Its high porosity and permeability, coupled with thin overlying soils and shallow depth of water, make the BVAS very vulnerable to contamination. Contamination has already occurred, especially in the Dayton Metropolitan area and other highly industrialized areas. Sources for contamination include, but are not limited to: (A) Leaking underground storage tanks, (B) stormwater drains that discharge to ground water, (C) accidental release of hazardous materials, (D) use and improper storage of agricultural chemicals, and (E) salting of roads for ice control. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality, with a consequent adverse effect on public health.

III. Description of the Buried Valley Aquifer System: Hydrogeology; Use, Recharge; Boundaries

The BVAS was formed when successive glacial events discharged sediment-choked meltwaters through pre-existing bedrock valleys. These meltwaters left behind heterogeneous deposits of gravel, sand, silt, and clay. The gravel and sand deposits form the principal aquifers of the BVAS, and range from 20 to 400 feet in thickness, and from 1/10th to 3 miles in width. The Ohio Department of Natural Resources subdivides the BVAS into Class I and Class II aquifers, based on hydrogeologic characteristics.

Ground water withdrawal from public and private water supply wells averages approximately 140 million gallons per day (mg/d) within the proposed area, with another 45 mg/d going to industrial use. This resource is so readily available and prolific that few communities and individuals within reach of it have developed alternative sources. In fact, 97 percent of the public water and 100 percent of the private water in the proposed designated area is drawn from the BVAS.

The BVAS is recharged primarily by precipitation, with a minor amount contributed as inflow from the upland areas. Many of the large wellfields produce sufficient drawdown to cause induced recharge from surface water bodies to be the primary recharge to the wellfield. However, according to a USGS report on the aquifers, "The flow [in the rivers] that is equaled or exceeded 90 percent of the time * * * is generally considered to come primarily from ground water." In other words, ground water contributes the bulk of water to rivers in the area. So the primary recharge mechanism ultimately remains the infiltration of precipitation over the aquifer.

The project review area consists of the area over the Class I and II aquifers from a hydrodynamic boundary which occurs just south of the City of Franklin in Warren County, to the northern boundary of the Great Miami Basin and including that portion of the BVAS in the Little Miami Basin north of Warren County. Excluded are two small "fingers" of aquifer in western Preble County that do not connect with the main aquifer in the proposed area. Also excluded is a portion of Class II aquifer in Logan and Shelby Counties in which ground water flows north and west, indicating a hydrologic boundary across the aquifer in the northwest corner of Harrison Township, Champaign County. Maps of the boundaries are available from the U.S. EPA Region V Office of Ground Water.

IV. Alternative Sources

The Petitioner considered several alternatives to the BVAS to supply drinking water: Existing surface water systems; bedrock aquifers; and construction of surface impoundments.

Existing surface water systems could supply water to a limited area, but current costs from these systems already exceed quantitative guidance thresholds, and the installation of additional water lines would raise these costs substantially. Also, existing surface water systems could not replace the 140 mg/d currently drawn from the BVAS.

Bedrock aquifers do not have the hydrogeologic characteristics to enable them to transmit sufficient water to replace the amount currently supplied by the aquifer. In addition, the water is highly mineralized, requiring additional treatment to bring it up to the quality of the current supply. New wells would have to be drilled, and additional piping installed for public water supplies.

Private users would have the expense either of hooking up to public water, deepening their existing wells, or redrilling.

The Petitioner conducted a cost analysis for construction, operation, and maintenance of surface impoundments on the major rivers as a potential alternative source. Current O&M costs, construction costs indexed to 1987, as well as the cost of additional piping, interconnections, and land acquisition, show that construction of impoundments is far too costly. In fact, the cost of O&M alone turned out to be greater than the guidance thresholds of 0.4–0.6 of average annual income.

V. Information Utilized in Determination

The information utilized in this determination includes the petition, published State and Federal reports on the area, and various technical publications. The petition file is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 111 W. Jackson, 10th Floor, Chicago, Illinois 60604.

VI. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments of funding by Federal agencies for projects which could contaminate the designated area of the Buried Valley Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the BVAS. Included in the review of any Federal financially assisted project will be coordination with State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VII. Summary of Public Comments

Only one comment was received during the public comment period, and that was in support of designation.

VIII. Economic and Regulatory Impact

Under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the designated area of the Buried Valley Aquifer System. The only affected entities will be those area-based businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required under other Federal laws, such as the National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only provides for an in-depth review of ground water protection measures, incorporating State and local measures whenever possible, for only these projects which request Federal financial assistance.

Dated: April 14, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-9103 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200052-001

Title: Tampa Port Authority Terminal Agreement

Parties: Tampa Port Authority Bay Terminal & Stevedoring Co., Inc.

Synopsis: The agreement amendment extends the term of the basic agreement through 31 July 1988.

Agreement No.: 224-200054-001

Title: Port of Tampa Lease Agreement

Parties: Tampa Port Authority G & C Stevedoring Co. (Tenant)

Synopsis: The proposed agreement would (1) extend the term of the lease for an additional three months through July 31, 1988; and (2) provide that the Tenant will pay a lump sum of $75.00 rental, payable after the effective date of Amendment One but not later than May 15, 1988.

Agreement No.: 224-011062-002

Title: Maryland Port Administration Terminal Agreement

Parties: Maryland Port Administration Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen)

Synopsis: The proposed Agreement amends the basic agreement to reflect MPA discounts of billings for port charges by $50.00 per container for loaded containers moved by Evergreen into and out of the Port of Baltimore (the Port) and drayed to either the CSX or CONRAIL railheads in Baltimore. The discount is restricted to containers moving in either direction by rail between the Port and Louisville, Kentucky, Chicago, Illinois or Detroit, Michigan.

Agreement No.: 224-200114

Title: City of Los Angeles Settlement Agreement

Parties: City of Los Angeles (City) Stevedoring Services of America (SSA)

Synopsis: The proposed Settlement Agreement provides that the City has agreed to waive $20,373 accrued interest on the full payment of $300,946.13 received from SSA for utility charges owed through July 14, 1987.

Agreement No.: 224-200113

Title: Duluth Terminal Agreement

Parties: Seaway Port Authority of Duluth Meehan Seaway Service, Ltd (Meehan)

Synopsis: The proposed agreement provides for Meehan to manage and operate the Arthur M. Clure Public Marine Terminal in Duluth, Minnesota. Meehan will pay the Port Authority a percentage of its gross revenues derived from the handling and storage of waterborne cargoes.

By Order of the Federal Maritime Commission.

Dated: April 29, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-9835 Filed 5-3-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York, Chase Manhattan National Corporation, New York, New York; and Chase Manhattan National Holding Corporation, Newark, Delaware; to engage *de novo* in acting as investment or financial adviser to the extent of (i) serving as the advisory company for a mortgage or a real estate investment trust; (ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940) to an investment company registered under that Act, including sponsoring, organizing, and managing a closed-end investment company providing portfolio investment advice to any person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and (v) providing financial advice to state and local governments, such as with respect to the issuance of their securities according to the terms, conditions, and restrictions contained in § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9875 Filed 5-3-88; 8:45 am]

BILLING CODE 6210-01-M

First Chicago Corp. and First Chicago Acquisition II Corp.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's aproval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois, and First Chicago Acquisition II Corp., Chicago, Illinois; to acquire 100 percent or, in the alternative, in the event of exercise of the option described herein, not more than 25 percent of the voting shares of Gary-Wheaton Corporation, Wheaton, Illinois, and thereby indirectly acquire Gary-Wheaton Bank of Fox Valley, Aurora, Illinois; Gary-Wheaton Bank of Batavia, Batavia, Illinois; Gary-Wheaton Bank of Downers Grove, Downers Grove, Illinois; and Gary-Wheaton Bank, Wheaton, Illinois. In connection with this application, First Chicago Acquisition II Corp., Chicago, Illinois, has also applied to become a bank holding company.

In connection with this application, Applicants also propose to acquire Gary-Wheaton Stock Brokerage, Inc., Wheaton, Illinois, and thereby engage in securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y; and G-W Life Insurance Company, Wheaton, Illinois, and thereby engage in underwriting, as reinsurer, of credit life, accident and health insurance coverage pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in DuPage County, Illinois.

Board of Governors of the Federal Reserve System, April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9876 Filed 5-3-88; 8:45 am]

BILLING CODE 6210-01-M

Pro Group, Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 27, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Pro Group, Inc.*, Bradford, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Producers Bank and Trust Co., Bradford, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Terre Du Lac Bancshares, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Ozarks National Bank, Lake Ozark, Missouri, a *de novo* bank.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Monycor Bancshares, Inc.*, Superior, Wisconsin; to become a bank holding company by acquiring 97.86 percent of the voting shares of Monycor Bank of Superior, Superior, Wisconsin.

Board of Governors of the Federal Reserve System, April 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-9877 Filed 5-3-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Availability of Funds for Fiscal Year 1988 Cooperative Agreements to Support State and Local Education Agency Programs for School Health Education To Prevent the Spread of Aids

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1988 (FY88) for cooperative agreements to support the development and implementation of effective health education about AIDS for school-age populations (elementary through high school-age youth, college-age populations, parents, and relevant school, health, and education personnel). Funds will be available to State education agencies (SEAs) that have not previously been awarded cooperative agreement funding, for continuation and expansion of State Education Agency and Local Education Agency (LEA) cooperative agreements awarded in Fiscal Year 87 (FY87), and for funding LEA applications submitted and approved for funding in FY87. No new LEA applications will be accepted in FY88. These agencies must be able to carry out and promote appropriate actions to help increase the number of schools, and agencies that serve youth who do not attend school, that provide effective education to prevent the spread of AIDS. The content of education about AIDS should be locally determined, consistent with community values, and appropriate to community needs.

(See "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988)" (53 FR 6034, February 29, 1988) and "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR Supplement 1988, 37, S-2, 1-13).)

Authorizing Legislation

These programs are authorized under section 301 (a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and section 311 (b and c) of the Public Health Service Act (42 U.S.C. 343(b)), as amended. The Catalog of Federal Domestic Assistance Number is *13.118.*

Program Background and Objectives

AIDS constitutes a significant and growing threat to the health of people in the United States. As of 12/30/87, approximately 50,000 cases of AIDS had been reported, as defined by the CDC surveillance case definition. Although the vast majority of AIDS cases and documented infections have occurred among homosexual and bisexual men and intravenous drug abusers, the AIDS virus is transmitted among heterosexuals (from infected men to women or from infected women to men) and perinatally (from infected mothers to newborn infants).

Approximately 1-1.5 million Americans already are infected and cases resulting from heterosexual

transmission of the virus are expected to increase. By the end of 1991, the cumulative total of AIDS cases in the United States is estimated to reach 270,000 with over 179,000 deaths due to AIDS. Because infected persons are capable of transmitting the virus to others for years before experiencing signs or symptoms of disease, the Public Health Service (PHS) has recommended the initiation of major public education efforts to inform the public, especially youth, school, and college populations, about AIDS and how to prevent becoming infected with the AIDS virus.

The objective of these cooperative agreements is to help increase the number of schools, and other agencies that serve youth who do not attend school, that provide effective AIDS education to prevent the spread of AIDS. The content of education about AIDS should be locally determined, consistent with parental values, and appropriate to community needs.

These cooperative agreements thus will stress both the importance of providing immediate education for junior high and high school-age youths about behaviors that increase the risk of AIDS, and the importance of providing such education within a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health.

The complete program description, the form the application must take, and the criteria for review will be set forth in the Request for Application package.

A. Eligible Applicants

Eligible *new* applicants are the official State education agencies (SEA) in States and Territories of the United States (other than the SEAs and LEAs *funded* in FY87). For the purpose of this agreement, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa.

New SEA applicants must give priority to assisting local education agencies in cities with a high reported incidence of AIDS cases and must show evidence of collaboration with the State and local health agencies in determining priority areas for the programmatic activities.

Currently funded SEAs and LEAs are eligible for continued funding and expansion of their activities above the level projected in the FY87 application.

B. Availability of Funds

A total of approximately $8,700,000 will be available in FY88 to fund approximately 40 *new* cooperative agreements with SEAs. *No new applications will be accepted from LEAs in FY88.* It is expected that the new cooperative agreements will begin on or about August 1, 1988, and will be funded for a 12 month budget period with a project period of 1 to 5 years. Funding estimates outlined above may vary and are subject to change.

Priority funding will be given to approved *new* applications from SEAs in states from which a cumulative total of 1,500 or more AIDS cases, as defined by the CDC case definition, were reported to CDC as of 12/28/87. Awards to approved *new* SEA applicants will average approximately $215,000.

A total of approximately $3,700,000 will be available to continue and expand LEA cooperative agreements funded in FY87, and to fund LEA applications that were approved in FY87, but not funded. *Continuation awards* to LEAs will begin on September 28, 1988. Awards for LEA applications that are currently approved, but not funded, will begin on or about August 1, 1988. A total of approximately $4,700,000 will be available to continue and expand SEA cooperative agreements funded in FY87. *Continuation awards* to SEAs will begin on September 28, 1988.

FY88 awards to continue and expand 12 LEA cooperative agreements with the average award of approximately $50,000 above the amount awarded in FY87.

FY88 awards to continue and expand 15 SEA cooperative agreements with the average award of approximately $90,000 above the amount awarded in FY87.

C. Application Submission and Deadline Date

New Applications: The original and two copies of *new* SEA applications must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, *on or before May 25, 1988.*

Continuation Applications: The original and two copies of *continuation applications* for SEAs and LEAs must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, *on or before July 15, 1988.*

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in l.a. or b. above are considered late applications. Lake applications will not be considered in the current competition and will be returned to the applicant.

D. Other Submission and Review Requirements

1. All applications will be subjected to an objective review by an Ad Hoc review committee of federal and nonfederal persons.

2. Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Lin Dixon or Marsha Jones, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305; or by calling (404) 842-6575 or FTS 236-6575. Technical assistance may be obtained from Jack Jones, Public Health Advisor, Office of School Health and Special Projects, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639-3824 or FTS 236-3824.

Dated: April 27, 1988.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 88-9811 Filed 5-3-88; 8:45 am]

BILLING CODE 4160-18-M

Availability of Funds for Fiscal Year 1988 Cooperative Agreements To Support National Programs for School Health Education to Prevent the Spread of AIDS

Introduction

The Centers for Disease Control (DDC) announces the availability of

funds for Fiscal Year 1988 for cooperative agreements to support the development and implementation of effective health education about AIDS for school-age populations (elementary through college-age youth, parents, and relevant school, health, and education personnel). Funds will be available for new cooperative agreements with national private-sector education and health organizations and other national agencies that serve youth, and to continue and expand cooperative agreements with the national organizations awarded funding in FY87. These organizations must be able to work as part of a national coalition to help increase the number of schools, colleges, or agencies that serve youth who do *not* attend school, to provide effective AIDS education to prevent the spread of AIDS. The content of education about AIDS should be locally determined, consistent with community values, and appropriate to community needs. (See "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988)" (53 FR 6034, February 29, 1988) and "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR Supplement 1988, 37, S-2, 1-13).)

Authorizing Legislation

These programs are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, and section 311 (b and c) of the Public Health Service Act (42 U.S.C. 243(b)), as amended. The Catalog of Federal Domestic Assistance Number is *13.118.*

Program Background and Objectives

As of December 30, 1987, approximately 50,000 cases of AIDS, as defined by the CDC surveillance case definition, had been reported. Although the vast majority of AIDS cases and documented infections have occurred among homosexual and bisexual men and intervenous drug abusers, infection with the AIDS virus is also transmitted among heterosexuals (from infected men to women or from infected women to men) and perinatally (from infected mothers to newborn infants).

Approximately 1-1.5 million Americans already are infected and cases resulting from heterosexual transmission of the virus are expected to increase. By the end of 1991, the cumulative total of AIDS cases in the United States is estimated to reach 270,000 with over 179,000 deaths due to AIDS. Because infected persons are capable of transmitting the virus to others for years before experiencing signs or symptoms of disease, the Public Health Service (PHS) has recommended major public health education efforts to inform the public, especially youth, school, and college populations, about AIDS and how to prevent becoming infected with the AIDS virus.

Every school day, more than 47 million students attend 90,000 elementary and secondary schools in 15,500 school districts across the Nation. A significant proportion of these students (and youth who do *not* attend school) may make behavior choices that unknowingly place them at increased risk for contracting and spreading the AIDS virus. These young persons need to be informed about AIDS.

The Nation's schools could inform 90-95% of our young people about the increasing number of infected individuals, the fatal nature of the disease, the lack of a preventive vaccine or cure for the disease, and specific means by which individuals can protect themselves now and in the future from becoming infected.

The objective of these cooperative agreements is to help increase the number of schools, colleges, and other organizations that serve youth in providing effective education to prevent the spread of AIDS. The content of AIDS education should be locally determined, consistent with parental values, and appropriate to community needs. Assistance provided by national organizations will result in a wide range of educational options from which local educators and others can choose in determining the most effective and appropriate strategies to teach young people about AIDS.

The effectiveness of AIDS education in schools may be influenced by the extent to which it is integrated within a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health. For example, education about AIDS may be more effective if students at appropriate ages were knowledgeable about community health, communicable diseases, including sexually transmitted diseases, and drug abuse; and have opportunities to learn peer resistance skills, communication skills, self-efficacy, self-esteem, etc.

These cooperative agreements thus will stress the importance of providing immediate education about behaviors that increase the risk of AIDS for junior high, high school, and college-age youths, and the importance of providing school health education within a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health.

National Programs for School Health Education To Prevent the Spread of AIDS

A. Purpose

The purpose of these programs is to assist national education, health, and social service organizations that serve youth to increase the number of schools and other organizations providing effective AIDS education for youth, school, and college populations in communities throughout the United States; and to facilitate collaboration between public and private sector agencies to implement a coordinated national program to help schools and other organizations nationwide provide effective education about AIDS.

There is a strong need to provide effective education about AIDS for school-age youth. Cooperative agreements with national organizations are intended to utilize and integrate each organization's unique and complementary organizational capabilities and constituencies to help with the implementation and dissemination of effective education to prevent the spread of AIDS.

B. Cooperative Activities

1. Recipient Activities

a. Use organizational capacities and constituents to help with the implementation and diffusion of effective AIDS education for school or college populations, minority school or college populations, or for youths who do not attend school; and to promote educational programs that are locally determined, consistent with parental values, and appropriate to community needs.

b. Establish specific, measurable, and realistic program objectives at national, State, and local levels to increase the number of schools, colleges, or other institutions providing effective AIDS education; and develop a plan of operation to meet the objectives.

c. Develop a plan of operation, including but not limited to: Influencing changes in policies, actions, knowledge/attitudes/beliefs, skills, or availability/accessibility of resources and services that will help to increase the number of schools, colleges, or institutions providing effective AIDS education.

d. Develop and disseminate educational strategies, materials, and

resources that will help schools, colleges, or other institutions in providing effective AIDS education.

e. Assess progress in achieving objectives and in carrying out activities.

f. Involve official education and health agencies and other relevant organizations in the planning, implementation, and evaluation of the program.

g. Provide copies of AIDS education curricula, program descriptions, progress reports, and educational materials to be included in CDC's AIDS School Health Subfile on the Combined Health Information Database, and use the Database to avoid duplication of efforts in developing needed resources.

h. Participate with CDC and other national organizations in an annual conference and one workshop about AIDS education for youth, school, and college populations.

2. CDC Activities

a. Provide information about AIDS and the prevention of infection with the AIDS virus, guidance on the development or selection of curricula and materials, and other guidance, recommendations, and standards that may be used as a basis for planning, implementing, and assessing effective AIDS education for youth, school, and college populations.

b. Identify and develop prototype educational materials and assessment instruments that can be adopted for use by students, parents, and school personnel.

c. Provide information about resources relevant to AIDS education in schools, including program descriptions, educational materials, policies, and curricula; and assure the availability of such information through CDC's AIDS School Health Subfile on the Combined Health Information Database (CHID).

d. Provide technical assistance related to attainment and assessment of program objectives, development of educational material and strategies, and dissemination of successful strategies, experiences, and evaluations.

e. Plan meetings of national, State, and local education agencies to address issues and program activities related to improving AIDS education for youth, school, and college populations.

C. Eligible Applicants

Eligible applicants are *national* organizations which may be private, nonprofit, health, education, social service, professional, or voluntary organizations with organizational capacities and experience to help schools and other organizations that serve school-age youth to provide effective education about AIDS.

D. Availability of Funds

Approximately $1,000,000 will be available in Fiscal Year 1988 to fund approximately seven new cooperative agreements.

Approximately two cooperative agreements may be awarded to *national organizations that represent a broad cross-section of the Nation's teachers (public and private, elementary, middle/junior high, and/or high school)* to increase their constituent's capacity to teach students about avoiding HIV infection and AIDS. These cooperative agreements will be funded at a level of approximately $150,000 each.

Approximately one cooperative agreement may be awarded to *a national organization that represents colleges of teacher education* to increase the number of colleges providing preservice and inservice training to help teachers provide effective education about AIDS. This cooperative agreement will be funded at a level of approximately $150,000.

Approximately one cooperative agreement may be awarded to *a national organization that represents a variety of private primary and secondary schools nationwide* to increase their constituent's capacity to teach youth about avoiding HIV infection and AIDS. This cooperative agreement will be funded at a level of approximately $150,000

Approximately one cooperative agreement may be awarded to *a national organization that represents the needs and interests of schools in the Nation's largest cities* to help increase the capacity of schools to teach youth about avoiding HIV infection and AIDS. This cooperative agreement will be funded at a level of approximately $150,000.

Approximately one cooperative agreement may be awarded to *a national organization that represents physicians* to help in establishing school and college programs of AIDS education for youth about avoiding HIV infection and AIDS. This cooperative agreement will be funded at a level of approximately $150,000.

Approximately one cooperative agreement may be awarded to *a national organization that represents health care providers serving the needs and interest of youth who are in correctional institutions.* This cooperative agreement will be funded at a level of approximately $150,000.

It is expected that the new cooperative agreements will begin on or about August 1, 1988, and will be funded for a 12 month budget period with a project period of 1 to 5 years. Funding estimates outlined above may vary and are subject to change.

A total of approximately $2,600,000 will be available to continue and expand cooperative agreements with national organizations funded in FY87. It is expected that awards for *continuation applications* will begin on September 28, 1988. Continuation applications for national organization cooperative agreements may be funded at a level of approximately $150,000, with the exception of awards to organizations representing state level education organizations. These may be funded at a level of approximately $350,000.

E. Use of Funds

Funds may be used to support personnel, their training and travel, and to purchase supplies and services directly related to planning, organizing, and conducting the activities described in this announcement.

Funds may be expended for written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS education for youth, school, and college populations if approved in accordance with paragraph G. below, entitled *Review of Materials.*

F. Reporting Requirements

Semi-annual progress reports which include data and activities related to the achievement of measurable objectives will be required. They will be due within 30 days of the end of the first and third quarters of the budget period. Annual financial status and performance reports are required 90 days after the end of a budget period.

G. Review of Materials

The applicant is required to establish and use a panel to review the appropriateness of educational materials (written materials, pictorials, audiovisuals, questionnaires, etc.) as described in the document: "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1988)" (53 FR 6034, February 29, 1988) and "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR Supplement 1988, 37, S-2, 1-13).)

H. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. The magnitude of and likelihood of the applicant achieving during this budget period: (1) Proposed increases in the number of schools, colleges and universities, and/or other agencies that serve school-age youth who do *not* attend school, providing effective AIDS education as a result of the applicant's proposed activities; (2) and/or estimated increases, in the numbers of youth, school, or college populations receiving effective AIDS education as a result of the applicant's proposed activities;

b. The applicant's demonstrated ability to help schools, colleges and universities, and/or agencies that serve school-age youth who do not attend school, in communities across the Nation provide effective education about health; the scope and efficiency of its national network and constituencies for rapidly disseminating information and activities; current and previous activities (if any) that have successfully contributed to the implementation and diffusion of effective health education in schools, colleges, or agencies that serve the needs of youths who do not attend school and/or minority youth; and its unique sensitivity, experience, awareness, or skills that will help the applicant to achieve proposed program objectives;

c. The applicant's demonstrated ability to coordinate efforts with other national organizations; and to plan and carry out complementary, collaborative, and organized national education efforts;

d. The quality of proposed objectives for this budget period in terms of importance, specificity, measurability, and feasibility; and the specificity and feasibility of the applicant's timetable for implementation of program activities;

e. The extent to which the applicant's activities reflect: (1) The immediate and urgent need for educating youths of junior high school-age and above, and/or youths who do *not* attend school, about how to protect themselves from infection with the AIDS virus; and/or (2) the need for integrating education about AIDS into a more comprehensive program of school health education that establishes a foundation for understanding relationships between personal behaviors and health;

f. The usefulness of assessment data that will be obtained to measure program objectives and monitor program activities during the first program year, and the feasibility of obtaining and using those data to improve programs;

g. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds; and

h. The number and qualifications of proposed staff, and time allotted for them to accomplish program activities. Specifically, the establishment of a full time school health coordinator and staff positions within the applicant's organization to manage and coordinate the proposed program activities. The coordinator ideally should have training and experience in school health education or health education for youth.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives and carrying out activities as planned, including incorporating effective AIDS education within comprehensive school health education programs;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds;

d. Program activities are modified to resolve problems and improve effectiveness and efficiency; and

e. All competitive portions (any requests for funding *above* that projected in the FY87 application as needed to continue the approved activities in FY88) of the continuation application will be evaluated and rated based on their consistency with previously approved program objectives and activities.

Applications

A. Application Content

1. The initial application for a new project period must include a narrative for the part of this announcement under which funds are requested that describes the following:

a. *Need:* The applicant should briefly describe the need to increase the number of schools, colleges, and/or other agencies providing effective AIDS education for school-age populations.

The applicant also should identify specific modifiable barriers that its organization can resolve to help with the implementation and diffusion of AIDS education programs for youth, school, and/or college populations.

This section should be no longer than three typed, single-spaced pages.

b. *Capacities:* The applicant should describe its organization's capacity to achieve the proposed increase in the number of schools, colleges, or other organizations providing effective AIDS education.

The description should address the organization's structure, the interests and constituencies it represents (e.g., teachers, health organizations, private schools, etc.), its demonstrated ability to help schools, colleges, or other organizations provide education about health for school-age populations; the scope and efficiency of its national network for rapidly disseminating information and other communications; and current and previous activities (if any) that have successfully reduced barriers that hinder the provision of effective AIDS education in schools, colleges, or organizations that serve the needs of youths who do not attend school.

This section should be no longer than three typed, single-spaced pages.

c. *Coordination:* The applicant should describe its organization's demonstrated ability to coordinate efforts with other national organizations; and its capacity to plan and carry out collaborative, complementary, and organized national efforts for effective AIDS education. The applicant's description should demonstrate a recongition of relevant activities (current or planned) of local and State education agencies and/or of other national organizations.

This section should be no longer than two typed, single-spaced pages.

d. *Objectives:* The applicant should identify objectives that are specific, measurable, and feasible to be accomplished during the first program year. The objectives should clearly identify outcomes intended (e.g. increases in the number of schools, colleges, or other organizations providing effective AIDS education; specific changes in policy, actions, knowledge/attitudes/beliefs, skills, and availability of resources or services; increases in the number of youth, school, or college populations receiving effective AIDS education as a result of the applicant's proposed activites; etc.). *For each objective, the applicant should identify factors that influence the achievement of the objective.*

This section should be no longer than three typed, single-spaced pages.

e. *Activities:* The applicant should identify the specific activities that will be undertaken to achieve each of the program's objectives during the first program year. *Activities should relate directly to the factors that influence the achievement of the objectives.* For each activity, the applicant should describe who will do what, when, and where to implement the activities.

Activities related to helping schools should clearly reflect: (1) The immediate and urgent need for educating junior high and high school students about how to protect themselves from infection with the AIDS virus; and/or (2) the need for integrating education about AIDS into a more comprehensive program of school health education that establishes a foundation for understanding the relationships between personal behaviors and health.

This section should be no longer than ten typed, single-spaced pages.

f. *Assessment:* The applicant should identify the specific data that it will obtain to assess progress in meeting its objectives and conducting its activities during the first program year. The applicant also should describe how that information will be obtained, and how it will be used to improve the program.

This section should be no longer than five typed, single-spaced pages.

g. *Evidence of Support:* The applicant should identify the extent to which relevant organizations (e.g., education and health agencies) support the proposal. If the program requires the participation or collaboration of other education or health organizations, evidence of support and agreement to participate must be provided by appropriate officials of those organizations.

This section should be no longer than one typed, single-spaced page with copies of letters of support attached.

h. *Transfer of Technology:* The applicant should plan to share a description of the program and evidence of effectiveness with other agencies interested in AIDS education for youth, school, or college populations. The applicant should submit a description of the program and all educational materials developed by the program to be included in CDC's AIDS School Health Subfile on the Combined Health Information Database.

The applicant should include plans to use the database in avoiding duplication of efforts and incorporating available programs/materials as the database grows.

This section should be no longer than one typed, single-spaced page.

2. *Continued Funding:* An application for continued funding of these activities within an approved project period should contain the following information. Requests for funding *above* that projected in the FY87 application as needed to continue the approved activities in FY88 are considered requests for "expansion" and must be evaluated on a competitive basis. If funds for "expansion" are requested, they must be identified in a separate budget section.

a. Description of activities performed and results achieved during the prior budget period;

b. Short-term objectives for the new budget period;

c. A description of the method of operation that will be used to accomplish any new objectives;

d. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved; and

e. A budget and accompanying justification consistent with the purpose and objectives of the project, and consistent with the needed FY88 amount projected in the FY87 application.

f. A separate "expansion" budget is needed for funding above the needed FY88 amount projected in the FY87 application.

3. *Index:* Each application must contain an index specifically directing the reviewers to each section of the application that corresponds with Recipient Activities.

B. Application Submission and Deadline Date

New Applications: The original and two copies of new applications must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321; Atlanta, Georgia 30305, *on or before May 25, 1988.*

Continuation Applications: The origional and two copies of *continuation applcations* must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurements and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta Georgia 30305, *on or before July 15, 1988.*

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the critiera in l.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. Other Submission and Review Requirements

1. All application will be subjected to an objective review by an Ad Hoc review committee of federal and nonfederal persons.

2. Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Lin Dixon or Marsha Jones, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305; or by calling (404) 842-6575 or FTS 236-6575. Technical assistance may be obtained from Jack Jones, Public Health Advisor, Office of School Health and Special Projects, Division of Health Education, Center for Health and Special Projects, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 639-3824 or FTS 236-3824.

Dated April 27, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-9812 Filed 5-3-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 78N-0434]

Mattox & Moore, Inc., Esmopal; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is withdrawing approval of the new animal drug application (NADA) for Esmopal, submitted by Mattox & Moore, Inc. The NADA was the subject of an amended notice of opportunity for hearing proposing that the application be withdrawn. The sponsor did not request a hearing, nor did it submit any data, information, or analysis. For each of these reasons, the sponsor waived the opportunity for a hearing. In a final rule published elsewhere in this issue of the

Federal Register, CVM is removing the regulation reflecting approval of the NADA.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 12, 1988 (53 FR 4214), CVM published an amended notice of opportunity for hearing on a proposal to withdraw approval of NADA 13-187, submitted by Mattox & Moore, Inc. (Mattox & Moore), for Esmopal. Esmopal (21 CFR 522.844) contains 10 milligrams of estradiol monopalmitate and is approved for injection into roasting chickens to produce more uniform fat distribution and to improve finish. The drug is not to be used within 6 weeks of slaughter (21 CFR 522.844).

CVM based the proposed action on section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)) on the grounds that (1) Esmopal is not shown to be safe for use because (a) new evidence provides a reasonable basis from which serious questions about the ultimate safety of Esmopal and the residues that may result from its use may be inferred, and (b) new evidence shows that Esmopal is no longer shown to be safe by adequate tests by all methods reasonably applicable, and (2) section 512(d)(1)(H) of the act applies to the drug because (a) new evidence shows that estradiol has been shown to induce cancer in animals, (b) it is impossible to determine whether the total residue of Esmopal is below the level of no carcinogenic concern, (c) there is no method approved by FDA by regulation that can measure the total residue of Esmopal at a concentration low enough to be of no carcinogenic concern, and (d) the residue concentration under conditions of use reasonably certain to be followed in practice cannot be shown to be at or below the concentration of no carcinogenic concern. The amended notice of opportunity for hearing required a written appearance by March 14, 1988, and data, information, and analysis by April 12, 1988.

Mattox & Moore did not file a written appearance requesting a hearing, nor did the firm submit any data, information, or analysis. For each of these reasons, Mattox & Moore waived the opportunity for a hearing. Accordingly, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 13-187 and all supplements thereto are hereby withdrawn, effective May 16, 1988.

In a final rule published elsewhere in this issue of the **Federal Register**, CVM is removing 21 CFR 522.844, which reflects this approval.

Dated: April 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-9868 Filed 5-3-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0040]

Sulfamethazine in Food-Producing Animals; Public Hearing Before the Commissioner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administratiuon (FDA) is announcing a public hearing before the Commissioner of Food and Drugs (the Commissioner) to provide an opportunity for interested persons to present relevant scientific data and pertinent information on the safety of the new animal drug sulfamethazine and on whether sulfamethazine can be used in food-producing animals without illegal drug residues in tissue (drug residues) resulting from such use. Sulfamethazine is commonly administered to swine to promote weight gain and to control the incidence and severity of such disease conditions as dysentery, pneumonia, abscesses, and atrophic rhinitis. The drug is also used in other food-producing animals. Despite various educational and compliance efforts by FDA and the U.S. Department of Agriculture (USDA), Food Safety and Inspection Service, the rate of violative drug residues remains unacceptably high.

Residues of sulfamethazine in tissue are of particular concern at this time because FDA's National Center for Toxicological Research has recently completed a chronic toxicity and carcinogenesis feeding study of sulfamethazine in mice, the results of which indicate that sulfamethazine may be a carcinogen. FDA will use information presented at and after the public hearing, together with other data and information, to determine whether the use of sulfamethazine in food-producing animals presents an unacceptable risk to human health and, if so, an appropriate course of action to minimize that risk.

DATES: Written or oral notices of participation by the close of business May 11, 1988. The hearing will be held on May 25 and 26, 1988, beginning at 8:30 a.m. on May 25. Further comments, whether on matters discussed in this notice or at the hearing, are to be submitted by June 27, 1988.

ADDRESSES: The public hearing will be held at the Jack Masur Auditorium, Bldg. 10, Clinical Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. Written notices of participation and any comments are to be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Transcripts of the hearing, copies of data and information submitted during the hearing, and any comments will be available for review at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT:

Judith A. Gushee, Center for Veterinary Medicine (HFV-236), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2830

or

David F. Tishler, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6244.

SUPPLEMENTARY INFORMATION:

I. Background

Sulfamethazine is an antibacterial sulfonamide drug widely used in the swine industry. The drug is administered to swine to promote weight gain and feed efficiency and to control the incidence and severity of diseases such as dysentery, pneumonia, abscesses, and atrophic rhinitis (21 CFR 520.2261, 558.145, and 558.630). FDA estimates that some 70 to 80 percent of all swine marketed in the United States receive some form of sulfonamide medication, with sulfamethazine being the drug most often used. Sulfamethazine is also administered to other food animals including cattle, sheep, chickens, and turkeys (21 CFR 510,450, 520.2260, 520.2261, 522.2260, and 558.128). Sulfamethazine is available for use in animal feed and drinking water, as oblets, as boluses, and as an injectable solution. For each of its uses in animals, sulfamethazine is a new animal drug as defined in section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). Accordingly, the drug cannot be legally

introduced or delivered for introduction into interstate commerce in the absence of an approved new animal drug application (NADA) (sections 301, 501, and 512 of the act (21 U.S.C. 331, 351, and 360b)) or as permitted under the interim marketing provisions of 21 CFR 510.450. Section 510.450 is discussed in a notice published in the **Federal Register** of July 5, 1984 (49 FR 27543).

The requirements for approval of an NADA are found in section 512 of the act. That section, in addition to requiring that a new animal drug be shown to be safe and effective and properly labeled, provides for the establishment of tolerances as a condition of approval. Tolerances define the level of the animal drug residue that is demonstrated to be safe in the human diet. Tolerances are generally established by reliance on the safety data submitted in an NADA and on the use of safety factors. The present tolerance of 0.1 part per million (ppm) for negligible residues of sulfamethazine in edible uncooked tissues was published in the **Federal Register** of September 20, 1968 (33 FR 14233) (see 21 CFR 556.670). The tolerance was (and is) based on no-effect levels demonstrated in 90-day feeding studies. FDA first approved the use of sulfamethazine in feed on July 6, 1963, in an application for a combination product containing sulfamethazine, chlortetracycline, and penicillin. As first approved, FDA required the drug to be withdrawn 7 days before slaughter. In the **Federal Register** of December 9, 1977 (42 FR 62211), the withdrawal period for sulfamethazine for use in feed or water for swine was extended to 15 days based on new data and a reevaluation of previously available data indicating that drug residues might occur within the shorter withdrawal periods then in use. The extension of the withdrawal period was intended to provide additional assurance against unsafe residues.

II. Residue Problem

USDA's Food Safety and Inspection Service (FSIS) monitoring data gathered prior to 1978 indicated that up to 13 percent of slaughtered hogs had sulfonamide residues above the tolerance (Ref. 1). Most of the residues were for sulfamethazine (id). In May 1978, FDA and USDA initiated an intensive educational and research program designed to reduce the rate of violative sulfamethazine residues. The agencies stressed the importance to feed manufacturers of maintaining good manufacturing practices, including adequate flushing of mixers. Producers were given information about the physical properties of sulfamethazine, its tendency to persist in edible tissues, and the importance of improved husbandry practices in raising swine. The drug manufacturing industry also contributed to the efforts to lower the violation rate. The industry developed a granular form of sulfamethazine that has electrostatic properties better suited to feed manufacturing than the powdered form of the drug, which is more likely to adhere to feed mixing equipment. The net result of these intensive efforts was a noticeable reduction in the rate of illegal drug residues. Nevertheless, since 1983 the violation rate has fluctuated between 4.1 and 6.2 percent (Ref. 2) which is above the 1 percent violation rate that FDA and USDA regard as acceptable. Accordingly, FDA believes that the rate of illegal residues of sulfamethazine in swine is a serious problem that cannot be ignored.

Although no particular route of administration or dosage form can be ruled out as a possible source of contamination, FDA believes that the most likely source is sulfamethazine in feed. In 1982, the USDA's FSIS and its Extension Service signed a cooperative agreement to jointly design and collect the data necessary for developing a management program for the prevention of residues. The purpose of the Residue Avoidance Program (RAP) was threefold:

1. To examine livestock and poultry systems to determine the critical points of control for residue avoidance.

2. To develop management recommendations to eliminate factors contributing to residue violations.

3. To educate producers and others in the livestock and poultry industries to avoid residues and improve the safety of the meat supply.

The USDA RAP projects, FDA investigations, and other studies have contributed to the information available about the possible causes of residues of sulfamethazine in swine. The data are insufficient to reach any conclusions, but they raise some doubts as to whether sulfamethazine is being used in accordance with its labeled directions. If it is used as labeled, those data raise questions as to whether illegal drug residues can be significantly reduced.

Such residues have been attributed to the following:

1. Poor husbandry and on-farm feed-mixing practices;

2. Poor medicated feed mill manufacturing practices;

3. Contamination of withdrawal feeds;

4. Recycling of feces and urine by coprophagic (excrement-eating) swine; and,

5. Mistakes by producers (e.g., failure to follow labeled withdrawal times), feed mill operators (e.g., failure to adequately flush mixing equipment after the use of medicated feeds), or delivery truck operators (e.g., failure to deliver the proper feed).

There is concern that scrupulous adherence to label directions, current good manufacturing practices, and sound husbandry practices cannot ensure that residues in edible tissues are within the tolerance. Although the use of granulated sulfamethazine premixes seems to have reduced the problem of sulfamethazine premixes adhering to feed mixing equipment—a problem originally associated with the powdered form of the drug—granulation does not appear to have eliminated the problem. It is possible that the properties of the drug and the feed mill equipment now in use are contributing factors in causing illegal drug residues, and that these factors cannot be overcome sufficiently to allow the continued use of sulfamethazine in animal feed.

Additionally, for the past several months FDA has been investigating allegations that sulfamethazine residues might be contaminating the nation's milk supply. Marketers and users of new screening methods of analysis, particularly for antimicrobial drugs, have published papers in scientific journals (Ref. 3) and have given presentations (Ref. 4), suggesting that sulfamethazine is widely used in the dairy industry. Sulfamethazine is reportedly used illegally to treat lactating dairy animals for mastitis, bacterial pneumonia, bronchitis, coccidiosis, colibacillosis, metritis, and shipping fever. Although sulfamethazine is not approved for use in lactating dairy cattle, it is available to farmers as an over-the-counter drug. If a farmer or veterinarian uses sulfamethazine in lactating dairy cattle, illegal drug residues in milk can result.

As a result of the allegations, FDA formed a Milk Committee (the committee) with scientists from its Center for Veterinary Medicine (CVM) and its Center for Food Safety and Applied Nutrition (CFSAN) to examine the possibility that milk might contain drug residues, including residues of sulfamethazine. The committee requested that CVM's Division of Veterinary Medical Research (DVMR) develop an analytical method for detecting residues of sulfamethazine in milk because there is no official method currently available. DVMR recently developed an analytical method, and that method is being validated. The committee also conducted a survey to

determine whether residues of sulfamethazine are present in milk. In accordance with the survey, FDA collected 49 retail samples of whole milk from 10 large cities across the United States. Preliminary analysis shows that 36 samples were positive for sulfamethazine with levels ranging from 0.8 parts per billion (ppb) to 40.3 ppb. The results are now undergoing confirmation.

FDA is working with the National Conference on Interstate Milk Shipments (NCIMS) in an effort to prevent residues of sulfamethazine in milk. The agency will provide to the States, as an enforcement tool, the method it is developing for detecting sulfamethazine residues in milk. In addition, FDA, NCIMS, and the National Milk Producers Federation are preparing an educational program to warn dairy farmers against using sulfamethazine in lactating dairy animals.

FDA requests that persons with relevant scientific data and any other pertinent information regarding whether sulfamethazine can be used without illegal drug residues resulting in the edible products of food-producing animals present such data and information at the hearing.

III. FDA's National Center for Toxicological Research (NCTR) Findings

In early feeding studies conducted with the sulfonamides, including sulfamethazine, thyrotoxicity was observed. Because of questions concerning the safety of sulfamethazine, FDA conducted chronic toxicity and carcinogenesis studies at NCTR, Pine Bluff, AR.

In the **Federal Register** of March 23, 1988 (53 FR 9492), FDA announced the availability of the results of a chronic toxicity and carcinogenesis study in mice (NCTR Technical Report 418: "Chronic Toxicity and Carcinogenesis Study in $B6C3F_1$ Mice").

Groups of male and female mice were fed a diet containing 0, 300, 600, 1,200, 2,400, or 4,800 ppm sulfamethazine. The feeding portion of the study was conducted from July 1982 to August 1984. There was no drug-related increase in mortaility. There was a slight dose-related decrease in mean body weight in both male and female mice relative to control mice. In the animals scheduled for sacrifice at 24 months, NCTR reported the following incidences of thyroid follicular cell adenomas:

Dose (ppm)	Female		Male	
	Incidence	Percent	Incidence	Percent
0	7/180	4	3/184	2
300	2/91	2	0/94	0
600	0/93	0	1/92	1
1,200	0/94	0	6/88	7
2,400	2/94	2	4/94	4
4,800	33/89	37	44/93	47

The increased incidence of adenomas is statistically significant for trend (=0) in both male and female mice.

NCTR also reported an increased incidence of hepatocellular adenomas or carcinomas in female, but not in male, mice. The incidences in female mice were:

Dose (ppm)	Incidence	Percent
0	10/184	5
300	6/94	6
600	12/94	13
1,200	5/96	5
2,400	7/96	7
4,800	11/92	12

NCTR did not report any other significant neoplastic lesions in mice.

NCTR conducted a risk assessment using the data on the increased incidence of thyroid follicular tumors and the agency's published risk assessment procedures (52 FR 49572–49590; December 31, 1987). The lifetime risk in mice, based on thyroid follicular cell adenomas, is less than 1 in 1 million at 0.09 ppm (90 ppb), and 0.04 ppm (40 ppb) for females and males, respectively.

The histological slides from the mouse study will be reviewed by a pathology working group under the aegis of the National Toxicological Program. FDA's decisions on the presence or absence of tumors in the test animals will not become final until this review is completed. The review is expected to be completed during September 1988.

Based on concerns raised by the NCTR mouse study, FDA has initiated a causal review of all NADA's providing for the use of sulfamethazine-containing products in food-producing animals. The sponsors of all such NADA's have been requested to submit to FDA for its review any additional data not previously submitted.

The NCTR data raise significant questions about the safety of the residues of sulfamethazine. FDA requests that interested persons present relevant scientific data and pertinent information at the hearing concerning whether:

1. Sulfamethazine is an animal carcinogen:

2. Any carcinogenic activity from sulfamethazine is due solely to a perturbation in thyroid function;

3. A new tolerance or a safe concentration needs to be established for sulfamethazine and, if so, what that tolerance or concentration should be; and,

4. The increased incidence of hepatocellular adenomas or carcinomas in female mice (as reported by NCTR) is of any biological significance relative to the perturbation in thyroid function.

IV. References

The following references have been placed on display in the Docket Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cordle, M. K., "USDA Regulation of Residues in Meat and Poultry Products," *Journal of Animal Science*, 66:413–433, 1988.

2. FSIS Science Program, "Domestic Residues Data Book National Residue Program," USDA , 300 12th St. SW., Washington, DC 20250, 1983, 1984, 1985, and 1986.

3. Brady, M. S., and S. E. Katz, "Antibiotic/Antimicrobial Residues in Milk," *Journal of Food Protection*, 51:8–11, 1988.

4. Charm, S. E. , "Sulfonamide Contamination in U.S. Milk," Presented at the Colorado Dairy Technology Society, October 20, 1987.

V. Hearing Procedures Under 21 CFR Part 15

To help the agency determine an appropriate course of action in this matter, the Commissioner has decided to conduct a legislative type hearing as provided in 21 CFR Part 15.

Interested persons will have an opportunity to provide comments on the residue and toxicology issues so that the agency can determine whether sulfamethazine presents an unacceptable risk to human health and, if so, an appropriate course of action for the agency to follow to minimize that risk.

1. Issuing a notice of opportunity for hearing proposing to withdraw approval of the NADA's for sulfamethazine for use in food animals (section 512(e) of the act and 21 CFR 514.115).

2. Issuing a proposed rule to revoke 21 CFR 510.450 insofar as it provides for interim marketing of sulfamethazine-containing drugs.

3. Issuing a notice of opportunity for hearing proposing to refuse approval of the NADA's fpr sulfamethazine-containing drugs.

4. Recommending that the Secretary of the Department of Health and Human Services (the Secretary) find that sulfamethazine presents an imminent hazard to the public health and suspend approval of the NADA's for sulfamathazine-containing products (section 512(e) of the act and 21 CFR 2.5).

5. Relying on voluntary action to reduce the incidence of illegal residues.

The Commissioner emphasizes that he made no decision as to whether to take any of the actions listed above or other actions. The purpose of the hearing announced in this notice is to develop evidence and hear views on an appropriate course of action.

Under section 512(e) of the act, FDA is required to withdraw approval of an NADA for new animal drug when the agency finds, among other things, that:

1. Experience of scientific data show that the drug is unsafe for use under the conditions of use upon the basis of which the application was approved; or

2. New evidence not contained in such application or not available until after the application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available when the application was aproved, shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved or that section 512(d)(1)(H) of the act (the Delaney clause) applies to the drug.

In the case of a new animal drug, safety includes safety to man or other animals consuming edible products of treated animals. In determining whether an animal drug is safe, section 512(d)(2) of the act requires that the agency consider:

1. The probable consumption of the drug and of any substance formed in or on food because of the drug's use;

2. The cumulative effect of the drug;

3. Appropriate safety factors; and,

4. Whether the conditions of use prescribed, recommended, or suggested in the labeling are reasonably certain to be followed in practice.

Under seciton 512(d)(1) of the act, FDA is required to refuse approval of an NADA for reasons similar to those applicable to agency decisions to withdraw approval of an NADA. Therefore, the agency may also decide to refuse to approve NADA's for sulfamethazine products currently subject to the interim marketing provisions of 21 CFR 510.450.

The usual administrative procedures for withdrawing approval of or refusing to approve an NADA including notice to the applicant of an opportunity for hearing an administrative determination of whether a hearing is justified, the preparation of an order denying a hearing or, alternatively, the conduct of a formal evidentiary public hearing before an administrative law judge, and a decision by the Commissioner to withdraw or refuse approval, based on the administrative record.

The act also provides in section 512(e) that approval of a new animal drug may be suspended, and the product immediately removed from the market, if it presents an "imminent hazard to the public health." The authority to suspend aproval is placed by law in the Secretary (or in the absence of the Secretary, in the officer acting as the Secretary) and may not be delegated. If new evidence or further analysis of existing evidence indicates that a life-threatening or other serious risk is present, the summary suspension procedures allows the Secretary to put a prompt end to that risk. If approval is suspended, the Secretary must provide the holder of the NADA with an opportunity for an expedited hearing on whether the application should be withdrawen and the product permanently removed form the market.

The following criteria will be used by FDA in determining whether to recommend that the Secretary find that there is an imminent hazard to health and suspend approval of the NADA for sulfamethazine-containing products. The validity of using these five criteria in imminent hazard proceedings under the act was reviewed and upheld in *Forsham v. Califano*, 442 F. Supp. 203 (D.D.C. 1977) The criteria are:

1. The likelihood that, after the customary administrative process is completed, the products will be withdrawn from the market.

2. The severity of the harm that could be caused by the drug during the completion of customary administrative proceedings to withdraw the products from the market.

3. The likelihood that the products will cause such harm while the administrative process is being completed.

4. The risk to the health of animals currently being given the products that might be occasioned by the immediate removal of the products from the market, taking into account the availability of other alternatives to the products and the steps necessary for affected animals to adjust to these other alternatives.

5. The availability of other approaches (for example, labeling changes) to protect the public health.

The hearing will be held on May 25 and 26, 1988, in Jack Masur Auditorium Bldg. 10 Clinical Center, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205. The hearing will begin at 8:30 a.m. on May 25. The presiding officer will be Frank E. Young, Commissioner of Food and Drugs, with panelists, Gerald B. Guest (May 25), Director of the Center for Veterinary Medicine, Richard H. Teske (May 26), Deputy Director of the Center for Veterinary Medicine, and Thomas Scarlett, Chief Counsel, FDA (May 25 and 26).

The procedures governing the hearing are found at 21 CFR Part 15.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before May 11, 1988. To ensure timely handling, any outer envelope should be clearly marked with Docket No. 88N-0040 and the statement "Sulfamethazine for Animal Use—Hearing." The notice of participation should contain the interested person's name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. FDA asks that groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA may allow interested persons attending the hearing who did not submit a notice of participation in advance of the hearing to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling David F. Tishler, 301-443-6244, or Judith A. Gushee, 301-443-2830, not later than May 11, 1988. Those persons who give oral notice of participation should also submit written notice containing the information described above to the Dockets Management Branch by the close of business on May 19, 1988. Any outer envelope should be clearly marked with Docket No. 88N-0040 and the statement "Sulfamethazine for Animal Use—Hearing."

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled

to begin. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 88N-0040.

To provide time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open for 30 days following the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch by June 27, 1988. To ensure timely handling, any outer envelope should be clearly marked with Docket No. 88N-0040 and the statement "Sulfamethazine for Animal Use—Hearing."

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings under Part 15. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

This notice is issued under 21 CFR Part 15.

Dated: April 29, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-10012 Filed 5-2-88; 3:59 pm]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Frederick Cancer Research Facility Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Frederick Cancer Research Facility (FCRF) Advisory Committee, National Cancer Institute, June 13-14, 1988, Building 549, Executive Board Room, at the NCI Frederick Cancer Research Facility, Frederick, Maryland 21701-1013.

The meeting will be open to the public on June 13 from 8:30 a.m. to approximately 11 a.m. to discuss administrative matters, future meetings, and to hear from the Acting Associate Director for FCRF his report on items of interest to NCI and the Committee, including budget and any pertinent management items. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 13 from approximately 11 a.m. to recess and on June 14 from 8:30 a.m. to adjournment for site visit of research being conducted by the Basic Research Program's Laboratory of Eukaryotic Gene Expression. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301, 496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701-1013 (301, 698-1108) will provide substantive program information upon request.

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-9904 Filed 5-3-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Board of Scientific Counselors, NICHD; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 3, 1988, in Building 31, Room 2A52.

This meeting will be open to the public from 9:00 a.m. to 12 noon on June 3 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 3 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-9900 Filed 5-3-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1988.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North Building, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee.

Exectuve Secretary: Dr. A.T. Gregoire, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Date of Meeting: June 16–17, 1988.

Place of Meeting: Hyatt Regency, 1 Metro Center, Bethesda, Maryland.

Open: June 16, 1988, 9:00 a.m.–10:00 a.m.

Closed:

June 16, 1988, 10:00 a.m.–5:00 p.m.
June 17, 1988, 9:00 a.m.–adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Executive Secretary: Dr. Scott Andres, Room 520, Executive Plaza North Building, Telephone: 301, 496–1485.

Date of Meeting: June 21–22, 1988.

Place of Meeting: Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland.

Open: June 21, 1988, 9:00 a.m.–10:00 a.m.

Closed:

June 21, 1988, 10:00 a.m.–5:00 p.m.
June 22, 1988, 9:00 a.m.–adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Susan Streufert, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696.

Date of Meeting: June 23–24, 1988.

Place of Meeting: Bethesda, Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

Open: June 23, 1988, 9:00 a.m.–10:00 a.m.

Closed:

June 23, 1988, 10:00 a.m.–5:00 p.m.
June 24, 1988, 9:00 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9901 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, June 6–7, 1988, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 6 from 9 a.m. to approximately 3 p.m. and June 7 from 8:30 a.m. to approximately 9:30 a.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public June 6 from approximately 3 p.m. to recess and from approximately 9:30 a.m. to adjournment on June 7, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, MD 20892 (301) 496–3411, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Associate Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9905 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Aging.

These hearings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcomittee A

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666

Dates of Meeting: June 15–17, 1988.

Place of Meeting: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814

Open: June 15, 8:30 a.m.—9:00 a.m.

Closed: June 15, 9:00 a.m. to recess; June 16–17, 8:30 a.m. to adjournment

Name of Committee: Gerontology and Geriatrics Review Committee, Subcomittee C

Executive Secretary: Dr. James Harwood, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666

Dates of Meeting: June 22, 1988.

Place of Meeting: Sheraton Inn, 8727 Colesville Road, Silver Spring, Maryland 20910

Open: June 22, 8:30—9:00 a.m.

Closed: June 22, 9:00 a.m. to adjournment

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9902 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 15–16, 1988, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 14 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on June 15 will be open to the public from 8:30 to 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on June 15 from 11:30 a.m. to 5 p.m., and on June 16, from 8:30 a.m. to adjournment; and the subcommittee meeting on June 14 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9903 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants Study Sections; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for June through July 1988, and the individuals from whom summaries of meetings and rostes of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	June–July 1988 Meetings	Time	Location
Allergy & Immunology, Dr. Eugene Zimmerman, Rm. 320, Tel. 301-496-7380	June 16-18	8:30	Crowne Plaza, Rockville, MD.
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Rm. 304, Tel. 301-496-7340	June 8-10	8:30	Holiday Inn, Georgetown, DC.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 306, Tel. 301-496-7682	June 8-10	8:30	Crowne Plaza, Rockville, MD.
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 438, Tel. 301-496-7109	June 8-10	9:00	Omni Georgetown Hotel, Washington, DC.
Biochemical Endocrinology, Dr. Abubakar Shaikh, Rm. 226, Tel. 301-496-7430	June 11-13	8:30	Fairmont Hotel, New Orleans, LA.
Biochemistry-1, Dr. Adolphus P. Toliver, Rm. 3188, Tel. 301-496-7516	June 15-18	8:30	Westpark Hotel, Arlington, VA.
Biochemistry-2, Dr. Alex Liacouras, Rm. 318A, Tel. 301-496-7517	June 16-18	8:30	Crowne Plaza, Rockville, MD.
Bio-Organic & Natural Products Chemistry, Dr. Michael Rogers, Rm. 5, Tel. 301-496-7107	June 23-25	9:00	Crowne Plaza, Rockville, MD.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301-496-7070	June 16-18	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7058	June 6-9	9:00	Ramada Inn, Bethesda, MD.
Cardiovascular & Pulmonary, Dr. Anthony C. Chung, Rm. 2A-04, Tel. 301-496-7316	June 8-10	8:30	Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Rosemary Morris, Rm. 321, Tel. 301-496-7901	June 13-15	8:30	Crowne Plaza, Rockville, MD.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396	June 8-10	7:00	Basement Room, Federal Building, Bethesda, MD.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Rm. 304, Tel. 301-496-7681	June 20-22	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301-496-7078	June 13-15	8:30	Crowne Plaza, Rockville, MD.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 219B, Tel. 301-496-7650	June 8-10	8:30	Miyako Hotel, San Francisco, CA.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301-496-7346	June 5-7	8:30	Hotel Meridien, New Orleans, LA.
Epidemiology & Disease Control-1, Dr. Sooja Kim, Rm. 203C, Tel. 301-496-7246	June 12-14	8:00	Westin Bayshore Hotel, Vancouver, BC, Canada.
Epidemiology & Disease Control-2, Dr. Horace Stiles, Rm. 340, Tel. 301-496-7248	June 12-14	8:00	Westin Bayshore Hotel, Vancouver, BC, Canada.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940	June 14-16	8:00	American Inn, Bethesda, MD.
Experimental Immunology, Dr. Calbert Laing, Rm. 222B, Tel. 301-496-7238	June 8-10	8:00	Holiday Inn, Georgetown, DC.
Experimental Therapeutics-1, Dr. Morris Kelsey, Rm. 221, Tel. 301-496-7839	June 20-22	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301-496-8848	June 30–July 1	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474	June 6-8	8:30	Room 7, Bldg. 31C, Bethesda, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797	June 15-17	8:30	Room 7, Bldg. 31C, Bethesda, MD.
General Medicine A-2, Dr. Donna J. Dean, Rm.354B, Tel. 301-496-7140	June 22-24	8:30	Room 6, Bldg. 31C, Bethesda, MD.

Study section	June–July 1988 Meetings	Time	Location
General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301-496-7730	June 15-17	8:00	Marbury House, Georgetown, DC.
Genetics, Dr. David Remondini, Rm. 349, Tel. 301-496-7271	June 9-11	9:00	Room 9, Bldg. 31C, Bethesda, MD.
Hearing Research, Dr. Joseph Kimm, Rm. 225, Tel. 301-496-7494	June 6-8	8:30	Omni Georgetown Hotel, Washington, DC.
Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508	June 9-11	8:00	Hyatt Regency Hotel, Bethesda, MD.
Hematology-2, Dr. Joel Solomon, Rm. 355B, Tel. 301-496-7508	June 15-17	8:00	Hyatt Regency Hotel, Bethesda, MD.
Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025	June 20-22	9:00	Omni Shoreham Hotel, Washington, DC.
Human Development & Aging-2, Dr. Louis Quatrano, Rm. 305, Tel. 301-496-7640	June 8-10	8:30	Holiday Inn, Bethesda, MD.
Human Development & Aging-3, Dr. Anita Sostek, Rm. 203A, Tel. 301-496-9403	June 13-15	8:30	Canterbury Hotel, Washington, DC.
Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301-496-7597	June 21-22	8:30	Holiday Inn, Georgetown, DC.
Immunobiology, Dr. William Stylos, Rm. 222A, Tel. 301-496-7780	June 15-17	8:30	Holiday Inn, Bethesda, MD.
Immunological Sciences, Dr. Anita Weinblatt, Rm. 233A, Tel. 301-496-7179	June 22-24	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271	June 9-11	8:30	Embassy Suites, Crystal City, VA.
Medicinal Chemistry, Dr. Ronald Dubois, Rm. 5, Tel. 301-496-7107	June 13-15	9:00	Crowne Plaza, Rockville, MD.
Metabolic Pathology, Dr. Marcelina Powers, Rm. 435, Tel. 301-496-5251	June 28-30	8:30	Linden Hill Hotel, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091	June 16-18	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Metallobiochemistry, Dr. Edward Zapolski, Rm. 310, Tel. 301-496-7733	June 16-18	8:30	Omni Georgetown Hotel, Washington, DC.
Microbial Physiology & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183	June 16-18	8:30	Congressional Park, Days Inn, Rockville, MD.
Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130	June 7-9	8:30	Holiday Inn, Bethesda, MD.
Molecular & Cellular Biophysics, Dr. Patricia Jost, Rm. 236A, Tel. 301-496-7060	June 17-19	8:30	One Washington Circle Hotel, Washington, DC.
Molecular Biology, Dr. Zain Abedin, Rm. 328, Tel. 301-496-7830	June 9-11	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149	June 2-4	8:30	One Washington Circle Hotel, Washington, DC.
Neurological Sciences-1, Dr. Allen C. Stoolmiller, Rm. 437B, Tel. 301-496-7279	June 15-17	8:00	St. James Hotel, Washington, DC.
Neurological Sciences-2, Dr. Stephen Gobel, Rm. 1A05, Tel. 301-496-8808	June 14-16	8:30	Holiday Inn, Georgetown, DC.
Neurology A, Dr. Catherine Woodbury, Rm. 326, Tel. 301-496-7095	June 15-17	9:00	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846	June 14-17	8:00	The River Inn, Washington, DC.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422	June 14-17	8:00	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591	June 22-24	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. A18, Tel. 301-496-0558	June 6-8	8:00	Holiday Inn, Chevy Chase, MD.
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178	June 27-29	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	June 13-16	8:30	Key Bridge Marriott, Arlington, VA.
Oral Biology & Medicine-2, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818	June 20-23	8:30	Key Bridge Marriott, Arlington, VA.
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581	June 22-24	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Pathobiochemistry, Dr. John Mathis, Rm. A26, Tel. 301-496-7820	June 15-17	8:30	Holiday Inn, Georgetown, DC.
Pathology A, Dr. John L. Meyer, Rm. 337, Tel. 301-496-7305	June 14-17	8:30	Hyatt Regency Hotel, Bethesda, MD.
Pathology B, Dr. Gerrald Fried, Rm. 340, Tel. 301-496-7248	June 22-24	8:30	Holiday Inn, Georgetown, DC.
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408	June 21-23	8:30	American Inn, Bethesda, MD.
Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120	June 20-22	8:30	Crowne Plaza, Rockville, MD.
Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837	June 23-25	8:00	Holiday Inn, Georgetown, DC.
Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878	June 7-9	8:00	Marbury House, Georgetown, DC.
Radiation, Dr. John Zimbrick, Rm. 219A, Tel. 301-496-7073	June 13-15	8:30	Holiday Inn, Bethesda, MD.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318	June 5-7	8:30	Hotel Inter-Continental, New Orleans, LA.
Reproductive Endocrinology, Dr. Bela Gulyas, Rm. 325B, Tel. 301-496-8857	June 13-15	8:30	Bethesa Marriott, Bethesa, MD.
Respiratory & Applied Physiology, Dr. Clyde Watkins, Rm. 218A, Tel. 301-496-7320	June 20-22	8:00	Crowne Plaza, Rockville, MD.
Safety & Occupational Health, Dr. Richard Rhoden, Rm. 154, Tel. 301-496-6723	June 15-17	8:00	Congressional Park, Days Inn, Rockville, MD.
Sensory Disorders & Language, Dr. Michael Halasz, Rm. 3A-07, Tel. 301-496-7550	June 15-17	8:30	Capitol Holiday Inn, Washington, DC.
Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906	June 2-3	9:00	Marbury Hotel, Washington, DC.
Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 303A, Tel. 301-496-7506	June 20-21	8:00	Holiday Inn, Georgetown, DC.
Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771	June 25-26	8:30	Holiday Inn, Bethesda, MD.
Toxicology, Dr. Alfred Marozzi, Rm. 205, Tel. 301-496-7570	June 22-24	8:00	Marbury Hotel, Washington, DC.
Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190	June 13-15	8:00	One Washgington Circle, Washington, DC.
Virology, Dr. Bruce Maurer, Rm. 309, Tel. 301-496-7605	June 16-18	8:00	Crowne Plaza, Rockville, MD.
Visual Sciences A-1, Dr. Luigi Giacometti, Rm. 207, Tel. 301-496-7000	June 15-17	9:00	Linden Hill Hotel, Bethesda, MD.
Visual Sciences A-2, Dr. Jane Hu, Rm. 439A, Tel. 301-496-7795	June 22-24	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.
Visual Sciences B, Dr. Earl Fisher, Jr., Rm. 325, Tel. 301-496-7251	June 8-10	8:30	Howard Johnson Plaza Hotel (Wellington), Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: April 25, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR. Doc. 88-9906 Filed 5-3-88; 8:45 am]

BILLING CODE 4140-01-M

Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committe A, National Heart, Lung, and

Blood Institute, National Institutes of Health, on June 23–24, 1988, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 23 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 23 from approximately 10 a.m. until adjournment on June 24 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institute of Health, Bethesda, Maryland 20892, (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: April 25, 1988.

Betty J. Beveridge,

Commitee Management Officer, National Institutes of Health.

[FR Doc. 88–9896 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institutes, National Institute of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on June 23, 1988, in Building 31, Conference Room 9.

This meeting will be open to the public on June 23, 1988 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 10 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Oullette, Executive Secretary , NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: April 25, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9897 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 19–21, 1988, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on June 19, from 7 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 20 from approximately 8 a.m. until adjournment on June 21, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: April 25, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88–9898 Filed 5–3–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, June 23 and 24, 1988, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. June 23 and from 9:30 a.m. to 12 noon on June 24 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from

12 noon to adjournment June 24 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Health, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496-2116.

Dated: April 27, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-9899 Filed 5-3-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Indian Irrigation Project, AZ

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: General notice.

SUMMARY: The propose of this general notice is to change the assessment rates for operating and maintaining the Salt River Indian Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water including pumped water and maintaining the facilities. Due to the delivery of irrigation water from several sources (normal flow water, spill water, storage water and pumped water), it is necessary to structure the assessment rates to reflect cost of water delivered. The assessment rates for the Salt River Indian Irrigation Project consist of a per acre rate for delivery of the first two (2) acre feet of water, a rate for delivery of the third (3rd) acre foot, delivery rate for additional water above 3 acre feet and a spill water rate. The per acre rate will provide funds to cover a portion of the personnel and maintenance costs while the per acre-foot delivery rate will provide funds to cover remaining costs.

EFFECTIVE DATE: This public notice will become effective upon date of publication and to remain in effect until changed by further notice.

FOR FURTHER INFORMATION CONTACT: Ray Albert, Acting Superintendent, Salt River Agency, Route 1, Box 117, Scottsdale, Arizona 85256, telephone FTS 261-2842, COM (602) 241-2842.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This general notice is issued by authority delegated to the Assisatnt Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to § 171.1 (e) of Part 171, Subchapter H, Chapter 1, Title 25 of the Code of Federal Regulations.

Determination Under E.O. 12291

Pursuant to E.O. 12291 of February 17, 1981 (46 FR 13193, February 19, 1981), each agency is to determine whether a rule it intends to issue is a major rule. The Bureau of Indian Affairs has determined that for the purpose of E.O. 12291, the proposed rate change is not a major rule and does not require preparation of Regulatory Impact Analysis because;

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

2. It will not result in major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

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

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 and 43 CFR Part 14, each agency is required to prepare and made available for public comment a regulatory flexibility analysis if a proposed rule will have a significant economic effect on a substantial number of small entities. The Bureau of Indian Affairs has determined that,

(1) A substantial number of small entities will not be affected as the proposed rate change will have effect upon one entity, the Salt River Pima-Maricopa Indian Community; and

(2) The impacts of the proposed rate change will not cause an adverse economic impact upon a substantial number of small entities.

SUPPLEMENTARY INFORMATION: The current basic operation and maintenance charges were established in 1975 at $13.20 per acre for the delivery of three (3) acre feet. In 1983 the excess water (pumped water) rate was set at $29.08 per acre-feet and has increased to $30.53 per acre foot. Spill water rate was established in 1983 as $6.75 per acre foot. The costs of labor, materials, equipment, power and energy have continued to increase each year until costs now exceed revenue.

The Agency staff and the Phoenix Area Office met with the waterusers and the Salt River Pima-Maricopa Indian Community on November 16, 1987, November 25, 1987 and January 6, 1988, respectively, and through several additional analysis of available surface water the assessment rates were finalized.

Comments were received by the Bureau from various lease holders and water users of the Reservation including the Indian Community. Concerns were expressed with the proposed assessment increases for the 1988 irrigation season. The Community further urged that the Bureau take a hard look at the productivity of the project and requested if the cost of providing O&M services could be performed at mimimum cost in order to keep the rate increases to a mimimum. Comments received at these public meetings were carefully considered in arriving at the proposed rates. To avoid adverse financial hardships for the irrigation project in the 1988 irrigation season the proposed rates must be implemented without delay.

The public notice shall read as follows:

Salt River Indian Irrigation Project

Annual Operation and Maintenance Assessment Rates

Basic Assessment—The basic operation and maintenance assessment rate against the assessable lands under the Salt River Indian Irrigation Project in Arizona, to which water can be delivered through the irrigation project works, is hereby fixed at the rate of $18.00 per acre for delivery of two (2) acre feet of water. Irrigation water will not be delivered until the basic operation and assessments are paid.

Assessment Rate for the Third (3rd) Acre-Foot—Water delivered above two (2) acre-feet and up to third (3rd) acre-foot is hereby fixed at the rate of $21.65

per acre-foot, measured at the farm delivery point. Payment shall be made in advance of delivery of water except where arrangements have been made for payment.

Assessment Rate for Delivery of Additional Water—Delivery of water above three (3) acre-feet, when available, is hereby fixed at the rate of $36.00 per acre-foot, measured at the farm delivery point. Payment shall be made in advance of delivery of water except where arrangements have been made for payment. The cost per acre-foot of water will be adjusted as the electrical energy supplier adjusts the rate at which electrical energy is supplied to the Salt River Indian Irrigation Project. Adjustment, up or down, shall be made on the first day of the month following notification of the change in electrical rates.

Municipal and Industrial—Assessment rate for delivery of water for M&I purposes is hereby fixed at $50.00 per acre foot.

Spill Water—Spill water is not charged against the apportionment, and may be delivered, when available, at the rate of $6.75 per acre foot. Payment shall be made in advance of delivery except where arrangements have been made for payment.

Payment—The annual basic assessment charge shall be due and payable on or before February 1st of each year.

Non-Project Lands—Non-Project Indian lands capable of receiving storage water from project facilities shall be eligible to receive water at the designated assessment rates. However, delivery of water will not be considered until the Officer-in-Charge has determined that there is sufficient project water available to serve these lands without adversely affecting in any way the water entitlement of the designated project assessed lands for which the project was designed and constructed. Water will not be delivered to these restricted lands until the lessee and/or landowner(s) has paid the annual basic assessed operation and maintenance charges.

Interest and Penalty Fees—Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, Part 3.8, Debt Collection Procedures.

Delivery of Water—Delivery of water shall be made to all tracts of land for which the basic assessment is paid and water delivery assessments are paid.

Period Covered—Assessment rates are set for the year 1988 and subsequent years until further notice.

James H. Stevens,

Phoenix Area Director.

[FR Doc. 88-9809 Filed 5-3-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Proposed Castle Mountain Project, San Bernardino County, CA; Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management will have an Environmental Impact Statement prepared under contract for the proposed Castle Mountain Project open-pit, heap-leach gold mine and will conduct public scoping meetings in connection with the preparation of that document.

Viceroy Gold corporation has proposed development of an open-pit, heap-leach gold mine in the Castle Mountains of northeastern San Bernardino County, California. The proposed Castle Mountain Project is located near the California-Nevada border approximately 18 miles southwest of Searchlight, Nevada in the East Mojave National Scenic Area. The proposed mine and related processing facilities will utimately affect approximately 670 acres of Public lands in the California Desert Conservation Area, five acres of Public lands in Nevada, and 28 acres of patented claims in San Bernardino County, California.

The Bureau of Land Management, together with San Bernardino County as State of California co-lead, will have a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) prepared under contract to assess the impacts of mining, construction and operation of the heap-leach processing facility, construction and maintenance of access roads, development of a water well field ad pipelines, and reclamation of disturbed lands. In addition, the EIS/EIR will consider alternative technologies, alternative siting of components, including access roads, heap-leach pads, processing facilities, waste dumps, water wells and pipelines, and alternative sources of water and power.

The EIS/EIR will be prepared by an independent environmental consulting firm which will consider the following general issues: Water resources (specifically the relationship between groundwater flows in Lanfair Valley and surface flow in Piute Creek), special areas, wildlife resources including species of concern), botanical resources (including species of concern), cultural resources, existing and potential land uses, recreation, visual resources, air quality, grazing, and transportation, storage, and disposal of hazardous wastes.

Two public scoping meetings will be conducted prior to actual preparation of the EIS/EIR in order to receive public comments, concerns, and interests which should be addressed in the document. Issues raised during these meetings will be considered in the EIS/EIR in addition to those issues which have already been described.

Date, Time, and Location

May 23, 1988—7:00 PM:
Las Vagas, Nevada, Board Room, Clark County Education Center, 2832 East Flamingo Road

May 26, 1988—6:30 PM:
Barstow, California, Conference Room, Barstow Station Super 8, 1511 East Main Street

FOR FURTHER INFORMATION CONTACT: Roger Alexander, Project Leader, Bureau of Land Management, Needles Resource Area, P.O. Box 888, Needles, California 92363, (619) 326-3896.

Date: April 28, 1988.

Hugo W. Riecken,

Associate District Manager.

[FR Doc. 88-9837 Filed 5-3-88; 8:45 am]

BILLING CODE 4310-40-M

[WY-040-08-4212-14; W-89588]

Wyoming; Realty Action; Direct Sale of Public Lands/Termination of Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands in Sublette County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the following described public lands are suitable for sale to Sublette County, Wyoming under the authority of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719. A 60 day waiting period from the date of this notice will occur prior to offering these lands for sale.

Sixth Principal Meridian

T. 30 N., R. 111 W.,

Sec. 22, E½NW¼

These lands contain 80 acres.

FOR FURTHER INFORMATION CONTACT: David Harper, Realty Specialist, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941 or call (307) 367-4358.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) proposes to sell the surface and minerals estates except oil and gas to Sublette County, Wyoming under the above cited authority. Sublette County wishes to acquire these lands in order to continue operations of the Big Piney-Marbleton Sanitary Landfill which presently occupies 40 acres of these lands under a Recreation and Public Purposes Act Lease. The lease will expire on September 24, 1988.

The price of these lands will be determined at market value. A purchase bid will constitute an application for conveyance of the unreserved mineral estate to the above described lands. Additionally Sublette County will be required to submit a nonreturnable application fee of $50 in accordance with 43 CFR 2720, for conveyance of all unreserved mineral interest in the lands.

The BLM has adopted a nationwide policy of transferring the title of lands leased for sanitary landfills to the entity that manages the landfills. The proposed sale to Sublette County, Wyoming, is consistent with this policy. Additionally, the proposed sale is consistent with the Pinedale Resource Management Plan/Final EIS and will serve important public objectives which cannot be otherwise accomplished. The land does not possess any known public values. The Planning Document/Environmental Assessment for the proposed sale is available for review at the BLM Pinedale Resource Area Office, Pinedale, Wyoming.

The sales patent will be subject to all valid existing rights, and will contain certain reservations to the United States. The exact wording of the reservations as well as specific conditions of the sale are available for review in the Pinedale Resource Area Office.

The Recreation and Public Purpose Initial Classification Decision W-87765 which became effective on July 2, 1986 will terminate when this proposed Realty Action becomes final.

Upon the date of this publication, the public lands described above are segregated from all forms of appropriation under the public land laws, including the mining laws. The segregation will end 270 days from the date of this publication.

Interested parties may submit comments to the Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82901. Comments must be received within 45 days from the issuance date of this notice. Adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections this proposed realty action will become final.

Dated: April 19, 1988.

Tom Curry,

Acting Area Manager.

[FR Doc. 88-9808 Filed 5-3-88; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Proposed Contractural Actions Pending through June 1988.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to section 426.20 of the rules and regulations published In the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amandatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to providie local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractural actions in each of the six reclamation regions. Each proposed action listed is or is expected to be in some stage of the contract negotiaiton process during April, May, or June of 1988. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water, rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractural actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definition Used Herein:

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenenace
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Project Act
(BCP) Boulder Canyon Project

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, Telephone (208) 554-1160.

1. Casade Reservior water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I; 59,721 acre-feet of stored water in Cascade Reservior.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land

reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. Individual Irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. IDs. and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Fifty-nine Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. South Columbia Basin ID, Columbia Basin Project, Washington: Supplemental repayment contract for Irrigation Block 24; 1,982 irrigable acres.

9. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. Three IDs, Flathead Indian Irrigation Project: Repayment of costs associated with rehabilitation of irrigation facilities.

11. Baker Valley ID, Baker Project, Oregon: Irrigation water service contracts on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

12. Crooked River Project, Oregon: Repayment of water service contracts with serveral individuals for a total of approximately 1,100 acre-feet of project water; contract terms up to 40 years for the purpose of supplying water under the project water right held by the United States.

13. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

14. Palisades Water Users Inc., Minidoka-Palisades Project: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

15. Willow Creek Project, Oregon: Repayment of water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

Mid-Pacific Region: Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5030.

1. Colusa Drain Mutual Water Company, CVP, California: Water right settlement contract; FR notice published July 25, 1979, Vol. 44, page 43535.

2. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California: Water service contract; 1,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

Note.—Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

5. Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

6. South San Joaquin ID and Oakdale ID, CVP, California: Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. ID's and similar water user entitles: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

9. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operations Agreement.

10. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

11. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

12. Panoche Water District, CVP, California: Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

13. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

14. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

15. City of Redding, CVP, California: Amendatory M&I water supply contract.

16. Washoe County Water Conservation District, Truckee Storage Project, Nevada: Repayment contract for the replacement of two needle valves at Boca Dam.

17. Placer County Water Agency, CVP, California: Amend existing water right and water service contract to include current water rates, standard contract language and diversion of Project water at other than the Auburn Dam site.

18. Glide Water District, CVP, California: Amendatory Pub. L. 84–130 repayment contract.

19. Kanawha Water District—Improvement District Nos. 2 and 3, CVP, California: Amendatory Pub. L. 84–130 repayment contracts.

20. Union Public Utility District, CVP, California: Water service contract, up to 1,000 acre-feet annually for M&I water from New Melones Reservoir for up to 15 years.

21. Grasslands Water District, CVP, California: Temporary water service contract, up to 50,000 acre-feet of Project water for 1 year in lieu of agricultural drainage water for waterfowl habitat.

22. Mid-Valley Water Authority, CVP, California: Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

23. Kern County Water Agency, CVP, California: Temporary agricultural water

supplies of up to 100,000 acre-feet for 1 year.

24. California Department of Fish and Game, CVP, California: Temporary wildlife habitat water supplies of up to 20,000 acre-feet for 1 year.

25. U.S. Fish and Wildlife Service, CVP, California: Temporary wildlife habitat water supplies of up to 30,000 acre-feet for 1 year.

26. City of Dos Palos, CVP, California: Contract for the use of surplus capacity in the San Luis Canal pursuant to the Warren Act. The contract will allow the exchange of water with Central California Irrigation District and transporation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) Sunterra Gas Processing Company (formerly Southern Union Gas Company): Navajo Reservoir water service contract; 50 acre-feet per year for industrial use; contract term for 40 years from execution.

2. Revised Hydrological Determination: A hydrologic determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.8 million acre-feet. Upon the request of the Secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

4. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,800 acre-feet per year. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

5. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

6. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

7. Navajo Indian Tribes, Animas-La Plata Project, New Mexico: Repayment contract; 7,600 acre-feet per year for M&I use.

8. Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado: Contract to continue O&M of Grand Valley powerplant.

9. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Agreement for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. Moon Lake Water Users Association, Moon Lake Project, Utah: Repayment contract for R&B of facilities including replacement of needle valve.

11. Central Utah Water Conservancy District, Bonneville Unit, CUP, Utah: D&MC contract; Advancement of $65.7 million for construction of laterals and drains of the irrigation and drainage system.

12. Three separate contracts with (1) Tri-County Water Conservancy District, (2) Menoken Water Company, and (3) Chipeta Water Company, Lower Gunnison Basin Unit, Colorado: Provides for funding, construction, modification, and O&M of each entity's domestic water system.

13. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

14. Florida Water Conservancy District, Florida Project, Colorado: Lease of power privileges to develop the hydroelectric power potential of the Florida Project.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. Water delivery contracts, BCP, Arizona: For a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. Contract with the State of Arizona, BCP: For a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 66 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

11. Ak-Chin Farm, Maricopa, Arizona: Repayment contract for $6.1 million SRPA escalation loan.

12. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

13. Central Arizona Water Conservation District, CAP, Arizona: Amendatory contract to increase the district's CAP repayment ceiling and to update other provisions of the contract.

14. Maricopa-Stanfield and Central Arizona IDDs, CAP, Arizona: Contract

to transfer O&M of the Santa Rosa Canal to Maricopa-Stanfield.

15. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

16. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

17. Golden Shores Water Conservation District, BCP, Arizona: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

18. Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* vs. *California* and BCP.

19. Winterhaven Present Perfected Rights contract for portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* vs. *California* and BCP.

20. County of San Bernardino, San Bernardino, California: Repayment contract for $28.1 million SRPA loan.

21. Yuma County and Yuma County Water Users' Association, Yuma Project, Arizona: Contract for O&M of 18 drainage wells in Yuma County, Colorado River Front Work and Levee System, Arizona.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, Texas 79101, telephone (806) 735-5430.

1. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

2. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96-550.

3. Hidalgo County ID No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97-293).

5. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

6. Carlsbad ID, Carlsbad Project, New Mexico; Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

7. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

8. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

9. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Interim water service contract; Interim measure to provide a water supply of approximately 20,000 acre-feet.

Missouri Basin Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107-6900, telephone (406) 585-6413.

1. Individual irrigators, M&I, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota: Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

5. Oahe Unit, P-SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97-293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming: Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Green Mountain Reservoir, Colorado-Big Thompson Project: Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

8. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

9. Fryingpan-Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

10. Cedar Bluff ID No. 6 and the State of Kansas, Cedar Bluff Unit, P-SMBP, Kansas: Repayment contract: Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservoir for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation. Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

11. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

12. Garrison Diversion Unit, P-SMBP, North Dakota: Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

13. Gray Goose ID, Gray Goose Unit, P-SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P-SMBP as authorized pursuant to section 1120 of the Water Resource-- Development Act of January 21, 1986 (Pub. L. 99-662).

14. Pacific Power and Light Company, Glendo Unit, P-SMBP, Wyoming: Contract negotiations for renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

15. Farwell ID, Farwell Unit, P-SMBP, Nebraska: Contract amendment for relief of repayemnt obligation under Contract No. 9-07-20-WO363, as amended, as authorized by section 205 of the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100-202.

16. City of Minot, North Dakota: Amendment to Contract No. 14-06-600-455A to provide repayment relief for the amount of $1,026,489.29 to the city of Minot as authorized in section 209 of the Act entitled "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100-202. This relief is sought as a result of the deauthorization in the Garrison Diversion Unit Reformulation Act of 1986 of the Velva Canal.

17. City of Dickinson, North Dakota: Cancellation of Contract No. 9-07-60-WR052 pursuant to the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending September 30, 1988, and for Other Purposes," Pub. L. 100-202. The contract will be replaced with a new contract for the repayment of $1,625,000 over a period of 40 years at 7.21 percent and payment of operation, maintenace, and replacement costs.

18. West Bench ID, SRPA: Amendatory contract to extend the repayment period by 12 years by giving the district the maximum repayment term of 40 years allowed under the contract.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impacts(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Date: April 26, 1988.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 88-9727 Filed 5-3-88; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Availability of Plan of Operations and Environmental Assessment Mesquite Pipeline Project; Chevron Pipe Line Co.; Big Thicket National Preserve, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Chevron Pipe Line Company a Plan of Operations for the Mesquite Pipeline Project. The proposal involves the installation of a new 12-inch gasoline/diesel pipeline within an existing right-of-way across the Little Pine Island Bayou Corridor and Lance Rosier Units of Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 346, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Dated: April 22, 1988.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 88-9922 Filed 5-3-88; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:00 p.m., CST, on May 10, 1988, at the University of New Orleans, University Center, Room 125, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 92-265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historic Park, and in the implementation and development of a general management plan and a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Update Environmental Education Center/Barataria Unit
—Update Chalmette Interpretive Programs/three operational units
—Land Acquisition/Barataria Unit
—Update German Culture Center
—New business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historic Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park, U.S Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130-2341, telephone 504/589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: April 29, 1988.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 88-9919 Filed 5-3-88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the revision of questionnaires to the Office of Management and Budget for review.

Purpose of Information Collection: The revised forms are for use by the Commission in connection with investigation No. 332-209, Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Summary of Proposals:

(1) Number of forms submitted: Two
(2) Title of form: Annual Surveys Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize-Questionnaires for U.S. Producers and Imports
(3) Type of request: Revision
(4) Frequency of use: Annual, through 1989
(5) Description of respondents: Firms which produce or import carbon and alloy steel products
(6) Estimated annual number of respondents: 350
(7) Estimated total number of hours to complete the forms: 7,250
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the revised form and supporting documents may be obtained from Mark Paulson (USITC, tel. no. 202 252-1432). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7340. Copies of any comments should be provided to Charles Ervin (U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: April 29, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-9923 Filed 5-3-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-385 and 386 (Final)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-385 and 386 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Japan of granular polytetrafluoroethylene resin (hereafter granular PTFE),[1] whether filled or unfilled, provided for in item 445.54 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before June 28, 1988, and the Commission will make its final injury determinations by August 16, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: April 19, 1988.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of granular PTFE from Italy and Japan are being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigations were requested in a petition filed on November 6, 1987, by E.I. DuPont de Nemours & Company, Inc., Wilmington, Delaware.

In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 49209, December 30, 1987).

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and

[1] Imports of PTFE fine powders and PTFE aqueous dispersions are not covered by these investigations.

207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report. A public version of the prehearing staff report in these investigations will be placed in the public record on June 27, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on July 13, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 1, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 6, 1988, in the Main Hearing Room of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 7, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 20, 1988. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 20, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: April 26, 1988.

[FR Doc. 88-9920 Filed 5-3-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-266]

Certain Reclosable Plastic Bags and Tubing; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined to issue a general exclusion order in the above-captioned investigation.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in §§ 210.53-210.58 of the Commission's Rules of Practice and Procedure (19 CFR § 210.53-.58).

SUMMARY: Having determined that the issues of remedy, the public interest, and bonding are properly before the Commission, and having examined the written submissions filed on remedy, the public interest, and bonding, as well as those portions of the record relating to those issues, the Commission has determined to issue a general exclusion order prohibiting entry into the United States, except under license, of: (1) Reclosable plastic bags and tubing manufactured according to a process which, it practiced in the United States, would infringe claims 1, 3, 4, or 5 of U.S. Letters Patent 3,945,872, and (2) reclosable plastic bags and tubing which infringe U.S. Trademark Registration No. 946,120.

The Commission has further determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the aforementioned general exclusion order and that the bond during the Presidential review period should be in the amount of 460 percent of the entered value of the articles concerned.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: On March 25, 1987, Minigrip, Inc. filed a complaint and a motion for temporary relief under section 337, alleging a violation of section 337 in the unlawful importation and sale of certain reclosable plastic bags and tubing manufactured abroad according to a process which, if practiced in the United States, would infringe claims 1-5 of U.S. Letters Patent 3,945,872 and bearing a color line mark infringing U.S. Trademark Registration No. 946,120, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The Commission instituted an investigation and named 20 firms as respondents. Two firms were later added as respondents. On November 30, 1987, the Commission issued a temporary exclusion order. Subsequently, eight respondents were terminated from the investigation on the basis of a settlement agreement, and 12 respondents were held in default. On January 29, 1988, the presiding administrative law judge issued an initial determination (ID) finding a violation of section 337. On March 16, 1988, the Commission issued a notice of nonreview of the ID. The parties and interested members of the public were requested to file briefs on remedy, the public interest, and bonding. Notice of the Commission's decision not to review the ID was published in the **Federal Register,** 53 FR 9495 (March 23, 1988). Complainant, the Commission investigative attorney, and two nonparties submitted briefs. No other submissions were received.

Copies of the Commission's Order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official buiness hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting

the Commission's TDD terminal on 202-252-1805.

By order of the Commission.

Issued: April 29, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-9921 Filed 5-3-88; 8:45 am]

BILLING CODE 7020-02-M

JUSTICE DEPARTMENT

Organization, Functions and Authority Delegations; Special Counsel for Immigration-Related Unfair Emploment Practices

AGENCY: Office of Special Counsel for Immigration Related Unfair Emploment Practices, DOJ.

ACTION: Notice.

SUMMARY: Notice is hereby given of the interim agreement between the Equal Employment Opportunity Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices appointing each agency as the agent of the other to receive discrimination charges under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) and section 102 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324b). The purpose of this agreement is to prevent any loss of rights arising from the operation of a filing deadline against an individual or entity who has mistakenly filed a charge with the wrong agency.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (800) 255-7688 (toll free) or (202) 653-8121 (Voice) or (202) 653-5710 (TDD number for the hearing impaired); or Daniel Echavarren, Attorney, Office of Special Counsel, (800) 255-7688 (toll free) or (202) 653-8260 (Voice) or (202) 653-5710 (TDD). At the Equal Employment Opportunity Commission (EEOC), contact Irene L. Hill, Assistant Legal Counsel for Coordination, Office of Legal Counsel, EEOC, 2401 E St., NW., Washington, DC, 20507; (202) 634-7581 (Voice) or (202) 634-7057 (TDD).

SUPPLEMENTARY INFORMATION:

Interim Agreement Between the Equal Employment Opportunity Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices

The Equal Employment Opportunity Commission (EEOC), under Title VII of the Civil Rights Act of 1964, as amended, has jurisdiction to process certain charges of employment discrimination on the basis of national origin. The Office of Special Counsel for Immigration Related Unfair Employment Practices (hereinafter, "Special Counsel") of the Department of Justice, under § 102 of the Immigration Reform and Control Act of 1986, has jurisdiction to process certain other charges of employment discrimination on the bases of national origin or citizenship status. The purpose of this Interim Agreement between the EEOC and the Special Counsel is to prevent any loss of rights arising from the operation of a filing deadline against a party who has mistakenly filed a charge with the wrong agency.

The EEOC and the Special Counsel hereby appoint each other as their respective agents for the purposes of the receipt of charges and satisfaction of the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

This Interim Agreement will remain in force pending completion of the negotiations on a final Memorandum of Understanding between the EEOC and the Special Counsel.

The Equal Employment Opportunity Commission.

By:

Clarence Thomas,

Chairman.

Dated: April 1, 1988.

The Office of Special Counsel for Immigration Related Unfair Employment Practices.

By:

Lawrence J. Siskind,

Special Counsel.

Dated: April 6, 1988.

Lawrence J. Siskind,

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 88-9867 Filed 5-3-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* May 20, 1988.
   Time: 9:00 a.m. to 4:30 p.m.
   Room: 315.
   Program: This meeting will review applications in Literature, Philosophy and Arts in the Regrants Programs, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.
2. *Date:* May 20, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430.
   Program: The panel will convene to consult and advise the NEH on issues concerning Interpretive exhibitions in art museums and the academy, submitted to the Division of General Programs, for projects beginning after October 1988.
3. *Date:* May 23, 1988.
   Time: 9:00 a.m. to 4:30 p.m.
   Room: 315.
   Program: This panel will review applications in History, Political Theory, and Archaeology, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.
4. *Date:* May 27, 1988.
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430.
   Program: This meeting will review Texts/Publication Subvention applications in the field of history, submitted to the Division of Research Programs, for projects beginning after October 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-9861 Filed 5-3-88; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 11, 1988 through April 22, 1988. The last biweekly notice was published on April 20, 1988 (53 FR 13010).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 3, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all

public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al, Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of Amendment Request: April 7, 1988

Description of Amendment: The proposed amendment would modify the Technical Specifications (Appendix A to Facility Operating License No. NPF-74, for PVNGS, Unit 3), to revise Figure 3.1-1 limits on the Moderator Temperature Coefficient (MTC). The proposed amendment would increase the negative MTC limit from -30 pcm/° F to -35 pcm/° F.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensees have provided a discussion of the proposed change as it relates to these standards; the discussion is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change will not increase the probability or consequences of an accident previously evaluated. The TS limit is set by the steam line break design basis accident. Since the proposed value of -35 pcm/° F is the same value assumed in the analysis, the probability or consequences of an accident previously evaluated will not be increased.

Standard 2 - Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed. The MTC only affects core response, therefore, the possibility of a new or different kind of accident from any previously evaluated will not be created.

Standard 3 - Involve a Significant Reduction in a Margin of Safety

The proposed change will not reduce a margin of safety as defined in the TS. The basis for the MTC limit is to ensure that the assumptions used in the safety analyses remain valid through each fuel cycle. The current MTC limit of -30 pcm/° F in the Unit 3 TS was required to compensate for the as-built safety injection drain line configuration. Subsequently, the drain lines were reconfigured so that the MTC limit of -35 pcm/° F that was assumed in the safety analyses would be valid. Therefore, increasing the MTC limit from -30 pcm/° F to -35 pcm/° F does not reduce the margin of safety defined in the Technical Specifications.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Dates of amendment request: November 26, 1986 and October 21, 1987

Brief description of amendments: In accordance with the requirements of 10 CFR 73.55, the licensee has submitted a proposed amendment to the Physical Security Plan for the H. B. Robinson Steam Electric Plant, Unit 2, to reflect recent changes to that regulation. The proposed amendment would change paragraph 3.F of Facility Operating License No. DPR-23 to add a new license condition to Facility Operating License No. DPR-23 to require compliance with the revised plans.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear reactor power licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and September 23, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the supplementary materials accompanying the amended regulations the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of

requirements as reflected in these amendments is [sic] appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether or not a no significant hazards consideration exists by providing certain examples of actions not likely to involve significant hazards considerations and examples of actions likely to involve significant hazards considerations (51 FR 7750). One of the examples of actions not likely to involve significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551 Raleigh, North Carolina 27602 Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket No. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: November 26, 1986, January 14, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Dresden Nuclear Power Station to reflect recent changes to this regulation. The proposed amendment would modify paragraph 3.I of Provisional Operating License No. DPR-19 for Unit No. 2 and paragraph 3.H of Facility Operating License No. DPR-25 for Unit No. 3 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 16, 1986, September 11, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.' The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael I. Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 28, 1988

Description of amendment request: Pursuant to 10 CFR 50.90, Commonwealth Edison Company (CECo, the licensee) proposed an amendment of Facility Operating License DPR-30 in order to provide for Cycle 10 operation of Quad Cities Nuclear Power Station (QCNPS), Unit 2.

The Unit 2 Reload 9/Cycle 10 replacement reactor fuel is of the GE8X8EB extended burnup fuel design, which has several different mechanical and nuclear features than existing Cycle 9 fuel. The GE8X8EB fuel design, as described in Topical Report NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel", has been reviewed and approved by the NRC for generic applications and extended burnup operations. Utilization of GE8X8EB fuel was previously approved for QCNPS, Unit 1, and other non-CECo plants (e.g., Fitzpatrick, Peach Bottom, Limerick, and Millstone).

This reload was performed by General Electric (GE) using their new advanced computer modeling methods. These new methods are known as the GEMINI methods and replace the old GENESIS methods. Furthermore, the impact of the new fuel type upon Emergency Core Cooling Systems (ECCS) analysis was evaluated with GE's SAFER/GESTR-LOCA methods rather than the SAFE/REFLOOD LOCA methods. The GEMINI and SAFER/GESTR-LOCA methods were also used for the Unit 1 Cycle 10 reload.

In general, the proposed license amendment would delete a certain license condition and revise the Technical Specifications (TS) to incorporate new Cycle 10 reload fuel operating limits, expand operating domains (including operation with equipment out of service), and make editorial corrections. Similar license and TS changes have already been issued for Unit 1 (i.e. Amendment No. 103, dated December 15, 1987). These TS changes specifically related to the Unit 2 Cycle 10 reload fuel operating limits and analyses, as derived from the improved analytical methodologies mentioned above, are as follows:

1. Incorporation of the Cycle 10 Minimum Critical Power Ratio (MCPR) limit and associated 20% insertion scram time
2. Addition of Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits for the reload fuel.
3. Addition of an Linear Heat Generation Rate (LHGR) limit specific to the GE8X8EB fuel.
4. Increasing the rod block monitor (RBM) setpoint.
5. Reduction of the MCPR fuel cladding safety limit from 1.07 to 1.04 as generically approved by the NRC for this type of fuel.

The TS changes resulting from analysis performed to expand the operating region and allow operation with certain equipment out-of-service include:

6. Changes to the analyzed operating region to include increased core flow (ICF) and feedwater temperature reduction (FTR).

7. Revision of the Automatic Pressure Relief Subsystem Technical Specification to require action only after two or more relief valves are found to be inoperable.

8. Deletion of the license operating restriction for coastdown to 40% power and coastdown with off-normal FW heating.

And TS changes which are administrative or editorial in nature include:

9. Updating references to reflect new analytical methods and models (e.g., GEMINI, SAFER/GESTR-LOCA, etc.)

10. Clarifying the Bases for the Automatic Pressure Relief function.

11. Incorporating Regulatory Guide 1.49 into Bases for analyzing rated thermal power conditions.

Basis for proposed no significant hazards consideration determination: The licensee's reload analysis was performed by GE, who used the advanced GEMINI licensing methodology to technically justify Cycle 10 operation. This generic methodology has been previously reviewed and considered acceptable by the NRC staff. Also, included as part of the reload submittal were all associated transient and accident analyses for the following Equipment Out-of-Service and Extended Operating Domain operating modes (EOOS/EOD): increased core flow, feedwater heater(s) out-of-service, feedwater temperature reduction, relief valve out-of-service, and single loop operation. All core wide transients and ECCS analyses were performed with the most restrictive relief valve out-of-service (RVOOS), i.e., the Target Rock S/RV. Therefore, the reload package has incorporated additional changes to allow unrestricted operation with only one relief valve out-of-service.

GE has also reanalyzed the design basis Loss of Coolant Accident (LOCA) event at QCNPS with an improved ECCS computer code package called SAFER/GESTR-LOCA Application Methodology. Results from this analysis of postulated plant LOCAs was provided by CECo in accordance with NRC requirements to demonstrate that QCNPS conforms with the ECCS and Peak Cladding Temperature (PCT) acceptance criteria of 10 CFR 50.46 and Appendix K. As such, SAFER/GESTR-LOCA Loss of Coolant Analysis (NEDC-31345P dated July 1987) is now considered the primary ECCS licensing basis reference for QCNPS.

The Commission has provided standards for determining whether a significant hazards consideration exists. As stated in 10 CFR 50.92(c), a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Pursuant with 10 CFR 50.91(a), the licensee has provided the following evaluation of their amendment application addressing these three standards.

CECo has evaluated the proposed Technical Specifications and License Conditions changes, and determined that they do not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of QCNPS Unit 2 Cycle 10 in accordance with the proposed changes will not:

1. Involve a significant increase in the consequences of an accident previously evaluated because MCPR, LHGR, and MAPLHGR core operating limits are provided to establish bounds on normal reactor operations which ensure core conditions are maintained within the assumptions and scope of accident analyses. New MAPLHGR curves and, LHGR and MCPR limits are provided for each and every reload to accurately reflect changes in the reactor fuel configuration. Operation within these limits will assure the consequences of affected transients and accidents remain within the results and bounds of safety analyses. MAPLHGR and MCPR curves/limits were generated using aforementioned analytical methods previously approved by the NRC. The LHGR limit for GE8X8EB fuel was calculated using the GESTR-MECHANICAL code (a fuel rod thermal-mechanical performance model considered acceptable by the NRC). Results from GESTR-MECHANICAL demonstrate that compliance with the new LHGR limit (in concert with appropriate MAPLHGR curves) will further ensure fuel design basis criteria are satisfied for GE8X8EB fuel. Cycle specific rod withdrawal error analysis conducted by GE, demonstrates the consequences of an accident are not affected by an increased rod block reading of 108%. This is because the resultant event MCPR, as bound by the proposed MCPR TS limit, and LHGRs remain within the design basis. Furthermore, Core Operating Limits and RBM setpoint changes do not affect any physical system or equipment which could increase the probability of an accident.

Proposed changes to increase the allowable operating region (i.e. EOOS/EOD), including coastdown to 20% and coastdown with off-normal FW heating, have been analyzed by GE (using NRC approved methods) to determine applicable operating restrictions (MCPR, MAPLHGR). GE demonstrated that the consequences of changes to the allowable operating region are bound by the proposed values for MCPR and MAPLHGR. Furthermore, the probability of an accident is not increased because operation in the expanded region does not significantly alter the normal operation of the equipment, for which failures have been previously analyzed. All cycle transient and LOCA analyses were performed assuming the most limiting RVOOS.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because proposed MCPR, MAPLHGR, and LHGR limits, and RBM setpoint represent limitations on core power distribution which do not directly affect the operation or function of any system or component. Expanded operating regions (including EOOS) represent changes to the core power and flow distribution, but do not significantly affect the operation or function of any system or component. Operating limits were established by analyses to bound all combinations of specified EOOS/EOD within acceptable analyzed conditions to ensure fuel integrity and ECCS criteria. Consequently, there is no significant impact on or addition to any system or equipment whose failure could initiate an accident. The major component affected (i.e., by ICF and FTR) is the recirculation pumps whose failure has been previously analyzed. Also, GE assumed operation with the most limiting relief valve out-of-service in the transient and LOCA analyses. Therefore, this condition has been analyzed and no new or different accidents are created.

3. Involve a significant reduction in the margin of safety because all of the proposed changes have been analyzed to demonstrate that the consequences of transients or accidents are not increased beyond those already evaluated and accepted by the NRC for QCNPS. Furthermore, the fuel used in Cycle 10 is very similar to that used in previous Unit 2 cycles and the core will be operated in essentially the same manner.

The NRC staff has reviewed the licensee's evaluation related to the

Cycle 10 changes and concurs with their conclusions. In addition, the Commission has provided guidance concerning application of 10 CFR 50.92 standards for determining whether a no significant hazards consideration exists by providing certain examples (51 FR 7751). The amendment proposed herein relating to Cycle 10 operation is representative of example (iii). The specific license changes are associated with a reload, where no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at QCNPS are used, no significant changes have been made to the acceptance criteria for the TS, and the methods used (although changed from the previous cycle) have been found previously acceptable by the NRC staff. Additonally, the administrative and editorial TS changes identified above are considered representative of example (i), which is defined as "a purely administrative change to TS; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or change in nomenclature."

Therefore, the NRC staff proposes to determine that this amendment request does not involve significant hazards considerations based upon a preliminary review of the reload submittal, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: December 2, 1986, and February 1, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Big Rock Point Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.C.(5) of Facility Operating License No. DPR-6 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and February 1, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: December 2, 1986, and December 14, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Palisades Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.F of Provisional Operating License No. DPR-20 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and December 14, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: January 26, 1988 (NRC-87-0248)

Description of amendment request: The proposed license amendment would change the Technical Specifications to allow closure mechanisms for primary and secondary containment penetrations which are located in locked high radiation areas to be verified closed each Cold Shutdown (if not performed within the previous 31 days) rather than every 31 days. Additionally, the proposed amendment clarifies that the primary containment penetrations located in locked areas which remain high radiation areas during Cold Shutdown may be verified by review of high radiation area access controls.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the Commission agrees, that the proposed changes to the Technical Specifications:

(1) Do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes provide an alternative frequency and means of verification of primary and secondary containment penetration isolation which still provide assurance that required conditions are maintained.

(2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not add any new equipment, do not affect the operation of any system, or alter any of the design assumptions previously evaluated.

(3) Do not involve a significant reduction in a margin of safety. The proposed changes only contain an alternative frequency and method of verifying a primary and secondary containment penetration isolation and thus result in an identical plant configuration with an unchanged margin of safety.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 5, 1987

Description of amendment request: The requested amendments would revise Technical Specifications (TS) 3/4.7.8 and its associated Bases to exclude the snubber listings in accordance with NRC Generic Letter (GL) 84-13, and to add a statement to Surveillance Specification 4.7.8.c to require periodic functional testing of large bore steam generator hydraulic snubbers. Specifically, the TS would be revised to:

(1) Delete TS Table 3.7-4a "Safety-Related Hydraulic Snubbers - ITT Grinnell" and TS Table 3.7-4b "Safety-Related Mechanical Snubbers - Pacific Scientific."

(2) Modify TS 3.7.8 which currently reads, "All snubbers listed in Tables 3.7-4a and 3.7-4b shall be operable." to read "All snubbers shall be operable. The only snubbers excluded from the requirements are those installed on non-safety related systems and then only if the failure of the system on which they are installed would not have an adverse effect on any safety related system."

(3) Delete the references to TS Tables 3.7-4a and 3.7-4b in TS 4.7.8.b and TS 6.10.2.k.

(4) Revise the Bases of TS 3/4.7.8 "Snubbers" to delete the requirement to list exempted snubbers in Tables 3.7-4a and 3.7-4b.

(5) Add the following statement to Surveillance Specification 4.7.8.e "Functional Testing": "The large bore steam generator hydraulic snubbers shall be tested as a separate population for functional test purposes. A 10% random sample from previously untested snubbers shall be tested at least once per refueling outage with continued testing based on failure evaluation. Once the whole population has been subjected to functional testing, the testing sequence shall begin anew by random selection based on the total population."

Basis for proposed no significant hazards consideration determination: In GL 84-13 the Commission concluded that snubbers need not be listed within the TS provided the TS is modified to specify which snubbers are required to be operable. GL 84-13 provided model specifications for use by licensees requesting such changes. The model retains the recordkeeping requirements of current specifications. The Commission also noted that since any changes in snubber quantities, types, or locations would be a change to the facility, such changes would be subject to the provisions of 10 CFR Part 50.59 and would be reflected in the licensee's records (as required by McGuire TS 6.10.2k).

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional restriction or control not presently included in the TS. The proposed change (item 5 above) to supplement surveillance specification 4.7.8e to add a requirement for functional testing of large bore steam generator hydraulic snubbers matches this example and the McGuire TS does not currently require these hydraulic snubbers to be tested.

The remaining proposed changes (items 1 through 4 above) do not match the examples in 51 FR 7750. However, the staff has reviewed the licensee's request for amendments and has determined that it follows the Commission's guidance in GL 84-13. The amendments would not result in a change to the actual systems or design of the systems as installed with respect to snubbers. Limitations, restrictions and surveillances presently in the TS would not be adversely affected. The same snubbers presently required to be operable would continue to be required operable (i.e, although the specific listing of snubbers would be deleted from the TS, the revised TS would, nevertheless, specify that all snubbers are to be operable except those installed on non-safety related systems whose failure would not adversely affect any safety-related system). Therefore, the changes, if implemented, would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that the proposed

change would not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Lawrence Crocker, Acting

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: January 21, 1986, as revised March 3, 1987

Description of amendment request: By application dated January 21, 1986, Duke Power Company requested amendments to the Technical Specifications (TSs) on the transfer of radioactive effluents to the chemical treatment pond and on correcting administrative-type items. By a March 3, 1987 letter, the licensee revised the original application. The revisions affect only Part C of TS 3.9.4 Chemical Treatment Ponds (CTP 1 and 2).

The Bases of the Oconee TS state that the inventory limits (of TS 3.9.4) for the Chemical Treatment Ponds are based on minimizing the consequences of an uncontrolled release of the pond inventory. The current Part C of TS 3.9.4 provides that the quantity of radioactive material per transferred batch of used powdex resin averaged over the transfers of the previous 13 weeks shall not exceed 0.01% of the pond radionuclide inventory limit.

The proposed amendments would delete this requirement and substitute a requirement that the total quantity of radioactive material of all batches of used powdex resin transferred to CTPs over the previous 13 weeks shall not exceed 0.4% of the pond radionuclide limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR Part 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The intent of Part C of Oconee TS 3.9.4 is to limit the quantities of radioactive materials transferred to the Chemical Treatment Ponds in order to ensure that the total inventory limit in the ponds is not exceeded over the life of the nuclear station. The current Part C limits only the average quantities of radioactive materials per batch of powdex resin transferred over the specified 13 week period. There is no limit on the total quantities transferred to the ponds during these time periods. The March 3, 1987 revised submittal would limit the total quantity of radioactive materials transferred to the ponds during these time periods, but would not limit the average quantity per batch, as in the current Part C. Conservatively assuming a uniform input level at 0.4% of the pond inventory limit each 13 week period and no radioactive decay, no more than 48% of the pond total inventory limit will be accumulated in the ponds over the remaining 30 year life of Oconee Nuclear Station under the proposed revision.

Therefore, the proposed action would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety. On this basis the Commission proposes to determine that the March 3, 1987 application involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Lawrence P. Crocker, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: February 9, 1988

Description of amendment request: This amendment would modify the Technical Specifications (TS) for Hatch Unit 2 by adding a footnote to TS Table 3.3.2.3 explaining that the instrumentation for the Reactor Water Cleanup (RWCU) system high differential flow isolation includes a 45 second delay time.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its February 9, 1988 submittal, provided the following evaluation of the proposed change with regard to these three standards:

The proposed change will result in a description identical to that provided in NRC approved BWR Standard Technical Specifications (NUREG 0123 Revision 3) for this common BWR design feature. This change is clarifying in nature and does not represent a change to the design or operation of the plant as described in the FSAR.

The proposed change does not involve a significant increase in the probability or consequences of an accident because no changes to plant operation or design are involved. This change clarifies a design feature of a plant leak detection system for which no credit is taken in the accident analysis. Containment isolation for accident analysis RWCU pipe breaks is provided by one of the following Class 1E circuits meeting all applicable criteria for redundancy, separation, etc.: Reactor Vessel Water Level Low Low, RWCU Area Temperature High, or RWCU Area Ventilation Differential Temperature High. The RWCU high differential flow isolation is a single channel system provided for leak before break protection. The 45 second time delay is commensurate with this function and is a standard BWR design feature.

The possibility of a different kind of accident from those analyzed previously is not created by this change, since the design function of systems, as described in the FSAR, is not affected.

Margins of safety are not significantly reduced by this change. No change to plant design or operation is involved. This change is clarifying in nature and has no impact on margins of safety.

The staff has considered the proposed amendment and agrees with the licensee's evaluation with respect to the three standards.

On this basis, the Commission has concluded that the requested change meets the three standards and, therefore, has made a proposed determination that the amendment

application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Lawrence P. Crocker, Acting

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: March 30, 1988 as supplemented April 12, 1988.

Description of amendment request: The proposed amendment would modify Section 3.10 of the Technical Specifications to accommodate the Cycle 12 Core Reload. Specifically, the Minimum Critical Power Ratio (MCPR) and the maximum average planar linear heat generation rate (MAPLHGR) limts will be changed. It would also permit the use of GE8X8EB fuel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or the consequence of an accident previously evaluated. The probability of an accident is not dependent upon the core loading and there are no other changes to the plant configuration, availability of safety systems, the manner in which the safety systems are initiated or the way the plant is operated that will increase the probability of an accident. Cycle 12 introduces a new fuel design, GE8X8EB, which has been reviewed and approved by the NRC; letter from H. Berkow (NRC) to J. S. Charnley (GE) dated December 3, 1985, "Acceptance for Approval of Fuel Designs Described in Licensing Topical Report NEDE-24011-P-A-6, Amendment 10 for Extended Burnup Operation." The fuel design has been incorporated into the reload applications of other BWR plants. The neutronic and mechanical design is not significantly different from designs currently in use at Oyster Creek and the fuel will not be operated in a manner that would cause the consequences of an accident to be increased.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The Cycle 12 core loading does not involve any other change to the plant configuration, nor does it change the availability of safety systems or the manner in which they respond to initiating events. Also, the design does not change the manner in which the core will be operated from previous cycles. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The proposed Technical Specifications are based on analysis results which were performed in accordance with methods and procedures developed by GPUN and GE. The GPUN methods have been submitted to the NRC for their review and approval. NRC approval requires GPUN to demonstrate the adequacy of the methods for the analyses to be performed, that the methods account for the uncertainties in the analyses, and that GPUN can adequately employ the methods for their application. All of the methods used by GPUN have been submitted to the NRC and have been approved except for TR-045 which is under review and addresses system transients using the RETRAN-02 computer code. NRC approval of TR-045 is expected since the methods employed have been used by other utilities in similar applications, the methods account for uncertainties and the methods provide results which are consistent with previous reload analyses. Currently, the RETRAN-02 code itself is being reviewed by the NRC for use in reload analyses.

The GE LOCA analyses, NEDE-31462P, "Oyster Creek Nuclear Generating Station SAFER/CORECOOL/GESTR-LOCA LOSS-OF-COOLANT ACCIDENT ANALYSIS," submitted with this reload application is based on a methodology previously approved by the NRC via a May 11, 1987 safety evaluation addressing NEDE-30996-P, Volume II. This methodology has been used by other utilities in reload applications, and, as in the case of TR-045, NRC approval of the Oyster Creek application is expected.

Therefore, the results of the analyses presented in TR-049 and NEDE-31462P and the technical specification changes based on these results will ensure that there is no significant reduction in the margin of safety.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 4, 1988

Description of amendment request: This amendment would remove details of the TMI-1 fire protection program from the Technical Specifications in accordance with guidance provided by the Commission in Generic Letter No. 86-10 dated April 24, 1986. The detailed fire protection requirements have been added to the TMI-1 Updated Final Safety Analysis Report (FSAR) and the requirement to maintain a fire protection program would be added as a license condition rather than as a Technical Specification.

Basis for proposed no significant hazards consideration determination: The Commission provided specific guidance to all reactor licensees regarding implementation of fire protection requirements in Generic Letter No. 86-10. This guidance encouraged inclusion of the fire protection program into the UFSAR, amendment of licensing conditions pertaining to the fire protection program and deletion of fire protection details from the Technical Specifications. The GPU Nuclear amendment request has been found consistent with the guidance provided in Generic Letter No. 86-10. The licensee provided the following significant hazards determination as required by 10 CFR 50.92. The proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The probability of occurrence or the consequences of previously evaluated accidents are not affected by this change, since the change is administrative in nature.

2. Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated. As stated above, the requirements of existing Fire Protection Technical Specifications are incorporated into the Updated FSAR. This change is administrative in nature and is consistent with the guidance provided by Generic Letter 86-10.

3. Operation of the facility in accordance with the proposed

amendments would not involve a significant reduction in the margin of safety. These changes do not reduce the margin of safety as the existing requirements of Fire Protection Technical Specifications are maintained as a part of the Fire Protection Program and incorporated into the Updated FSAR by reference. As stated above, the change is administrative in nature.

The NRC staff agrees with the licensee's assessment that this amendment would involve no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 2, 1986, and December 17, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Duane Arnold Energy Center to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.c(5) of Facility Operating License No. DPR-49 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and December 17, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Kenneth E. Perkins.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 25, 1988

Description of amendment request: The amendment would modify the Technical Specifications (TS) applicable to 125 VDC batteries. The changes would reflect replacement of aged lead-acid batteries with new lead-calcium batteries of higher ampere-hour capacity, higher individual cell voltage, and different specific gravity and charging current requirements. Test methods would be upgraded to conform to current industry practice.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations. These examples include (1) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications: for example a more stringent surveillance requirement, and (2) a repair or replacement of a major component or system important to safety, if the following conditions are met: (a) the repair or replacement process involves practices which have been successfully implemented...., and (b) the repaired or replacement component or system does not result in a significant change in its safety function...

The proposed amendment is within the scope of the above examples in that it would upgrade surveillance testing requirements to reflect the use of higher capacity batteries of improved design, and improved chargers suitable for the new batteries. Since the 125 VDC electrical system served by the batteries is not changed there would be no change in safety function.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 25, 1988

Description of amendment request: The amendment would modify the Technical Specifications to add new Limiting Conditions of Operation (LCO) and Surveillance Requirements (SR) for the Alternate Shutdown (ASD) system instruments and controls.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example a more stringent surveillance requirement. The ASD system provides the capability to shut down the reactor from a remote location

in the event of a fire which disables control and instrumentation equipment necessary for shutdown from the control room.

The system was installed during the facility's Cycle 10 refueling outage in response to 10 CFR 50.48 (Appendix R) requirements. Prior to the outage, the proposed modifications were reviewed and found acceptable by the staff. Following the modifications, the staff requested the licensee to submit proposed Technical Specifications to ensure operability of the new equipment. This amendment would invoke such technical specifications to ensure ASD system operability and is therefore within the scope of the above example.

Since the application for amendment involves proposed changes that are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: March 24, 1988

Description of amendment request: The proposed amendment to the Technical Specifications will add a license condition requiring the licensee to implement and maintain its Integrated Implementation Schedule Program Plan. This program plan will provide a methodology to be followed for scheduling plant modifications and engineering evaluations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change would require the implementation of the IIS methodology described in the Program Plan. As such, it requires that NNECO establish an administrative means for tracking, prioritizing, and scheduling NRC required plant modifications and engineering evaluations, and licensee identified plant improvement projects. This methodology is intended to enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby assuring that issues required for safe operation of the plant receive priority and are complete in a timely manner.

Because the license condition addresses only an administrative scheduling mechanism, it does not affect directly the design or operation of the plant. Therefore, no accident analyses are affected and the proposed change does not increase the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed license condition establishes a new requirement relating to scheduling of modifications and engineering evaluations. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in any margin of safety.

As discussed above, the proposed license condition establishes a new administrative requirement intended to enhance public safety and reliable plant operation. It does not affect any accident analysis or involve any modification to the plant configuration or operation. Therefore, the proposed change does not involve a reduction in any margin of safety.

Accordingly, the staff has made a proposed determined that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 1, 1988

Description of amendment request: The proposed amendment would change Technical Specification Sections 6.2.3.1 to state that Independent Safety Engineering Group (ISEG) recommendations, records and reports are provided to appropriate station and corporate management instead of to the Vice President-Nuclear and Environmental Engineering.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, NNECO has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration because the change does not:

1. Involve a significant increase in the probability or consequence of an accident previously analyzed.

The proposed change is administrative. It does not affect systems or components. There is clearly no significant increase in the probability of any accident. The proposed changes will have no affect on the consequence of any design basis accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not affect safety systems or components and, therefore does not create the probability of an accident or malfunction of a new or different type than any evaluated previously in the safety analysis report.

3. Involve a significant reduction in a margin of safety. Since the proposed change is administrative, it has no impact on the basis of any Technical Specification.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District (OPPD), Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: April 15, 1988

Description of amendment request: The proposed amendment would delete Figure 5-1, "OPPD Support Staff" and Figure 5-2, "Fort Calhoun Station Organization Chart" from the Technical Specifications. Section 5.5.1.2 and 5.5.2.2 would be revised to refer to Chapter 12 of the Fort Calhoun Station Updated Safety Analysis Report (USAR) for the composition of the Plant Review Committee and the Safety Audit and Review Committee. Also, position titles

have been revised to reflect organization changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The licensee provided a discussion regarding the above criteria which proposes to determine that the requested changes do not involve a significant hazards consideration because the proposed changes would not:

(1) involve a physical modification of equipment or a change in operational methods. The proposed changes do not alter any inputs or methodologies utilized in safety analyses for Fort Calhoun Station. Organization information will continue to be maintained in the USAR and the NRC will be informed of changes through the annual USAR update.

(2) involve a physical modification of equipment or a change in operational methods. The proposed changes do not alter any inputs or methodologies utilized in safety analyses for Fort Calhoun Station. Organization information will continue to be maintained in the Fort Calhoun Station USAR.

(3) in any way alter OPPD's commitment to maintain a management structure that contributes to the safe operation and maintenance of Fort Calhoun Station. This information will be maintained in the USAR, clearly communicating the lines of authority and responsibility for station operations.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Dates of amendment requests: December 1, 1986 and December 14, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted revisions to the Indian Point 3 Nuclear Power Plant Physical Security Plan to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.G of Facility Operating License No. DPR-64 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 1, 1986, and September 14, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Robert A. Capra, Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 24, 1988

Description of amendment request: The licensee has provided the following description of the changes to the Technical Specifications:

This application seeks to amend Specification 3.1.A of Appendix A to the Operating License to revise the Technical Specifications to conform with the supporting FSAR transient analyses concerning the number of reactor coolant pumps assumed to be operating when the reactor coolant system average temperature is above 350° but below the no-load reactor coolant average temperature (hot-zero power).

Existing Technical Specification 3.1.A.b. requires at least one reactor coolant pump be in operation when reactor coolant system average temperature is greater than 350° F. FSAR Safety Analyses for steamline break, rod ejection and bank withdrawal from subcritical (the limiting zero power transients) assume all four reactor coolant pumps are operating as an initial condition. A review of the steamline break and rod ejection analyses under the reduced flow conditions of only one reactor coolant pump in operation has demonstrated that the conclusions presented in the FSAR will not be impacted. For the uncontrolled control rod withdrawal from subcritical event, however, the DNB design basis may not be met when only one pump is in operation.

There is no mechanism by which the control rods can be automatically withdrawn when RCS Tavg is between 350° F and hot zero power due to control system error, thus an uncontrolled rod withdrawal event can only be initiated as a result of human error during rod manipulation. This proposed Technical Specification change would prohibit control bank withdrawal with less than four reactor coolant pumps in operation, thereby providing assurance that the plant is operated within the accident analysis assumptions and that the margin of safety as defined in the FSAR analysis is not reduced.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a

facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated? The proposed amendment would resolve an inconsistency between the Technical Specifications and the FSAR analysis of the uncontrolled control rod withdrawal from a subcritical event and the number of reactor coolant pumps assumed to be in operation. By revising the Technical Specification to the more conservative assumption used in the FSAR analyses (four reactor coolant pumps operating) or prohibiting control bank withdrawal with less than four RCPs operating such that an uncontrolled rod withdrawal event is precluded assures that consequences of this event are not increased and are maintained consistent with previous analysis. The revised requirement for operating reactor coolant pumps will not change the probability of a rod withdrawal event.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated? Insofar as the proposed change revises the Technical Specifications to conform with the more conservative assumptions employed in the FSAR Safety Analysis for the uncontrolled control rod withdrawal from subcritical, the proposed change constitutes an additional restriction not presently included in Technical Specifications. Prohibiting control bank withdrawal when less than four reactor coolant pumps are in operation between Tavg = 350° F and hot zero power will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety? As noted previously, the proposed amendment constitutes an additional restriction not presently included in Technical Specifications. As such, the amendment does not involve a significant reduction in a margin of safety but rather an enhancement to assure the margin of safety assumed in the uncontrolled control rod withdrawal analysis is maintained.

Based on the above, the staff purposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Robert A. Capra, Director

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station Unit 1, Fairfield County, South Carolina

Date of amendment request: January 6, 1988

Description of amendment request: On January 6, 1988, an amendment was proposed to revise Section 6.0 of the Technical Specifications (TS). The purpose of the proposed revision is to reflect changes to the V. C. Summer Nuclear Station Functional Organization. Specifically, Section 6.2, "Organization," is proposed to be modified to indicate that as result of the planned reorganization neither the Offsite Organization nor the Unit Organization will continue to exist. With the movement onsite of all of the nuclear staff for South Carolina Electric & Gas, these former organizations are now incorporated as the V. C. Summer Nuclear Station Functional Organization. Figure 6.2-1 is proposed to be modified to reflect this new organization. With the deletion of these two organizations some renumbering of Section 6.2 of the TS is necessary. The present Section 6.2.3, "Independent Safety Engineering Group (ISEG)," is proposed to be modified under "Authority," (TS 6.2.3.4) to indicate that the ISEG shall make recommendations to the General Manager, Nuclear Safety versus the Group Manager, Technical Specifications in the previous organization. The "Composition," (TS 6.5.1.2), of the Plant Safety Review Committee is proposed to be changed to be consistent with the new organization. The Chairman will be either the Director, Nuclear Plant Operations or the General Manager, Station Operations. The other members will consist of the managers of Operations, Maintenance Services, Chemistry and Health Physics, Core Engineering and Nuclear Computer Services, and Design Engineering and the General Manager, Station Support. Section 6.5.3, "Technical Review and Control," is proposed to be modified in TS 6.5.3.1.b to indicate that each modification to plant nuclear safety-related structures, systems, and components shall now be designed under authorization from the Engineering Services versus Technical Services in the old organization.

The licensee indicated that this January 6, 1988 request is not intended to supercede their July 8, 1987 request to delete the organizational charts from the TS but is intended to ensure consistency between the TS and the Station Organization until the NRC acts upon the licensee's July 8 request.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the reorganization does not affect plant operation in any manner.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Through SCE&G's Quality Assurance programs and efforts to maintain only the most qualified personnel in positions of responsibility, it is assured that safety functions performed by personnel with the Nuclear Operations Division will continue to be performed at a high level of competence.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Street, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric Gas

Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: September 15 and November 23, 1987

Description of amendment requests: In accordance with the requirements of 10 CFR 73.55, the Tennessee Valley Authority (TVA) submitted an amendment to the Physical Security Plan for the Sequoyah Nuclear Plant, Units 1 and 2, to reflect changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating Licenses Nos. DPR-77 and DPR-79 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. TVA submitted its revised plan on September 15 and November 23, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Acting Assistant Director: Rajender Auluck

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: February 8, 1988

Description of amendment request: The proposed amendment would revise Technical Specification Section 3.3.2 Table 3.3.2-2. Numerous Trip Setpoints and Allowable Values are footnoted with a statement that these were initial values, and that the final values would be determined during the startup test program. The footnote also states that any required setpoint change would be submitted to the Commission within 90 days of startup test completion. The purpose of the proposed change is to provide the final values for the residual heat removal/reactor core isolation cooling (RHR/RCIC) Steam Line Flow-High Trip Setpoint and Allowable Value based on the results of the Startup Test Program, and to delete the footnote from all Trip Setpoints and Allowable Values since the startup test program has been completed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a request for amendment involves no significant hazards consideration. As described in the Commission's regulations, 10 CFR 50.92, a proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following determination as to whether the proposed amendment involves a significant hazards consideration:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident basis for establishing the Trip Setpoint and Allowable Value has not changed (125% total maximum RCIC and RHR Steam Condensing Steam Flow). The Trip Setpoint and Allowable Values are being changed based on Startup Test Program results of normal RCIC and RHR steam condensing steam flow rather than being based solely on calculations. As such, there is no change to the probability of previously evaluated accidents. Furthermore, the consequences of an accident would not change. Thus, there is no increase in the probability or consequences of any accident previously evaluated. Deletion of the footnote is strictly administrative in nature and does not increase the probability or consequences of an accident.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: February 10, 1988 as supplemented March 3, 1988

Description of amendment request: The proposed amendment requests revision of Technical Specification Section 4.3.8.2.c to allow a one time extension for the disassembly and inspection of the turbine control valves, turbine stop valves, low pressure turbine intercept valves, and low pressure turbine intermediate stop valves until the first refueling outage, currently scheduled to begin during the first quarter of 1989. These tests will become overdue beginning December 8, 1988.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a request for amendment involves no significant hazards consideration as contained in the Commission's Regulations, 10 CFR 50.92. A proposed amendment would not involve a

significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following determination as to whether the proposed amendment involves a significant hazard consideration:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The valves were all inspected successfully in early to mid 1984, and were subsequently cleaned and installed between September 10 and November 15, 1984. The turbine was first brought to rated speed using nuclear steam in December 1986. The valves will have only experienced operating conditions for approximately 25 months by the beginning of the first refueling outage. Therefore, in actuality, the valves will be inspected prior to accumulating the amount of wear presently permitted by the Technical Specification. This does not represent any increase in the probability of an accident. Since extending the first interval does nothing to the consequence of an accident, this change will not change the consequences of an accident. Thus, there is no increase in the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Turbine overspeed protection testing of the main turbine was performed as part of the Startup Test Program. Tests including the Turbine Generator load reject test (conducted on October 25, 1987) actually verified that the valves are functioning properly to prevent an unacceptable overspeed condition in the main turbine. Since the purpose of the disassembly and inspections of the valves is to ensure that they will operate to protect the turbine from excessive overspeed, the startup testing preformed has verified that this is in fact the case. Therefore, no new or different kind of accident from any accident previously evaluated has been created.

The proposed change does not involve a significant reduction in the margin of safety.

As stated above, the valves will actually experience less operating time between inspection than what is presently permitted by the Technical Specifications. Therefore, the margin of safety will not be reduced by approval of this change request.

The staff has reviewed the licensee's determination as to whether the proposed amendment involves no significant hazards considerations. The staff notes that the requested extension interval for inspection of the turbine valves until the first refueling outage is small and is not likely to have significant effect on the probability of an accident previously evaluated. The staff also notes that extending the interval by a small amount cannot by itself introduce a new or different kind of accident from any previously evaluated. In these and other respects, the staff concurs with the licensees that the proposed amendment would not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

The Commonwealth Edison Company, Docket Nos. STN-454 and STN-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: November 26, 1986 and January 14, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Byron Nuclear Power Station Security Plan to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-37 and paragraph 2.F of Facility Operating License No. NPF-66 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and January 14, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

The Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: November 26, 1986 and January 14, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, Commonwealth Edison Company (CECo, the licensee) submitted an amendment to the Physical Security Plan for Quad Cities Nuclear Power Station (QCNPS) to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.E of Facility Operating Licenses No. DPR-29 and DPR-30 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and

27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 26, 1986 and January 14, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

The Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: December 1, 1986, October 1, 1987, and November 30, 1987

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Clinton Power Station to reflect recent changes to this regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. NPF-62 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 1, 1986, October 1, 1987, and November 30, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendment is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Attorney for licensee: Sheldon Zable, Esq., of Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606.

NRC Project Director: Daniel R. Muller

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 26, 1986; February 12, 1987; October 16, 1987; and January 5, 1988.

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for Vermont Yankee Nuclear Power Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.G. of Facility Operating License No. DPR-28 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822) the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on January 5, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very

minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard Wessman

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: March 7, 1988 as supplemented April 12, 1988.

Description of amendment request: The proposed amendment would revise WNP-2 Technical Specification Table 3.2.3-1 in Section 3/4.2.3, "Minimum Critical Power Ratio," and Figure 3.3.10-1, "Thermal Power Limits of Specification 3.3.10-1," to support the operation of WNP-2 at full rated power during the upcoming Cycle 4. The third reload of the Washington Public Power Supply System Nuclear Project No. 2 (WNP-2) will utilize Advanced Nuclear Fuels Corporation (ANF), 8x8 current fuel. The fuel design of this reload batch is virtually identical to the fuel design of the previous reload batch.

The amendment application submittal of March 7, 1988, is composed of the WNP-2 Cycle 4 Reload Summary Report (WPPSS-EANF-119), the WNP-2 Cycle 4 Reload Analysis Report (XN-NF-88-02), the WNP-2 Cycle 4 Plant Transient Analysis Report (XN-NF-88-01), and the proposed changes to the WNP-2 Technical Specifications. The Reload Summary Report summarizes the reload analyses performed by ANF in support of WNP-2 operation for Cycle 4. In addition, a description of the ANF reload is given along with a comparison of the characteristics of the Cycle 4 and Cycle 3 cores.

The WNP-2 Cycle 4 Reload Analysis Report is intended to be used in conjunction with ANF Topical Report XN-NF-80-19(P)(A), Volume 4, Revision 1, Application of the ANF Methodology to BWR Reloads which gives a detailed description of the methods and analyses utilized.

The supplement of April 12, 1988, provides the pages of the Technical Specifications showing the revisions requested to be made by this amendment. This letter also provided a figure which had been omitted from the WNP-2 Cycle 4 Reload Summary Report.

WNP-2 will be entering its fourth cycle of operation and is approaching an equilibrium cycle. The results of the licensees analysis show little change from Cycle 3 to 4. As a result, the licensee has chosen to add some small Critical Power Ratio (CPR) penalties for margin to envelope future anticipated analysis results. The intent is to be able to make future fuel reloads without Technical Specification changes using instead the provisions of 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: The proposed amendment to the WNP-2 Technical Specifications to support this reload is very similar to Example (iii) provided by the Commission (51 FR 7751, March 6, 1986) of the types of amendments not likely to involve significant hazards considerations. Example (iii) is an amendment to reflect a core reload where:

(1) No fuel assemblies are significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved;

(2) No significant changes are made to the acceptance criteria for the Technical Specifications;

(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

(4) The NRC has previously found such methods acceptable.

For the third refueling outage for WNP-2, the Supply System will replace 152 of the General Electric (GE) initial core fuel assemblies with ANF 8x8 fuel. Twenty-four (24) of the Cycle 4 reload fuel assemblies will have a bundle average enrichment of 2.72 weight percent U^{235}; 128 of the Cycle 4 reload fuel assemblies are enriched to a bundle average value of 2.64 weight percent U^{235}. The 152 ANF 8x8C fuel bundles to be loaded for Cycle 4 are similar in design to the initial core fuel and previous reload assemblies.

The change in WNP-2 core loading required a partial re-analysis by ANF. The Loss of Coolant Accident (LOCA) and the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) analyses relevant to Cycle 4 operations were performed for all ANF fueled cores as a part of the Cycle 2 (initial reload) analysis. Relevant transient analyses and Minimum Critical Power Ratio (MCPR) analyses for the Cycle 4 loading were reported. Analyses of normal reactor operation consisted of evaluation of the mechanical, thermal hydraulic, and nuclear design characteristics. Operation at extended core flow, single loop operation and final feedwater temperature reduction were also evaluated.

The use of the ANF type fuel assemblies and the associated analytical methods used for the Cycle 4 reload analyses have been previously approved by the NRC staff for use in other boiling water reactors (BWR's). Based on these prior reviews, the NRC staff has determined that there are only small differences between the use of ANF and GE analytical methods.

This core reload involves the use of fuel assemblies that are not significantly different from those found acceptable to the Commission for a previous core at this facility. The proposed amendment would change the Technical Specifications to reflect new operating limits associated with the fuel to be inserted into the core based on the new core physics. In the licensee's analyses supporting this reload there have been no significant changes in acceptance criteria for the Technical Specifications. The licensee contends that their analytical methods have been found acceptable by the NRC.

The only difference between this reload and Example (iii) provided by the NRC is related to the use of the ANF analytical methods which are slightly different from the GE methods used for Cycle 1 and the Exxon (now ANF) methods used for Cycle 2. The licensee argues that the ANF analytical results are not significantly different from those found acceptable to the NRC for the previous cores at WNP-2 and that the methods have been approved previously by the staff for use in other BWR's.

In addition to providing examples of amendments not likely to involve a significant hazards consideration, the Commission has provided standards for determining whether no significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the evaluation performed in accordance with 10 CFR 50.92, and the fact that the analytical methods used have been approved previously by the NRC staff and do not provide results significantly different,

the Supply System has concluded, and the staff agrees, that operation of WNP-2 in accordance with the proposed reload amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the transient analyses have been reanalyzed for the reload core. The proposed changes to the Technical Specifications reflect new operating limits associated with the reload core, are based on approved analysis methods and are within the current acceptance criteria;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the operational limitations applied to Cycle 4 are identical to previous cycles. The values were derived from NRC qualified codes and by applying the most limiting transients throughout the cycle. These limitations are sufficient to ensure the plant is operated within previously accepted conditions. In addition, no changes sufficient to create a new type of malfunction are contemplated; or

(3) Involve a significant reduction in the margin of safety because the margin to safety for all accidents or operational occurrences analyzed for Cycle 4 operation is either identical to or more conservative than that used for previous cycles.

Based on the above considerations, the Commission proposes to determine that the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street NW., Washington, DC 20005-3502.

NRC Project Director: George W. Knighton

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: December 2, 1986, and March 22, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted amendments to the Physical Security Plan for the Kewaunee Nuclear Power Plant to reflect recent changes to 10 CFR 73.55. The proposed amendment would modify paragraph 2.C.4 of Facility Operating License No. DPR-43 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55 The licensee submitted its revised plan on December 2, 1986, and March 22, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193, Orlando, Florida 31082.

NRC Project Director: Kenneth E. Perkins.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 11, 1986 and January 6 and March 23, 1988

Brief description of amendment: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Point Beach Nuclear Plant, Units 1 and 2 to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3.F of Facility Operating License Nos. DPR-24 and DPR-27 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 11, 1986 and January 6 and March 23, 1988 to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations

clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 25, 1988

Description of amendment request: The proposed amendment would reduce surveillance requirements on blank flanges and expansion joints, that are located in high radiation areas, in order to reduce radiation exposure to plant personnel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses pertaining to these proposals, contained in the March 25, 1988 letter, stated the following:

This change is requested in order to enhance implementation of the ALARA concept and to provide operational flexibility to the Technical Specifications governing containment isolation systems. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Two parts of this change involve brief openings under administrative control of drain taps in piping connected to certain closed systems inside containment. The remaining parts of this change have no effect on potential leakage paths. Brief, administratively controlled openings on closed systems inside containment have negligible effects on the risk of any accident previously evaluated. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed. All parts of this change are consistent with Standard Technical Specifications. None of them introduces a new operating configuration or analytical assumption. Therefore, there is no possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety. This change does not affect the ability of the containment systems to perform their intended functions. Therefore, there is no significant reduction in the margins of safety associated with containment integrity.

Based on the considerations contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analyses and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Richard H. Wessman

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: February 12, 1988, as supplemented on March 21, 1988 and March 25, 1988 (2 letters)

Brief description of amendment request: The amendment would make the following changes:

1. Modify Technical Specification (TS) Limiting Condition for Operation (LCO) 3.1.1.4 by adding a figure that provides the upper limits for moderator temperature coefficient (MTC) and increases this MTC limit for thermal power levels above 70% rated thermal power (RTP) from less positive than 0.2 E-4 delta k/k/° F to the linear equation where the MTC limit is less positive than +[(.9 + 4 (1-P))/3] E-4 delta k/k/° F where P is the fraction of RTP. Thus, at 70% RTP, MTC must be less positive than 0.7 E-4 delta k/k/° F and at 100% RTP MTC must be less positive than +0.3 E-4 delta k/k/° F.

2. Increase the minimum required shutdown margin of TS LCO 3.1.1.1 above the currently required +3.5 delta k/k in accordance with the linear progression where the shutdown margin limit shall be greater than or equal to +[3.5 + 1.5(P)] delta k/k where P is the fraction of RTP. Thus, at 0% RTP the shutdown margin limit is +3.5 delta k/k but at 100% RTP the limits is +5.0 delta k/k.

3. Change the TS Figure 3.1-2, "CEA Group Insertion Limits vs. Fraction of Allowable Thermal Power for Existing RCP Combination," Bank 5 Transient Insertion Limit from the linear progression with values of 25% insertion at 90% RTP and 35% insertion at 100% RTP to a constant insertion limit of 35% between 90% and 100% RTP.

4. Reduce unnecessary Axial Shape Index (ASI) trips below 70% RTP and provide additional operating flexibility by:

a. modifying TS Figure 2.2-1, "Peripheal Axial Shape Index vs. Fraction of Rated Thermal Power," by increasing the acceptable operation region below 70% RTP to the area bounded by the linear equations for the ASI limits, where

(1) ASI limit = ± [.6 + ⅔ (.4-P)] (P is the fraction of RTP) between 40% and 100% RTP, and

(2) ASI limit = ± 0.6 at powers below 40% RTP.

The current ASI limits are ± 0.4 at powers below 70% RTP;

b. expanding the acceptable operation region of TS Figure 3.2-2, "Linear Heat Rate Axial Flux Offset Control Limits,"

and TS Figure 3.2-4, "DNB Axial Flux Offset Control Limits," by increasing the negative ASI limit below 50% RTP from the current value of -0.3 to

(1) the linear equation limit, between 15% and 50% RTP, of the negative ASI limit = -[0.3 + 3/7 [.5-P)], where P is the fraction of RTP;

(2) below 15% RTP, the negative ASI limit = -0.45.

5. Reflect the lowering of the departure from nucleate boiling ratio (DNBR) limit to 1.16 due to the incorporation of an extended statistical combination of uncertainties methodology through modifying Figures 2.2-2, "Thermal Margin/Low Pressure Trip Setpoint Part 1 (ASI v. A_1)," and 2.2-3, "Thermal Margin/Low Pressure Trip Setpoint Part 2 (Fraction of Rated Thermal Power v. QR_1)," by

a. changing the equation for the pressure variable trip from P (TRIP VAR) = 2061 (Q_{DNB}) + 15.85 (T_{IN}) - 8915 to P (TRIP VAR) = 2892 Q_{DNB} + 17.16 (T_{IN}) - 10682;

b. changing Q_{DNB}, which equals QR_1 X A_1, by increasing QR_1 from the values of

QR_1 = .235 + (628/7810) P between 0% and 78.1% RTP

QR_1 = .863 + (109/191)x(P-.781) between 78.1% and 97.2% RTP

QR_1 = P above 97.2% RTP

to

QR_1 = .3 + (11/12)P between 0% and 60% RTP

QR_1 = .85 + (3/8)x(P-.6) between 60% and 100% RTP

QR_1 = P above 100% RTP where P is the fraction of RTP.

Date of publication of individual notice in **Federal Register:** April 15, 1988 (53 FR 12618).

Expiration date of individual notice: May 16, 1988

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: September 29, 1987

Brief description of amendment: The proposed changes would incorportate revised instrument numbers in Technical Specification (TS) Tables 3.3.6.1-1, 3.3.6.1-2 and 4.3.6.1-1 and revise TS Section 3/4.3.6 to reflect the new instruments that have been installed for the alternate rod injection and the recirculation pump trip system.

Date of issuance: April 8, 1988

Effective date: April 8, 1988

Amendment No.: 150

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1987 (52 FR 42048) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Dates of application for amendment: February 3, 1988, supplemented March 30, 1988.

Brief description of amendment: Revises Minimum Critical Power Ratio (MCPR) safety limit value from 1.07 to 1.04.

Date of issuance: April 12, 1988

Effective date: April 12, 1988

Amendment No.: 151

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7585). Supplemental submittal on March 30, 1988 corrected a MCPR value, which was inadvertently omitted in the original submittal. The supplemental letter provided additional information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 16, 1987

Brief description of amendment: The amendment makes minor editorial changes to the TS to: (1) delete unnecessary references to the number of flux thimbles available for movable incore instrumentation, (2) increase the number of monitors on the steam generator blowdown line, (3) replace remark (2) to Item 10 of Table 4.1-1 inadvertently omitted when Amendment No. 97 was issued on March 7, 1986.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No. 116

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35789) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 12, 1988

Brief description of amendments: These amendments revise the Technical Specifications to separate the Gaseous Waste Management System Oxygen Analyzer into its two major components.

Date of issuance: April 15, 1988

Effective Date: April 15, 1988

Amendment Nos.: 17 for Byron, 8 for Braidwood

Facility Operating Licenses Nos. NPF-37, NPF-66, NPF-72, and NPF-75. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7588). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, La Crosse, Wisconsin

Date of application for amendment: November 12, 1987 as revised January 29, 1988.

Brief description of amendment: This amendment revises the Technical Specifications (TS) to reduce the required shift crew size since the reactor is permanently shutdown and the fuel has been removed to the Fuel Element Storage Well.

Date of issuance: April 11, 1988

Effective Date: April 11, 1988

Amendment No.: 60

Provisional License No. DPR-45. This Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1988 (53 FR 2662) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 2, 1986 and October 6, 1987

Brief description of amendments: The amendments modified paragraphs 2.E. of the licenses to require compliance with the amended Physical Security Plan. The Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment Nos. 43 and 46

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the operating licenses.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7590) The Commission's related evaluation of the amendments is contained in a letter to Duke Power Company dated April 11, 1988 and a Safeguards Evaluation Report dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 5, 1988

Brief description of amendments: The amendments corrected Technical Specifications 3.1.2.5 and 3.1.2.6 by increasing the minimum volume of borated water to be maintained in the Boric Acid Storage System.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment Nos.: 80 and 61

Facility Operating License Nos. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7590) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: April 13, 1987, and supplemented by letters dated December 2, 1987 and January 25, 1988.

Brief description of amendment: The amendment revises certain Technical Specifications pertaining to the waste gas decay tank, specifically, removal of requirements associated with a radiation monitor.

Date of issuance: April 7, 1988

Effective date: April 7, 1988

Amendment No. 123

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24549) The supplements dated December 2, 1987 and January 25, 1988 provided supporting information requested by the staff and made no change to the original amendment request. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 17, 1987, as revised March 9, 1988.

Brief description of amendment: The amendment updated the containment air lock surveillance requirements to conform with 10 CFR 50, Appendix J and an earlier exemption granted by the NRC.

Date of issuance: April 13, 1988

Effective date: April 13, 1988

Amendment No.: 105

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13336). By letter dated March 9, 1988, the licensee submitted a revision to the application in response to the staff's request. This revision did not change the staff's initial no significant hazards consideration determination. Therefore, renoticing was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: March 23, 1988

Brief description of amendment: The amendment modified the Technical Specifications to allow pre-operational positive pressure testing of the Unit 2 Emergency Heating, Ventilation, and Air Conditioning System.

Date of issuance: April 16, 1988

Effective date: April 16, 1988

Amendment No.: 4

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (53 FR 10450 dated March 31, 1988). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 2, 1988, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation is contained in a Safety Evaluation dated April 16, 1988.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: January 29, 1988 as supplemented March 16, 1988

Brief description of amendment: The amendment revised Section 5.3 and corresponding bases of the Technical Specification to allow fuel with higher enrichments to be stored in the fuel storage facilities on site.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No.: 121

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7593). The March 16, 1988 submittal provided additional clarifying information and did not change the initial finding of no significant hazards consideration. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 11, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Gulf States Utilities Company, Docket No. 50-498, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: November 13, 1987

Description of amendment request: This amendment revised the surveillance requirements of section 4.7.1.2 of the Technical Specifications to reflect the upgraded ultimate heat sink water temperature monitoring system that was installed during the first refueling outage.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No. 20

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications:

Date of initial notice in **Federal Register:** January 27, 1988 (53 FR 2317). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State Univerity, Baton Rouge, Louisiana 70803

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendments: August 21, September 14, December 17, and December 18, 1987; and as supplemented March 9, 1988.

Brief description of amendment: This amendment revises the Technical Specifications 2.1.1, *Fuel Cladding Integrity*, and 3.1.7 and 4.1.7, *Fuel Rods*, and the associated Bases. The changes were necessary to provide appropriate limits for fuel Cycle 10.

By letter (NMP1L 0232) dated March 9, 1988, the licensee provided clarifying information concerning the new fuel and indicated a minor change in the fuel mix for Cycle 10. The effect of this change has been considered in the staff's evaluation.

Date of issuance: April 19, 1988

Effective date: April 19, 1988

Amendment No.: 97

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** February 10, 1988 (53 FR 3956 and 53 FR 3957). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: August 3, 1987, supplemented August 16, September 3, November 24, 1987 and February 19, 1988

Brief description of amendment: This amendment revises the service water supply header discharge temperature limit in Technical Specification 3/4.7.1 to 81° F.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No.: 3

Facility Operating License No. NPF-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1987 (52 FR 30473). *The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration

Determination and Opportunity for Hearing that appeared in 52 FR 30473 contained a typographical error in the current Technical Specification limit. That number is 76° F not 71° F as stated. The NRC has not found it necessary to revoke its Consideration of Issuance as the error, while misstating the current Technical Specification, correctly states the proposed change. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: February 3, 1988

Brief description of amendment: This amendment revises the allowable value and the isolation trip setpoint for the residual heat removal (RHR)/reactor core isolation cooling (RCIC) steam line flow-high in Table 3.3.2-2 of the Technical Specifications.

Date of issuance: April 11, 1988

Effective date: April 11, 1988, to be implemented within 30 days

Amendment No.: 4

Facility Operating License No. NPF-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7596) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: February 3, 1988

Brief description of amendment: This amendment revises Technical Specification 3/4.4.8.2.1.b.2, "D.C. Sources - Operating," to allow an alternate method of determining battery operability when visible corrosion appears at either terminals or connectors.

Date of issuance: April 19, 1988

Effective date: April 19, 1988. To be implemented within 30 days

Amendment No.: 5

Facility Operating License No. NPF-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7595). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1988

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 31, 1987

Brief description of amendment: This amendment would revise the sample plans used for the surveillance of snubbers as described in Technical Specification Section 4.7.10.e.2) to remove the threshold criteria that requires testing of all snubbers if the number of failures in the sample exceed about 10 percent of the sample size.

Date of issuance: April 7, 1988

Effective date: April 7, 1988

Amendment No.: 16

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 5, 1988

Brief description of amendment: This amendment would revise Technical Specification 3/4.4.6 Reactor Coolant System Leakage to allow continued plant operation for up to 30 days with the Containment Atmospheric Gaseous and Particulate Radioactivity Monitoring Systems inoperable as long as certain conditions are met.

Date of issuance: April 18, 1988

Effective date: April 18, 1988

Amendment No.: 17

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7596). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: August 14, 1987, as supplemented August 27, 1987, January 4 and February 10, 1988.

Brief description of amendments: The amendments change Figure TS.6.1-2 and sections 6.1.D and 6.5.G of administrative requirements appearing in Section 6 of the TS.

Date of issuance: April 18, 1988

Effective date: April 18, 1988

Amendment Nos.: 82, 75

Facility Operating Licenses Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 21, 1987 (52 FR 39303) Since the date of the initial notice, the licensee provided supplemental information. This information clarified the original submittal and had no impact on the original no significant hazards consideration determination, and therefore did not warrant renoticing. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

NRC Project Director: Martin J. Virgilio.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 9, 1988

Brief description of amendment: This amendment revises the Technical Specifications to permit an extension in the next due date from April 30, 1988 to

the refueling outage scheduled for September 1988 for performing the inspection of Diesel Generator No. 1 required by Surveillance Requirements.

Date of issuance: April 19, 1988.

Effective date: April 19, 1988.

Amendment No.: 112

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 18, 1988 (53 FR 9015) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: January 22, 1988, as supplemented March 25, 1988.

Brief description of amendments: The amendments allow the minimum residual heat removal system flow rate to be reduced from 3000 gpm to 1300 gpm while the plant is in Mode 6 (Refueling), provided that the reactor has been subcritical for more than 57 hours.

Date of issuance: April 21, 1988

Effective date: April 21, 1988

Amendment Nos.: 28 and 27

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7597). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 21, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Opispo, California 93407.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 30, 1986 as supplemented on April 27, 1987

Brief description of amendments: The amendments added surveillance requirements for the time delay feature of the undervoltage protective device for the reactor protection system alternate power supply.

Date of issuance: April 6, 1988

Effective date: April 6, 1988

Amendments Nos.: 130 and 133

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30579) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 6, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 15, 1988 as revised February 15, 1988.

Brief description of amendment: The amendment revises the Offsite and Facility Organization Charts for the Trojan Technical Specifications.

Date of issuance: April 11, 1988

Effective date: April 11, 1988

Amendment No.: 140

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7596). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Dates of application for amendment: January 20, 1987, as supplemented February 24, 1987

Brief description of amendment: This amendment addresses the upgrading of the reactor building cooling unit (RBCU) service water outlet valves to environmentally qualified Class IE motor operated valves, with automatic controls to open the valves on the selected post-accident RBCU and close the valves on the non-selected RBCU and the change to the surveillance requirements of TS 4.6.2.5.6.2 to reflect the flow to the operating RBCU rather than the flow from the service water booster pump flow.

Date of issuance: April 13, 1988

Effective date: April 13, 1988

Amendment No.: 69

Facility Operating License No. NPF-12: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1987 (52 FR 5869) The February 24, 1987, letter provided additional information which did not change the initial determination published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: March 10, 1987

Brief description of amendment: This amendment revises Section 3.3.7.1, "Radiation Monitoring Instrumentation," and the basis for Section 3/4.7.1, by changing the setpoint value for the new fuel vault criticality monitor alarm from less than or equal to 10 R/h to less than or equal to 5 R/h.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment No.: 51

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34021). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: March 21, April 10, and June 5, 1986 and March 13, 1987.

Brief description of amendment: The amendment revises Section 3.7.1.3 (Ultimate Heat Sink) of the Technical Specifications to permit the two spray ponds that comprise the Ultimate Heat Sink to be used individually for dissipation of heat during the refueling operational mode.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment No.: 52

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24266). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Date of initial notice in **Federal Register:** July 2, 1986 (52 FR 24266). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: February 9, 1987

Brief description of amendment: This amendment revises Specification 4.1.3.5 pertaining to surveillance requirements for the control rod scram accumulators.

Date of issuance: April 4, 1988

Effective date: April 4, 1988

Amendment No.: 53

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47797). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System Docket No. 50-397, WNP-2, Richland Washington

Date of application for amendment: June 1 1987

Brief description of amendment: This amendment revises Table 4.2.2.1-2 "Isolation Actuation Instrumentation Surveillance Requirements." The channel check requirements (once per shift) are deleted for the reactor water level 2 instruments that provide the containment isolation function.

Date of issuance: April 13, 1988

Effective date: April 13, 1988

Amendment No.: 55

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34022). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: October 13, 1987

Brief description of amendments: The amendments clarified the requirements for testing of the steam generator pressure channels during refueling shutdowns.

Date of issuance: April 14, 1988

Effective date: April 14, 1988

Amendment Nos.: 113 and 116

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7583 at 7605) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 19, 1988

Brief description of amendments: The amendments made numerous administrative changes to the Technical Specifications (TS), clarifying or correcting several items in the TS.

Date of issuance: April 18, 1988

Effective date: April 18, 1988

Amendment Nos.: 114 and 117

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1988 (53 FR 5498). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media

to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 3, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: April 11, 1988

Description of amendment request: This amendment revises Fermi-2 Technical Specification 4.6.1.2.b to make it consistent with a one-time exemption to Appendix J of 10 CFR Part 50 dated April 15, 1988.

Date of issuance: April 15, 1988

Effective date: April 15, 1988

Amendment No.: 18

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

Comments received: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 18, 1988.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

NRC Project Director: Martin J. Virgilio.

Dated at Rockville, Maryland, this 28th day of April, 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Assistant Director for Regions II and V Reactors, Division of Reactor Projects - III, IV, V and Special Projects, Office of Nuclear Reactor Regulation

[Doc. 88-9730 Filed 5-3-88; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-424]

Georgia Power Co. et al.; Exemption

I.

In the matter of Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Vogtle Electric Generating Plant, Unit 1.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), are the holders of Facility Operating License No. NPF-68 issued March 16, 1987, which authorizes full power operation of the Vogtle Electric Generating Plant, Unit 1 (the facility). A superseded license, NPF-61, issued January 16, 1987, authorized licensees to operate the facility at steady-state reactor power levels not in excess of 170 megawatts thermal. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission.

II.

Section 50.71(e)(3)(i) of 10 CFR 50 requires the licensees of nuclear power reactors to submit an Updated Final Safety Analysis Report (UFSAR) within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later. The above regulation would have required submittal of the UFSAR for Vogtle Unit 1 by January 16, 1989.

By letter dated January 15, 1988, licensees requested an exemption to 10 CFR 50.71(e) which would defer submittal of the UFSAR until one year following issuance of a full power operating license for Vogtle Unit 2 on the basis that the present Final Safety Analysis Report (FSAR) applies to both units. The FSAR has been updated on May 6, 1987, August 31, 1987, and March 30, 1988, and will continue to be updated to support the licensing of Vogtle Unit 2 and to provide updated information on Vogtle Unit 1. These FSAR revisions essentially satisfy the intent of the regulation, but achieve it in a different format from the one recommended by the staff in a letter to all operating reactor licensees dated December 15, 1980. Because the necessary safety information is provided in each revision, no undue risk would result from the proposed exemption.

III.

The NRC staff has reviewed the licensees' request for an extension of the Vogtle Unit 1 UFSAR submittal until one year following issuance of a full power operating license for Vogtle Unit 2. The extension is needed to eliminate the hardship of maintaining two versions of essentially the same document. The Vogtle Unit 2 full power operating license issuance is estimated to be April 1989. This would result in an extension of approximately 15 months.

On June 22, 1983, the licensees submitted the FSAR for both Vogtle units. From that time until the present, the NRC staff has reviewed the FSAR on the basis that it was for both units; however, since Units 1 and 2 are not receiving operating licenses at the same time, there are two regulations which are not consistent with each other. 10 CFR 50.34 requires the licensees to amend the FSAR in order to keep the information contained therein current, whereas 10 CFR 50.71(e) requires the licensees to submit an entirely new document, an UFSAR, which replaces the existing FSAR. Therefore, in order to comply with these two regulations concurrently, the licensees would have to maintain both the FSAR with amendments with the UFSAR. Maintaining two versions of the same licensing document for each unit would be difficult, could lead to ambiguities and confusion and would serve no useful purpose if the existing FSAR is maintained up-to-date through the licensing of Unit 2.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(i) and (ii) apply to this situation. The requirement of 10 CFR 50.34 to keep the submitted FSAR current is not consistent with the requirement of 10 CFR 50.71(e) to submit an UFSAR, because the FSAR is a combined document for both units. This consitutes the special circumstance described in 10 CFR 50.12(a)(2)(i).

Application of 10 CFR 50.71(e) requirement in this situation for updating the FSAR for Vogtle Unit 1 within two years, in accordance with the format recommended by the staff, is not necessary to achieve the underlying purpose of the rule, which is to ensure that updated information be available in the FSAR. Since the FSAR for both Vogtle Units 1 and 2 has been updated in a different format, on May 6, 1987, August 31, 1987 and March 30, 1988, the extension of time granted herein does not conflict with the intent of the rule. This complies with the intent of the regulation and comports with the special circumstance described in 10 CFR 50.12(a)(2)(ii).

Accordingly, the Commission hereby grants an exemption as described in Section III above from § 50.71(e)(3)(i) of 10 CFR Part 50 to extend the date for submittal of the updated FSAR for Vogtle Unit 1 until one year following

issuance of a full power operating license for Vogtle Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (53 FR 9829).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 28th day of April 1988.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-9857 Filed 5-3-88, 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co. et al.; Issuance of Amendment to Facility Operating License

In the matter of Iowa Electric Light and Power Company, Central Iowa Power Cooperative, Corn Belt Power Cooperative. Notice of Consideration of issuance of amendment to facility operating license and opportunity for hearing.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-49, issued to the Iowa Electric Light and Power Company, et al. (the licensees), for operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The amendment would revise the DAEC Technical Specifications relating to logic system functional testing. Specifically, the proposed changes would: (1) Extend the surveillance frequency of Engineered Safety Feature logic system testing from annually to 18 months, to coincide with the 18-month operating cycle: (2) clarify the definition of Logic System Functional Test to more closely conform to the BWR Standard Technical Specifications and to reflect revised testing practices; (3) delete the requirement to perform a logic system functional test on the logic controlling the Head Spray Mode of the Residual Heat Removal System, as this equipment is no longer in service; (4) correct editorial errors in Tables 4.2-A and 4.2-B by deleting calibration frequencies associated with each Logic System Functional Test that are appropriately specified elsewhere in the tables; and (5) delete Note 4 for Tables 4.2-A through 4.2-F, which describes the use of test jacks which will not be used in the revised DAEC testing practices.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 3, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator would be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman, Esq., and Kathleen H. Shea, Esq., Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after the completes its technical review and prior to the completion of any required hearing if it published a further notice for public comment of its proposed finding of no

significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 11, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 26th day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-9858 Filed 5-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operation License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operation License No. NPF-3 issued to Toledo Edision Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station Unit No. 1 (the facility), located in Ottawa County, Ohio.

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to:

(1) The Reactor Cooling System (RCS) pressure-temperature operating limits during heatup, cooldown, and inservice leak and hydrostatic tests to reflect reactor vessel neutron exposure,

(2) The allowable heatup and cooldown rates permitted to reflect the rates assumed when determining the pressure-temperature limitation curves,

(3) The evaluation required by the TS's when the pressure-temperature limits are exceeded,

(4) The action required to change plant operation when the temperature-pressure limits are exceeded,

(5) The surveillance requirement for reactor vessel material irradiation surveillance specimens, and

(6) The allowable RCS pressure versus pressurizer level when in Modes 4 or 5 with an inoperable Decay Heat Removal System safety valve.

The proposed amendment also would revise the license condition relating to the required analysis and modifications to prevent low temperature over-pressurization of the RCS.

These changes are required to incorporate new RCS pressure-temperature limits, heatup-cooldown rates, and pressurizer level-RCS pressure limits to reflect reactor vessel material properties to 10 effective full power years (EFPY). The removal of the surveillance requirements and specimen withdrawal schedule is reguired because the program is governed by the results of Babcock and Wilcox analyses of vessel material specimens.

The proposed amendment, specifically, would revise License Condition 2.C.(3)(d), TS Sections 3/4.4.2, 3/4.4.9.1, Figures 3.4-2, 3.4-2a, 3.4-2b, 3.4-3, 3.4-4, and Table 4.4-5. The amendment would also revise Bases Section 3/4.4.9, Bases Table 4-1, and Bases Figures 4-1 and 4-2.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By June 3, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-600 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Kenneth E. Perkins: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 26, day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III–3, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 88–9859 Filed 5–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–3, issued to the Yankee Atomic Electric Company (the licensee), for operation of the Yankee Nuclear Power Station, located near Rowe, Massachusetts.

The proposed amendment would modify the Technical Specifications to accommodate changes in the incore detection system from moveable detectors to fixed detectors. The licensee's application for amendment is dated April 4, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 3, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding: (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for

amendment dated March 23, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 28th day of April, 1988.

For the Nuclear Regulatory Commission.

Richard Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-9860 Filed 5-3-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request to extend the use of OPM Form 805 that collects information from the public. OPM Form 805, "Application To Be Listed Under the Voting Rights Act of 1965," is used to elicit information from persons applying for voter registration under the authority of the Voting Rights Act of 1965. There are 250 individuals who respond annually for a total public burden of 83 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before May 18, 1988.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ellice Halpern, (202) 632-4632.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 88-9866 Filed 5-3-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25620; File No. SR-CBOE-87-47, Amdt. No. 1]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Market Maker Eligibility for RAES in Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission Amendment No. 1 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

The following describes eligibility criteria for members to participate as contra-brokers on RAES in equity options for a six-month pilot program:

RAES eligibility in Equity Options

1. Any Exchange member who has registered as a market-maker is eligible to log on RAES in an equity option class, so long as the following requirements are met.

2. The market-maker must log on the system using his own acronym and individual password. All RAES trades to which the market-maker is a party will be assigned to and will clear into his designated account.

3. The market-maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. [Consistent with Exchange rules and interpretations thereof] *Unless exempted by the Market Performance Committee,* only one participant in a joint account may use the joint account for trading in a particular option class at one time on RAES in regular trading.

4. *Unless exempted by the Market Performance Committee,* a market-maker may log on RAES in a particular equity option only in person and may continue on the system only so long as he is present in that trading crowd. *Accordingly, absent exemption from the foregoing limitation,* [A] *a* member may not remain on the RAES system and must log off the system when he has left the trading crowd, unless the departure is for a brief interval.

5. *In option classes designated by the Market Performance Committee, any market-maker who has logged on RAES at any time durng an expiration month must log on the RAES system in that option class whenever he is present in that trading crowd until the next expiration.*

6. *Notwithstanding the limitations in paragraph 4 above, if there is inadequate RAES participation in a particular options class, the Exchange's Market Performance Committee may require market makers who are members of the trading crowd, as defined in Interpretation .01 to Rule 8.12, to log on to RAES absent reasonable justification or excuse for non-participation.*

[6. In unusual market conditions, the Exchange may grant exemptive relief from these provisions.]

[6] *7.* Failure of a member to abide by the [these eligibility] *the foregoing* requirements [; including but not limited to logging off RAES upon leaving the trading crowd] may be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES *and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This is an amendment to the proposed rule change to amend the standards of market-maker eligibility to participate in RAES in equity options.[1] The standards

[1] SR-CBOE-87-47 was originally filed with the Commission on October 19, 1987, and noticed in Securities Exchange Act Release No. 25173 (December 4, 1987), 52 FR 47470.

were originally set forth in SR-CBOE-86-22, approved in Exchange Act Release No. 23591 (September 4, 1986), 51 FR 32710 (September 15, 1986).

The amendments are as follows. Paragraphs 3, 4 and 5 have been amended to give authority to the Market Performance Committee to grant the contemplated exemptions. The original proposed rule change gave this authority to the Floor Procedure Committee. The Exchange believes that the Market Performance Committee, which is responsible for market-maker performance, should have this authority. In addition, it should be noted that the currently effective eligibility rules are administered, in part, by the Market Performance Committee.

Paragraph 6 is new in this amendment, providing the Market Performance Committee with the ability to require members of a trading crowd to sign onto RAES if there is inadequate participation in a class at the start of trading or during the trading day. This will ensure the system's availability throughout the trading day for eligible public customer orders. While one or a small number of market-maker participants may be sufficient in many equity option classes, more participants may be necessary in more active classes. The Market Performance Committee, therefore, will be able to determine the level of necessary participation.

The Market Performance Committee will prepare periodic lists of the market-makers who are deemed to be members of the trading crowd in each option class. The members of the trading crowd will be notified that they are on the list, and of the possibility of being required to log onto the system under this Rule. The members on the list, if called upon to log onto the system, will be expected to do so, absent reasonable justification or excuse. If a member fails to log on, the member may be subject to remedial measures taken by the Market Performance Committee under Chapter VIII of the Exchange Rules or disciplinary action under Chapter XVII of the Exchange Rules.

Finally, Paragraph 7 has been amended to clarify that the Market Performance Committee possesses the authority to take remedial measures under Chapter VIII of the Exchange Rules for violations of this rule.

The Exchange believes that this amendment to the proposed rule change is consistent with the provisions of the Exchange Act and the rules and regulations thereunder, in particular, section 6(b)(5) thereof, in that the proposed rule change will allow for the continuing availability of RAES for public investors with reasonable and fair market-maker participation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 25, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

April 27, 1988.

[FR Doc. 99-9888 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25621; File No. SR-CBOE-88-02]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Amended Eligibility Criteria for Members To Participate as Contra-Brokers on RAES in Standard and Poor's 500 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 6, 1988, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

The following describes amended eligibility criteria for members to participate as contra-brokers on RAES in the Standard & Poor's 500 Index ("SPX") for a six-month pilot program.

RAES Eligibility In SPX

1. Any Exchange member who has registered as a market-maker is eligible to log on RAES in SPX, so long as the following requirements are met.

2. The market-maker must log on the system using his own acronym and individual password. All RAES trades to which the market-maker is a party will be assigned to and will clear into his designated account.

3. The market-maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. [Consistent with Exchange rules and interpretations thereof] *Unless exempted by the Market Performance Committee,* only one participant in a joint account may use the joint account for trading in a particular option class at one time on RAES in regular trading.

4. *Unless exempted by the Market Performance Committee,* a market-maker may log on RAES in SPX only in person and may continue on the system only so long as he is present in that trading crowd. *Accordingly, absent exemption from the foregoing limitation,* [A] *a* member may not remain on the RAES system and must log off the system when he has left the trading crowd, unless the departure is for a brief interval.

5. *Unless exempted by the Market Performance Committee, any market-maker who has logged on RAES at any time during an expiration month must log on the RAES system ins SPX whenever he is present in that trading crowd until the next expiration.*

6. *Notwithstanding the limitations in paragraph 4 above, if there is inadequate RAES participation in SPX, the Exchange's Market Performance Committee may require marketmakers who are members of the trading crowd, as defined in Interpretation .01 to Rule 8.12, to log on the RAES absent reasonable justification or excuse for non-participation.*

[6. In unusual market conditions, the Exchange may grant exemptive relief from these provisions.]

[6] *7.* Failure of a member to abide by [these eligibility] *the foregoing* requirements [; including but not limited to logging off RAES upon leaving the trading crowd] may be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES *and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in section (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This proposed rule change amends the standards of market-maker eligibility to participate in the RAES pilot in SPX set forth in SR–CBOE–86–28. The amended criteria are substantially the same as those previously submitted for RAES in equity options. (See SR–CBOE–87–47, Amendment No. 1, amending SR–CBOE–86–22.)

The amendments are as follows. Paragraphs 3, 4 and 5 have been amended to give authority to the Market Performance Committee to grant the contemplated exemptions. The Exchange believes that the Market Performance Committee, which is responsible for market-maker performance, should have this authority. In addition, it should be noted that the currently effective eligibility rules are administered, in part, by the Market Performance Committee.

Paragraph 6 is new in this amendment, providing the Market Performance Committee with the ability to require members of the trading crowd to sign onto RAES if there is inadequate participation in SPX at the start of trading or during the trading day. This will ensure the system's availability throughout the trading day for eligible public customer orders. The Market Performance Committee, will determine the level of necessary participation.

The Market Performance Committee will prepare periodic lists of the market-makers who are deemed to be members of the trading crowd in SPX. The members of the trading crowd will be notified that they are on the list, and of the possibility of being required to log onto the system under this Rule. The member on the list, if called upon to log onto the system, will be expected to do so, absent reasonable justification or excuse. If a member fails to log on, the member may be subject to remedial measures taken by the Market Performance Committee under Chapter VIII of the Exchange Rules or disciplinary action under Chapter XVII of the Exchange Rules.

Finally, Paragraph 7 has been amended to clarify that the Market Performance Committee possesses the authority to take remedial measures under Chapter VIII of the Exchange Rules for violations of this rule.

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act and the rules and regulations thereunder, in particular, section 6(b)(5) thereof, in that the proposed rule change will allow for the continuing availability of RAES in SPX for public investors with reasonable and fair market-maker participation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All Submissions should refer to the file number in the caption above and should be submitted by May 25, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 27, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9889 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25618; File No. SR-CSE-87-1]

Self-Regulatory Organization; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange Relating to the Use of the General Securities Representative (Series 7) Examination of the Uniform Application for Securities Industry Registration or Transfer (Form U-4)

On November 18, 1987, the Cincinnati Stock Exchange ("Exchange" or "CSE") filed with the Commission copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to permit use of the General Securities Representative ("Series 7") examination and the Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). The CSE is also proposing to amend the Form U-4 to provide for consent to service of process by associated persons.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Rel. No. 25361, February 18, 1988) and by publication in the **Federal Register** (53 FR 6722). No comments were received regarding the proposal.

In its filing, the Exchange indicates that the Series 7 examination and its study outline will be utilized to qualify those persons seeking registration as general securities representatives. In addition, the Exchange believes that use of the examination and its study outline will ensure that persons associated with member organizations as general securities representatives successfully complete a training course and examination to demonstrate an adequate knowledge of the securities business.

The CSE is also requesting to use the Form U-4 and to amend it to provide for consent of service, as part of its procedures for the registration and oversight of member firm personnel. In this regard, the Exchange indicates that the Form U-4 provides an efficient method of reviewing and tracking the continuous and frequent entry and movement of individuals in the securities industry as well as changes in their employment histories.

After careful review, the Commission finds that the proposal to permit the CSE to use and continue to use both the Series 7 examination and Form U-4 is reasonable. In this regard, we note that the Commission has, to date, approved proposed rule changes submitted by the National Association of Securities Dealers, Inc., the Philadelphia Stock Exchange, Inc., the New York Stock Exchange, Inc., the Boston Stock Exchange Incorporated and the Pacific Stock Exchange Incorporated exchanges to use, and continue to use a revised and updated Series 7 examination and its study outline to reflect recent trends and developments in the securities markets.[1] Indeed, the Series 7 exam has been used for many years by the stock exchanges as a uniform exam for general securities representative qualification. The use of the exam and its study outline should help ensure that those persons acting as security representative are adequately trained and qualified. In addition, with regard to the Uniform Application for Securities Industry Registration or Transfer (Form U-4), the Commission believes that the Exchange's continued use of the Form U-4 will ensure that the Exchange continuously monitors the movement within the securities industry of those individuals associated with CSE member firms. With respect to the adoption of the consent to service clause, the Commission believes that this provision is designed to ensure that the procedural due process requirements incorporated in the Act are satisfied in cases in which the CSE takes disciplinary action against an associated person who fails to receive service of process because he is absent from his last known addresses. It is anticipated that the proposed consent will validate mailed or telegrammed (but unreceived) service of process in these cases.

Based on the above, the Commission finds that the CSE's proposal is consistent with section 6 of the Act and the rules thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

Dated: April 27, 1988.

[FR Doc. 88-9890 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release Nos. 23325 (June 16, 1986), 51 FR 22874, 23685 (October 6, 1986) 51 FR 36621, 23954 (January 5, 1987) 52 FR 1270, 24106 (February 17, 1987) and 24167 (March 3, 1987) 52 FR 7736.

[2] 17 CFR 200.30-3.

[Release No. 34-25619; File No. SR-MSE-87-14]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

On November 9, 1987, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Commission copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. section 78s(b)(1), and Rule 19b-4 thereunder to rescind its Mandatory Posting Rule.[1]

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 25241, January 5, 1988) and by publication in the **Federal Register** (53 FR 649). No comments were received concerning the proposal.

The Mandatory Posting Rule ("Rule") originally was adopted by the MSE in 1985[2] to govern the posting and reassignment of securities amony MSE specialists and co-specialists due to substandard performance. In adopting the Rule, the Exchange indicated that it was designed to improve the quality of MSE markets—either through the dissemination of more competitive markets or through the automatic posting and reassignment of issues in which the current co-specialist has not successfully attracted significant order flow.[3]

[1] *See* Article XXX, Rule 1.01(l)(6)(C) of the MSE Rules.

[2] *See* Securities Exchange Act Release No. 22577 (October 28, 1985) 50 FR 45695.

[3] *See* Securities Exchange Act Release Nos. 22077 (May 28, 1985), 50 FR 23370, and 22577 (October 28, 1985), 50 FR 45695. We note that the Commission approved two proposals submitted by the MSE that suspended the application of the Mandatory Posting Rule for the six month periods ending June 30, 1986 and December 31, 1986, *see* Securities Exchange Act Rel. No. 24444 (May 12, 1987) 52 FR 9002 and for the six month period ending June 30, 1987. *See* Securities Exchange Act Rel. No. 24892 52 FR 35018. Accordingly, the MSE only posted and reassigned securities under the Rule for one six month period of activity occurring between July 1, and December 31, 1985.

Under the Rule, an issue is posted for reassignment,[4] if, during the preceding six month period, the MSE's market share in the issue[5] falls below three or more other exchanges and also ranks below the Exchange's average market share for all issues for which there is a registered specialist.[6] When a security is posted for reassignment, all qualified co-specialists, including the current co-specialist, can submit an application to have the posted stock assigned to them.[7] The Rule, however, provides that, if several co-specialists with comparable ability and experience apply for a new allocation, the Committee on Specialist Assignment and Evaluation ("Committee") is generally required to give preference to the co-specialist who has not had posted for reassignment that issue or any other security in the current posting period.

In this filing, the Exchange proposes to rescind the Mandatory Posting Rule. As a result, a co-specialist's performance in an assigned issue will no longer be measured by the number of trades executed in the issue during the preceding six month period. The Exchange indicates that it intends to submit to the Commission for approval a set of newly developed alternate co-specialist evaluation criteria that will replace the Mandatory Posting Rule.[8]

The Exchange further indicates that its determination to rescind the Rule stems, in part, from structural changes occurring within the securities industry, particularly, the growth of retail firms functioning as specialists on other exchanges.

As a general matter, the Commission supports the concept of the Mandatory posting Rule and believes that it provides a meaningful incentive to co-specialists to improve their market making performance in their assigned issues.[9] Moreover, the Commission notes that the Rule contains several provisions designed to ensure that co-specialists receive proper procedural protection throughout the entire posting process. As discussed above, a key provision provides for the distribution of a monthly market share status report to each specialist unit. This report provides each unit with an indication of the quality of its performance for the preceding month affording the specialist the opportunity to improve his position and avoid mandatory posting. Accordingly, if the market share figures indicate that the unit's performance in a particular issue is inadequate, the specialist unit has an ability to take appropriate steps to improve its performance. In addition, in the event an issue is posted for reassignment, the current co-specialist is permitted to apply, along with other co-specialists, for the allocation of the issue. Further, co-specialists whose stocks are up for reassignment are allowed to defend their performance before the Committee in a formal hearing.[10] In this hearing, the co-specialist is permitted to explain any mitigating circumstances that have contributed to his substandard performance. A co-specialist is also entitled to appeal any decision by Committee to reassign a stock to the MSE's Executive Committee.[11]

Although the Commission believes that the Rule provides, among other things, an incentive for improved co-specialist performance, the Commission nevertheless recognizes that the MSE is in the process of revising its specialist evaluation program. As part of this process, the MSE believes it is necessary to replace the Mandatory posting Rule with a new program. Additionally, no other exchange has a rule comparable to the Mandatory Posting Rule. Accordingly, the Commission has concluded that it should not require the MSE to maintain a mandatory posting system and approves the MSE's request to rescind the Rule.[12]

At the same time, however, the Commission notes that the MSE will continue to utilize its Co-Specialist Evaluation Survey [13] to monitor co-specialist performance in accordance with its oversight responsibilities set forth in Rule 11b–1 of the Act.[14] In addition, the MSE will still retain the right to reallocate stocks due to inadequate performance as indicated by the survey. This should ensure that there is no interruption in the Exchange's co-specialist performance evaluation program. Based upon the above, and the MSE's ongoing efforts to strengthen its specialist evaluation program, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is approved.

[4] An issue only may be posted if it has been assigned to the current specialist unit for six months or more.

[5] For purposes of the Rule, market share is calculated as a percentage of the number of trades reported to the consolidated tape. After determining the MSE's market share in an issue, the Exchange compares its market share with the market shares of other market centers trading the stock.

[6] Thus, to avoid the automatic posting of a security under the Rule, a so-specialist must attract sufficient order flow in an issue to maintain its market share ranking above the fourth highest level. To this end, each specialist unit is provided with a monthly summary of its market share activity in its assigned issues. This information is designed to apprise the unit of its market share performance for the preceding month and to provide each unit ample opportunity to either improve its performance in an issue prior to the semi-annual posting or request a transfer of such issue to a stronger co-specialist within the unit.

[7] In this regard, we note that under the Rule, the posting of an issue due to substandard performance does not necessarily result in ressignment to another co-specialist. The Committee on Specialist Assignment and Evaluation ("Committee") makes the final determination as to whether a posted issue will be reassigned to another co-specialist or allowed to remain with the current co-specialist. As noted above, the Exchange only has posted and reassigned issues under the Mandatory Posting Rule for trading activity occurring between the July 1, and December 31, 1985 six month period.

[8] The Exchange has indicated that it's Co-Specialist Evaluation Survey ("Survey" or "Questionnaire") will be a component of the new evaluation criteria. The survey is a questionnaire completed semi-annually by MSE floor brokers who are asked to rate co-specialist performance in a variety of areas. A specialist's registration in an assigned security may be suspended or revoked due to unsatisfactory performance ass indicated by the broker survey results. *See* MSE Rules, Article XXX, Rule 1, Interpretaions and Policies 01, I, 6. We note that the Exchange has submitted to the Commission a proposed rule change that would revise its Co-Specialist Evaluation Survey. The proposal is currently pending before the Commission. *See* Securities Exchange Act Rel. No. 25387 (February 23, 1988) 53 FR 6723 (SR–MSE–87–13). The MSE also has indicated that it is currently developing additional evauation criteria that will be submitted to the Commission for its review.

[9] We note that the Division of Market Regulation, in its report on the October 1987 Market Break, discussed the need for the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. to develop and incorporate into their specialist evaluation programs objective standards of performance. *See* Division of Market Regulation, United States Securities and Exchange Commisison, The October 1987 Market Break (1988) pg. XVII.

[10] *See* MSE Rules, Article VXII, Rule 2.

[11] *See* MSE Rules, Article VXII, Rule 4.

[12] As noted above, in addition to developing a new questionnaire the MSE Is also currently in the process of developing additional evaluation criteria that will include objective standards. we support these efforts and believe the development of a comprehensive specialist evaluation program that measures performance using both floor surveys and objective criteria is extremely important and will assist the MSE in fulfilling its obligations under the Act. *See* n. 8, *supra.* Of course, the Commission will review the MSE's proposed specialist evaluation program, including the reviewed survey and any new objective criteria, to ensure it meets the requirements of the Act.

[13] *See,* n. 8, *supra.*

[14] 17 CFR 240.11b–1(a)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: April 27, 1988.

[FR Doc. 88-9891 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16385; (812-6554)]

Bear Stearns Secured Investors Inc.; Notice of Application

April 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Bear Stearns Secured Investors Inc. (the "Applicant"), on behalf of itself and all owner trusts (each, a "Trust") it may establish in the future. (Applicant and the Trusts are referred to collectively as the "Issuers".)

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant filed an application on December 8, 1986, and amendments on February 6, March 2 and March 18, 1987 ("Original Application"), for an order conditionally exempting the Issuers from all provisions of the 1940 Act to permit them to issue and sell one or more series of fixed rate bonds collateralized by Mortgage Collateral (as defined below). On April 13, 1987, the SEC issued an order granting the requested relief (Investment Co. Act Release No. 15678). On April 30 1987, Applicant filed Amendment No. 4 to the Original Application, and on June 2, 1987 submitted a letter relating thereto, to permit the Issuers to issue series of Bonds containing one or more classes of variable or floating interest rate bonds ("Floating Rate Bonds") (such Amendment No. 4, as modified by said letter, together with the Original Application, shall hereinafter be referred to as the "Amended Application"). On July 2, 1987, the SEC issued an order granting the requested relief (Investment Co. Act Release No. 15858, which, together with Release No. 15678, shall hereinafter be referred to as the "Existing Order"). On January 29, 1988, the Staff of the Division of Investment Management issued an interpretive letter permitting the Issuers to secure series of bonds with securities issued and guaranteed by GNMA, FNMA of FHLMC representing beneficial ownership interests in less than 100% of the distributions of principal or interest or both made on the mortgage loans underlying such securities ("Agency Stripped Mortgage-Backed Certificates"). On February 11, 1988, Applicant further amended the Amended Application ("Amendment No. 5") to permit the Issuers to secure series of bonds, in whole or in part, with Stripped Mortagage-Backed Securities, whole and partial pool Non-Agency Certificates and Funding Agreements secured by Mortgage Collateral (each as described below). The Amended Application, as further amended by Amendment No. 5 is referred to herein as the "Application"). Applicant then filed Amendment No. 6 to the Applicantion to permit the Issuers (1) to sell (a) Residual Interests to sophisticated non-institutional investors and (b) Bonds to foreign investors, in each case subject to certain additional conditions, and (2) to amend and restate all the conditions applicable to the issuance of Bonds by the Issuers.

Filing date: The Application was filed on December 8, 1986 and amended on February 6, March 2, March 18 and April 30, 1987 and February 11, 1988. Amendment No. 6 was filed on April 8, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on May 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Bear Stearns Secured Investors Inc., 1601 Elm Street, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Paul Heaney, Financial Analyst (202) 727-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is a direct, wholly-owned, finance subsidiary of The Bear Stearns Companies Inc., which in turn is the parent of Bear, Stearns & Co. Inc. Under the Existing Order, Applicant, a Delaware corporation, engages in asset-backed financing, including issuing and selling, or establishing separate Trusts to issue and sell, series of fixed and Floating Rate Bonds, and purchasing owning and selling to the Trusts Mortgage Certificates and other collateral (collectively, "Mortgage Collateral") and pledging such Mortgage Collateral to a Trustee as security for each series of Bonds. Applicant will not engage in any business or investment activities unrelated to such purpose. Applicant now proposes, subject to the conditions contained in the Existing Order, as amended herein, and to certain additional terms and conditions as described below: (i) To use Stripped Morgage-Backed Securities issued by limited purpose trusts or other entities established by the Applicant or others as collateral for the Bonds, (ii) to use whole and partial pool Non-Agency Certificates as collateral for the Bonds, (iii) to enter into Funding Agreements as a means of securing additional collateral for the Bonds, and (iv) to sell (a) Residual Interests to sophisticated non-institutional investors and (b) Bonds to foreign investors.

2. Stripped Mortgage-Backed Securities will be similar to stripped mortgage-backed certificates issued by FNMA in that they are issued in series of two or more classes, with each class representing a specified undivided fractional interest in principal distributions and/or interest distributions on a specified underlying pool of assets, and the fractional interests of each class are not identical but in the aggregate represent 100% of the principal and interest distributions on the particular pool. In additon, the Stripped Mortgage-Backed Securities to be included in Mortgage Collateral: (a) Will be rated in one of the two highest rating categories by at least one nationally recognized statistical rating agency, (b) will represent an underlying pool of assets consisting entirely of FNMA Certificates, GNMA Certificates, FHLMC Certificates or Agency Stripped Mortgage-Backed Certificates and (c) will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. Use of such Stripped Mortgage-Backed Securities as collateral for Bonds will not reduce the security afforded to Bondholders nor expose them to a level of risk significantly different from that present

in a series of Bonds directly secured by FNMA Certificates, GNMA Certificates, FHLMC Certificates or Agency Stripped Mortgage-Backed Certificates in which such Stripped Mortgage-Backed Securities represent an interest.

3. Non-Agency Certificates are mortgage pass-through certificates issued by non-governmental or non-government sponsored entities. They will be rated in one of the two highest rating categories by a least one nationally recognized statistical rating agency. All or a portion of the Non-Agency Certificates securing the Bonds may be "partial pool" Non-Agency Certificates representing less than 100% of Non-Agency Certificates issued with respect to a pool of mortgage loans and some or all of any remainder could be "whole pool" Non-Agency Certificates.

4. Each Funding Agreement will be entered into by an Issuer with a limited purpose entity (each, a "Participant") affiliated with a concern engaged in the home-building or mortgage lending business or otherwise engaged in a mortgage-related business or providing services to builders or lenders. The Participants may be in corporate, trust or general or limited partnership form and may include affiliates of the Applicant. Each of the Funding Agreements securing a series of Bonds will provide that (i) the Issuer make a loan to each Participant out of the proceeds of the sale of such series, such loan to be evidenced by one or more promissory notes (the "Notes"); (ii) each such Participant pledge Mortgage Collateral to the Issuer as security for its Notes; and (iii) each such Participant be obligated to repay its loan by causing payments on the Mortgage Collateral securing its Notes to be made directly to the Trustee for the Bondholders in amounts sufficient to pay such Participant's share of principal and interest on the Bonds, together with certain administrative expenses of the Issuer. The Issuer will in turn assign its entire right, title and interest in such Funding Agreements (other than the Issure's rights to receive fees, to indemnification and to reimbursement as provided for in the related Indenture), and in the related Notes and Mortgage Collateral to the Trustee as security for such series of Bonds.

Applicant's Legal Conclusion: The requested order is necessary and appropriate in the public interest because: (a) The Issuers should not be deemed to be entities to which the provisions of the Act were intended to be applied; (b) the Issuers may be unable to proceed with the proposed activities if the uncertainties concerning the applicability of the Act are not removed; (c) the Issuers' activities are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933, as amended, and thereafter by the Trustee representing their interests under the Indenture; and (e) the Residual Interests will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional or "accredited" non-institutional investors through private placements.

Applicant's Amended and Restated Conditions:

A. Conditions Relating to the Bonds

(1) Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act or because such series of Bonds is offered and sold outside the United States or to non-United States persons in reliance upon an opinion of United States counsel that registration is not required. No single offering of Bonds sold both within and outside the United States will be made without registration of all such Bonds under the 1933 Act without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings. In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Bonds from being offered or sold in the United States or to United States persons (except as United States counsel may then advise is permissible). Disclosure provided to purchasers located outside the United States will be substantially the same as that provided to United States investors in United States offerings.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the collateral directly securing the Bonds will be GNMA Certificates, FNMA Certificates, FHLMC Certificates, Agency Stripped Mortgage-Backed Certificates, Stripped Mortgage-Backed Securities, Non-Agency Certificates and/or Funding Agreements.

(3) If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in Conditions A.(2) and A.(4). New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged only in the event of default, late payments or defect in such Non-Agency Certificates being replaced. New Funding Agreements may be substituted for initial Funding Agreements only if the substitution of the Mortgage Collateral securing such Funding Agreements would be permitted under the foregoing specified conditions. In addition, new Mortgage Certificates will not be substituted for more than 40% of the aggregated face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All Mortgage Collateral securing a series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian. Neither the Trustee nor the custodian will be an "affiliate" (as the term "affiliate" is defined in 1933 Act Rule 405, 17 CFR 230.405) of any Issuer. The Trustee will be provided with a first priority perfected security or lien interest in and to all Mortgage Collateral.

(5) The master servicer of the mortgage loans underlying Non-Agency Certificates securing a series of Bonds may not be an affiliate of the Trustee. If there is no master servicer for the mortgage loans underlying Non-Agency Certificates securing a series of Bonds, no service of those mortgage loans may be an affiliate of the Trustee. In additon, any master servicer and any servicer of a mortgage loan underlying Non-Agency Certificates will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of mortgage loans underlying Non-Agency Certificates shall obligate the servicer to provide substantially the same services with respect to such mortgage loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

(6) Each series of Bonds will be rated in one of the two highest bond rating categories by at least on nationally recognized statistical rating agency that is not affiliated with any Issuer. The Bonds will not be considered "redeemable securities" within the meaning of section (2)(a)(32) of the Act.

(7) So long as applicable law requires, at least annually, an independent public accountant will audit the books and records of each Issuer and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

B. Conditions Relating to Floating Rate Bonds

(1) Each class of Floating Rate Bonds will have set maximum interest rates (interest rate caps), which may vary from period to period as specified in the related prospectus or other offering document, and will be secured by Mortgage Collateral to the same extent as any other class of Bonds.

(2) At the time of the acquisition of the Mortgage Collateral by the Applicant or the deposit of the Mortgage Collateral with the issuing Trust, as the case may be, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Collateral pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of Floating Rate Bonds. Such Mortgage Collateral will be paid down as the mortgages comprising or underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

(3) In addition to those mechanisms referred to in the application, a number of mechanisms exist to ensure the adequancy of the Mortgage Collateral notwithstanding subsequent potential increases in the interest rate applicable to the Floating Rate Bonds. Applicant will give the Staff of the Division of Investment Management (the "Staff") notice by letter of any such additional mechanisms before they are utilized in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of paragraph B. (2) and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

C. Conditions Relating to REMIC Election

(1) The election by an Issuer to treat the arrangement by which any series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred by any such Issuer. If such an election is made, the Issuer that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to the agency or agencies rating the Bonds. Each Issuer that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses in connection with the issuance of the Bonds and the administration of the trust estate by one or more of the methods described in the Application.

(2) Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of which or all of the methods (which methods may be used in combination) are selected by such Issuer to provide for the payments of such fees and expenses.

D. Conditions Relating to the Sale of Residual Interests

(1) Residual Interests will be sold only where the related Bonds are collaterilized by one or more of the following: GNMA Certifications, FNMA Certificates, FHLMC Certificates, Stripped Mortgage-Backed Securities, Agency Stripped Mortgage-Backed Certificates or Funding Ageements secured by one or more of the foregoing Certificates or Securities. Residual Interests will be offered and sold only to no more than 100 (i) institutional investors or (ii) non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15, be required to purchase at least $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, real estate investment trusts or other institutions or non-institutional investors as described above which customarily engage in the purchase or origination of mortgages and other types of mortgage related securities.

(2) Residual Interests will be sold only in transactions not involving any public offering within the meaning of Section 4(2) of the 1933 Act.

(3) Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than 100 Residual Interest Holders of any series of Bonds at any time.

(4) Each purchaser of a Residual Interest will be required to represent that it is not purchasing for distribution and that it will hold such Residual Interests in its own name or for accounts as to which it exercises sole investment discretion.

(5) No Residual Interest Holder may be affiliated with the Trustee, the custodian of the Mortgage Collateral or the agency rating the Bonds of the relevant series.

(6) No holder of a controlling interest in the Applicant (as the term "control" is defined in Rule 405 under the 1933 Act) will be affiliated with either (a) any custodian which may hold the Mortgage Collateral on behalf of the Trustee or (b) any statistical rating agency rating the Bonds.

(7) If any shares of the common stock of the Applicant were to be sold and such sale results in the transfer of control (as the term "control" is defined in rule 405 under the 1933 Act) of the Applicant other than to an affiliate of The Bear Stearns Companies Inc., the relief afforded by an order granted on the Application would not apply to subsequent Bond offerings by the Applicant or any of the Trusts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-9819 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16381; 812-6992]

The Rodney Square Benchmark U.S. Treasury Fund, Inc., et al.; Application

April 26, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Rodney Square Benchmark U.S. Treasury Fund, The Rodney Square Fund, The Rodney Square International Securities Fund, Inc., The Rodney Square Multi-Manager Fund, The Rodney Square Tax-Exempt Fund ("Applicant" or "Funds"), and such other investment companies as may be established in the future for which Wilmington Trust Company or Rodney Square Management Corporation serves as investment adviser.

Relevent 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 32(a)(1) of the 1940 Act.

Summary of Application: Applicants seek an order to permit them to file with the SEC financial statements signed or certified by an independent public accountant selected at a board of directors or trustees meeting held within 90 days before or after the beginning of each Applicant's fiscal year.

Filing Date: The application was filed on February 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notifed if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on May 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Rodney Square North, Wilmington, Delaware 19890.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants are registered under the 1940 Act as open-end investment companies organized either as a corporation under the laws of the State of Maryland, or as business trusts under the laws of the Commonwealth of Massachusetts. Either Wilmington Trust Company or Rodney Square Management Corporation serves as investment adviser to all of the Applicants. Scudder Fund Distributors, Inc. ("SFD") serves as principal underwriter of each Fund.

2. Each Fund is governed by a board of directors or trustees ("Board"), each of which consists of five persons, two of whom are not "interested persons" as defined in the 1940 Act. The membership of each Board is identical.

3. Neither the laws of Massachusetts applicable to business trusts nor the laws of Maryland pertaining to corporations require the holding of an annual shareholders' meeting. Regularly scheduled Board meetings are currently jointly held for all Applicants in February, May, August and November each year. It is the usual practice to consider an issue affecting more than one of the Applicants at the same meeting.

4. The Funds' fiscal year commencement dates are staggered as follows: October 1 (The Rodney Square Fund and The Rodney Square Tax-Exempt Fund); November 1 (The Rodney Square Benchmark U.S. Treasury Fund and The Rodney Square International Securities Fund, Inc.); January 1 (The Rodney Square Multi-Manager Fund). Accordingly, under the provisions of section 32(a)(1) the Funds now will have to select their independent public accountant within thirty days before or after the beginning of each Funds' fiscal year.

5. The selection of independent public accountants for the Funds is based on the recommendation of the audit committee of each Board ("Audit Committee"). Each Fund's Audit Committee is composed of three Board members, Messrs. Brucker, duPont and Quindlen. The Audit Committee meets at least once a year, immediately preceding the Board meeting at which selection is to be considered, to review the performance of the independent accountants and to decide on its recommendation to the Board for the coming year. Each Applicant currently employs one of two firms as independent public accountants.

6. The application of section 32(a)(1) in light of the present fiscal years and meeting dates of the Funds would require one or two additional Board meetings for the sole purpose of selecting independent public accountants for the Funds, because often the regularly scheduled meetings would not fall within 30 days of the various Funds' fiscal year commencement dates. If meeting dates change or new funds with different fiscal years are added to the complex in the future, the requirement of section 32(a)(1) could become more onerous. Therefore, Applicants are seeking an order to permit them to select independent public accountants at a meeting of the board of directors or trustees of each Fund held within 90 days before or after the beginning of such Fund's fiscal year.

7. Each Applicant submits that it is desirable to consider the selection of its independent public accountant at the same time as the other Applicants during a regularly scheduled board meeting. Expanding the 30-day window to 90 days would permit the Applicant to select accountants once during the year at a regularly scheduled Board meeting. The Applicants submit that it is preferable to avoid the extra expense and inconvenience of holding additional Board meetings solely for the purpose of selecting independent public accountants, as would be required if the 30-day window were not expanded.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 88-9817 Filed 5-3-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24631]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 28, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 23, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice oir order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Edison Company et al. (70–7439)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865, and EUA Service Corporation ("EUA Service"), P.O. Box 2333, Boston, Massachuetts (collectively, "Companies"), subsidiaries of Eastern Utilities Associates, a registered holding company, have filed a post-effective amendment to their declaration pursuant to Sections 6 and 7 of the Act.

By prior Commission order, the Companies were authorized to issue and sell short-term notes to banks, from time to time during the period from December 28, 1987, to December 27, 1988, in aggregate amounts outstanding at any one time not to exceed $50 million for Eastern Edison, $32 million for Montaup, $12 million for Blackstone and $3 million for EUA Service (HCAR No. 24539, December 23, 1987). Montaup now proposes to increase the aggregate amount of short-term notes to banks which Montaup can have outstanding at any one time from $32 million to $40 million, under the same terms and conditions as previously approved by the Commission.

Savannah Electric and Power Company (70–7497)

Savannah Electric and Power Company (SEPCO), 600 Bay Street, East Savannah, Georgia, a subsidiary of The Southern Company, a registered holding company, has filed an application-declaration subject to sections 6(a), 6(b) and 7 of the Act.

SEPCO proposes to issue and sell from time to time, prior to April 1, 1990, short-term notes to banks up to an aggregate principal amount of $25.5 million at any one time outstanding. SEPCO may use short-term borrowings effected hereunder in connection with the financing of certain pollution control facilities.

The Southern Company (70–7515)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration pursuant to section 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Southern proposes, from time to time through June 30, 1990, to issue and sell, pursuant to an exception from competitive bidding, up to 50,000 shares of its common stock, par value $5.00 per share, pursuant to the Profit Sharing Plan for Electric City Merchandise Company, Inc. ("Plan"). Electric City Merchandise Company, Inc. ("Plan"). Electric City Merchandise Company, Inc. ("Employer") is a subsidiary of Mississippi Power Company, an electric utility subsidiary of Southern. Pursuant to the Plan employees voluntarily may contribute or have contributed on their behalf up to 12% of their compensation. The Employer, in its sole and absolute discretion, also may make certain contributions to the Plan. Each Plan member must direct that his contributions be invested in one or more of three funds, including one consisting of Southern common stock. All Employer contributions will be invested in Southern common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–9818 Filed 5–3–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: Pursuant to 49 CFR 1.43(a), the Secretary of Transportation has assumed direct responsibility for review of all complaints that have been or may be filed challenging the changes in the landing fee structure at Logan International Airport in Boston, Massachusetts that were adopted by the Massachusetts Port Authority on March 16, 1988.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, C–50, (202) 366–9307, United States Department of Transportation, 400 Seventh Street SW. Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On March 16, 1988, the Massachusetts Port Authority ("Massport") adopted a resolution that would substantially revise the structure of landing fees at Logan International Airport in Boston, Massachusetts. Complaints have been filed with the FAA regarding Massport's revised landing fee schedule by the National Business Aircraft Association and the Aircraft Owners and Pilots Association. The complaints, among other things, argue that the fee schedule is discriminatory, in violation of the Airport and Airway Improvement Act of 1982. These complaints have been filed pursuant to Part 13 of the Federal Aviation Regulations, 14 CFR Part 13. Although the formal processing of these complaints is still in its early stages, the issues raised in the complaints have been presented previously in informal submissions to the Office of the Secretary.

The Secretary has concluded that these complaints raise important issues whose resolution may affect the national air transportation system and which involve matters of national transportation policy. Thererfore, the Secretary has assumed direct responsibility for review of all complaints challenging Massport's adoption of a revised landing fee structure at Logan Airport. Any additional complaints that may be filed in connection with this issue will also be addressed by the Secretary. This assumption of authority is consistent with the express reservation of authority set forth in 49 CFR 1.43(a).

Subject to further notice, the applicable procedures of Part 13 will be followed in these cases, except that the Secretary will remain responsible in lieu of the FAA Administrator. All documents shall continue to be filed at the locations provided in Part 13, and the official docket will continue to be maintained at the FAA.

Issued on April 29, 1988.

Jim Burnley,

Secretary, U.S. Department of Transportation.

[FR Doc. 88–9874 Filed 4–29–88; 3:58 pm]

BILLING CODE 4910–62–M

Commercial Space Transportation Advisory Committee; Advisory Committee Renewal

AGENCY: Office of the Secretary of Transporation (OST); DOT.

ACTION: Publication of advisory committee renewal.

SUMMARY: DOT announces the renewal of Commercial Space Transportation Advisory Committee (COMSTAC), an advisory committee created under the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C., App. 1) to provide information, advice, and recommendations to the Secretary of Transportation on matters relating to all aspects of the commercialization of expendable launch vehicles. This renewal is effective May 1, 1988 to May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Courtney A. Stadd, Office of Commercial Space Transportation, Office of the Secretary of Transportation, Department of Transportation, Washington, DC 20590 at (202) 366–2937.

Authority: Title 49, Code of Federal Regulations, Sub. A, Part 95.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

[FR Doc. 88–9871 Filed 5–3–88; 8:45 am]

BILLING CODE 4910–62–M

Commercial Space Transportation Advisory Committee, Announcement of Meeting

AGENCY: Office of the Secretary of Transportation (OST); DOT.

ACTION: Commercial Space Transportation Advisory Committee; open meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Thursday, May 12, 1988, from 9:00 a.m. to 5:00 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW., in Washington, DC. This will be the seventh meeting of the Committee. The meeting will address issues associated with liability and insurance, technology transfer policy, government procurement of launch services, trade issues, and the White House Space Policy. The members of the Committee are:

Lionel Alford, Corporate Senior Vice President for Aerospace, The Boeing Company;
Joel Alper, President, Space Communications Division, Communications Satellite Corporation;
James W. Barrett, President, International Technology Underwiters, Inc.;
Richard E. Brackeen, President, Commercial Titan Systems, Martin Marietta Corporation;
Leonard Cormier, President, Third Millennium, Inc. (MMI);
Donald A Derman, Management Consultant;
Jerry Grey, Publisher, *Aerospace America*, American Institute of Aeronautics and Astronautics;
David Grimes, Chairman, Transpace Carriers, Inc.;
George A. Koopman, President and Chief Executive Officer, American Rocket Company;
John Krimsky, Jr., Deputy Secretary General, United States Olympic Committee;
Linda A. Long, President, Long Consultants, Inc.;
Adolph Medica, President, Space Transportation Systems;
George Nesterczuk, President, Nesterczuk & Associates;
Thomas Pauken, Vice President and Corporate Counsel, GARVON, Inc.;
Daniel Ruskin, Vice President, Government Requirements, Lockheed Missiles;
Jerome Simonoff, Vice President, Citicorp Industrial Credit, Inc;
Donald (Deke) Slayton, President, Space Services, Inc. and former astronaut.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from DOT's Office of Commercial Space Transportation, Room 10401, 400 Seventh Street, SW., Washington, DC 20590. Contact: Ann M. Linnertz, telephone 202–366–5770.

Issued in Washington, DC, on April 28, 1988.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

[FR Doc. 88–9872 Filed 5–3–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Lewis/Greenup Counties, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Lewis/Greenup Counties, Kentucky.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602–0536. Phone (502) 227–7321; FTS 352–5468 or Mr. G. F. Hughes, Jr., Director, Division of Environmental Analysis, Kentucky Transportation Cabinet, 419 Ann Street, Frankfort, Kentucky 40622. Phone (502) 564–7250.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, is preparing an environmental impact statement in Lewis/Greenup Counties. The proposed improvement provides for the construction of a two-lane facility on new location from Quincy in Lewis County to Greenup Dam in Greenup County, a distance of approximately 16 miles. The proposed project is needed to improve traffic service to a remote area of Kentucky, reduce travel time and distance, improve highway safety and faster economic and industrial development. The facility will be two lanes initially with sufficient right-of-way for four lanes, at a later date.

Possible alternatives under consideration include the (1) do-nothing, (2) project postponement and (3) the build alternative.

The build alignment begins near KY 1021, South of Quincy, Lewis County and proceeds in a southeasterly direction, paralleling KY 1021 for more than a mile. The alignment turns to the northeast and crosses into Greenup County. At this point, the alignment parallels existing KY 734 to a point near Letitia. The alignment turns to the east, crosses Beauty Ridge to Beechy Creek and continues to Tygarts Valley. The alignment crosses Tygarts Creek before ending at US 23 and the Greenup Dam Bridge, a distance of approximately 16 miles.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held as needed to receive project input and inform the public of project development. A formal public hearing will be held upon approval of the DEIS. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

It is estimated that the draft EIS will be available for public review in August 1988.

Issued on April 22, 1988.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 88-9807 Filed 5-3-88; 8:45 am]

BILLING CODE 4910-22-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by June 3, 1988.

Dated: April 27, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Request for Information to Make Direct Payment to Child Reaching Majority.
3. VA Form Letter 21-863.
4. This form letter is issued to gather the necessary information to enable the Veterans Administration to determine a child's continued eligibility to benefits and eligibility to receive direct payment at age of majority.
5. On occasion.
6. Individuals or households.
7. 22,600.
8. 3,767.
9. Not applicable.

[FR Doc. 88-9887 Filed 5-3-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 86
Wednesday, May 4, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Cancellation of Closed Commission Meeting, Thursday, April 28th Following Oral Argument

The Federal Communications Commission has cancelled the close meeting for discussion of oral argument in Phase I of the KHJ-TV, Los Angeles, California comparative renewal proceeding (Docket Nos. 16679-80), previously scheduled to be held on April 28, 1988 at 1919 M Street NW., Washington, DC.

Issued: April 29, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-9995 Filed 5-2-88; 2:02 pm]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR, April 29, 1988, Page No. 15493.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 am., Friday, April 29, 1988.

CHANGES IN THE AGENDA: The Federal Trade Commission has cancelled its previously announced open meeting at which it was to discuss Consideration of Notice of Proposed Rulemaking Initiating Amendment Proceeding for Funeral Rule.

Emily H. Rock,

Secretary.

[FR Doc. 88-9985 Filed 5-2-88; 12:54 pm]

BILLING CODE 6750-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, May 5, 1988 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-383 (Final) (Certain Bimetallic Cylinders (from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE IMFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 29, 1988.

[FR Doc. 88-9927 Filed 5-2-88; 10:12 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, May 6, 1988 at 4:00 p.m.

PLACE: Room 101, 500 E Street, SW.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Inv. 731-TA-390 (P) (Digital Readout Systems and Subassemblies from Japan)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,

Secretary.

April 29, 1988.

[FR Doc. 88-9928 Filed 5-2-88; 10:12 am]

BILLING CODE 7020-02-M

federal register

Wednesday
May 4, 1988

Part II

Environmental Protection Agency

40 CFR Parts 152, 153, 156, 158, and 162
Pesticide Registration Procedures; Pesticide Data Requirements; Final Rule

40 CFR Parts 153, 156, 158, 162, and 163
Cross References; Technical Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 153, 156, 158, and 162

[OPP-30071C; FRL-3266-9b]

Pesticide Registration Procedures; Pesticide Data Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises procedures for the registration of pesticide products under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule sets out in Part 152 which products are considered to be pesticides, lists exemptions, and describes the procedures for registration, classification, cancellation, and suspension. This document also reorganizes and recodifies existing regulations for comprehension, readability and easy reference. In addition, this rule modifies pesticide data requirements in Part 158 to revise product chemistry requirements, to prescribe the format of data submissions and to establish criteria under which data submitters must that their submission contains information of particular interest to the Agency. This rule finalizes regulations contained in two separate proposals in the **Federal Registers** of September 26, 1984 (49 FR 37916) and October 3, 1985 (50 FR 40408).

EFFECTIVE DATE: This rule will become effective after 60 days of continuous congressional session from the date of promulgation as provided in FIFRA sec. 25(a)(4). After that period has elapsed, the Agency will issue for publication in the **Federal Register** a notice announcing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT:
By mail:
Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and room number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0944).

SUPPLEMENTARY INFORMATION:

I. Organization of this Preamble

This rule finalizes a number of different proposals or portions of proposals and covers a number of disparate topics. Not all portions of the final rule are addressed in the preamble, only those for which the Agency received significant comment. Except as modified by this preamble, the preambles of EPA's prior proposals are incorporated in this document by reference. This preamble is organized as follows:

I. Organization of this preamble.
II. Background.
III. Definitions.
  A. Acute LD-50.
  B. Distribute and sell.
IV. Products required to be registered.
V. Exemptions.
  A. Exemptions under FIFRA sec. 25(b).
  B. Contract manufacturing.
VI. Registration Procedures.
  A. Amended applications not requiring full review.
  B. Separate applications.
  C. Content of applications.
VII. Reregistration procedures.
VIII. Agency response to applications.
  A. Procedural issues.
  B. Conditional registration.
  C. Denial of applications.
IX. Undeliverable mail.
X. Timeframes for use of labeling.
XI. Agency actions affecting registration.
XII. Restricted use classification.
  A. Scope of classification.
  B. Criteria for classification.
XIII. Label Improvement Program.
XIV. Intrastate products.
XV. Devices
XVI. Determination of active and inert ingredients.
XVII. Coloration and discoloration.
XVIII. Format of data submissions.
  A. Format requirements.
  B. Confidential business information.
XIX. Flagging criteria.
  A. Need for flagging.
  B. Scope of the flagging requirement.
  C. Toxicology criteria.
  D. Environmental fate and ecological effects criteria.
  E. Procedural and miscellaneous.
XX. Product chemistry data requirements.
  A. Reorganization of Part 158.
  B. Scope and applicability.
  C. Definitions.
  D. Product composition information.
  E. Materials used in producing the product.
  F. Production of formulation process.
  G. Discussion of formation of impurities.
  H. Certification of limits.
  I. Enforcement analytical method.
  J. Conforming changes.
XXI. Consolidated Table of Contents to Part 152.
XXII. Statutory requirements.
XXIII. Regulatory requirements.
  A. Executive Order 12291.
  B. Regulatory Flexibility Act.
  C. Paperwork Reduction Act.

II. Background

In the **Federal Register** of September 26, 1984 (49 FR 37916), the EPA issued a proposal to modify its registration procedures contained in 40 CFR Part 162. These procedures were originally promulgated in 1975 in response to amendments to FIFRA in 1972, and applied to a broad range of pesticide regulatory actions authorized or affected by that legislation, including pesticide registration and classification. In succeeding years, as additional material was added to Part 162, it grew in volume and complexity.

The 1984 proposal was the first comprehensive revision of the 1975 regulations. One main purpose of the revision was to reorganize the material to eliminate overlapping, redundant, or obsolete requirements, and to make them clearer and more useful to applicants and registrants. A second objective was to update the requirements to conform to legislative changes since 1975, and to include policy and procedural changes that had evolved in that period. The Agency believes that the final rule responds to these needs, and will benefit the Agency, pesticide producers, and the public by clearly setting out policies and procedures.

In the **Federal Register** of October 3, 1985 (50 FR 40408), the Agency issued a proposal to establish criteria for the "flagging" by registrants or applicants of pesticide data they submit to the Agency, to indicate that the data contain significant information concerning potential adverse effects. The proposal would modify existing Part 158, and also parts of Part 152 as proposed in 1984. Comments on that proposal have been considered and are addressed in this document. Parts 158 and 152 as promulgated today contain the revisions proposed on October 3, 1985.

The regulations adopted here are an integral part of a larger set of regulations addressing pesticide regulatory activities, all of which have been organized to be comprehensive and complementary. Individual elements of the pesticide regulatory scheme have been segregated and are presented in separate Parts for easy understanding:

1. Part 152 sets out Federal pesticide registration procedures in their entirety. Procedures for State registration of pesticides under FIFRA sec. 24(c) have been retained as Part 162, Subpart D.

2. Part 153 contains general policies pertaining to registration or registered products, but distinct from the registration process itself. Today's final rule promulgates Subparts G, H and M of Part 153, concerning (a) declaration of certain ingredients as inert; (b) coloration/discoloration of pesticide products; and (c) devices. Additional Subparts A and D, concerning, respectively, pesticide advertising and reporting of adverse effects data have been proposed, but have not been made final.

3. Part 154, promulgated on November 27, 1985 (50 FR 49015), describes the Agency's Special Review process in its entirety.

4. Part 155, promulgated the same day (50 FR 49001), discusses the public participation procedures associated with the development and issuance of Registration Standards.

5. Part 156, which was proposed on September 26, 1984, revises labeling requirements for pesticides and devices, currently located in § 162.10. Today's rule document redesignates § 162.10 as § 156.10, retaining current requirements until the revised rules are promulgated.

6. Part 157, promulgated on June 11, 1986 (51 FR 21286), contains requirements for the packaging of pesticide products, currently limited to child-resistant packaging.

7. Part 158, promulgated on October 24, 1984 (49 FR 42881), contains data requirements applicable to pesticide products.

Each of these addresses a single regulatory topic, process or function, and can be used independently of the others.

In response to its 1984 proposal, the Agency received 30 comments. Commenters included individual pesticide producers, trade associations, user groups, an environmental group, and a Federal agency. The significant comments are addressed in Units III through XVIII and XX of this preamble. In response to its 1985 proposal, the Agency received 10 comments. These are addressed in Unit XIX of this preamble.

As part of its 1984 document, the Agency proposed to establish Part 157, containing regulations governing child-resistant packaging requirements for pesticides. Readers should note that the Agency has separately promulgated these regulations in final form, in the **Federal Register** of June 11, 1986 (51 FR 21276). Comments pertaining to child-resistant packaging of pesticides have been addressed in that final rule, and are not repeated here.

III. Definitions

A. Acute LD-50

The Agency proposed definitions for "acute oral LD_{50}," "acute dermal LD_{50}," and "acute inhalation LC_{50}," which defined these values as "statistically derived estimates" of the single dose (or concentration) that would cause mortality to 50 percent of the test species. Several commenters stated that the definitions are inconsistent with the Pesticide Assessment Guidelines, in that a statistically derived estimate requires a study using three dosage levels, while the Pesticide Assessment Guidelines permit the use of a single dosage "limit test" if it shows no mortality. They believe that the proposed definition precludes the use of the limits test.

EPA disagrees. The definitions are exactly the same as those contained in the Pesticide Assessment Guidelines themselves and are correct definitions for the terms. The use of these definitions in the Guidelines has not raised similar concerns among data developers, and the definitions have co-existed with the limits tests since the Guidelines were issued. Thus the definitions are not incompatible with the Pesticide Guidelines or the limits test.

EPA strongly supports the use of the limits test in defining acute toxicity limits, because its single dosage regimen can significantly reduce the number of test animals used. EPA also attempts to evaluate pesticides using data from structurally similar chemicals when appropriate. If classic acute toxicity studies are nonetheless required, the Agency encourages maximum utilization of the testing to evaluate multiple toxic endpoints rather than just simple lethality. The LD50s and LC50s derived from standard acute toxicity testing are used not only as indicators of acute toxicity (for purposes of labeling the product), but also serve as rangefinding levels for use in subchronic studies and chronic studies that follow.

B. Distribute and Sell

Seven commenters expressed concern at the definition of "distribute and sell" in § 152.3(j). In addition to the statutory language concerning distribution and sale, the definition deemed distribution to have occurred either when a finished product was both packaged and labeled in the manner in which it would be shipped or when it was stored in an area where such finished products are stored. The Agency's intent was to incorporate the current definition of "released for shipment" as part of the definition of "distribute and sell." The term "released for shipment" is used in FIFRA sec. 9 to define when a product may be inspected for compliance purposes.

According to industry commenters, the Agency's proposed inclusion of the criteria for "released for shipment" would create problems for the industry if it were used to determine whether a product has been introduced into commerce and thus can be found in violation of FIFRA. All commenters expressed concern that products which a registrant has not decided to "release for shipment" may meet the definition of "distribute or sell." According to commenters, the term "release for shipment" does not describe an identifiable and uniformly enforceable point in the distribution chain of a product. The commenters said that whether an individual product has been released for shipment depends on the policies of the producer involved, i.e., that a product has been released for shipment when the producer intends that it be shipped. Unless the producer admits that the product has been released for shipment, they suggest, the product cannot be inspected for compliance purposes, and therefore cannot be found in violation of FIFRA.

Moreover, commenters claim, the proposed definition runs counter to production and storage practices commonly used in the industry. Finished products that have been released for shipment are commonly stored with other products which are "on hold" for one reason or another. They state that a finished product may be in both "released for shipment" and not "released for shipment" status, and claim that the proposed definition does not recognize this distinction. Commenters feared that, if the definition were adopted, products that are on hold might frequently be deemed to have been distributed and sold.

EPA disagrees with the statements of commenters that there can be, or should be, a distinction made between products that have been released for shipment and those that have been deemed to be distributed or sold. A product that has been released for shipment by its producer is considered to have been distributed or sold as defined in the Act (which includes holding for sale). A producer cannot reasonably assert that two batches of registered product, identical in packaging and labeling and located in the same area of a warehouse or producing establishment, are different merely because one allegedly has been released for shipment and another has not. The Agency, in inspecting for compliance, will assume that a product that is packaged, labeled, and stored in an area where finished products are normally stored has been released for shipment.

The Agency would be severely hampered in its ability to enforce compliance if products released for shipment were not considered to have been distributed and sold, since violations of the Act depend on "distribution and sale" and not upon "release for shipment." Carried to its practical conclusion, if a product that had been released for shipment, and therefore could be inspected under FIFRA sec. 9, were to be found in violation, the Agency could not take enforcement action until the product had

actually been distributed and sold. If inspection of products released for shipment could not lead directly to enforcement action, but must await some further point at which it had been "distributed and sold," the Agency's enforcement efforts would be thwarted.

Consequently, in the final rule, the Agency has included the term "released for shipment" in the definition of "distribute and sell."

The Agency also considered defining the term "channels of trade," which has been used in past Agency documents (without definition) as an informal synonym for the litany of terms in FIFRA sec. 12 comprising "distribute and sell." EPA considers the two terms synonymous: a product that is being distributed and sold by any person is in channels of trade, and vice versa. It is therefore unnecessary to define "channels of trade" separately. Moreover, the Agency does not expect to use the term in future regulatory documents, but will rather specify the categories of persons who are prohibited from distributing or selling a product. Thus, the registrant may be prohibited from distributing or selling after a certain date, while other persons (e.g., retailers) may be prohibited from distributing or selling after a second date.

IV. Products Required To Be Registered

The Agency proposed to clarify its interpretation of what constitutes a pesticide, for purposes of compliance with the registration requirement of FIFRA sec. 3. Section 152.15 proposed to add new language stating that a substance may be intended for a pesticidal purpose (and therefore required to be registered) if any of a number of tests are met. The first of these is whether advertising or product labeling claims, implicitly or explicitly, that the product is a pesticide. This is the principal test contained in current regulations. No comments were received on this test, and it has been adopted as proposed.

EPA also proposed to treat as a pesticide any substance which has no significant commercially valuable use other than a pesticidal one. One commenter objected that the term "significant commercially valuable use" is judgmental. EPA acknowledges that a certain degree of judgment must be exercised in deciding whether a substance meets this definition. On the other hand, the Agency believes that a large percentage, if not the majority, of pesticide active ingredients are clearly identifiable either as pesticides or as multi-purpose substances, and that the Agency will rarely be compelled to use this criterion alone to judge whether a substance is a pesticide. The Agency has in the past focused its enforcement efforts on individual product claims, and EPA intends to continue this focus.

The Agency further proposed, as a third criterion, that if a person knows, or should reasonably know, that he is selling a product for a pesticidal purpose (even though the product itself bears no pesticidal claims), the product should be a pesticide subject to the registration requirement. This criterion would apply primarily to products which are currently not registered as pesticides (for example, multi-purpose substances having pesticide uses, but for which a particular product bears no pesticidal claims.)

Nine persons commented upon this provision. Several expressed concern that the language was imputing knowledge of pesticidal use and responsibility to manufacturers who have no control over their distributors and customers. This burden, they state, is unreasonable. Other commenters, while not objecting to the criterion per se, requested that the Agency clarify its intent, and sought reassurance that the criterion would be used for enforcement against the person making the claim and not against the producer. Some suggested that simply deleting the word "reasonably" from the criterion would resolve the problem satisfactorily. In general, commenters believed that definition was too broad and inclusive.

In response, the Agency has clarified the definition by replacing the "reasonable" knowledge terminology with language concerning "actual or constructive" knowledge of pesticidal use. Actual or constructive knowledge will be gauged as objectively as possible. The Agency issued in the **Federal Register** of March 25, 1987 (52 FR 9504) a proposal concerning establishment registration, which uses the same terminology to describe when a pesticide producer must register his producing establishment. In that document, the Agency described the criteria that it would consider in determining actual or constructive knowledge. These included promotional claims and advertising, common knowledge of the general business of the person to whom the substance is sold, and the commercial distance from a producer to a formulator. The same principles will guide the Agency in applying the "actual or constructive knowledge" test of pesticide for purposes of registration.

The Agency believes the fears of the commenters concerning "upstream penalties" are unfounded. The Agency does not intend to impose penalties upon the producer of a non-pesticide product, if, without his knowledge, a pesticidal claim is made for the product by someone else. EPA agrees that it would be unreasonable to require registration of a product whose primary uses are non-pesticidal merely because a retailer sold the product as a pesticide. On the other hand, EPA believes that a producer who sells a product with full knowledge of its intended pesticidal use should be held responsible for its registration. This situation might apply, for example, when a producer sells what would ordinarily be considered a basic chemical to a user whose only purpose in acquiring such a chemical would be to use it as a pesticide. If the seller of the product is aware of the nature of his customer's business, EPA may consider him to be selling a product for a pesticidal purpose. EPA acknowledges that application of this criterion for enforcement purposes will require subjective judgment.

The second and third criteria both are intended to address longstanding enforcement problems in which neither labeling nor advertising clearly states or implies that the product is a pesticide, but the product is sold under circumstances in which it is clear that the product is intended for a pesticidal purpose. For example, if the ingredients of a well-known wood preservative mixture are offered for sale (without pesticidal claims) in a trade magazine aimed primarily at wood processors and there is no other apparent reason for wood processors to be interested in the ingredients, it would not be unreasonable to regard the products as pesticides.

V. Exemptions

A. Exemptions under FIFRA Sec. 25(b)

Sections 152.20 and 152.25 describe exemptions based on FIFRA sec. 25(b) for, respectively, products adequately regulated by another Federal agency and products of a character not requiring FIFRA regulation.

One commenter suggested that the exemption for pheromones in § 152.25(a) be expanded to include pheromones other than those produced by an arthropod. Paragraph (a)(1) of that section defines a pheromone as a compound produced by arthropods. The Agency declines to adopt the commenter's suggestion. The Agency is not aware that pheromones produced by other animals are registered with the Agency. EPA was able to exempt arthropod pheromones based on information it possessed in its files on such products. Although the Agency

may choose to exempt such pheromones in the future (and would probably adopt the commenter's suggestion concerning revision of the definition if it does so), it does not choose to do so prospectively in the absence of information concerning their characteristics and effects.

Two commenters requested that an additional exemption be added to § 152.25 for preservatives used in "non-FDA regulated products," when used at levels consistent with Food and Drug clearances for drugs and cosmetics. The commenters stated that exemption would make available a greater variety of preservatives for use in household products.

It is not clear to the Agency what exemption is being proposed or for what preservatives. It appears that the commenters' concern is that the availability of preservatives for use in consumer products is limited because such preservatives are required to be registered as pesticides. The implication is that producers of some preservatives suitable for use in these products are unwilling to undertake the registration process for what is presumably a limited market. The commenter further suggests that if FDA-regulated preservatives were not required to be regulated under FIFRA, producers of preservative products would make more of them available.

Although the commenters' suggestion may have merit in certain situations, it is not specific enough for the Agency to act on in this final rule. The commenters provided proposed language for an exemption, but it was worded so broadly and ambiguously that EPA cannot properly evaluate it. No specific preservatives were mentioned, only those "used by the cosmetic and drug industry." Moreover, no levels or limits were indicated or even referred to; the proposed language simply stated "in amounts consistent with those 'used in FDA regulated products.' " EPA would be willing to entertain proposals for exemption of specific preservatives at specific levels, but is not willing to grant the blanket exemption suggested by the commenters.

In § 152.20(a)(3) of the final rule, the Agency has made a minor technical change. That section provides an exemption from FIFRA requirements for certain types of living organisms, except as provided. The list of exceptions (organisms that are not exempt) has been modified to use current terminology. The Agency is currently reviewing this exemption and its implications in light of recent advances in biotechnology. If changes in the exemption or new policies evolve from the Agency's review, this section may be modified after notice and comment.

B. Contract Manufacturing

The Agency proposed two changes affecting current contract manfacturing provisions. First, the Agency proposed to revise the definition of "operated by the same producer" in § 152.3(q). This definition is the key to an exemption from registration provided by the statute in FIFRA sec. 3(b). The Agency proposed to limit this definition to its clear statutory meaning, which would exclude from the definition contractual arrangements between different companies. The modified definition would include only facilities owned or leased by a single company.

At the same time, the Agency proposed to continue an exemption for certain contract manufacturing by specifically including contractual agreements in § 152.30, which exempts certain types of transfers from registration. EPA proposed to exempt from registration certain transfers of pesticide for the purpose of processing, packaging, or labeling, provided, among other things, that the transferor was the owner of the transferred pesticide and the registrant of the final product distributed or sold.

Thirteen commenters commented upon the two proposed sections. Although some addressed the definitional change and others the exemption, all expressed similar concerns. Commenters stated that, when considered together, the definitional change and the revised exemption provision would preclude the contract manufacturing operations that are extensively relied upon by producers. Commenters stated that many registrants contract out their entire production operation, including production, packaging and labeling; they may also contract out certain distribution by means of a supplemental registration (see § 152.132). The reasons cited for such extensive contracting operations are varied. For small companies not having a production facility, contracting may be the only way to distribute and sell a pesticide; for large companies, temporary contractual arrangements afford flexibility in producing a product while the registrant determines whether the marketing of a product warrants construction of a dedicated production facility.

These practices have been possible in the past, despite the language of the statute and regulations, because of an exercise of prosecutorial discretion by EPA. The Agency announced that it would not regard as an actionable violation of FIFRA the transfer of an unregistered pesticide pursuant to a contract, providing that the transferor would supply the pesticide in question to no one in the United States except the transferee contracting party. However, for reasons described in this unit of the preamble, EPA has determined that it will not continue this enforcement policy.

A common arrangement has been for a contractor who is formulating the product for the registrant to obtain quantities of an unregistered technical grade active ingredient from a producer other than the registrant. The registrant of the formulated product is not the owner of the transferred technical material, as required by proposed § 152.30, nor is the formulating process carried out in a facility "operated by the same producer" within the meaning of the proposed definition. Consequently, under the proposed rule, the transfer of that technical chemical to the contract formulator would be in violation of the Act unless the technical chemical is a registered pesticide product.

In general, commenters asserted that the proposed changes would have the effect of eliminating the current contract manufacturing system, and would be burdensome to formulators, who rely on contract manufacturing. They believed EPA should reinstate the definition to provide that contractual relationships be deemed to be "operated by the same producer" and that § 152.30 should be modified to accommodate industry contracting practices. In short, they objected to the proposed revision and urged that the current provisions be restored. The Agency has considered the comments, but has decided to retain the definition change and the exemption provided by § 152.30 (the language of that section has been modified, however, as explained in this preamble unit).

The commenters are correct in their analysis of the effect of the proposed change; as stated in the preamble to the proposal, "[t]he practical effect would be that a product would have to be registered prior to any transfer representing a sale or change in ownership." It was the Agency's intention to require that pesticides be registered before they are sold or transferred from one person to another, even for further formulation under contract. The final rule will not preclude contract manufacturing, but will limit the use of unregistered pesticides in contract manufacturing.

The Agency has cogent reasons for its decision to require the registration of all technical products. First, the Agency

does not believe that Congress intended the exemption from registration in FIFRA sec. 3(b) to be so broadly defined. A straightforward reading of FIFRA sec. 3(b) suggests that the exemption it provides should be limited as the Agency is doing.

Second, EPA is concerned about the lack of regulation of the large volume of unregistered pesticides that it believes are being transferred. The previous exemption permitted an unquantified volume of unregulated distribution and sale of pesticides. Pesticide production reports submitted under FIFRA sec. 7 include numerous pesticides having a large production of end use products with no corresponding reported production of a technical grade active ingredient. EPA believes that the policy which allowed producers of technical grade active ingredient to distribute and sell product under the umbrella of a "sole transferee" contract accounts for much of this discrepancy.

The sale and distribution of unregistered products is contrary to the Agency's mandate to protect human health and the environment, leaves large gaps in the Agency's knowledge about and control of such pesticides, creates competitive inequities among similar products in the marketplace, and undermines the efforts of producers of registered products to comply with FIFRA.

FIFRA provides a comprehensive regulatory scheme covering all pesticide products. Registration is the principal means of ensuring that a product is brought under the FIFRA regulatory scheme. The registrant must demonstrate to the Agency's satisfaction that the product meets the statutory criteria for registration with respect to composition, labeling, and lack of unreasonable adverse effects. The registrant must take responsibility for quality control of the product's composition and for adequate labeling describing the product, its hazards and uses. He must submit or cite data concerning the pesticide's impact on man and the environment, and must assume obligations required by section 3(c)(1)(D) with respect to data compensation. Once registered, a registrant is required under FIFRA sec. 6(a)(2) to report to EPA any factual information concerning the unreasonable adverse effects of the pesticide on the environment. A person selling an unregistered product has not complied, and is under no obligation to comply, with any of these requirements.

The producer of a pesticidal active ingredient is more likely to become aware of certain types of sec. 6(a)(2) information than a formulator who buys the active ingredient. EPA is increasingly concerned about the presence of potentially toxic impurities in pesticides, and is taking steps to reduce the levels of such impurities. For instance, EPA has recently required the reduction of DDT impurity levels in products containing technical dicofol. EPA can more effectively require and monitor compliance with such a directive if the active ingredient is registered before being distributed and sold; it would have great difficulty in ascertaining compliance for similar products that are not registered by the ingredient's producer. In a situation such as this, where the Agency has concerns about the composition of a technical grade active ingredient, the Agency cannot address its concerns by dealing only with formulators, who may not be aware of the impurities of the technical they purchase. Distribution and sale of unregistered products thus seriously impairs the Agency's ability to promote the development of safer pesticides.

By requiring registration of all products, EPA also gains the efficiency of dealing with fewer companies in matters concerning safety of active ingredients or their impurities. Rather than having to concern itself with a large number of formulators who buy and use unregistered technical pesticides, the Agency can focus on the producers of the technicals, who are both more knowledgeable about the chemicals and significantly fewer in number. Registration of these products also will reduce the potential for a registrant to abuse the data compensation scheme under FIFRA sec. 3(c)(1)(D) and 3(c)(2)(D) by stating in its registration application that it will purchase a registered product, and then instead using an unregistered product as the source of the active ingredient.

Commenters who feared that limitation of the contract manufacturing exemption from registration would increase costs or be burdensome apparently base their conclusion on the data compensation implications of requiring registration of technical products. Ideally, of course, data costs to the registrant either would be included in the purchase of a registered product or would arise under FIFRA sec. 3(c)(1)(D) because of the use of an unregistered product. However, until all products are required to be registered or reregistered, the real world situation may be that use of an unregistered product is less costly.

If all products must first be registered, the burden of data generation and compensation will tend to shift from formulators to technical producers. In turn, this will foster a more competitive market in which FIFRA regulatory requirements are not a significant influence on or determinant of cost differential.

Accordingly, in the final rule, § 152.15 requires the registration of all pesticides, including products intended for formulating use. Section 152.30(a) contains the statutory exemption provided by FIFRA sec. 3(b) for products moving between establishments operated by the same producer.

In addition, a specific exemption is needed to address contract manufacturing practices (using registered products) between facilities operated by different producers. The Agency does not intend to interfere with or curtail in any way such contract manufacturing practices relied upon by registrants. Many products are produced by a series of contract operations, involving various steps in informulation, packaging, and labeling. Since intermediate products (varying in composition, packaging, or labeling from the technical or final product that is registered) must be shipped between facilities not operated by the same producer to accomplish this, a specific exemption from the registration requirement is needed. Section 152.30(b) therefore contains an exemption allowing transfer of what technically are unregistered pesticides for contract manufacture and packaging by establishments operated by different producers. As long as the products used are registered, the final product is registered, and the transferred intermediate products are properly labeled, the Agency is confident that adequate environmental and regulatory safeguards are in place.

The Agency has already taken steps to begin the process of regulating more closely pesticides used in contract manufacturing. EPA issued a notice (PR Notice 87-7, June 3, 1987) revoking the previously-mentioned enforcement policy statement and requiring that applications for currently unregistered technical pesticides be submitted by September 30, 1987. As of the effective date of this rule, the transfer of unregistered pesticides (except as provided by § 152.30) will be a violation of FIFRA sec. 12(a)(1)(A).

VI. Registration Procedures

A. Amended Applications Not Requiring Full Review

The Agency proposed in § 152.42 to define categories of amendments to registration that did not require review or approval prior to implementation. Section 152.42(b)(1) listed amendments

to registration that could be accomplished simply by notification to the Agency, and implemented immediately after notice was given. Section 152.42(b)(2) listed amendments that could be made without notice to the Agency.

The Agency proposed that certain relatively routine amendments to registration be subject only to a notification requirement, and that others of even lesser significance be permitted without notification to the Agency. Of the 10 commenters on this proposal, 7 supported the concept that not all amendments require the same level of scrutiny by the Agency, and that some can be discretionary with the registrant.

Several commenters proposed that additional types of labeling amendments would be suitable for inclusion in the "no approval" category in § 152.42(b)(1)(ii) or the "no notification" category in § 152.42(b)(2).

Two commenters suggested that changes in label format consistent with Part 156 should require no notification, noting that the language is already approved by EPA. EPA agrees that the Agency need not review each format change that is consistent with Part 156, provided that the language of the label does not change. Accordingly, paragraph (b)(2) has been revised to specify that changes in label format for consistency may be made at the discretion of the registrant.

One of those commenters stated that advertising claims are often placed on labels. Although EPA does not prohibit advertising on pesticide labels, it cautions that advertising must not differ or detract from the approved label, and that it may not obliterate or obscure the required label language.

Two other commenters suggested that paragraph (b)(2) be revised to require only notification when a company wishes to market an already-registered product as two products, each bearing a subset of approved use. Moreover, the commenters suggested that label claims be permitted to be transferred between registrations of the same formulation. Although the commenters appear to view these two situations as identical, EPA does not and wishes to clarify its policy.

The first situation is already permitted, in EPA's opinion, and will continue to be acceptable under § 152.130(b). A company having a registered product is permitted (both by current policy and by this final rule) to market the product in a variety of ways. The product may be marketed under different brand names, each product bearing the full set of uses approved by the Agency. Or it may be marketed under the same brand name, but bearing different subsets of approved uses (for example, to distinguish primary uses for different regions of the country). Or each product may bear both a different brand name and a different subset of approved uses. In each case, the product is a single formulation having a single registration number, and no other changes in labeling are permitted (in fact, if "splitting" the uses would result in changes in precautionary labeling, the "split" is not permitted).

The second situation is somewhat different. It appears that the commenters espouse the transfer of uses (without notification to the Agency) between two separately registered products having the same formulation. This is not acceptable to the Agency. Agency records are compiled and organized based upon individual registrations. A single registration covers a specified approved set of uses, regardless of whether there are other registered products with the same composition but different approved uses. If the Agency were to permit approved uses from one registered product to be transferred to another registered product without approval, accurate recordkeeping and effective enforcement would be virtually impossible.

Three commenters noted an inconsistency between the language in § 152.46(b)(1)(v) that required notification of a change in the source of "beginning materials" (defined to include inert ingredients) and the language in § 152.46(b)(2)(i) that permitted change in the source of inert ingredients without notification to the Agency. In response, the former paragraph has been revised to exclude inert ingredients.

Two commenters noted that Agency's proposed deletion of the supplemental distributor regulations as superfluous, and, while agreeing with the Agency, suggested that the requirements be retained for completeness. The Agency agrees, and in the final rule has included supplemental distributor requirements in Subpart G (Rights and Obligations of Registrants). This location has been chosen because, strictly speaking, a distributor arrangement is not an amendment to registration, but the exercise of a right accorded to a registrant to facilitate distribution and marketing of a pesticide product.

B. Separate Applications

In the final rule, EPA has revised § 152.45 (now § 152.43) to describe more explicitly what variations in product composition require registration of a new product. This has been necessitated by comments received on the proposal, as well as the Agency's ongoing project to revise and call in the statements of formula for all products.

In the final rule, the Agency has stated that a composition variation would trigger a requirement for separate registration if:

1. The variation would result in the active ingredient's nominal concentration falling outside the certified limits for the basic product; or

2. The variation would require different dosage rates, use directions or precautionary statements on the labeling. Whenever the labeling of alternative formulations would differ because of the change in composition of the product, a separate product must be registered. This is an overriding consideration that outweighs any other permitted variations, and precludes excessive variation in the composition of any product.

For practical purposes, this means that registrants may substitute inert ingredients in a product to the extent that the total percentage of inert ingredients does not change. EPA believes that variation of inert ingredients will rarely result in a change in the formulation type of the product, but in § 152.43 EPA has reserved the right to reject an alternate formulation that is significantly different from those already registered under a single registration number. If the alternate formulation would result in a change in product type, the Agency is likely to require separate registration. The Agency anticipates that a requirement for separate registration (in lieu of an alternate formulation) will rarely be necessary.

Substitution, addition, or deletion of an active ingredient would affect the label ingredients statement and would require a separate registration. Under this policy, the registrant could vary the source of his active ingredient(s); however, changing the source of an active ingredient normally will require the submission of information concerning the new source, particularly if the new source is an unregistered product.

In all cases, a registrant seeking an alternate formulation must amend his registration by submitting an application for amendment, and an additional statement of formula for approval. EPA thus will be able to monitor alternate formulations.

C. Content of Applications

Eight commenters addressed the Agency's proposed requirements for applications for registration. Since few of the requirements were new, the

comments were limited to three particular items that were required for the first time:

1. The releasable summary of data required by § 152.50(c). Five commenters questioned the requirement for a releasable summary of the application. Two commenters remarked that the § 152.119 referenced in the proposal does not exist. This section was promulgated as part of the data compensation regulations (Subpart E of Part 152) on August 1, 1984 (49 FR 30903), and has been incorporated into Subpart F in this final rule. Two commenters stated that the Agency's rationale for this requirement was not clear, and requested additional justification for the requirement; one asserted that the requirement was significant enough to warrant reproposal. Neither commenter, however, expressed any specific objection to the requirement. Two other commenters objected to the proposed requirement that an application set forth "reasonable grounds" for approval, stating that submission of the application constituted reasonable grounds, and that an additional statement was therefore unnecessary.

The Agency agrees with this last comment, and has revised § 152.50(c) to delete the language. Section 152.50(c) now requires the submission of a list of studies submitted, with a brief summary of the results. The list required by this section will suffice as the transmittal document required by § 158.32. Moreover, because it will be a releasable summary, the Agency will be able to respond rapidly to requests for information after registration. A summary of data may obviate the need for more extensive and time-consuming clearance of an entire study and, EPA believes, may better serve the needs of the non-technical public. The Agency believes that additional justification is not necessary, that additional comment would not be useful or significant, and that reproposal would be burdensome. Accordingly, the provision, as modified, is adopted in this final rule.

2. The Good Laboratory Practices certification. Several commenters noted that the Good Laboratory Practices (GLP) requirements mentioned in § 152.50(g)(2) currently apply only to toxicological studies. The commenters are correct, and the provision has been revised to insert the words "if applicable." EPA notes that it is considering the adoption of GLP requirements for other types of studies (such as ecological effects studies), and this language will be satisfactory even if Part 160 is revised to expand the coverage of GLPs.

3. The requirement that applicants submit adverse effects data in the same manner that registrants are required by FIFRA sec. 6(a)(2) to submit such information. The Agency has considered comments in response to both the September 26, 1984, proposal, and the October 3, 1985, proposal concerning "flagging" of data.

The Agency received seven comments on its September 26 proposal. Several pointed out that FIFRA sec. 6(a)(2) applies only to registered products, and suggested that the section be deleted. Others suggested that the policy would be more appropriately dealt with in the Agency's policy statement on FIFRA sec. 6(a)(2), published in the **Federal Register** of September 20, 1985 (50 FR 38115). Two commenters suggested that the requirement be made consistent with the FIFRA 6(a)(2) policy, which requires the submission only of new information and only if not available in published literature sources.

In response to the comments suggesting that the requirement be deleted because FIFRA sec. 6(a)(2) applies only to registered products, EPA notes that the authority for this requirement is not section 6(a)(2), but section 3(c)(1), which authorizes the Agency to prescribe the data that must be submitted in support of applications for registration. The Agency has chosen to apply the same requirement to applicants that is imposed on registrants. Consequently, the final rule retains the requirement, now located as § 152.50(g)(3), addressing registration data requirements. Moreover, that paragraph now references Part 153, Subpart D, as the basis for identifying which information must be submitted. This will eliminate concerns expressed by commenters about inconsistency.

VII. Registration Procedures

In Subpart D of the proposal, the Agency prescribed the procedures it would use in processing applications for reregistration in response to issuance of a registration standard. No comments were received on these procedures; however, one commenter addressed two legal aspects of the registration standards process (that precedes the procedures proposed in Subpart D). Although not pertinent to the proposed procedures, the Agency would like to make clear its position on these points.

The commenter, an environmental group, asserted that registration standards, which the Agency develops as position documents supporting its regulatory actions under FIFRA sec. 3(g) and 6, should be considered regulations, subject to the notice and comment procedures of the Administrative Procedure Act. The commenter noted that many registration standards are given procedural treatment similar to that of regulations, and therefore should be afforded legal status as regulations. EPA disagrees.

Registration standards are support documents underlying the regulatory decisions taken by the Agency. As a licensing statute, FIFRA requires that the Agency take regulatory action on an individual product basis. Although the Agency may issue regulations governing all or a group of pesticide products, regulatory decisions generally are made legally binding on individual products through cancellation actions. EPA thus far has chose not to use the rulemaking process in carrying out the reregistration of individual products.

Second, the commenter asserted that Registration Standards are subject to the Environment Impact Statement (EIS) requirements of the National Environmental Policy Act (NEPA), since they are "major Federal actions."

Regulatory actions taken by EPA have been held by the courts not to be subject to the requirements of an EIS under NEPA. Consideration of environmental concerns is intrinsic to the decisionmaking process at EPA. FIFRA's substantive and procedural provisions for the registration of pesticides, including their reregistration, are the functional equivalent of an EIS. Under the functional equivalency doctrine, EPA is not required to prepare a specific document addressing environmental issues. The process used by the Agency in developing registration standards itself provides for the analyses which would be required in an EIS. Moreover, the courts have found that in establishing the licensing process under FIFRA, Congress recognized that compliance with NEPA's procedural requirements would not be appropriate. The Agency therefore declines to accept the comment.

VIII. Agency Response to Application

Proposed Subpart F described the procedures and criteria that the Agency would use in reviewing and approving applications for registration and amended registration. This subpart largely described the Agency's current procedures and practices and did not propose a significant departure from those procedures. Comments were received primarily from industry sources and generally reflected their knowledge of these procedures and criteria. Few commenters expressed serious concerns with the Agency proposal or suggested

that significant modifications were necessary. The majority of comments suggested clarifications.

A. Procedural Issues

One commenter noted that the Agency proposed in § 152.102 to issue for publication in the **Federal Register** a notice of receipt of an application for registration of a new chemical or significant new use pattern, but questioned why no notice of approval was provided for. In response, EPA has revised the section to provide for publication of a notice of final action. The commenter also suggested that the notice of receipt should include the Agency's assessment of the application. EPA does not agree with this comment. The notice of receipt is required by FIFRA sec. 3(c)(4) to be published promptly after the application is received, and cannot await the Agency's evaluation of the application. Moreover, the purpose of the notice is to obtain comment from the public and other Federal agencies, rather than to provide the Agency's conclusions regarding the application.

Two clarifications were requested with respect to the Agency's proposed treatment of incomplete applications. The Agency stated that it would not begin or continue review of incomplete applications, defined generally by § 152.104. A number of commenters argued that minor deficiencies should not hold up review of applications.

With respect to applications for so-called "me-too" products, which are substantially similar to existing products, The Agency intends to follow its current practices. The Product Manager will screen incoming applications for completeness; he may choose to telephone or write applicants to correct minor deficiencies, while continuing the review of the application, or he may choose to reject the application because it cannot be processed without correction. With such applications, the Agency normally will retain the application awaiting response from the applicant. After 75 days, however, if no response is forthcoming from the applicant, the Agency will treat the application as if it had been withdrawn. The Agency cannot afford to store pending applications indefinitely awaiting response by applicants. Administrative withdrawal and a requirement for a new application permit the Agency to clear its files of applications after a reasonable period of time for response.

On the other hand, when an application is submitted for a new chemical or the first food use of a pesticide, involving substantial amounts of data and the expenditure of greater resources and time for review, the Agency will more rigorously screen the application. The Agency has issued a notice to registrants (PR Notice 86-4, April 15, 1986), describing its screening procedures for such applications. These procedures provide for the rejection of incomplete applications without extensive review, and for the return of applications to the applicant. The Agency will not begin substantive review of such applications until they are complete and correct. In these cases, the 75-day response time will not apply, since the application will be returned to the applicant, who may reapply at his convenience.

Several commenters asked for clarification of the 75-day response time. Two suggested that it not start until receipt by the applicant of a certified letter; another believed that only "working days" should be counted.

The Agency cannot adopt the first commenter's suggestion, since Agency letters are not routinely sent by certified mail. (The Agency, as a rule of thumb, does allow a 15-day mail lag time.) Because the 75-day timeframe is not calculated by the Agency by means of certified mail receipts, the Agency declines to commit itself to the more rigorously defined "working days" suggested by the second commenter. To do so would lengthen the response time by one-third (75 working days is approximately 105 calendar days). EPA believes that 75 days is sufficient time for a registrant either to correct deficiencies or to tell EPA when they will be corrected.

Two commenters expressed concern with the Agency's policy of reviewing and approving only draft labeling rather than final printed labeling (§ 152.108). Both were concerned about the ability of the States, which enforce FIFRA requirements under cooperative agreements, to discern compliance with the Act. These same concerns were raised and have been thoroughly discussed in previous documents, including the proposed and final regulations establishing the policy, issued in the **Federal Register** of September 15, 1982 (47 FR 40659) and that of January 4, 1984 (49 FR 380), respectively. The Agency is not aware of serious problems that have arisen with the policy in the 3 years it has been in effect.

One of the commenters also questioned whether, given the labeling changes that are permitted by the Agency without notification by § 152.42, the States might not encounter labels in channels of trade that are significantly different from those approved by the Agency. The changes permitted by § 152.42 are those that the Agency considers minor, unlikely either to involve compliance questions by States or to be of serious consequence even if not correctly accomplished. Furthermore, the permitted changes are insignificant when compared with the changes in format that are permitted to be made between the Agency's review of draft labeling and the final printed label that actually is found in channels of trade. EPA believes that States have adapted well to the current Agency practice of approving draft labeling, and that changes permitted by § 152.42 will pose no additional problems.

In § 152.110, the Agency stated that it would review applications for registration as expeditiously as possible, but the Agency did not propose to establish binding review times. Six commenters urged the Agency to obligate itself to specific review times for applications. Suggestions ranged from 75 to 180 days, with one commenter suggesting that the Agency publish a review timetable for various types of applications.

EPA has not adopted these suggestions. FIFRA does not mandate statutory timeframes for review of applications: the language of FIFRA sec. 3(c)(3) requires that Agency's determination of registrability be made "as expeditiously as possible." The Agency agrees with the commenters that, from a policy perspective, the Agency would prefer to be able to set achievable timeframes in which to review applications and determine acceptability. However, the nature of the registration process, and the associated regulatory evaluations and decisions that accompany it, preclude the Agency from doing so. EPA cannot predict the number of applications for registration that it will receive each year, because submission of an application is largely at the discretion of persons seeking registration. Nor can the Agency determine the level of review that will be needed to evaluate the application; some applications are of greater complexity than others. The Agency does not believe it prudent to establish regulatory timeframes that it may not be able to meet consistently because of circumstances beyond its control. Therefore, the final rule does not establish Agency review times.

B. Conditional Registration

Sections 152.113 through 152.115 described the criteria for issuance of conditional registration under FIFRA sec. 3(c)(7) and the conditions attached to such registrations. One commenter

focused on these criteria and procedures, in particular those in §§ 152.114 and 152.115 relating to conditional registration of new chemicals.

The commenter objected to the Agency's issuance of conditional registration for new chemicals. Acknowledging that the statute permits such registrations, and that amendment to FIFRA itself would be necessary to remove the authority for issuance, the commenter urged that the Agency adopt a policy (which would be expressed in the final rule), of severely limiting the issuance of new chemical conditional registrations.

First, the commenter expressed the opinion that conditional registration should not be granted for any new chemical that meets or exceeds risk criteria for special review found in 40 CFR Part 154. Second, the commenter urged that the final rule provide criteria for the public interest finding that must be made before a new chemical conditional registration is granted. FIFRA sec. 3(c)(7) requires that the Agency determine that issuance is "in the public interest" before granting conditional registration for a new chemical. The commenter stated that without definitive criteria on which to base a determination of public interest, the Agency could grant conditional registrations for new chemicals very broadly and, it is feared, without adequate justification. Finally, the commenter urged that conditional registration of new chemicals should be limited to the specific period required for generation of required data, and that conditional registrations should expire automatically at the end of that time if required data are not submitted.

In response to all of these comments, the Agency notes that it has issued a policy statement in the **Federal Register** of March 5, 1986 (51 FR 7628), describing its policies for issuance of conditional registration of new chemicals. That policy statement addresses each of the commenters' concerns in an affirmative manner. It states that the Agency will not grant conditional registration for new chemicals if the available data demonstrate that special review criteria are exceeded. It further sets out in greater detail the types of information that may be necessary for the Agency to make a public interest finding in accordance with FIFRA sec. 3(c)(7)(C). Lastly, the policy statement provides that conditional registrations will expire automatically if data (or interim progress reports) are not submitted in a timely manner or if the data, when submitted, show that the pesticide would meet or exceed risk criteria for special review.

In response to these comments, § 152.114 listing the criteria for approval of conditional registration of new chemicals has been revised to clarify that the public interest determination applies only during the expected period of the conditional registration. Section 152.115(b), specifying the conditions of registration for new chemicals, has been revised more substantively. The conditions attached to registration under FIFRA sec. 3(c)(7)(C) now include an automatic expiration (in addition to Agency-initiated cancellation as provided in the proposal) if data or progress reports are not submitted. Moreover, § 152.115 now also includes the condition that the conditional registrant submit information on production of the conditionally registered product. This information is required by the Agency for its annual report to Congress under FIFRA sec. 29.

C. Denial of Applications

Proposed § 152.118 contained proposed procedures for denial of applications for registration. Three commenters noted the provision in § 152.118(e) that, upon notice of denial (by certified mail, as suggested by two commenters), an applicant would have 30 days to respond and correct the deficiencies. The commenters asserted that 30 days is insufficient time to respond properly with corrective action, and urged lengthening the time to 60 or 90 days. They believed that it is unfair to expect 30-day response from the applicant when the Agency has taken several months to review the application.

Although the Agency is sympathetic to the perceived plight of the commenters, EPA notes that FIFRA sec. 3(c)(6) requires a 30-day response to a notice of intent to deny. If the applicant fails to respond within the 30 days, that section states that the Administrator may refuse to register the pesticide. This discretionary authority permits EPA to provide additional time for correction if warranted. EPA does not expect that all corrections can be accomplished within the 30 days. EPA is seeking, at a minimum, an indication from the applicant that he intends to make the corrections within a given time period. Thus, although 30 days would seem to bind the applicant to a short time for both response and correction, EPA may permit longer for actual correction, provided that the applicant notifies the Agency within the allotted 30 days.

A second commenter noted that paragraph (d) apparently makes discretionary the Agency's publication of a notice of denial in the **Federal Register**. He cited the language stating that the Agency "may issue in the **Federal Register** a notice of denial * * *," and interpreted this to mean that publication is discretionary. The language in the final rule has been revised to clarify that it is the decision to deny that is discretionary. All notices of denial will be published in the **Federal Register**, as required by FIFRA sec. 3(c)(6).

IX. Undeliverable Mail

The Agency proposed in § 152.122 that if applicants do not keep the Agency apprised of their current name and address of record, the Agency would suspend the registrations of all products of that applicant. Two comments were received on this provision, neither objecting, but offering suggested clarifications. Since this proposal, the Agency has issued in the **Federal Register** of March 5, 1986 (51 FR 7634) a notice announcing that it will cancel such registrations, and has begun the process of purging its records of registrations whose owners cannot be located. In the final rule, the Agency has modified § 152.122 to conform to its new policy. The Agency believes that this modification in the final rule does not warrant reproposal.

X. Timeframes for Use of Labeling

Section 152.128 of proposed Subpart G established timeframes for the use of existing label stocks after the label has been amended (either on the registrant's initiative or in response to an action by the Agency). Similarly, § 152.135, (concerning voluntary cancellation) proposed a time period for disposal of existing stocks of the pesticide. Although disposal of label stocks upon amendment, and disposal of pesticide stocks after voluntary cancellation are not strictly comparable, comments addressed the two together in some cases. Consequently, this unit responds to comments on both §§ 152.128 and 152.135.

The Agency proposed a period of 1 year after amendment for the replacement of product labeling if initiated by the registrant. Eleven comments were received on this proposal, all of which took exception to the Agency's proposal; all claimed that 1 year is insufficient time to dispose of existing label stocks. The commenters offered various reasons for their objection: sales of seasonal products often extend into subsequent years; the life of returnable or reusable containers (which may be embossed or silk-screened with permanent labeling) is up

to 5 years; health or safety questions that warrant such a short time period are not generally at issue in registrant-initiated amendments; States are unable to keep pace with label transactions each year; and some States (unidentified by the commenter) provide a minimum time of 2 years for exhausting old label stocks. In short, all commenters stated that the Agency should defer to the needs of industry when no questions of health and safety are involved. On the other hand, no commenter objected to (and one supported) the idea that where health or safety concerns were raised, the Agency would specify a timeframe for replacement of labeling, which might be shorter than 1 year.

Based on these comments, the Agency has decided that it will permit 18 months instead of 12 months for disposition of existing label stocks when the amendments proposed by the registrant do not involve health or safety considerations. EPA believes that persons who are seeking label amendment can and should plan in advance for use of their label stocks, so that large number of label stocks will not remain after 18 months.

One commenter urged the Agency to delete the language referring to "physical possession" as the determinant of which products must be relabeled. He suggested that the Agency instead use the more standard term "released for shipment."

EPA agrees with the commenter and has deleted the term from the final rule. "Physical possession" is not the term used in FIFRA to define when enforcement actions may be taken. The Act uses the term "released for shipment" (FIFRA sec. 9) to define when inspections may be carried out for purposes of compliance, and the Act defines violations (FIFRA sec. 12) in terms of the "distribution and sale" of the product. The Agency's current practice in defining dates when revised labeling must appear on products has been to specify two dates: a date beyond which the registrant may not distribute or sell the product (a "released for shipment" date) and a second, later, date beyond which distributors, dealers and retailers may not distribute or sell the product (a so-called "channels of trade" date). The Agency intends to continue this method of specifying timeframes for compliance.

One commenter suggested that the voluntary cancellation procedures in proposed § 152.135 (codified as § 152.138 in the final rule) be modified to include a petition process whereby a registrant could petition for a period longer than 1 year in which to dispose of a voluntarily cancelled product. Rather than specify a specific date by which pesticide stocks must be disposed with a concomitant petition process to justify a longer period, the Agency has deleted from the final rule any specific date by which existing stocks must be disposed of. The Agency prefers the flexibility of dealing with existing stocks questions individually, and hesitates to impose a formal petition process unnecessarily. Moreover, the Agency believes that a timeframe for disposal of pesticide stocks should depend on the risks associated with that pesticide that formed the basis for the cancellation. A product that is voluntarily cancelled in the face of impending suspension or special review decisions may pose risks such that no disposition of existing stocks should be permitted. By contrast, a product that is voluntarily cancelled because a changing market no longer supports continued distribution and sale may pose no risks that justify limiting existing stocks distribution. In this latter case, the registrant probably will have only a small stock of product because he has already phased down his production and distribution volume.

Consequently, § 152.138 requires that a registrant requesting cancellation of his product propose a timeframe for disposal of existing stocks of the pesticide, taking into account the amount of material and the historical time for moving the product through channels of trade. In the notice of cancellation, the Agency will specify a timeframe for disposal of existing stocks.

XI. Agency Actions Affecting Registration

Subpart H of the proposal described in summary form various Agency actions that may affect registration—classification for restricted use, data call-in, reregistration, special review, cancellation and suspension, and required use of child-resistant packaging.

Two commenters addressed this subpart. One commenter urged that when the Agency changes the requirements for data under FIFRA sec. 3(c)(2)(B) (§ 152.142), the Agency state the reason for the new data and the status of data under the old guidelines. The Agency is not certain what the commenter is referring to when he mentions "changing" data requirements.

The overwhelming majority of data required of registrants under section 3(c)(2)(B) are not new or changed requirements, but simply the application of current data requirements contained in 40 CFR Part 158 to existing pesticides. If, however, a data requirement being imposed under section 3(c)(2)(B) is not contained in Part 158, or is required only for certain products, the Agency will state the reason for the data requirement.

The Agency's policy with respect to previously submitted data is stated in 40 CFR 158.80. That section states that EPA will evaluate a study to determine whether it was conducted in conformance with accepted scientific protocols and study designs and whether the results were reproducible. The Agency will not reject a study that is conducted in accordance with Agency recommendations, or another acceptable protocol, provided that the study fulfills the purposes for which the requirement was established, and permits sound scientific judgments.

One commenter objected to the provision in § 152.148 that the Agency may initiate cancellation proceedings if the composition, packaging or labeling of the product do not comply with the Act. The commenter was particularly concerned with labeling, stating that labeling requirements are subjective. The commenter asserted that no provision is made in the rule for negotiation, arbitration or other registrant-initiated actions.

Section 152.148 states the provisions of FIFRA sec. 6(b), which permits the Agency to initiate cancellation proceedings if a product, its packaging, or its labeling is not in compliance with the Act. Once a notice of intent to cancel is issued, however, the registrant has the right to request an administrative hearing, in which he may contest the basis for the cancellation, including the reasonableness of any labeling requirement that has not been specifically established by regulation, or its applicability to his product. During the pendency of such a hearing, the product remains registered.

XII. Restricted Use Classification

Subpart I of the proposed rule reorganized and revised the criteria and procedures for restricted use classification. The Agency proposed few changes in the procedures for classification, and only minor changes in the criteria for classification. The provisions of proposed Subpart I largely reflected the criteria in § 162.11(c) and the procedures in § 162.30. A total of 13 comments were received on Subpart I, the majority directed to the changes in criteria in § 152.170.

A. Scope of Classification

Section 152.160 of the proposal described the scope of the Agency's authority to classify products, and the overall framework of the program. The

Agency noted that it may classify products for restricted use either by regulation or on a case-by-case basis in conjunction with other regulatory actions.

Several commenters stated that the Act does not provide for an "unclassified" product, as stated in § 152.160(a), and suggested that it be deleted. The commenters are correct that FIFRA sec. 3(d) provides that a product shall be classified for either restricted use or general use. However, as a policy matter, the Agency does not now, and does not intend to, classify products for general use.

As stated in the preamble to the proposal, the thrust of the classification process is the identification of products that should be restricted—not those which do not need to be restricted. A product for which no concerns warranting restriction have been raised does not need confirmation of that fact by classifying it for general use. The Agency does not intend to devote its scarce resources to reviewing a product for the purpose of general classification—a determination which would carry with it no obligations or consequences for the registrant. Therefore, a product which has not been classified for restricted use remains unclassified in EPA's opinion. Section 152.160 of the final rule acknowledges this fact.

A second commenter to § 152.160 objected to the case-by-case determinations of classification. The commenter argued that case-by-case determinations did not permit sufficient phase-in time, provided no notice or comment opportunity under the Administrative Procedure Act, no consideration of small business impacts under the Regulatory Flexibility Act, and no judicial review.

The Act specifically provides for case-by-case classification as part of its registration process. FIFRA sec. 3(c)(1)(F) requires an applicant for registration to propose a classification at the time of application and section 3(d)(1)(A) states that classification shall occur as part of the registration. In addition, the Act provides for a discretionary process of classification by regulation, which is subject to all the administrative and judicial protections provided by the Administrative Procedure Act for other regulations. In both cases (case-by-case or by regulation), the Agency's decision is a final determination subject to judicial review. Thus the commenter is in error in assuming that there are no administrative, procedural, or judicial protections for Agency classification decisions.

B. Criteria for Classification

EPA proposed in § 152.170 criteria under which the Agency would classify products for restricted use. The criteria include determinations by the Agency that the product exceeds certain hazard criteria, that restriction would reduce the risk of adverse effects to a greater extent than it would decrease benefits from use of the product, and that labeling would not be sufficient to mitigate the identified risks.

The majority of commenters on this subpart expressed concern with the criteria for restriction for residential and institutional products contained in § 152.170(b). In general, commenters were in favor of the Agency's not restricting various types of products—e.g., residential, institutional, industrial, or antimicrobial products—or, alternatively, of considering restriction only if the products were highly toxic (Toxicity Category I). Some expressed the opinion that the requirements for child-resistant packaging (40 CFR Part 157), together with labeling, are sufficient to protect users in residential use situations.

EPA has not revised the criteria to eliminate the possibility of restricted use classification for residential/institutional/industrial products. The criteria are identical to those in existing regulations (§ 162.11(c)) for new "domestic" products). EPA has not applied those criteria to date to restrict such products. Child-resistant packaging has been the mechanism thus far used to reduce the risks of products intended for residential use. Nonetheless, the Agency does not believe it should limit its regulatory choices in the manner proposed by the commenters, such that residential, institutional, industrial, or antimicrobial products could not be classified for restricted use if circumstances warrant.

A commenter questioned the practicality of a unique and independent fish and wildlife trigger for restricted use (§ 152.170(c)). The commenter's main concern appeared to be the practicality of the fish and wildlife trigger based on dietary intake, which he stated was difficult to determine. EPA agrees that there is scientific uncertainty in calculations such as those proposed. Nonetheless, EPA has developed considerable experience in estimating dietary intake of pesticides by wildlife, and believes that the estimations are reliable indicators of hazard. EPA therefore has retained the fish and wildlife triggers based on dietary intake.

The same commenter urged that the Agency retain the human risk trigger as prerequisite to a wildlife trigger (i.e., the Agency should not consider restricted use for wildlife effects unless a human risk trigger has first been exceeded). EPA believes that a scheme in which restriction for ecological and environmental effects is only secondary to potential human effects would provide inadequate protection of the environment, and limits the Agency's regulatory options. Human, ecological, and environmental risk reduction can be equally well served by restricted use classification, which requires application by or under the supervision of a trained certified applicator.

Moreover, restricted use classification is intended to function as an alternative to cancellation of a pesticide that poses unreasonable adverse effects on man or the environment; such effects are not limited to human exposures. If confronted with a pesticide that poses strictly environmental or ecological risks, the Agency might be compelled to cancel products if restriction were not available for consideration. Additionally, the criteria for initiating a special review of a pesticide, a process that may lead to cancellation, include specific and independent criteria for ecological effects. The Agency has initiated special reviews of some pesticides based solely on ecological effects. Consequently, EPA will also retain the fish and wildlife restricted use criteria independent of human effects criteria.

Three commenters asserted that use history and accident data, proposed as criteria for potential restriction in § 152.170(d), are not appropriate as triggers for restricted use. They state that these are not indicative of the inherent hazard of the product, but are the result of misuse only, and should be deleted as considerations in restricting a product. EPA disagrees. Use history and accident data are important sources of information on hazards, particularly in the ecological effects area. Moreover, EPA can usually distinguish between accidents and misuse incidents, and information from accidents can be considered apart from obvious misuse situations. The Agency believes that the training and certification of applicators that is required for restricted use classification can significantly reduce the potential for adverse effects, whether from normal use or misuse. Thus information on misuse is an important consideration in evaluating the need for restriction.

The Agency does not contemplate restricting a product based solely on misuse or accident history, but will consider such information as supporting

data on the pesticide's potential to cause adverse human and ecological effects.

XIII. Label Improvement Program

The Agency proposed to add as Subpart J regulations implementing its Label Improvement Program (LIP) initiated in 1980. The proposal described the procedures the Agency would use in conducting an LIP, the expected responses of registrants, the timeframes for submission of responses, and the compliance times for the label changes. Twelve commenters objected to the inclusion of this program in the Agency's regulations. Their objections were varied, but commonly expressed the notions that the program was not sufficiently well defined in scope and applicability, that it has not "matured" to the point of regulation as yet, and that it could develop into a quasi-registration function not offering opportunity for input by affected or interested parties. Several commenters urged greater participation in the existing non-regulatory LIP program by industry.

Based on these comments, the Agency has decided not to promulgate regulations for the LIP program at this time. EPA believes that the LIP serves a useful function, with goals of consistency, uniformity, and clarification of labeling. However, EPA agrees with commenters that the current LIP program is still evolving and that regulations for its implementation are premature. The Agency will continue to use the LIP as it has in the past, allowing considerable flexibility in procedures and requirements as individual situations warrant. The Agency will, as requested by commenters, provide more opportunity for participation by registrants and the public before issuing LIP notices. At a future time, the Agency may propose regulations for the LIP program.

XIV. Intrastate Products

EPA proposed to update its requirements for intrastate products. Subpart L of the proposed rule required that intrastate producers submit applications for full Federal registration no later than July 31, 1988. Products shipped after December 31, 1988, would be in violation of the Act unless federally registered. In addition, the Agency could require earlier submission of applications for consistency with regulatory actions concerning federally registered products.

One commenter pointed out that no provision was made for continued sale and distribution of products if an application had been submitted by July 31, 1988, but was still pending as of December 31, 1988. The Agency agrees that a pending application should suffice to permit continued sale and distribution of the product while the Agency considers the application. Accordingly, § 152.230 has been revised to state this. The December 31, 1988, date for obtaining Federal registration is therefore irrelevant (as would be any specific date for receiving Federal registration). Instead, legal sale and distribution of the intrastate product will be governed by the application submission date of July 31, 1988.

Accordingly, by July 31, 1988, each producer of an intrastate product must submit an application for full Federal registration. If no application is filed, sale or distribution of the product will be deemed to be in violation of FIFRA sec. 12(a)(1)(A) after July 31, 1988. The Agency will deny applications for registration of intrastate products that are not complete or sufficient for review.

XV. Devices

Subpart M of the proposed rule set out, by reference to the Act and regulations, the requirements pertaining to devices, which are not required to be registered but are subject to other provisions of FIFRA. No comments were received on this subpart, and it is adopted without change. However, since devices are not subject to registration requirements, Subpart M has been moved from Part 152 to Part 153, containing policies and interpretive rules concerning registration.

XVI. Determination of Active and Inert Ingredients

For organizational purposes, the Agency proposed that the information contained in § 162.60 be relocated in Part 158. Current § 162.60 describes the general criteria applied to determine whether an ingredient is active in a pesticide product, and lists a number of substances which are deemed to be inert when used in antimicrobial products. Since this material appeared to relate primarily to the data requirements that might be imposed on such substances (depending on whether they were active or inert), the Agency proposed to include the criteria and listing in Part 158, which addresses data requirements.

Although no comments were received that specifically addressed this organizational change or raised issues requiring consideration by the Agency, it was clear from comments received on other topics (product chemistry requirements in particular) that the listing was being misconstrued. At least two commenters assumed that listing a substance in § 158.1001 as an inert ingredient was equivalent to a clearance process which relieved them of the responsibility of submitting any data on those substances. The Agency's decision to locate the material in Part 158 may have contributed to this misperception.

The purpose of the listing is to identify substances that are pesticidally inert; the listing in proposed § 158.1001 applies to substances used in antimicrobial products. The criteria of proposed § 158.27 clearly were related to pesticidal effects of the substances, not toxicological or other characteristics for which data may be required. Although the Agency has discretion to limit the types and amounts of information it will require on ingredients in pesticide products, and may discriminate between pesticidally active and inert ingredients, it should not be inferred that designation as an inert ingredient automatically has that consequence. The original need for making a determination on the listed substances arose because registrants of antimicrobial products tended to include those substances as active ingredients on their labels. The only regulatory consequence that can correctly be inferred is that a listed substance may not be designated on the label as an active ingredient, but must be included in the total of inerts.

To clarify this misperception, the Agency has revised the information and is locating it separately in Part 153, which contains policies pertaining to registration. Section 153.125 clearly describes the criteria as those for determining "pesticidal" activity. Section 153.125(b) sets out the Agency's authority to determine whether a substance is pesticidally active or inert (within the meaning of FIFRA sec. 2(m)). Paragraph (c) of that section states that designation as inert affects the labeling of the product. A new paragraph (d) has been added to ensure that registrants are aware that other requirements (including data requirements) may be imposed, even though the substances are listed as inert.

XVII. Coloration and Discoloration

In accordance with FIFRA sec. 25(c)(6), the Agency proposed to require that additional types of products be colored (or discolored). Specifically, the Agency proposed that products intended for seed treatment (with certain exceptions) contain a dye, unless instructions were included on the label to color the seeds separately at the time of seed treatment.

No comments were received on this proposal, which reflects current policy and is in conformity with similar regulations under the Food and Drug

Administration and U.S. Department of Agriculture. Accordingly, this requirement is adopted as proposed.

The Agency also proposed to require that granular products for soil application be brightly colored to contrast with soil components. EPA stated that colored granules would deter wildlife (particularly birds) from ingesting the granules, and would make application easier. Eight commenters addressed this proposal, seven objecting to the requirement for various reasons. Commenters argued that coloration will not deter birds or wildlife; that the Agency has no scientific evidence to support its proposal; that the dyed granules will be an "attractive nuisance" for children; that the addition of dyes will be costly and not always technically feasible; and that the requirement is arbitrary, being imposed without regard to potential hazard or application practices that might mitigate the hazard.

EPA has considered these comments and concludes that they raise issues needing fuller evaluation before requirements are imposed. Accordingly, the Agency has deleted the requirement for coloration of granular products from the final rule.

Finally, because the requirements for coloration and discoloration are general policy, and do not pertain distinctly to the registration process, they have been redesignated in the final rule as Subpart H of Part 153.

XVIII. Format of Data Submissions

A. Format Requirements

EPA proposed to establish, as §§ 158.32 and 158.33, format requirements for the submission of data in support of applications for registration, experimental use permits, petitions for tolerance, and other regulatory activities under FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA). Submission of data in the formats required will assist the Agency in indexing, cataloging, and reviewing the data, and will facilitate retrieval of data for review and reference purposes. Additionally, the requirements pertaining to segregation of confidential business information (CBI) will permit the Agency to respond more readily to requests under the Freedom of Information Act (FOIA) without jeopardizing the confidentiality of information protected by FIFRA sec. 10(d)(1), and without undue delay.

In proposed § 158.32, EPA described a number of general format requirements for submission of data. Studies must be submitted separately; must contain a title page with specific identifying information; and, when submitted with a number of studies, must be transmitted with a cover document describing the entire transmittal. Two commenters addressed the requirements of this section, requesting clarification of the language on several points.

Both commented that at this time the Good Laboratory Practices requirements referenced in § 158.32(b)(2) pertain only to toxicological studies. The commenters are correct. Section 160.3(m) of this chapter defines a "study" in a manner that limits its applicability to toxicology studies. However, EPA has not revised the rule to specify this policy, since this final rule is intended only to cross-reference the requirements of Part 160. If Part 160 is revised to add to or change the GLP requirements, a specific cross-reference in § 158.32 would also have to be revised. The Agency is, in fact, considering revising Part 160 to specify the types of good laboratory practices that would be appropriate for other types of studies.

Both commenters also requested that the Agency clarify whether the date of "completion" of a study is synonymous with the date of "issuance" of the study. The Agency wants to know when the study itself was completed by the performing laboratory, not the date it was sent to the submitter. Section 158.32(c) has been revised to clarify this point.

B. Confidential Business Information

Section 158.33 of the proposal described the procedures that data submitters must use in asserting a claim of CBI. First, the Agency proposed that all information claimed to be CBI within the meaning of FIFRA sec. 10(d)(1) (A), (B), and (C) be isolated in a separate attachment to the study and cross-referenced in the study itself. Second, the Agency proposed that other information for which a claim of confidentiality is asserted under FIFRA sec. 10(b) be clearly marked in the text of the study, but not physically separated.

Four commenters took exception to the Agency's establishing a system that required segregation of some information from the context of the study. They asserted that the system was cumbersome and complicated for data submitters and that it is heavily weighted toward the Freedom of Information Act (FOIA) needs of the Agency. Moreover, they believed that Agency reviewers would find a system that located FIFRA sec. 10(d) information in a separate study attachment inefficient and difficult to use. All preferred the simpler marking system required for CBI claimed under section 10(b).

EPA acknowledges that the procedures required by § 158.33 may at first be inconvenient and may initially involve slightly increased costs for data submitters who have not in the past submitted information in this manner. However, as they gain experience in compiling studies in the required format, data submitters' costs should diminish. Moreover, the costs to the Government will significantly decrease if these procedures are put in place.

The Agency has had experience with the simple marking system advocated by commenters; the difficulties encountered with this system provided the impetus for the changes proposed. As to arguments that segregation of claimed CBI will be inefficient for Agency reviewers, EPA disagrees. Agency reviewers recognize the need to protect CBI, and in drafting Agency documents are required to adhere to the same requirements. They are accustomed to the procedures and have not found the segregation of claimed CBI to be overly burdensome.

The Agency's reasons for requiring separation of claimed CBI under section 10(d)(1) were clearly stated in the preamble to the proposal. Comments from data submitters have not convinced the Agency that segregation of claimed CBI is unnecessary, nor that a marking system could accomplish the objectives equally well. EPA continues to believe that the benefits and efficiencies of the requirements to EPA more than offset the cost and inconveniences cited by commenters in objecting to the requirements.

Two commenters questioned the need for the Statement of Non-Confidentiality required by § 158.33(c). They pointed out that the Agency has stated in § 158.33(b) its policy that failure to segregate CBI properly is deemed to be a waiver of claims by the submitter. Since waiver of claims is assumed in the absence of an affirmative declaration by the data submitter, the Statement of Non-Confidentiality is redundant.

EPA views the policy and the Statement of Non-Confidentiality as complementary rather than redundant. Although Agency policy is that unmarked and unsegregated information is freely releasable under the FOIA, the Agency believes that maximum protection to data submitters (and incidentally to the Agency) is afforded by the affirmative statement required by § 158.33(c). If a study is clearly marked as non-CBI, the Agency is assured that the data submitter has given careful thought to its status, and has not

inadvertently overlooked the requirements.

Finally, two commenters asked that the final rule clarify where the Statement of Confidentiality Claims should be located, suggesting that the title page of the study is an appropriate location. The proposal did not specify a location for the required statement, nor does the final rule. The title page of a study may be prepared by the performing laboratory, while the determinations of confidentiality would ordinarily be done by the submitter of the data. The Agency prefers that the statement be included on a separate page immediately following the title page. However, there in no objection to its being located on the title page if desired by the submitter.

XIX. Flagging Criteria

EPA issued a proposal in the **Federal Register** of October 3, 1985 (50 FR 40408), that would require pesticide applicants and registrants to mark or "flag" certain studies at the time of submission to the Agency. The Agency cited the increased volume of data expected to be submitted in the near future and its limited resources for review of those data as reasons for its proposal. Flagging the studies would serve to alert the Agency to pesticides having potentially serious adverse effects. Earlier, the Agency had issued in the **Federal Register** of September 20, 1985 (50 FR 38115), an interpretive rule concerning the submission of adverse effects data under FIFRA sec. 6(a)(2). That regulation, although not requiring the flagging of studies, had requested that submitters voluntarily do so. Together, these two documents attempted to address all data submissions made by registrants or applicants.

In its October proposal, the Agency proposed a set of study types subject to the flagging requirement. The proposal covered studies of three general types: toxicological studies (subchronic and chronic); ecological effects; and environmental fate studies. For each study, the proposal contained one or more criteria which, if met, would trigger a requirement for affirmative flagging of the study. The toxicology criteria were qualitative and descriptive in nature. The environmental fate and ecological effects criteria were quantitative and objective. A study was to be flagged by signing a certification statement that the study either did or did not meet the criteria.

In response to its proposal, the Agency received comments from nine pesticide companies or trade associations and one environmental organization. In response to these comments, the Agency is at this time promulgating only the toxicology criteria and has better defined those criteria for positive flagging. The Agency is reassessing the criteria for ecological effects and environmental fate to determine their feasibility and usefulness and may in the future promulgate the proposed criteria, or propose different ones. Comments on the proposal are addressed in the following preamble subunits.

A. Need for Flagging

The Agency stated in its proposal that it would be receiving large volumes of data in response to its Data Call-In (DCI) and Registration Standards programs, and that its limited scientific resources would not permit all such data to be reviewed upon receipt. For that reason, EPA viewed flagging as a means of setting review priorities so that pesticides demonstrating potentially serious adverse effects could be given early review.

Most commenters questioned whether the Agency would accomplish its stated purpose by its proposal, and several commenters objected to the proposal. Commenters generally stated that the proposal would result in overflagging of data. Flagging, it was asserted, would not isolate pesticides having potential adverse effects; rather, the Agency would be inundated with studies that were flagged, which would defeat the purpose of flagging. Commenters attributed this to the combination of several factors: the vagueness, ambiguity, or subjective nature of the criteria, particularly in the area of oncogenicity and chronic feeding studies; the Agency's recommendation for inclusion flagging where scientific uncertainty exists; and the concern that EPA would seek penalties of an unstated nature, although the proposal did not describe such a plan. These three factors, commenters stated, would lead data submitters to be extremely conservative, with the result that most studies would be flagged. One commenter also stated that a company desiring early review of its studies might be inclined to flag them simply for that purpose (and could do so with impunity, since the criteria and penalties were not sufficiently clear that they could be held accountable for erroneous flagging). The Agency believes this latter occurrence will be infrequent.

In response to concerns about ambiguity and lack of clarity in the toxicological studies and the specific comments received, the Agency has revised the criteria (see Unit XVIII.C.) to delineate more carefully the factors that should be applied.

With respect to the penalties for failure to flag, under FIFRA sec. 3(c)(2)(B) the Agency may suspend the registration if the data submitter fails to flag the data properly. Moreover, failure to flag may be deemed to be a falsification of a required report under FIFRA sec 12(a)(2)(M).

B. Scope of the Flagging Requirement

Other commenters who objected to the proposal questioned its utility in the application review process (as opposed to the Data Call-In process, about which similar comments were not made). Their comments were directed primarily at new chemicals. Commenters stated that flagging data submitted with a new chemical application was unnecessary, i.e., that early review of the studies would achieve no environmental protection because the chemical was not being marketed. These commenters also argued that early review would have little effect upon review resources, since the entire application would still have to be reviewed (including all unflagged studies) before the registration could be granted. On the other hand, they pointed out that flagging of one study could stigmatize the chemical for a single effect which might not be significant when considered with the data as a whole.

Finally, commenters pointed out that the Agency's stated policy is to give priority review to safer new chemicals, and that giving early review to studies demonstrating potential adverse effects runs counter to this policy. A new chemical application having no flagged studies could, presumably, be relegated to a lower review priority while the Agency focused its attention on a new chemical with a flagged study. Commenters viewed this as an unintended effect of the flagging requirement and recommended that new chemical applications should not be subject to flagging.

The Agency has decided to retain the flagging requirement for applications for registration. EPA believes that flagging of data for new chemical applications, although not a means of prioritizing the review of the application, will be useful in other ways. For example, if the Agency has under review other regulatory actions on a chemical, such as a section 18 exemption request, EPA will be able to use flagged data in evaluating the request.

In the case of an application for registration of a me-too product or for a new use of an old chemical, flagging will serve the purpose of identifying the

study for early review. An application for a new use of an old chemical or for a me-too product is generally reviewed in an order determined by factors other than the type of amount of data submitted. In the case of me-too products, data that would require flagging are rarely submitted. Similarly, unless an applicant seeks a significantly expanded use requiring submission of a full battery of studies, the Agency does not expect the routine submission of the types of studies requiring flagging. In both of these cases, EPA views the flagging of data that are submitted as especially important, since the Agency normally will not alter its current review priorities for such applications unless prompted to do so by having the studies flagged.

Finally, EPA notes that the task of flagging the data is not overly time-consuming or difficult, and that the number of studies requiring flagging is relatively small. EPA believes that the burden upon registrants will be insignificant compared to the time and expense of producing the study in the first place.

C. Toxicology Criteria

The Agency proposed flagging criteria for six types of toxicological studies commonly required by the Agency. These included oncogenicity, chronic and subchronic feeding studies, reproduction, teratology, and neurotoxicity studies.

1. *Oncogenicity studies* (Criteria 1 through 4 in the final rule). A number of commenters raised similar concerns about unclear terms used in describing the criteria, particularly for oncogenicity and chronic feeding studies. They singled out terms such as "marginal," "substantial," and "decreased time," as needing better definition. They noted that unless the terms are better defined, industry compliance and enforcement would be difficult, and excessive flagging would result. Commenters suggested additional language that they believed would help clarify the criteria, including "statistically and biologically" significant increases, "concurrent and historical" controls, and "treatment-related" effects.

In response to these comments, the Agency has substantially revised the criteria for oncogenicity studies to eliminate many of the imprecise terms. Specifically, EPA has eliminated the terms "marginal" and "substantial increase." and has included language concerning "concurrent controls" and "statistically significant" increases in tumor development.

EPA, however, has not adopted language concerning "historical" controls, or "treatment-related" or "biologically significant" tumor development. The Agency recognizes the importance of the concepts such as "historical controls," "biological significance," and "treatment-related effects" in the ultimate determination concerning oncogenicity of a pesticide. However, the Agency believes that, since the purpose of the criteria is to provide a rough screen to alert the Agency of potential problems, such detailed analyses are not warranted at this level of review. The "decreased time to tumor development" language has been retained because it is a commonly recognized criterion for judging oncogenicity.

Although these revisions significantly reduce the ambiguity of the criteria, scientific judgment still must be applied to determine whether the toxicology criteria have been met, but EPA believes that this scientific interpretation is no more uncertain or ambiguous than that which normally arises in interpreting the results of any scientific study.

2. *Teratology studies* (Criterion 5). Of the six commenters on the teratology criterion, three suggested the inclusion of the same language as for the oncogenicity studies. EPA has not included language on biologically significant increases, historical controls, and treatment-related effects for the reasons explained before. EPA has included language concerning a "dose-related response." The Agency is conforming this rule to its position on teratology as expressed in previous Agency documents (Final Guidelines for the Health Assessment of Suspect Development Toxicants, September 26, 1986 (51 FR 34028); Standard Evaluation Procedure: Teratology Studies, OPP, June 1985). The concept of adverse developmental toxicity in the absence or presence of significant maternal toxicity at the same dose level will be evaluated on a case-by-case basis.

Another commenter noted that teratogencity cannot be compared on a fetus basis, only on a litter basis. The Agency agrees, and has deleted the fetus-based comparisons. A third commenter noted that the presence of teratogenicity is sufficient evidence of adverse effects; language requiring an "increase" in fetal malformations is not appropriate. EPA disagrees, and has retained the original language. In most teratology studies, the controls show a certain low background rate of teratogenic effects; therefore an "increase" when compared with controls is appropriate.

3. *Neurotoxicity studies* (Criterion 6). Commenters on the neurotoxicity criterion generally stated that the end point of concern—a "positive effect"—is too vague and undefined to be meaningful in evaluating whether a study meets the criterion. Two suggested alternative language that they believed expressed the criterion more accurately. EPA rejected language requiring "histologic evidence of adverse effect on nerves" as being too narrow. In the final rule, the Agency has accepted the suggested language of the other commenter, who proposed to base the criterion on a response "indicative of acute delayed neurotoxicity," but not requiring that a positive response be dependent upon histologic findings of nerve effects.

The Agency has not adopted language suggested by commenters concerning "historical" controls, for the reasons cited earlier. Nor has EPA based the criterion on "positive and negative controls" as suggested by another commenter. EPA's concern in evaluating neurotoxic effects focuses on whether such effects are greater than negative controls, not on whether they are as potent as positive controls.

4. *Chronic feeding studies* (Criteria 7 and 8). Commenters on these criteria focused on the Agency's use of the acceptable daily intake (ADI) which is often derived from the results of chronic feeding studies. Commenters generally requested that the Agency clarify what ADI was to be used, whether a provisional ADI (PADI) should be used, and the applicability of the criteria when there is no ADI. There was no disagreement with the 10X or 100X factors used in the translation of the NOEL to the ADI.

In applying the chronic feeding criterion, data submitters should use the latest ADI upon which a tolerance (either temporary or permanent) has been based. This may be a PADI if not based on a full complement of toxicological studies sufficient to define an ADI. If no ADI has ever been determined (no tolerances have previously been established), the data submitter should flag the first study which permits the establishment of a PADI or ADI, and thereafter apply the criterion as written.

5. *Reproduction studies* (Criterion 9). Two comments were received on this criterion. One suggested the inclusion of historical controls, which the Agency has not adopted. The other suggested that the use of the "no observed effect level" (NOEL) should be replaced with the "no observed adverse effect level" (NOAEL). The Agency views these terms as interchangeable, but in the pesticide regulation program has consistently used the term "NOEL"

rather than "NOAEL" in previous documents. Language concerning "adverse" effects would introduce greater ambiguity into the criterion. Therefore, the Agency has not changed the reproduction criterion.

6. *Subchronic feeding studies* (Criteria 11 and 12). Commenters on the subchronic criteria generally were concerned about the Agency's 200X and 2000X factors used in translating the NOEL to the ADI. They argued that the Agency should not double the factors used (in addition to the tenfold difference factor normally applied based on the use of subchronic instead of chronic studies). They urged the Agency to use a 100X factor for the cholinesterase inhibition criterion and a 1000X factor for the general (systemic) toxicity criterion. EPA agrees with these comments, and has revised the criteria for subchronic studies to reflect only a tenfold uncertainty factor.

Commenters also suggested language concerning "treatment-related" effects and the NOEL; the Agency has not adopted these suggestions for reasons given earlier.

D. Environmental Fate and Ecological Effects Criteria

Commenters on both the environmental fate and ecological effects criteria questioned whether the criteria would be effective in identifying pesticides having potential adverse effects. A typical comment was that in both the environmental fate and ecological effects areas, the flagging criteria could not be applied independently as indicators of potential adverse effects, but must be considered with other studies. Particularly, commenters noted that the environmental fate criteria are actually characteristics of the pesticide that are meaningless when considered independently.

The Agency agrees with commenters that flagging of environmental fate and ecological effects studies under the criteria as proposed would result in a large number of studies being flagged for early review. The Agency has tested the flagging criteria by applying them to a random sampling of 23 Registration Standards. Of the available studies (for a number of Standards, there were no studies which could be judged against the flagging criteria), over 80 percent of the hydrolysis and aerobic soil metabolism studies and 68 percent of the solubility studies would have been flagged. When considered together, it is clear that a large proportion, if not all, pesticides would meet one or more of the environmental fate criteria. Similarly, in the area of ecological effects, 35 to 54 percent of the studies would be flagged, depending upon study type.

By contrast, a similar comparison of toxicology studies in the Registration Standards surveyed revealed that 30 percent or less of the studies would be flagged (in the Agency's estimation), ranging from a low of 10 percent for teratology studies to 31 percent of chronic feeding studies. Based on this limited survey, and the comments received, EPA has decided not to establish flagging criteria for environmental fate studies or ecological effect studies at this time. EPA will be evaluating whether criteria can be developed that will identify or isolate effects of concern more clearly. At a future time, EPA may promulgate or propose flagging criteria for environmental fate and ecological effects studies.

E. Procedural and Miscellaneous

In addition to comments on the criteria, the Agency received a number of comments on the procedural aspects of the proposal, as well as some miscellaneous comments.

1. Does flagging apply to interim reports as well as final studies? No, the requirement applies to the study when complete. However, if the study is being conducted on a registered pesticide, under FIFRA sec. 6(a)(2) there may be an obligation to submit interim reports identified as 6(a)(2) data.

2. The Agency should issue in the Federal Register semi-annually a list of all flagged studies. EPA does not intend to do so. The purpose of flagging is to identify studies that should be given early review. Industry commenters were particularly concerned that the effect of flagging might be to stigmatize the chemical in the public perception based on less than complete information. EPA believes it would be premature and inappropriate for the Agency to publicize the submission of studies merely because they had been flagged. Until the Agency has reviewed studies to determine their significance, publication would serve only to raise public concerns and fears that might prove entirely unfounded. If, based on its review of the study, the Agency determines to take regulatory action, such as initiating a special review of the pesticide, the agency would then make public its findings and reasons for so doing.

3. EPA should use the criteria as indicators that a risk trigger for special review has been exceeded. EPA rejects this idea for the same reasons as stated above. The criteria for special review are clearly set out in 40 CFR 154.7, and entail consideration of exposure factors not encompassed in the flagging criteria. A pesticide will be placed in special review only upon Agency determination that a special review criterion has been met.

In this regard, one commenter also suggested that EPA should include flagging criteria for exposure factors. The commenter's point was that the Agency should give higher priority to a pesticide having high exposure potential, even if there are flagged studies on a low exposure chemical. EPA intends that the flagging criteria be used for a relatively rapid screening process for internal review purposes. If the criteria were encumbered with exposure factors, which would be considerably more subjective in nature, they would lose their usefulness to the Agency, and would be significantly more difficult for data submitters to interpret correctly. The effectiveness of the flagging criteria depends on mutual understanding between the Agency and data submitters of the types of scientific findings that are of concern to the Agency as indicative of potential adverse effects. EPA's objective has been to introduce greater objectivity and clarity into the flagging criteria, not greater uncertainties. As noted earlier, commenters indicated that the criteria as written (without exposure considerations) were too vague and ambiguous. However, the Agency may take exposure factors into account when determining the priority of review among similarly flagged studies. For example, it is likely that higher priority would be given to a flagged study for a chemical having high or widespread exposure than to one having limited exposure.

Moreover, another commenter questioned whether the flagging criteria would not put the data submitter in the position of having to make a judgment call that the Agency is mandated to make. This commenter raised the question whether EPA's independent assessment of the study might be compromised by the submitter's flagging of the study. Although EPA does not believe that this would happen, inclusion of exposure criteria would certainly give more credence to the commenter's concern about registrant versus Agency judgments.

4. Finally, several commenters remarked on the Agency's recently issued interpretive rule on FIFRA sec. 6(a)(2) data. This final interpretive rule included the flagging criteria, with a request that data submitters use the criteria in submitting section 6(a)(2) data. Although not directly pertinent to

this rule, which specifically excludes 6(a)(2) data from the flagging requirement, the comments indicated some confusion as to the role of the flagging criteria in identifying potential adverse effects data under FIFRA sec. 6(a)(2).

The Agency has not yet made effective its final 6(a)(2) interpretive rule, published in the **Federal Register** of September 20, 1985 (50 FR 38115). Before it does so, EPA intends to revise the rule in response to concerns raised by commenters and to republish the final rule. The recommended use of flagging criteria will be deleted from the final rule. The Agency agrees with commenters that flagging of 6(a)(2) data would be a redundant requirement, since 6(a)(2) adverse effects data are inherently relevent to the Agency's risk/benefit decisionmaking. The purpose of the 6(a)(2) interpretive rule is to delineate the subset of adverse effects data the Agency is most interested in reviewing. Data identified as 6(a)(2) data are already given priority review in the same manner as is intended by flagging. Therefore, flagging of only some of those data would create a "subset within a subset" situation, which could prove confusing to registrants, with no corresponding benefit to the Agency in early review priorities.

XX. Product Chemistry Data Requirements

The Agency proposed establishing a new Subpart R of Part 152, which would contain product chemistry data requirements. The proposed data requirements repeated the existing product chemistry data requirements currently contained in Part 158. In addition, Subpart R was to codify certain types of product chemistry information contained in the Pesticide Assessment Guidelines, which are referenced in Part 158 in the table of product chemistry requirements (§ 158.190), but without guidance on the types and quantity of information required to be submitted. This latter information consists of information concerning identity and composition of ingredients and impurities, descriptions of starting materials and manufacturing processes, discussions of potential impurity formation, and requirements for certified limit information and analytical methods.

Eight commenters addressed the product chemistry requirements proposed as Subpart R. All but one of these were pesticide producers or groups who expressed concern about the stringency of the requirements. The other commenter was an environmental group which strongly supported the clarified requirements.

A. Reogranization of Part 158

From an organizational standpoint, most commenters noted the redundancy of repeating the product chemistry requirements in two different codified locations (Part 152 and Part 158). The Agency's proposal of Subpart R was primarily one of convenience. In order to present the existing product chemistry requirements and integrate the new requirements into a comprehensive whole, EPA extracted the requirements from Part 158 (which was then ready for promulgation) and proposed Subpart R. Ultimately, EPA intended to consolidate all the requirements in a single location in Title 40.

The Agency agrees with commenters that the requirements should be located in Part 158, and has reorganized Part 158 to do so. Product chemistry requirements are contained in Subpart C, and the remaining data requirements (presented in tables) comprise Subpart D. Other organizational changes have been made to accommodate these revisions, but the only substantive changes involve the revision of the product chemistry requirements.

Because of the reorganization of the material, this preamble unit discusses section-by-section the requirements beging adopted by the Agency, and responds to comments on the proposal. The new organization is used in this preamble. The following table correlates the new Part 158 sections, the old Part 158 sections, and the proposed sections.

TABLE—DERIVATION AND DISTRIBUTION OF PART 158 PRODUCT CHEMISTRY DATA REQUIREMENTS

New section	Old 158 section	Proposed 152 section
158.108	158.115	None.
158.150	158.105	152.340.
158.153	158.108(c)	152.342.
158.155	158.108(b)	152.344.
158.160	None	152.346.
158.162	None	152.348.
158.165	None	152.348.
158.167	None	152.350.
158.170	158.120	152.352, 152.354.
158.175	158.110	152.352, 152.353.
158.180	158.112	152.354.
158.190	158.120	None.
158.202	158.105	None.
158.240-158.740.	158.125-158.170	None.

B. Scope and Applicability

Section 158.150 has largely been repeated from current Part 158. This section outlines the applicability of the product chemistry requirements, and discusses their purpose and use in the Agency's review scheme and regulatory decisions. A new paragraph has been added discussing the nominal concentration.

C. Definitions

Section 158.153 contains definitions pertinent to the product chemistry evaluation. The Agency received specific comments on two definitions, and has revised others for clarity and simplicity.

The current (and proposed) definition of "technical grade of active ingredient" (TGAI) defines the TGAI to include added substances necessary for synthesis or purification. Thus the intended components of the TGAI are the pesticide chemical itself, any starting materials remaining from the reaction process, or added during that process, and any substances remaining from the final purification steps.

Two commenters suggested that the definition of "technical grade of active ingredient" be revised to permit the inclusion of a preservative in the TGAI. The Agency has not adopted this suggestion. The TGAI is the test substance normally required for a number of Part 158 studies in toxicology, ecological effects, and environmental fate, and the Agency believes its integrity should be preserved as carefully as possible for test purposes.

From a strictly scientific standpoint, testing to determine the characteristics of an active ingredient should be conducted with a version of the ingredient that is as pure as possible, such as the pure active ingredient. Contaminants or impurities in the test substance are scientifically undesirable for such testing, since they complicate the test procedure and may introduce uncertainties into the evaluation of results. It would be impractical and costly, however, to require that applicants take extraordinary steps beyond normal quality assurance measures to purify the TGAI simply for the purpose of most testing. The product of such purification would not be representative of the actual TGAI that will be incorporated into other products. Therefore, the Agency ordinarily allows use of the TGAI itself, at the point at which it emerges from the reaction and purification processes, as the most practical substitute, recognizing its limitations.

Since unavoidable substances are undesirable in the TGAI, the intentional addition of substances (such as a preservative used for stabilization during shipment to formulators), is less

tolerable. Therefore, the final definition of TGAI has not been modified.

Another commenter requested clarification of the definition of "impurity associated with an active ingredient." This comment, however, was directed to the question of who was required to submit information on the impurities associated with the active ingredient. The commenter's concern was that formulators should not be required to submit such information, since it would be available from producers of the TGAI. The final rule specifies that formulators would not be required to provide information on the impurities in the TGAI, but it does not affect the definition. Consequently, the definition has not been revised.

With respect to who must submit information on the impurities associated with an active ingredient, the burden falls primarily on producers using integrated systems, that is, persons who produce the TGAI or end use product in a continuous process. A formulator who purchases a registered product is not expected to provide information on impurities in that product. Both §§ 158.155 (product composition) and 158.167 (discussion of formation of impurities) clearly state that the producer of a product by a non-integrated system is not required to provide information on the identity or amount of impurities contained in the TGAI.

The Agency has revised several definitions in other ways, in response to comments that they were unclear. Further, the Agency has also revised some definitions because of modifications in the data requirements (see later sections of this preamble unit). The following changes have been made in § 158.153:

1. Definitions for "end use product" and "manufacturing use product" has been included. These were inadvertently omitted from the proposed rule.

2. A definition of "formulation" has been added for the purpose of distinguishing the operation of blending and dilution from that of chemical reaction ordinarily involved in an integrated system. Commenters uniformly noted that data requirements pertaining to the chemical reaction process were not applicable to the formulation process.

3. The definition of "beginning material" has been clarified. First, the term has been changed to "starting material." Second, the definition has been modified to clarify that the term applies only to materials used in a reaction process resulting in a TGAI or its equivalent. Only a producer who uses an integrated system is required to provide information on starting materials.

4. The definitions of "active ingredient," "inert ingredient," and "impurity" have been modified to include groups of structurally similar substances as well as single substances. This permits the Agency to specify that certain closely related impurities, such as nitrosamines, be considered together for testing or regulatory purposes.

5. The term "inert ingredient" has been changed to delete the words "intentionally added." The term is now defined to include only substances intentionally added to the pesticide product. Any other constituent that is neither an active ingredient nor an intentionally added ingredient, such as a degradation product, reaction byproduct, or contaminant, is considered to be an "impurity" within the definition of § 158.153(c) for the purposes of product chemistry evaluation.

The Agency is aware that, under FIFRA sec. 2(m), impurities are encompassed within the definition of inert ingredient. In the final rule, EPA is modifying the definition of inert ingredient to exclude impurities. EPA believes that, for clarity and usefulness of the data requirements contained in Subpart C, the term "inert ingredient" should be defined to include only those inert ingredients that are intentionally added, and the term "impurity" should be defined to include all other substances that are not "ingredients" of the product. This does not modify the legal standing of impurities under the Act as inert ingredients. However, it significantly improves the ability of the Agency to describe its data requirements for inert ingredients and impurities, and makes the terms consistent with their historical connotation and actual usage.

6. The term "integrated formulation system" is now referred to simply as an "integrated system." The reason for this is that the term "formulation" has been defined in § 158.153(b) to include only blending and dilution operations. An integrated system may or may not include a formulation step.

D. Product Composition Information

The Agency had proposed a set of product composition information that essentially repeated that contained in Part 158. A number of commenters noted that much of the information on active ingredients could be supplied simply by citing the registration number of the source product (on the assumption that the source product is EPA-registered and that EPA will already possess the information). Another commenter noted that certain identifying information required on inert ingredients is not available to a formulator because it is proprietary or trade secret. In general, the comments suggested a need for clarification of the requirements.

EPA agrees with these comments. In order to clarify the product composition information requirements, § 158.155 has been reorganized to specify separately the information required on active ingredients, inert ingredients, toxic impurities, other impurities associated with the active ingredient, and ingredients that cannot be characterized as discrete substances. Requirements concerning impurities associated with inert ingredients have been reserved in this final rule.

Section § 158.155(a) distinguishes between an active ingredient which is derived from an EPA-registered source and one derived from an unregistered source. A formulator who uses a registered product as the source of an active ingredient in his product is required to provide simply the pertinent information on the source product, and to provide the nominal concentration and certified limits of the active ingredient in his product. If the source of active ingredient is not EPA-registered, complete chemical identification of the active ingredient is required, including chemical names, formulae, and molecular weight. For all active ingredients, the nominal concentration and upper and lower certified limits are required.

With respect to inert ingredients, § 158.155(b) specifies that the chemical identity of inert ingredients is to be provided by the applicant only to the extent that it is known to him. A formulator who uses a basic chemical in the formulation of his product, or who simply dilutes the manufacturing use product with a solvent or water, is expected to provide complete information on identity. If he uses a proprietary mixture of inert ingredient, such as a combination of emulsifiers of unknown composition, he is responsible for ensuring that the producer of that proprietary ingredient furnishes the Agency with identity information directly. Producers of proprietary inert ingredients may wish to establish with the Agency master files of the composition of their products for reference by applicants. The Agency may require an applicant or registrant to know or ascertain the identity of individual inert ingredients of toxicological concern in their products, regardless of their origin in proprietary mixtures, either for data generation or labeling purposes.

Moreover, a registrant will be held responsible for the certified limits of inert ingredients included in his product only as part of a proprietary mixture (refer to Unit XX.H. for further discussion of certified limits).

Section 158.155(c) now describes the required identification information for impurities of toxicological significance associated with the active ingredient. Section 158.155(d) describes the information required for other impurities associated with the active ingredient and present at levels greater than 0.1 percent of the TGAI. These requirements for identification and certification of impurities apply only to technical grade active ingredients and products produced by an integrated system. Finally, § 158.155(f) addresses ingredients that cannot be characterized chemically because of their complexity, or because they are substances for which extensive chemical analysis is not practicable.

Section 158.155 specifies that a person who formulates a pesticide product is required to provide only information on the active and inert ingredients. A producer of a product by an integrated system (whether it is a manufacuring use product or end use product) also is required to provide information on the impurities that may be present in the product.

E. Materials Used in Producing the Product

The Agency proposed that applicants provide certain identifying information on the materials used in producing the final product. Section 158.160 sets out requirements regarding source materials which, although they are very similar to those in § 158.155, are not the same. Section 158.112 focuses strictly on the identity and quantity of the separate chemical constituents of the final product—the active ingredient, inert ingredients, and impurities—that is offered for sale and distribution. Section 158.160, by contrast, addresses information on the actual materials used to make the product, which may be distinctly different. These are often referred to as the "recipe" ingredients of the product.

Under § 158.160, the applicant is intended to provide information on the "recipe" ingredients of his production or formulation process, including their sources and properties. The "recipe" ingredients for a technical grade active ingredient or integrated system product are the starting materials for the various chemical reactions by which a product containing the active ingredient is ultimately produced. The "recipe" ingredients for a non-integrated system product, however, are those ingredients (whose identity and composition may be proprietary) which are blended to make the final product. Section 158.160 does not address impurities, since impurities are never intentionally used in the process, but are a result of the process.

Several commenters pointed out that, with respect to inert ingredients, the Agency would receive large amounts of duplicative information, since the same inert ingredients are used in a number of products. The Agency recognizes that, if producers use the same inert ingredients, EPA will receive some information that is duplicative. On the other hand, information can be incorporated by reference if it has been previously submitted by the applicant. EPA encourages producers of inert ingredients to establish master files which will eliminate much repetitious information.

The majority of information required by §§ 158.155 and 158.160 is supplied by completing the Statement of Formula. (current EPA Form 8570-4). EPA is in the process of revising its Statement of Formula form to conform to the requirements of this subpart and other needs of the Agency. The information required by §§ 158.162 through 158.180 is not amenable to standardized forms, and must be submitted in narrative form.

A commenter noted an inconsistency in requiring such extensive information on an inert ingredient, when elsewhere in the rule (proposed § 152.42), the Agency proposed to permit a change in the source of the inert ingredient without even notifying the Agency. The Agency has now revised § 152.42 such that changing the source of an inert ingredient is an action requiring notification to the Agency (but not approval) only if the Agency originally required such information. Changing the identity of an inert ingredient (including variations in proprietary mixtures of inert ingredients) requires Agency approval.

Another commenter suggested that the Agency undertake to identify inert ingredients which are sufficiently well known that no information need be provided. The commenter sugested that ingredients listed in proposed § 158.1001 (recodified as § 153.139) be considered for this purpose. That section defined substances deemed to be inert when used in antimicrobial products. Although the suggestion of the commenter is worthwhile, the substances on the list in § 153.139 are not chemicals that could necessarily form the basis of such a listing. The commenter assumed that identification as an inert ingredient in § 153.139 establishes a presumption of knowledge about, and automatic "clearance" of, such ingredients; this is not so. The substances listed in § 153.139 should not be assumed to be "cleared" in any regulatory sense of the word; they have not been reviewed by the Agency for that purpose. Listing in § 153.139 merely identifies them as pesticidally inert for purposes of labeling.

However, the Agency has developed and published in the **Federal Register** of April 22, 1987 (52 FR 13305) an inert ingredient strategy, under which the Agency categorized pesticide inert ingredients into four "lists" based upon their potential toxicological concern. List 4, which is available from the Agency, contained inert ingredients deemed to be relatively innocuous. The Agency is currently taking no regulatory action with respect to ingredients on List 4.

F. Production or Formulation Process

The Agency proposed to required that applicants provide information on their production and formulating processes, including the substances and amounts used, the equipment and conditions of production, and quality control measures. These requirements were based on the information stated in the Pesticide Assessment Guidelines, Subdivision D.

A number of industry commenters and trade groups objected to the proposed requirements as being burdensome, needlessly detailed, and of little use to the Agency. Comments from formulators expressed concern that the requirements were appropriate only for integrated processes involving chemical reactions, not for formulating processes which are essentially blending and dilution processes. They suggested that a different process be put in place for end use products (formulated from registered products) to avoid repetitious paperwork.

Producers of manufacturing use products and TGAIs also objected. Their objections stemmed less from the burden of providing the information than from the possibility that the information will not be available at the time of application. They stated that the manufacturing process for a pesticide often is not finalized until after registration. Even large producers often contract out the initial manufacture of a new manufacturing use product, until marketing and distribution factors and level of demand justify capital expenditure for a full-scale production facility. Thus, they assert, the information the Agency is seeking may not be available at the time of

application. The Agency is willing to accept initial manufacturing process information from pilot-scale production, with full-scale process information submitted later. However, the Agency will not accept laboratory bench-scale process information.

In the final rule, the Agency has defined separately the requirements applicable to the production process (§ 158.162) and the formulation process (§ 158.165). EPA agrees that some of the requirements set out in the proposed rule pertain only to production processes involving chemical reactions and not to formulation operations that are essentially blending of ingredients not expected to react. Thus a description of the "production" process needs to be more detailed and to include more information than a description of the "formulation" process.

All applicants (whether they use an integrated system, a formulation process, or both) must describe the materials used to produce the product, the type of process being used, the equipment and physical parameters of the process, and the quality control measures (both operational and analytical) for the final product.

In addition, for an integrated system where a chemical reaction is intended to occur to produce a TGAI, the reaction process must be described fully with flow charts and chemical equations, and a description of purification procedures. If the reaction process occurs in several distinct steps, with isolated chemical substances produced at each step, § 158.162 requires that each step be treated as a separate process and documented accordingly.

G. Discussion of Formation of Impurities

The Agency proposed that each applicant provide a discussion of the potential for formation of impurities in his product, based on information available to him about the materials he uses and manufacturing process. The Agency stated that it would use the discussion to determine what impurities the applicant expects to be in his product, to evaluate the possibility of other impurities and to evaluate the reliability of other data presented by the applicant. Under the Agency's proposal, an applicant would be expected to discuss the impurities that, based on chemical theory, might be formed at levels of 0.1 percent or greater in the TGAI.

Commenters from industry uniformly objected to the requirement for a discussion. Objections focused primarily on the theoretical nature of the discussion; several commenters suggested that it be limited to "expected" reactions rather than "possible" reactions, or that it deal only with known byproducts and impurities. Producers of TGAIs and manufacturing use products asserted that, because of the complexity of the chemical reactions, it would be time-consuming to construct the discussion across the entire production process and that it would not serve the purposes intended.

The Agency disagrees with the argument that the information will not be useful. Some of the risks posed by an pesticide result from the presence of impurities or contaminants rather than (or in addition to) the active ingredients or inert ingredients. In some cases, impurities pose the more significant risks, particularly when chronic health effects are considered. For example, dibenzo-p-dioxins and dibenzofurans, which are common impurities in the manufacture of some pesticides, are known to be potent carcinogens.

The Agency cannot conduct a comprehensive risk assessment of a pesticide without considering the possibility that toxic impurities may be formed. One common outcome of current Agency reviews is the requirement that registrants analyze their products to determine the presence and levels of toxic impurities. EPA believes that an early discussion of the possibility of impurities might preclude a requirement for more inclusive analysis of products. The discussion may alleviate Agency concerns or demonstrate that, although theoretically possible, impurities are not likely to be produced in an applicant's particular production process. Thus EPA has not modified the final rule.

The final rule provides that a producer using an integrated system must address impurities that are found actually found by analysis in his product, and also those that theoretically might be present based on established chemical theory. The magnitude and depth of the theoretical discussion are not prescribed in the rule, merely the topics that should be addressed. In all cases, the discussion is limited to the applicant's knowledge; he is not expected to seek out information he could not reasonably know or have access to. A registrant is not expected to provide a sophisticated or exhaustive treatment of theoretical impurities that are not toxicologically significant. However, if an impurity has actually been found by analysis, or if an impurity of toxicological concern is postulated to be formed, the Agency will expect a significantly more comprehensive discussion.

Comments from formulators also expressed concern at the Agency's proposal. The commenters questioned the need for any discussion of impurity formation for formulated products. They stated that the formulation process is intended to produce a stable product, and asserted that chemical reactions among the components are virtually unknown. Moreover, they noted that information on the identity of impurities in they active and inert ingredients they purchase is rarely, if ever, available to them, so that the would be unable to provide the information in any case.

As stated earlier, § 158.175 of the final rule is clear on this point: the discussion is to be based on information available to the formulator. Thus, the formulator is not required to seek information on the identity or level of impurities in his source products. If provided with such information by his supplier, a formulator should consider it in his discussion. Since information on the impurities in a registered source TGAI will be available to the Agency from the registrant of that source product, duplication of the information serves no purpose.

Other elements of a discussion for a formulated product, however, are concerned with reactions that could occur in the formulation process—reactions between active and inert ingredients, reactions between the product and its packaging, and migration of contaminants into the pesticide. These are topics which only the formulator can address. If the applicant does not believe it likely that any possible sources of impurity or contamination will materialize in his formulation process, his discussion need only explain why this is so. EPA agrees with commenters that the formulation process is less likely to involve chemical reactions that result in impurities; nonetheless, the possibility cannot be dismissed or ignored. In any case, EPA does not believe that the required discussion will be a protracted, time-consuming or burdensome process for formulators, since the majority of impurities in formulated products are present as a result of carryover from the active ingredient source, of which the formulator's knowledge may be limited.

One commenter misinterpreted the discussion requirement for non-intergrated system products as requiring analysis of each product at the 0.1 percent level and stated that formulators do not have laboratory capability at that level. Formulators not using an integrated system are not required to analyze their products to determine impurities qualitatively or quantitatively.

By contrast, producers who use an integrated system are required by § 158.170 to provide the Agency with a

preliminary analysis of the TGAI to the 0.1 percent level. The producer of a TGAI or integrated system product is required to address each impurity found in that analysis at a level of 0.1 percent or greater of the TGAI. Moreover, if a producer has reason to believe that the TGAI may contain nitrosamine, dibenzodioxin or dibenzofuran impurities, he is expected to analyze below the 0.1 percent level, in accordance with the Agency's policy statement on nitrosamines (42 FR 51640, September 29, 1977) and its final rule (under the Toxic Substances Control Act) on dibenzodioxins and dibenzofurans (52 FR 21412, June 5, 1987).

H. Certification of Limits

The Agency proposed essentially the same certification of limits requirements as are contained in current § 158.110. In brief, the Agency proposed to require the certification of:

1. Upper and lower limits for active ingredients.
2. Upper limits for inert ingredients (the omission of lower limits was unintentional and has been corrected in the final rule).
3. Upper limits for impurities at any level that are determined to be toxicologically significant.
4. Upper limits for other impurities associated with the active ingredient at levels of 0.1 percent or greater. Impurities were to be certified if they were postulated to be present or if they were found by analysis of the product.

Comments on the certification requirements were received from five industry sources and one environmental group. Most commenters noted that the requirements were redundant to those in Part 158. EPA acknowledges this, but chose to repropose the requirements for completeness and organization purposes. In the final rule, all product chemistry requirements have been consolidated into Part 158, eliminating the redundancy.

Industry commenters were unanimous in objecting to the reproposed certification requirements, even though they were unchanged from those in current Part 158. A number of commenters repeated comments made at the time of initial proposal of these requirements (in 1982). In particular, several commenters addressed the requirement for certified limits for inert ingredients, and the possibility that applicants would have to develop costly analytical methods and capability to support those limits. The Agency has not changed its position on the requirement for upper and lower certified limits for active and inert ingredients, and does not believe it necessary to reiterate its responses to those comments. Readers are referred to the preamble to the final Part 158 rule, published in the **Federal Register** of October 24, 1984 (49 FR 42862), for a discussion of comments concerning certified limits for inert ingredients, and the level of analysis required in support of those limits.

The Agency has adopted the suggestion of a commenter that standardized certified limits for active and inert ingredients be established, taking into account acceptable deviations in analytical techniques and concentration factors. An applicant would have the choice of using the Agency's standard certified limits or of proposing his own certified limits, as was required by the proposal. The commenter suggested that the guidelines established by the American Association of Pesticide Control Officials be considered as the basis for the standard limits. The Agency considered those guidelines, but has adopted different limits. Section 158.175 now provides that, for active and inert ingredients, the applicant may propose certified limits or may use the standard certified limits set out in § 158.175(b)(2).

Standard certified limits are not appropriate for impurities for which a certified upper limit is required; the applicant must propose such limits. Since impurities are not intentionally added to a product, their levels cannot be predicted to fall within standardized limits. Moreover, impurities are intended to be minimized, and the Agency does not believe it should sanction their presence at predetermined levels.

An applicant is not required to use the standard limits. They are provided as an alternative to applicant-proposed certified limits, as a convenience to applicants. If an applicant chooses not to use the standard certified limits, he may propose wider (or narrower) limits. If wider, the applicant is strongly urged to include in his application a discussion of those limits and why he has selected them. A thorough discussion of the basis for different limits may avoid the Agency's questioning the applicant's proposed limits.

With respect to impurities, current § 158.190 and the proposed rule require that upper certified limits be established for impurities that are potentially present in the TGAI (as indicated in the discussion required by § 158.167). As a result of the comments received, the Agency has reexamined its requirements for certified limits for impurities, and has made significant changes in the final rule.

First, the Agency has eliminated the requirement for an upper certified limit for impurities that are not toxicologically significant. The requirement for a statement of the nominal concentration for such impurities when associated with the active ingredient has been retained in § 158.155(d). Second, the Agency has eliminated the requirement for certified limits on theoretical impurities in the formulation. An upper certified limit for toxic impurities will routinely be required only if shown by analysis of the product to be present.

The applicant is required to sign a certification statement agreeing that he will maintain his product's composition within the certified limits approved by the Agency. The certified limits approved by the Agency will be used for enforcement purposes. Moreover, although the Agency has established standard certified limits which should be acceptable for most products, the Agency reserves the right to reject those limits for an individual product, and to require the applicant to propose new limits.

A formulator should be aware that in formulating a product and certifying its active and inert ingredient ranges, he may have to adjust his formulation process to account for the permitted variability of the active ingredient in the source products he purchases. For example, a formulator may produce a product nominally containing 45 percent active ingredient by diluting a 90 percent nominal concentration technical product on a 1:1 basis. The standard certified limits would permit the technical grade active ingredient to vary from 87.3 to 92.7 percent. The forumulated product may therefore contain only 43.7 percent active ingredient if the formulator is using source product at the lower certified limit, assuming optimal formulation conditions and manufacturing practices. If the formulator assumes the standard certified limit of 3 percent, his product (nominally at 45 percent) will just barely meet the lower certified limit, and is at risk of being in violation of FIFRA if his formulation process is less than optimal.

EPA urges formulators to be aware of the percentage of active ingredient actually contained in the source products they purchase. Each registrant will be held accountable for the certified limits of his product.

The responsibility of the registrant to adhere to the certified limits extends to individual inert ingredients. The fact that the applicant uses a proprietary mixture of substances whose composition is not known to him does not remove his responsibility for maintaining the composition of each of

those inert ingredients within its certified limits.

Although EPA encourages the free and open exchange of information between producers of inert ingredients and their customers, it recognizes that producers' concerns about trade secrecy may prevent their customers from obtaining this information. Therefore, the Agency normally will not require that an applicant know the composition of a proprietary mixture of inert ingredients in order to obtain registration; he is, however, required to ensure that the Agency is informed of the mixture's composition by its producer. If a component of the proprietary mixture is an inert ingredient of toxicological concern, the agency may require that the applicant obtain information about purchased inert ingredients, so that the product may be labeled properly. Otherwise, the Agency may have to deny or cancel registration of the product.

In addition, the Agency holds the applicant responsible for the certified limits of each inert ingredient in his product, including those that are present as part of a proprietary mixture. An applicant who does not know the composition of an inert ingredient, and cannot persuade his supplier or producer to disclose it, may certify to an upper and lower limit of the ingredient as introduced into his product as a whole. In this case, the Agency will apply the certified limits of the ingredient as a whole to the individual substances comprising the ingredient, as disclosed by the supplier directly to the Agency. The applicant is responsible for maintaining his product within those Agency-derived limits.

A formulator who is uncomfortable with the extent of responsibility implicit in this policy should take steps to decrease the uncertainties, either by gaining knowledge of the composition of inert mixtures or by assuring that the composition of the mixture he uses will not change over time. EPA believes that a contractual arrangement between formulator and supplier is the best way to ensure that the formulator can rely on the composition of the material received, short of having direct knowledge of its composition.

Two commenters questioned the lack of criteria for determining "toxicological significance" of impurities. One suggested that the Agency issue a list of toxicologically significant impurities. The consequence of identification as an impurity of toxicological significance is that, under § 158.175 of the final rule, an applicant must supply an upper certified limit for each such impurity in a TGAI or integrated system product, and, under § 158.180, an analytical method suitable for enforcement of the certified limit. Impurities not identified as being of toxicological significance must be identified at levels greater than 0.1 percent of the TGAI, and a nominal concentration must be provided, but a certified upper limit is not required.

In response to the comment, the Agency has identified in two ways impurities for which it believes that certified limits are necessary. The first is a list of specific substances or classes of substances of known toxicological concern. In some cases, the listed substances are currently or have been the subject of regulatory action against pesticide products because of the risks posed by their presence as impurities in the product. In other cases, they are identified because historically they are known to contribute significantly to the toxic profile of an active ingredient. For example, the oxygen analogs of organophosphate pesticides may be more toxic than the parent compound and must be considered in setting tolerances for the toxicologically active components of the pesticide.

The second is a set of criteria for substances which are potentially of toxicological significance; in this latter list, no specific substances are named. While substances meeting the criteria of this second list are not necessarily hazardous, nor have risks associated with their presence been quantified in any specific instance, they are typical of the types of impurities that the Agency has found to be of significance in the past.

Impurities and classes of impurities of toxicological concern

Hexachlorobenzene (HCB)
Ethylene thiourea (ETU)
Dichloro diphenyl trichloroethane (DDT) and other chlorinated diphenyl ethanes and ethylenes, such as analogs and isomers of DDT, DDD, DDE and Cl-DDT ("extrachloro DDT")
Sulfotepp
Halogenated dibenzodioxins
Halogenated dibenzofurans
Nitrosamines
Biphenyl ethers
Anilines and substituted anilines
Hydrazines
Oxygen analogs of organophosphates
Sulfoxides and sulfones of organophosphates and carbamates

Impurities having characteristics of potential toxicological significance

Any impurity that is structurally related to the parent compound and is not known to be toxicologically insignificant.
Any impurity that is also an active ingredient
Any impurity that is identified in standard toxicology data bases such as Toxline as being teratogenic, oncogenic or neurotoxic

This list is not exhaustive, and EPA does not intend it to be. The list may be expanded as new information on impurities becomes available. For that reason, the list is not included in the final rule. EPA will update the list periodically, and make it available to registrants and the public, or may publish it in the **Federal Register.** EPA has reserved the right to require certified limits for other impurities on a case-by-case basis. Registrants should contact the Agency if there is a question about the status of any individual impurity not listed.

It should be emphasized that the certification of limits for impurities of toxicological significance as part of the registration or reregistration process does not imply that the Agency seeks to take regulatory action based upon the presence of the impurity or its level in a product. The certified limits will permit EPA to monitor the continued stability of the manufacturing process, and will foster improved processes to further limit the presence of toxic impurities.

On the other hand, if the Agency has not quantified the risks associated with a particular impurity, it will not take regulatory action merely because the applicant certifies the limits of that impurity in his product. In a particular active ingredient and use context, the certified limits will be used to determine the risk posed by the impurity. The Agency would then undertake its risk/benefit balancing process to determine whether that risk is unreasonable.

If any of these substances is found to be present at any level in any TGAI used in or produced by an integrated system product, the applicant must provide an upper certified limit. Certified limits are not required for impurities other than those listed or meeting the criteria; however, a nominal concentration is required for each other impurity found to be present at a level greater than 0.1 percent of the TGAI if the impurity is associated with an active ingredient. Routine requirements for certification of limits for impurities of inert ingredients are not described in this final rule, but under § 158.175(a)(4), the Agency has reserved the right to require that certified limits be set for

other ingredients in a pesticide product, including if warranted, impurities derived from inert ingredients. Such requirements are imposed on a case-by-case basis, in accordance with the inerts policy notice of April 22, 1987 (52 FR 13305).

The need to certify limits of impurities does not require that a producer analyze a product to any greater extent than he is otherwise required to do. A producer of a TGAI or an integrated system product is required by § 158.170 to analyze the TGAI in his product to the 0.1 percent level and provide the results of those analyses to the Agency. Certification of limits of identified impurities found in those analyses, and identification of the nominal concentration of other impurities found at greater than 0.1 percent are analogous reporting requirements derived from the same analyses.

I. Enforcement Analytical Method

No comments were received on the proposed requirements for an enforcement analytical method for active ingredients and other toxicologically significant ingredients. Accordingly, § 158.180 has been adopted as proposed.

J. Conforming Changes

The Agency has made two conforming changes in the final rule. First, a specific certification statement has been provided in § 158.175(d). Since certified limits are legally enforceable, the Agency believes it essential not only that product composition and certified limits be established, but also that the registrant promise that his product will conform to those limits at all times during sale and distribution.

Second, the table in § 158.190(a) has been revised to delete the requirements that are now contained in §§ 158.150 through 158.180 in narrative form. The table now includes only a listing of the physical/chemical characteristic data requirements.

XXI. Consolidated Table of Contents to Part 152

The Agency is today adding a number of new subparts to existing Part 152. Part 152 was originally promulgated on August 4, 1984 (49 FR 30903), containing only Subpart E, pertaining to data compensation procedures. As a convenience to readers, this unit provides a consolidated Table of Contents to Part 152, including the subparts being promulgated today and Subpart E. This Table of Contents will appear in the Code of Federal Regulations when next published.

Subpart A—General Provisions

Sec.
152.1 Scope.
152.3 Definitions.
152.5 Pests.
152.8 Products that are not pesticides because they are not for use against pests.
152.10 Products that are not pesticides because they are not deemed to be used for a pesticidal effect.
152.15 Pesticide products required to be registered.

Subpart B—Exemptions

152.20 Exemptions for pesticides regulated by another Federal agency.
152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.
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Subpart C—Registration Procedures

152.40 Who may apply.
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152.50 Contents of application.
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Subpart D—Reregistration Procedures

152.60 General.
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Subpart E—Procedures to Ensure Protection of Data Submitters' Rights

152.80 General.
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152.84 When materials must be submitted to the Agency.
152.85 Formulators' exemption.
152.86 The cite-all method.
152.90 The selective method.
152.91 Waiver of a data requirement.
152.92 Submission of a new valid study.
152.93 Citation of a previously submitted valid study.
152.94 Citation of a public literature study or study generated at government expense.
152.95 Citation of all studies in the Agency's files pertinent to a specific data requirement.
152.96 Documentation of a data gap.
152.97 Rights and obligations of data submitters.
152.98 Procedures for transfer of exclusive use or compensation rights to another person.
152.99 Petitions to cancel registration.

Subpart F—Agency Review of Applications

152.100 Scope.
152.102 Publication.
152.104 Completeness of applications.
152.105 Incomplete applications.
152.107 Review of data.
152.108 Review of labeling.
152.110 Time for Agency review.
152.111 Choice of standards for review of applications.

Sec.
152.112 Approval of registration under FIFRA sec. 3(c)(5).
152.113 Approval of registration under FIFRA sec. 3(c)(7)—Products that do not contain a new active ingredient.
152.114 Approval of registration under FIFRA sec. 3(c)(7)—Products that contain a new active ingredient.
152.115 Conditions of registration.
152.116 Notice of intent to register to original submitters of exclusive use data.
152.117 Notification to applicant.
152.118 Denial of application.
152.119 Availability of material submitted in support of registration.

Subpart G—Obligations and Rights of Registrants

152.122 Currency of address of record and authorized agent.
152.125 Submission of information pertaining to adverse effects.
152.130 Distribution under approved labeling.
152.132 Supplemental distribution.
152.135 Transfer of registration.
152.138 Voluntary cancellation.

Subpart H—Agency Actions Affecting Registrations

152.140 Classification of pesticide products.
152.142 Submission of information to maintain registration in effect.
152.144 Reregistration.
152.146 Special review of pesticides.
152.148 Cancellation of registration.
152.150 Suspension of registration.
152.152 Child-resistant packaging.
152.159 Policies applicable to registration and registered products.

Subpart I—Classification of Pesticides

152.160 Scope.
152.161 Definitions.
152.164 Classification procedures.
152.166 Labeling of restricted use products.
152.167 Distribution and sale of restricted use products.
152.168 Advertising of restricted use products.
152.170 Criteria for restriction to use by certified applicators.
152.171 Restrictions other than those relating to use by certified applicators.
152.175 Pesticides classified for restricted use.

Subparts J and K—[Reserved]

Subpart L—Intrastate Pesticide Products

152.220 Scope.
152.225 Application for Federal registration.
152.230 Sale and distribution of unregistered intrastate pesticide products.

XXII. Statutory Requirements

In accordance with FIFRA sec. 25(a), a draft of this final rule was submitted to the Secretary of Agriculture (USDA), the Scientific Advisory Panel (SAP), and the House Committee on Agriculture and Senate Committee on Agriculture, Nutrition and Forestry for comment. The SAP waived its formal review of the final rule. The Congressional

Committees did not comment on the rule.

The Department of Agriculture, although not objecting to the use of the term "unclassified" for a pesticide that has not been restricted, believed that such pesticides are essentially classified for general use, and that a determination by the Agency to restrict the pesticide's use should be considered a change in classification for the purposes of FIFRA sec. 6. EPA disagrees. EPA does not regard the initial classification of a product or use that was previously unclassified as a change in classification.

The Agency's decision to restrict a product's use can be made and announced in a number of regulatory and non-regulatory contexts, including Special Review, issuance of a Registration Standard, or case-by-case reviews of individual products. EPA may use the procedures of FIFRA sec. 3(d)(2), under which the registrant and the public are given notice of a change in classification, or EPA may initiate a hearing or cancellation process under FIFRA sec. 6(b).

If a registrant agrees with, or does not contest, the Agency's decision to restrict the product's use(s), the restriction is implemented. However, if a registrant disagrees with the Agency's decision, EPA can compel compliance with its decision only by using the cancellation procedures of FIFRA sec. 6(b), which provides for 60-day notice to and comment by the Department of Agriculture before taking action, and hearing rights for registrants.

XXIII. Regulatory Requirements

A. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency determined at the time of proposal that this final rule revising and reorganizing Part 162 is not a major regulation as defined by E.O. 12291. This final rule was submitted to the Office of Management and Budget for review as required by E.O. 12291.

Regulatory Flexibility Act

This final rule was reviewed against the provisions of section 3(a) of the Regulatory Flexibility Act and it was determined that it does not contain provisions which would have a significant adverse impact on a substantial number of small entities, and I hereby certify that a separate Regulatory Flexibility Analysis is not required.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and has assigned OMB Control Numbers 2070–0057 and 2070–0060.

List of Subjects in 40 CFR Parts 152, 153, 156, 158, and 162

Administrative practice and procedure, Data requirements, Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: April 18, 1988.

Lee M. Thomas,

Administrator.

Therefore, Chapter I of Title 40 is amended as follows:

PART 152—PESTICIDE REGISTRATION AND CLASSIFICATION PROCEDURES

I. In Part 152:

1. The authority citation for Part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

2. By adding new Subpart A to read as follows:

Subpart A—General Provisions

Sec.
152.1 Scope.
152.3 Definitions.
152.5 Pests.
152.8 Products that are not pesticides because they are not for use against pests.
152.10 Products that are not pesticides because they are not deemed to be used for a pesticidal effect.
152.15 Pesticide products required to be registered.

Subpart A—General Provisions

§ 152.1 Scope.

Part 152 sets forth procedures, requirements and criteria concerning the registration and reregistration of pesticide products under FIFRA sec. 3, and for associated regulatory activities affecting registration. These latter regulatory activities include data compensation and exclusive use (Subpart E), and the classification of pesticide uses (Subpart I). This Part also describes the requirements applicable to intrastate products that are not federally registered (Subpart L).

§ 152.3 Definitions.

Terms used in this part have the same meaning as in the Act. In addition, the following terms have the meanings set forth in this section.

(a) "Act" or "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136–136y).

(b) "Active ingredient" means any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a).

(c) "Acute dermal LD_{50}" means a statistically derived estimate of the single dermal dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(d) "Acute inhalation LC_{50}" means a statistically derived estimate of the concentration of a substance that would cause 50 percent mortality to the test population under specified conditions.

(e) "Acute oral LD_{50}" means a statistically derived estimate of the single oral dose of a substance that would cause 50 percent mortality to the test population under specified conditions.

(f) "Administrator" means the Administrator of the United States Environmental Protection Agency or his delegate.

(g) "Agency" means the United States Environmental Protection Agency (EPA), unless otherwise specified.

(h) "Applicant" means a person who applies for a registration, amended registration, or reregistration, under FIFRA sec. 3.

(i) "Biological control agent" means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism declared to be a pest by the Administrator.

(j) "Distribute or sell" and other grammatical variations of the term such as "distributed or sold" and "distribution or sale," means the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.

(k) "End use product" means a pesticide product whose labeling

(1) Includes directions for use of the product (as distributed or sold, or after combination by the user with other substances) for controlling pests or

defoliating, desiccating, or regulating the growth of plants, and

(2) Does not state that the product may be used to manufacture or formulate other pesticide products.

(l) "Final printed labeling" means the label or labeling of the product when distributed or sold. Final printed labeling does not include the package of the product, unless the labeling is an integral part of the package.

(m) "Inert ingredient" means any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, which is intentionally included in a pesticide product.

(n) "Institutional use" means any application of a pesticide in or around any property or facility that functions to provide a service to the general public or to public or private organizations, including but not limited to:

(1) Hospitals and nursing homes.

(2) Schools other than preschools and day care facilities.

(3) Museums and libraries.

(4) Sports facilities.

(5) Office buildings.

(o) "Manufacturing use product" means any pesticide product that is not an end-use product.

(p) "New use," when used with respect to a product containing a particular active ingredient, means:

(1) Any proposed use pattern that would require the establishment of, the increase in, or the exemption from the requirement of, a tolerance or food additive regulation under section 408 or 409 of the Federal Food, Drug and Cosmetic Act;

(2) Any aquatic, terrestrial, outdoor, or forestry use pattern, if no product containing the active ingredient is currently registered for that use pattern; or

(3) Any additional use pattern that would result in a significant increase in the level of exposure, or a change in the route of exposure, to the active ingredient of man or other organisms.

(q) "Operated by the same producer," when used with respect to two establishments, means that each such establishment is either owned by, or leased for operation by and under the control of, the same person. The term does not include establishments owned or operated by different persons, regardless of contractural agreement between such persons.

(r) "Package" or "packaging" means the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use, or storage. The term does not include any shipping or bulk container used for transporting or delivering the pesticide unless it is the only such package.

(s) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDCA sec. 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCA sec. 201(x) that bears or contains any substances described by paragraph (s)(1) or (2) of this section.

(t) "Pesticide product" means a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

(u) "Residential use" means use of a pesticide directly:

(1) On humans or pets,

(2) In, on, or around any structure, vehicle, article, surface, or area associated with the household, including but not limited to areas such as non-agricultural outbuildings, non-commercial greenhouses, pleasure boats and recreational vehicles, or

(3) In any preschool or day care facility.

§ 152.5 Pests

An organism is declared to be a pest under circumstances that make it deleterious to man or the environment, if it is:

(a) Any vertebrate animal other than man;

(b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;

(c) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or

(d) Any fungus, bacterium, virus, or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA sec. 201(g)(1) and cosmetics (as defined in FFDCA sec. 201(i).

§ 152.8 Products that are not pesticides because they are not for use against pests.

A substance or article is not a pesticide, because it is not intended for use against "pests" as defined in § 152.5, if it is:

(a) A product intended for use only for the control of fungi, bacteria, viruses, or other microorganisms in or on living man or animals, and labeled accordingly.

(b) A product intended for use only for control of internal invertebrate parasites or nematodes in living man or animals, and labeled accordingly.

(c) A product of any of the following types, intended only to aid the growth of desirable plants:

(1) A fertilizer product not containing a pesticide.

(2) A plant nutrient product, consisting of one or more macronutrients or macronutrient trace elements necessary to normal growth of plants and in a form readily usable by plants.

(3) A plant inoculant product consisting of microorganisms applied to the plant or soil for the purpose of enhancing the availiability or uptake of plant nutrients through the root system.

(4) A soil amendment product containing a substance or substances added to the soil for the purpose of improving soil characteristics favorable for plant growth.

(d) A product intended to force bees from hives for the collection of honey crops.

§ 152.10 Products that are not pesticides because they are not deemed to be used for a pesticidal effect.

A product that is not intended to prevent, destroy, repel, or mitigate a pest, or to defoliate, desiccate or regulate the growth of plants, is not considered to be a pesticide. The following types of products or articles are not considered to be pesticides unless a pesticidal claim is made on their labeling or in connection with their sale and distribution:

(a) Deodorizers, bleaches, and cleaning agents;

(b) Products not containing toxicants, intended only to attract pests for survey or detection purposes, and labeled accordingly;

(c) Products that are intended to exclude pests only by providing a physical barrier against pest access, and which contain no toxicants, such as certain pruning paints to trees.

§ 152.15 Pesticide products required to be registered.

No person may distribute or sell any pesticide product that is not registered

under the Act, except as provided in §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or

(2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or

(b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

3. By adding Subpart B to read as follows:

Subpart B—Exemptions

Sec.
152.20 Exemptions for pesticides regulated by another Federal agency.
152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.
152.30 Pesticides that may be transferred, sold, or distributed without registration.

Subpart B—Exemptions

§ 152.20 Exemptions for pesticides regulated by another Federal agency.

The pesticides or classes of pesticide listed in this section are exempt from all requirements of FIFRA. The Agency has determined, in accordance with FIFRA sec. 25(b)(1), that they are adequately regulated by another Federal agency.

(a) *Certain biological control agents.* (1) Except as provided by paragraph (a)(3) of this section, all biological control agents are exempt from FIFRA requirements.

(2) If the Agency determines that an individual biological control agent or class of biological control agents is no longer adequately regulated by another Federal agency, and that it should not otherwise be exempted from the requirements of FIFRA; the Agency will revoke this exemption by amending paragraph (a)(3) of this section.

(3) The following biological control agents are not exempt from FIFRA requirements:

(i) Eucaryotic microorganisms, including protozoa, algae and fungi;

(ii) Procaryotic microorganisms, including bacteria; and

(iii) Viruses.

(b) *Certain human drugs.* A pesticide product that is offered solely for human use and also is a new drug within the meaning of FFDCA sec. 201(p) or is an article that has been determined by the Secretary of Health and Human Services not to be a new drug by a regulation establishing conditions of use for the article, is exempt from the requirements of FIFRA. Such products are subject to regulation in accordance with the Federal Food, Drug, and Cosmetic Act and implementing regulations.

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

The pesticides or classes of pesticides listed in this section have been determined to be of a character not requiring regulation under FIFRA, and are therefore exempt from all provisions of FIFRA when intended for use, and used, only in the manner specified.

(a) *Treated articles or substances.* An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use.

(b) *Pheromones and pheromone traps.* Pheromones and identical or substantially similar compounds labeled for use only in pheromone traps (or labeled for use in a manner which the Administrator determines poses no greater risk of adverse effects on the environment than use in pheromone traps), and pheromone traps in which those compounds are the sole active ingredient(s).

(1) For the purposes of this paragraph, a pheromone is a compound produced by an arthropod which, alone or in combination with other such compounds, modifies the behavior of other individuals of the same species.

(2) For the purposes of this paragraph, a synthetically produced compound is identical to a pheromone only when their molecular structures are identical, or when the only differences between the molecular structures are between the stereochemical isomer ratios of the two compounds, except that a synthetic compound found to have toxicological properties significantly different from a pheromone is not identical.

(3) When a compound possesses many characteristics of a pheromone but does not meet the criteria in paragraph (a)(2) of this section, it may, after review by the Agency, be deemed a substantially similar compound.

(4) For the purposes of this paragraph, a pheromone trap is a device containing a pheromone or an identical or substantially similar compound used for the sole purpose of attracting, and trapping or killing, target arthropods. Pheromone traps are intended to achieve pest control by removal of target organisms from their natural environment and do not result in increased levels of pheromones or identical or substantially similar compounds over a significant fraction of the treated area.

(c) *Preservatives for biological specimens.* (1) Embalming fluids.

(2) Products used to preserve animal or animal organ specimens, in mortuaries, laboratories, hospitals, museums and institutions of learning.

(3) Products used to preserve the integrity of milk, urine, blood, or other body fluids for laboratory analysis.

(d) *Vitamin hormone products.* Vitamin hormone horticultural products consisting of mixtures of plant hormones, plant nutrients, inoculants, or soil amendments, which meet the following criteria:

(1) The product, in the undiluted package concentration at which it is distributed or sold, meets the criteria of § 156.10(h)(1) of this chapter for Toxicity Category III or IV; and

(2) The product is not intended for use on food crop sites, and is labeled accordingly.

(e) *Foods.* Products consisting of foods and containing no active ingredients, which are used to attract pests.

§ 152.30 Pesticides that may be transferred, sold, or distributed without registration.

An unregistered pesticide, or a pesticide whose registration has been cancelled or suspended, may be distributed or sold, or otherwise transferred, to the extent described by this section.

(a) *A pesticide transferred between registered establishments operated by the same producer.* An unregistered pesticide may be transferred between registered establishments operated by the same producer. The pesticide as transferred must be labeled in accordance with Part 156 of this chapter.

(b) *A pesticide transferred between registered establishments not operated*

by the same producer. An unregistered pesticide may be transferred between registered establishments not operated by the same producer if:

(1) The transfer is solely for the purpose of further formulation, packaging, or labeling into a product that is registered;

(2) Each active ingredient in the pesticide, at the time of transfer, is present as a result of incorporation into the pesticide of either:

(i) A registered product; or

(ii) A pesticide that is produced by the registrant of the final product; and

(3) The product as transferred is labeled in accordance with Part 156 of this chapter.

(c) *A pesticide distributed or sold under an experimental use permit.* (1) An unregistered pesticide may be distributed or sold in accordance with the terms of an experimental use permit issued under FIFRA sec. 5, if the product is labeled in accordance with § 172.6 of this chapter.

(2) An unregistered pesticide may be distributed or sold in accordance with the provisions of § 172.3 of this chapter, pertaining to use of a pesticide for which an experimental use permit is not required, provided the product is labeled in accordance with Part 156 of this chapter.

(d) *A pesticide transferred solely for export.* An unregistered pesticide may be transferred within the United States solely for export if it meets the following conditions:

(1) The product is prepared and packaged according to the specifications of the foreign purchaser; and

(2) The product is labeled in accordance with Part 156 of this chapter.

(e) *A pesticide distributed or sold under an emergency exemption.* An unregistered pesticide may be distrubuted or sold in accordance with the terms of an emergency exemption under FIFRA sec. 18, if the product is labeled in accordance with Part 156 of this chapter.

(f) *A pesticide transferred for purposes of disposal.* An unregistered, suspended, or cancelled pesticide may be transferred solely for disposal in accordance with FIFRA sec. 19 or an applicable Administrator's order. The product must be labeled in accordance with Part 156 of this chapter.

(g) *Existing stocks of a formerly registered product.* A cancelled or suspended pesticide may be distributed or sold to the extent and in the manner specified in an order issued by the Administrator concerning existing stocks of the pecticide.

4. By adding Subpart C to read as follows:

Subpart C—Registration Procedures

Sec.
152.40 Who may apply.
152.42 Application for new registration.
152.43 Alternate formulations.
152.44 Application for amended registration.
152.46 Modifications to registration not requiring amended applications.
152.50 Contents of application.
152.55 Where to send applications and correspondence.

Subpart C—Registration Procedures

§ 154.40 Who may apply.

Any person may apply for new registration of a pesticide product. Any registrant may apply for amendment of the registration of his product.

§ 152.42 Application for new registration.

Any person seeking to obtain a registration for a new pesticide product must submit an application for registration, containing the information specified in § 152.50. An application for new registration must be approved by the Agency before the product may legally be distributed or sold, except as provided by § 152.30.

§ 152.43 Alternate formulations.

(a) A product proposed for registration must have a single, defined composition, except that EPA may approve a basic formulation and one or more alternate formulations for a single product.

(b) An alternate formulation must meet the criteria listed in paragraph (b)(1) through (4) of this section. The Agency may require the submission of data to determined whether the criteria have been met.

(1) The alternate formulation must have the same certified limits for each active ingredient as the basic formulation.

(2) If the alternate formulation contains an inert ingredient or impurity of toxicological signficance, the formulation must have the same upper certified limit for that substance as the basic formulation;

(3) The label text of the alternate formulation product must be identical to that of the basic formulation.

(4) The analytical method required under § 158.180 must be suitable for use on both the basic formulation and the alternate formulation.

(c) Notwithstanding the criteria in this section, the Agency may determine that an alternate formulation must be separately registered. If EPA makes this determination, the Agency will notify the applicant of its determination and its reasons. Thereafter the application for an alternate formulation will be treated as an application for new registration, and the alternate formulation will be assigned a new registration number.

§ 152.44 Application for amended registration.

(a) Except as provided by § 152.46, any modification in the composition, labeling, or packaging of a registered product must be submitted with an application for amended registration. The applicant must submit the information required by § 152.50, as applicable to the change requested. If an application for amended registration is required, the application must be approved by the Agency before the product, as modified, may legally be distributed or sold.

(b) In its discretion, the Agency may:

(1) Waive the requirement for submission of an application for amended registration;

(2) Require that the applicant certify to the Agency that he has complied with an Agency directive rather than submit an application for amended registration; or

(3) Permit an applicant to consolidate an amendment affecting a number of products into a single application.

§ 152.46 Modifications to registration not requiring amended applications.

(a) *Changes needing Agency notification, but not approval.* A registrant may modify his registration as provided in paragraph (a)(1) through (7) of this section if he notifies the Agency before the modified product is distributed or sold. The registrant need not obtain Agency approval of any such amendment, but may distribute or sell the product, as changed, as soon as he has notified the Agency of the change. Based upon a notification, the Agency may require that the registrant submit an application for amended registration. If it does so, the Agency will notify the registrant and state its reasons for requiring an application for amended registration in lieu of a notification. Thereafter, if the registrant fails to submit an application without good cause, the Agency may determine that the product is no longer in compliance with the requirements of the Act and initiate cancellation proceedings under FIFRA sec. 6. Notification under this paragraph is considered a report filed under the Act for the purposes of FIFRA sec. 12(a)(2)(M).

(1) A revision of the label language consistent with Part 156 of this chapter and involving no change in the statement of ingredients, precautionary statements of directions for use.

(2) Addition or substitution of brand names.

(3) A change in the source of any starting material used in the manufacturing process for a product produced by an integrated process, unless the applicant has reason to believe that such source change would result in:

(i) An increase in the level of any impurity of toxicological significance (but not to exceed the upper certified limit); or

(ii) The formulation of any new impurity at a level greater than 0.1% by weight of the technical grade active ingredient.

(4) A change in the source of an active ingredient if, after the change the registrant continues to be eligible for a formulator's or generic data exemption.

(5) If the Agency has previously required that the source(s) of an inert ingredient be specified, a change in the source(s) of that ingredient.

(6) A change in the nominal concentration, but not the identity or certified limits, of any inert ingredient whose chemical identity or composition is known to the registrant. Substitution of a proprietary or trade name inert ingredient whose identity or composition is unknown to the registrant does not qualify.

(7) Change in the formulation process of a product produced by a non-integrated system (as defined in § 158.153), provided that the certified limits of the active and inert ingredients would not change as a result.

(b) *Changes not needing Agency approval or notification.* The following changes may be made in a product's composition, labeling or packaging without notification to or approval by the Ageny:

(1) Correction of typographical or printing errors on the labeling.

(2) Change in the package size and label net contents, provided no change in use directions or requirement for child-resistant packaging would ensue.

(3) Revision of non-mandatory label statements, consistent with Part 156 of this chapter, including additions or changes required by other Federal statutes or regulations.

(4) Change on the label of the name or address of the registrant, except for a change resulting from transfer of ownership, which requires Agency approval in accordance with § 152.135. Section 152.122 requires, however, that a registrant keep his name and address current with the Agency.

(5) Revision of the label format, provided that the format is consistent with Agency labeling requirements and the label text is not modified.

(Approved by the Office of Management and Budget under Control Number 2070-0060.)

§ 152.50 Contents of application.

Each application for registration or amended registration must include the following information, as applicable:

(a) *Application form.* An application form must be completed and submitted to the Agency. Application forms are provided by the Agency, with instructions as to the number of copies required and proper completion.

(b) *Identity of the applicant*—(1) *Name.* The applicant must identify himself. An applicant not residing in the United States must also designate an agent in accordance with paragraph (b)(3) of this section to act on behalf of the applicant on all registration matters.

(2) *Address of record.* The applicant must provide an address in the United States for correspondence purposes. The U.S. address provided will be considered the applicant's address of record, and EPA will send all correspondence concerning the application and any subsequent registration to that address. It is the responsibility of the applicant and any registrant under § 152.122 to ensure that the Agency has a current and accurate address.

(3) *Authorized agent.* An applicant may designate a person residing in the United States to act as his agent. If an applicant wishes to designate an agent, he must send the Agency a letter stating the name and United States address of his agent. The applicant must notify the Agency if he changes his designated agent. This relationship may be terminated at any time by the applicant by notifying the Agency in writing.

(4) *Company number.* If an applicant has been assigned a company number by the Agency, the application must reference that number.

(c) *Summary of the application.* Each application must include a list of the data submitted with the application, together with a brief description of the results of the studies. The list of data submitted may be the same as the list required by § 158.32 of this chapter. The summary must state that is is releasable to the public after registration in accordance with § 152.119.

(d) *Identity of the product.* The product for which application is being submitted must be identified. The following information is required:

(1) The product name;

(2) The trade name(s) (if different); and

(3) The EPA Registration Number, if currently registered.

(e) *Draft labeling.* Each application for new registration must be accompanied by five legible copies of draft labeling (typescript or mock-up). Each application for amended registration that proposes to make any changes in the product labeling must be accompanied by five legible copies of draft labeling incorporating the proposed labeling changes. If the proposed labeling change affects only a portion of the labeling, such as the use directions, the applicant may submit five copies of that portion of the label which is the subject of the amendment. Upon request, an applicant for amended registration must submit a complete label to consolidate amendments.

(f) *Registration data requirements.* (1) An applicant must submit materials to demonstrate that he has complied with the FIFRA sec. 3(c)(1)(D) and Subpart E of this part with respect to satisfaction of data requirements, to enable the Agency to make the determination required by FIFRA sec. 3(c)(5)(B). Required items are described in Subpart E of this part.

(2) An applicant must furnish any data specified in Part 158 of this chapter which are required by the Agency to determine that the product meets the registration standards of FIFRA sec. 3(c)(5) or (7). Each study must comply with:

(i) Section 158.30 of this chapter, with respect to times for submission;

(ii) Section 158.32 of this chapter, with respect to format of submission;

(iii) Section 158.33 of this chapter, with respect to studies for which a claim of trade secret or confidential business information is made;

(iv) Section 158.34 of this chapter, with respect to flagging for potential adverse effects; and

(v) Section 160.12 of this chapter, if applicable, with respect to a statement of whether studies were conducted in accordance with the Good Laboratory Practices of Part 160.

(3) An applicant shall furnish with his application any factual information of which he is aware regarding unreasonable adverse effects of the pesticide on man or the environment, which would be required to be reported under FIFRA sec. 6(a)(2) if the product were registered. The types of information and submission requirements are described in Part 153, Subpart D of this chapter.

(g) *Certification relating to child-resistant packaging.* If the product meets the criteria for child-resistant packaging, the applicant must submit a certification that the product will be distributed or sold only in child-resistant packaging. Refer to Part 157 of this chapter for the criteria and certification requirements.

(h) *Request for classification.* If an applicant wishes to request a classification different from that established by the Agency, he must

submit a request for such classification and information supporting the request.

(i) *Statement concerning tolerances.* If the proposed labeling bears instructions for use of the pesticide on food or feed crops, or if the intended use of the pesticide results or may be expected to result, directly or indirectly, in pesticide residues in or on food or feed (including residues of any active ingredient, inert ingredient, metabolite, or degradation product), the applicant must submit a statement indicating whether such residues are authorized by a tolerance, exemption from the requirement of a tolerance, or food additive regulation issued under section 408 or 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). If such residues have not been authorized, the application must be accompanied by a petition for establishment of appropriate tolerances, exemptions from the requirement of a tolerance, or food additive regulations, in accordance with Part 180 of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070-0024.)

§ 152.55 Where to send applications and correspondence.

Applications and correspondence relating to registration should be mailed to the Registration Division (TS-767C), U.S. Environmental Protection Agency, Washington, DC 20460. Persons who wish to hand-deliver applications should contact the Registration Division to determine the location for delivery.

5. By adding Subpart D to read as follows:

Subpart D—Reregistration Procedures

152.60 General.
152.65 Application for reregistration.
152.70 Agency response to application.

Subpart D—Reregistration Procedures

§ 152.60 General.

FIFRA sec. 3(g) requires that all currently registered pesticide products be reregistered. To facilitate the reregistration of products, EPA has instituted a program for the review of a pesticide active ingredient, the data supporting registration of products containing that active ingredient, and its uses. This review normally culminates in the issuance of a Registration Standard. The Standard explains the Agency's position on the registrability of products containing the active ingredient(s), assesses the acceptability of existing tolerances, lists additional data or information, if any, that must be submitted to complete the reregistration review, and identifies labeling changes or use restrictions needed for the product to remain in compliance with FIFRA.

§ 152.65 Application for reregistration.

(a) When the Agency is prepared to reregister products containing a specified active ingredient or combination of ingredients, it will notify the registrant by certified mail and will inform him of the specific requirements and the timeframes for submission of an application for reregistration.

(b) After receiving notice, the registrant is required to submit an application for reregistration within the timeframes specified in the notice.

(c) The application must contain the information required by § 152.50, unless such information is already on file with the Agency and is current and accurate.

§ 152.70 Agency response to application.

(a) *Approval of application.* The Agency will approve an application for reregistration when it determines that the registrant has complied with the instructions in the Agency's notice, and that the product meets the criteria for registration stated in § 152.112.

(b) *Time for compliance after approval.* If the Agency approves the application, it will notify the registrant of such approval. The notice of approval will specify the time permitted for modification of product composition, labeling and packaging of products shipped or distributed in commerce.

(c) *Notice of intent to cancel.* If a registrant fails to submit an application within the time allowed, or submits an application that does not conform to Agency requirements, the Agency may issue a notice of intent to cancel the registration. The registration will be cancelled after 30 days, unless within the 30 days the registrant takes one of the following actions:

(1) Submits a complete and correct application.

(2) Corrects the deficiencies in his previously submitted application.

(3) Requests a hearing, in accordance with § 152.148.

6. By adding Subpart F consisting of §§ 152.100 through 152.115 and 152.117 and 152.118, and §§ 152.116 and 152.119 which are revised and transferred from Subpart E to new Subpart F. As added, Subpart F reads as follows:

Subpart F—Agency Review of Applications

Sec.
152.100 Scope.
152.102 Publication.
152.104 Completeness of applications.
152.105 Incomplete applications.
152.107 Review of data.
152.108 Review of labeling.
152.110 Time for Agency review.
152.111 Choice of standards for review of applications.
152.112 Approval of registration under FIFRA sec. 3(c)(5).
152.113 Approval of registration under FIFRA sec. 3(c)(7)—Products that do not contain a new active ingredient.
152.114 Approval of registration under FIFRA sec 3(c)(7)—Products that contain a new active ingredient.
152.115 Conditions of registration.
152.116 Notice of intent to register to original submitters of exclusive use data.
152.117 Notification to applicant.
152.118 Denial of application.
152.119 Availability of material submitted in support of registration

Subpart F—Agency Review of Applications

§ 152.100 Scope.

(a) The Agency will follow the procedures in this subpart for all applications for registration, except an application for registration of a pesticide that has been the subject of a previous Agency cancellation or suspension notice under FIFRA sec. 6.

(b) The Agency will follow the procedures of Subpart D of Part 164 of this chapter in evaluating any application for registration of a pesticide involving use of the pesticide in a manner that is prohibited by a suspension or cancellation order, to the extent required by Subpart D of Part 164.

§ 152.102 Publication.

The Agency will issue in the **Federal Register** a notice of receipt of each application for registration of a product that contains a new active ingredient or that proposes a new use. After registration of the product, the Agency will issue in the **Federal Register** a notice of issuance. The notice of issuance will describe the new chemical or new use, summarize the Agency's regulatory conclusions, list missing data and the conditions for their submission, and respond to comments received on the notice of application.

§ 152.104 Completeness of applications.

The applicant is responsible for the accuracy and completeness of all information submitted in connection with the application. The Agency will review each application to determine whether it is complete. An application is incomplete if any pertinent item specified in § 152.50 has not been submitted, or has been incorrectly submitted (for example, data required by Part 158 of this chapter not submitted in accordance with the requirements for format, claims of confidential business information, or flagging).

§ 152.105 Incomplete applications.

The Agency will not begin or continue the review of an application that is incomplete. If the Agency determines that an application is incomplete or that further information is needed in order to complete the Agency's review, the Agency will notify the applicant of the deficiencies and allow the applicant 75 days to make corrections or additions to complete the application. If the applicant believes that the deficiencies cannot be corrected within 75 days, he must notify the Agency within those 75 days of the date on which he expects to complete the application. If, after 75 days, the applicant has not responded, or if the applicant subsequently fails to complete the application within the time scheduled for completion, the Agency will terminate any action on such application, and will treat the application as if it had been withdrawn by the applicant. Any subsequent submission relating to the same product must be submitted as a new application.

§ 152.107 Review of data.

(a) The Agency normally will review data submitted with an application that have not previously been submitted to the Agency.

(b) The Agency normally will review other data submitted or cited by an applicant only:

(1) As part of the process of reregistering currently registered products;

(2) When acting on an application for registration of a product containing a new active ingredient;

(3) If such data have been flagged in accordance with § 158.34 of this chapter; or

(4) When the Agency determines that it would otherwise serve the public interest.

(c) If the Agency finds that it needs additional data in order to determine whether the product may be registered, it will notify the applicant as early as possible in the review process.

§ 152.108 Review of labeling.

The Agency will review all draft labeling submitted with the application. If an applicant for amended registration submits only that portion of the labeling proposed for amendment, the Agency may review the entire label, as revised by the proposed changes, in deciding whether to approve the amendment. The Agency will not approve final printed labeling, but will selectively review it for compliance.

§ 152.110 Time for Agency review.

The Agency will complete its review of applications as expeditiously as possible. Applications involving new active ingredients, new uses, petitions for tolerance or exemptions, or consultation with other Federal agencies normally will take longer than applications for substantially similar products and uses.

§ 152.111 Choice of standards for review of applications.

The Agency has discretion to review applications under either the unconditional registration criteria of FIFRA sec. 3(c)(5) or the conditional registration criteria of FIFRA sec. 3(c)(7). The type of review chosen depends primarily on the extent to which the relevant data base has been reviewed for completeness and scientific validity. EPA conducts data reviews needed to support unconditional registrations on a chemical-by-chemical basis, according to an established priority list. Except for applications for registration of a new active ingredient or in special cases where it finds immediate review to be warranted, the Agency will not commence a complete review of the existing data base on a given chemical in response to receipt of an application for registration. Instead the Agency will review the application using the criteria for conditional registration in FIFRA sec. 3(c)(7) (A) and (B).

§ 152.112 Approval of registration under FIFRA sec. 3(c)(5).

EPA will approve an application under the criteria of FIFRA sec. 3(c)(5) only if:

(a) The Agency has determined that the application is complete and is accompanied by all materials required by the Act and this part, including, but not limited to, evidence of compliance with Subpart E of this part;

(b) The Agency has reviewed all relevant data in the possession of the Agency (see §§ 152.107 and 152.111);

(c) The Agency has determined that no additional data are necessary to make the determinations required by FIFRA sec. 3(c)(5) with respect to the pesticide product which is the subject of the application;

(d) The Agency has determined that the composition of the product is such as to warrant the proposed efficacy claims for it, if efficacy data are required to be submitted by Part 158 of this chapter for the product;

(e) The Agency has determined that the product will perform its intended function without unreasonable adverse effects on the environment, and that, when used in accordance with widespread and commonly recognized practice, the product will not generally cause unreasonable adverse effects on the environment;

(f) The Agency has determined that the product is not misbranded as that term is defined in FIFRA sec. 2(q) and Part 156 of this chapter, and its labeling and packaging comply with the applicable requirements of the Act, this Part, and Parts 156 and 157 of this chapter;

(g) If the proposed labeling bears directions for use on food, animal feed, or food or feed crops, or if the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in pesticide residues (including residues of any active or inert ingredient of the product, or of any metabolite or degradation product thereof) in or on food or animal feed, all necessary tolerances, exemptions from the requirement of a tolerance, and food additive regulations have been issued under FFDCA sec. 408, sec. 409 or both; and

(h) If the product, in addition to being a pesticide, is a drug within the meaning of FFDCA sec. 201(q), the Agency has been notified by the Food and Drug Administration (FDA) that the product complies with any requirements imposed by FDA.

§ 152.113 Approval of registration under FIFRA sec. 3(c)(7)—Products that do not contain a new active ingredient.

(a) Except as provided in paragraph (b) of this section, the Agency may approve an application for registration or amended registration of a pesticide product, each of whose active ingredients is contained in one or more other registered peticide products, only if the Agency has determined that:

(1) It possesses all data necessary to make the determinations required by FIFRA sec. 3(c)(7)(A) or (B) with respect to the pesticide product which is the subject of the application (including, at a minimum, data needed to characterize any incremental risk that would result from approval of the application);

(2) Approval of the application would not significantly increase the risk of any unreasonable adverse effect on the environment; and

(3) The criteria of § 152.112(a), (d), and (f) through (h) have been satisfied.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Agency will not approve the conditional registration of any pesticide under FIFRA sec. 3(c)(7)(A) unless the Agency has determined that the applicant's product and its proposed use are identical or substantially similar to a currently registered pesticide and use, or that the pesticide and its proposed use

differ only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment.

(c) Notwithstanding the provisions of paragraph (a) of this section, the Agency will not approve the conditional registration of any pesticide product for a new use under FIFRA sec. 3(c)(7)(B) if:

(1) The pesticide is the subject of a special review, based on a use of the product that results in human dietary exposure; and

(2) The proposed new use involves use on a major food or feed crop, or involves use on a minor food or feed crop for which there is available an effective alternative registered pesticide which does not meet the risk criteria associated with human dietary exposure. The determination of available and effective alternatives shall be made with the concurrence of the Secretary of Agriculture.

§ 152.114 Approval of registration under FIFRA sec. 3(c)(7)—Products that contain a new active ingredient.

An application for registration of a pesticide containing an active ingredient not in any currently registered product may be conditionally approved for a period of time sufficient for the generation and submission of certain of the data necessary for a finding of registrability under FIFRA sec. 3(c)(5) if the Agency determines that:

(a) Insufficient time has elapsed since the imposition of the data requirement for those data to have been developed;

(b) All other required test data and materials have been submitted to the Agency;

(c) The criteria in § 152.112(a), (b), (d), and (f) through (h) have been satisfied;

(d) The use of the pesticide product during the period of the conditional registration will not cause any unreasonable adverse effect on the environment; and

(e) The registration of the pesticide product and its subsequent use during the period of the conditional registration are in the public interest.

§ 152.115 Conditions of registration.

(a) *Substantially similar products and new uses.* Each registration issued under § 152.113 shall be conditioned upon the submission or citation by the registrant of all data which are required for unconditional registration of his product under FIFRA sec. 3(c)(5), but which have not yet been submitted, no later than the time such data are required to be submitted for similar pesticide products already registered. If a notice requiring submission of such data has been issued under FIFRA sec. 3(c)(2)(B) prior to the date of approval of the application, the applicant must submit or cite the data described by that notice at the time specified by that notice. The applicant must agree to these conditions before the application may be approved.

(b) *New active ingredients.* Each registration issued under § 152.114 shall be conditioned upon the applicant's agreement to each of the following conditions:

(1) The applicant will submit remaining required data (and interim reports if required) in accordance with a schedule approved by the Agency.

(2) The registration will expire upon a date established by the Agency, if the registrant fails to submit data as required by the Agency. The expiration date will be established based upon the length of time necessary to generate and submit the required data. If the studies are submitted in a timely manner, the registration will be cancelled if the Agency determines, based on the data (alone, or in conjuction with other data), that the product or one or more of its uses meets or exceeds any of the risk criteria established by the Agency to initiate a special review. If the Agency so determines, it will issue to the registrant a Notice of Intent to Cancel under FIFRA sec. 6(e), and will specify any provisions for sale and distribution of existing stocks of the pesticide product.

(3) The applicant will submit an annual report of the production of the product.

(c) *Other conditions.* The Agency may establish, on a case-by-case basis, other conditions applicable to registrations to be issued under FIFRA sec. 3(c)(7).

(d) *Cancellation if condition is not satisfied.* If any condition of the registration of the product is not satisfied, or if the Agency determines that the registrant has failed to initiate or pursue appropriate action towards fulfillment of any condition, the Agency will issue a notice of intent to cancel under FIFRA sec. 6(e) and § 152.148.

§ 152.116 Notice of intent to register to original submitters of exclusive use data.

(a) Except as provided in paragraph (c) of this section, at least 30 days before registration of a product containing an active ingredient for which a previously submitted study is eligible for exclusive use under FIFRA sec. 3(c)(1)(D)(i), the Agency will notify the original submitter of the exclusive use study of the intended registration of the product. If requested by the exclusive use data submitter within 30 days, the Agency will also provide the applicant's list of data requirements and method of demonstrating compliance with each data requirement.

(b) Within 30 days after receipt of the Agency's notice, or of the applicant's list of data requirements, whichever is later, the exclusive use data submitter may challenge the issuance of the registration in accordance with the procedures in § 152.99 (b) and (c). If the Agency finds that the challenge has merit, it will issue a notice of denial of the application. The applicant may then avail himself of the hearing procedures provided by FIFRA sec. 3(c)(6). If the Agency finds that the challenge is without merit, it will deny the petition and register the applicant's product. Denial of the petition is a final Agency action.

(c) If an applicant has submitted to the Agency a certification from an exclusive use data submitter that he is aware of the applicant's application for registration, and does not object to the issuance of the registration, the Agency will not provide the 30-day notification described in paragraph (a) of this section to that exclusive use data submitter.

§ 152.117 Notification to applicant.

The Agency will notify the applicant of the approval of his application by a Notice of Registration for new registration, or by a letter in the case of an amended registration.

§ 152.118 Denial of application.

(a) *Basis for denial.* The Agency may deny an application for registration if the Agency determines that the pesticide product does not meet the criteria for registration under either FIFRA sec. 3(c)(5) or (7), as specified in §§ 152.112 through 152.114.

(b) *Notification of applicant.* If the Agency determines that an application should be denied, it will notify the applicant by certified letter. The letter will set forth the reasons and factual basis for the determination with conditions, if any, which must be fulfilled in order for the registration to be approved.

(c) *Opportunity for remedy by the applicant.* The applicant will have 30 days from the date of receipt of the certified letter to take the specified corrective action. During this time the applicant may request that his application be withdrawn.

(d) *Notice of denial.* If the applicant fails to correct the deficiencies within the 30-day period, the Agency may issue a notice of denial, which will be published in the **Federal Register**, and which will set forth the reasons and the factual basis for the denial.

(e) *Hearing rights.* Within 30 days following the publication of the notice of denial, an applicant, or any interested person with written authorization of the applicant, may request a hearing in accordance with FIFRA sec. 6(b). Hearings will be conducted in accordance with Part 164 of this chapter.

§ 152.119 Availability of material in support of registration.

(a) The information submitted to support a registration application shall be part of the official Agency file for that registration.

(b) Within 30 days after registration, the Agency will make available for public inspection, upon request, the materials required by Subpart E to be submitted with an application. Materials that will be publicly available include an applicant's list of data requirements, the method used by the applicant to demonstrate compliance for each data requirement, and the applicant's citations of specific studies in the Agency's possession if applicable.

(c) Except as provided by FIFRA sec. 10, within 30 days after registration, the data on which the Agency based its decision to register the product will be made available for public inspection, upon request, in accordance with the procedures in 40 CFR Part 2.

7. By adding Subpart G to read as follows:

Subpart G—Obligations and Rights of Registrants

Sec.

152.122 Currency of address of record and authorized agent.
152.125 Submission of information pertaining to adverse effects.
152.130 Distribution under approved labeling.
152.132 Supplemental distribution.
152.135 Transfer of registration.
152.138 Voluntary cancellation.

Subpart G—Obligations and Rights of Registrants

§ 152.122 Currency of address of record and authorized agent.

(a) The registrant must keep the Agency informed of his current name and address of record. If the Agency's good faith attempts to contact the registrant are not successful, the Agency will issue in the **Federal Register** a notice of intent to cancel all products of the registrant under FIFRA sec. 6(b). The registrant must respond within 30 days requesting that the registrations be maintained in effect, and providing his name and address of record. If no response is received, the cancellations will become effective at the end of 30 days without further notice to the registrant. The Agency may make provision for the sale and distribution of existing stocks of such products after the effective date of cancellation.

(b) The registrant must also notify the Agency if he changes his authorized agent.

§152.125 Submission of information pertaining to adverse effects.

If at any time the registrant receives or becomes aware of any factual information regarding unreasonable adverse effects of the pesticide on the environment that has not previously been submitted to the Agency, he shall, in accordance with FIFRA sec. 6(a)(2) and Subpart D of Part 153 of this chapter, provide such information to the Agency, clearly identified as FIFRA 6(a)(2) data.

§152.130 Distribution under approved labeling.

(a) A registrant may distribute or sell a registered product with the composition, packaging and labeling currently approved by the Agency.

(b) A registrant may distribute or sell a product under labeling bearing any subset of the approved directions for use, provided that in limiting the uses listed on the label, no changes would be necessary in precautionary statements, use classification, or packaging of the product.

(c) Normally, if the product labeling is amended on the initiative of the registrant, by submission of an application for amended registration, the registrant may distribute or sell under the previously approved labeling for a period of 18 months after approval of the revision, unless an order subsequently issued by the Agency under FIFRA sec. 6 or 13 provides otherwise. However, if paragraph (d) of this section applies to the registrant's product, the time frames established by the Agency in accordance with that paragraph shall take precedence.

(d) If a product's labeling is required to be revised as a result of the issuance of a Registration Standard, a Label Improvement Program notice, or a notice concluding a special review process, the Agency will specify in the notice to the registrant the period of time that previously approved labeling may be used. In all cases, supplemental or sticker labeling may be used as an interim compliance measure for a reasonable period of time. The Agency may establish dates as follows governing when label changes must appear on labels:

(1) The Agency may establish a date after which all product distributed or sold by the registrant must bear revised labeling.

(2) The Agency may also establish a date after which no product may be distributed or sold by any person unless it bears revised labeling. This date will provide sufficient time for product in channels of trade to be distributed or sold to users or otherwise disposed of.

§152.132 Supplemental distribution.

The registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product." The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. Supplemental distribution is permitted upon notification to the Agency if all the following conditions are met:

(a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product.

(b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer (or under contract in accordance with § 152.30) who produces, packages, and labels the registered product.

(c) The distributor product is not repackaged (remains in the producer's unopened container).

(d) The label of the distributor product is the same as that of the registered product, except that:

(1) The product name of the distributor product may be different (but may not be misleading);

(2) The name and address of the distributor may appear instead of that of the registrant;

(3) The registration number of the registered product must be followed by a dash, followed by the distributor's company number (obtainable from the Agency upon request);

(4) The establishment number must be that of the final establishment at which the product was produced; and

(5) Specific claims may be deleted, provided that no other changes are necessary.

§152.135 Transfer of registration.

(a) A registrant may transfer the registration of a product to another

person, and the registered product may be distributed and sold without the requirement of a new application for registration by that other person, if the parties submit to the Agency the documents listed in paragraphs (b) and (c) of this section, and receive Agency approval as described in paragraph (d) of this section.

(d) Persons seeking approval of a transfer of registration must provide a document signed by the authorized representative of the registrant (the transferor) and of the person to whom the registration is transferred (the transferee) that contains the following information:

(1) The name, address and State of incorporation (if any) of the transferor;

(2) The name, address and State of incorporation of the transferee;

(3) The name(s) and EPA registration number(s) of the product(s) being transferred;

(4) A statement that the transferor transfers irrevocably to the transferee all right, title, and interest in the EPA registration(s) listed in the document;

(5) A statement that the transferred registration(s) shall not serve as collateral or otherwise secure any loan or other payment arrangement or executory promise, and that the registration(s) shall not revert to the transferor unless a new transfer agreement is submitted to and approved by the Agency;

(6) A description of the general nature of the underlying transaction, e.g., merger, spinoff, bankruptcy transfer (no financial information need be disclosed);

(7) A statement that the transferor and transferee understand that any false statement may be punishable under 18 U.S.C. 1001; and

(8) An acknowledgment by the transferee that his rights and duties concerning the registration under FIFRA and this chapter will be deemed by EPA to be the same as those of the transferor at the time the transfer is approved.

(c) In addition, the transferor must submit to the Agency a notarized statement affirming that:

(1) The person signing the transfer agreement is authorized by the registrant to bind the transferor;

(2) No court order prohibits the transfer, and that any required court approvals have been obtained; and

(3) The transfer is authorized under all relevant Federal, State and local laws and all relevant corporate charters, bylaws, partnerships, or other agreements.

(d) If the required documents are submitted, and no information available to the Agency indicates that the information is incorrect, the Agency will approve the transfer without requiring that the transferee obtain a new registration. The Agency will notify the transferor and transferee of its approval.

(e) The transfer will be effective on the date of Agency approval. Thereafter the transferee will be regarded as the registrant for all purposes under FIFRA.

(f) Rights to exclusive use of data or compensation under FIFRA sec. 3(c)(1)(D) are separate from the registration itself and may be retained by the transferor, or may be transferred independently in accordance with the provisions of § 152.98. If the registrant as the original data submitter wishes to transfer data rights at the same time as he transfers the registration, he may submit a single transfer document containing the information required by this section for both the registration and the data.

(Approved by the Office of Management and Budget under Control Number 2070-0060.)

§ 152.138 Voluntary cancellation.

(a) A registrant may request at any time that his registration be cancelled. A request for voluntary cancellation must include the registrant's name and address, the product name(s), the EPA registration number(s) involved, and the signature of the registrant or his authorized representative. In addition, if the registrant wishes to continue to distribute and sell existing stocks of the product, the request must include a proposed timeframe for disposition of such stocks.

(b) EPA will send a notice of cancellation by certified mail to the registrant. The notice will specify the effective date of cancellation, and the timeframe for disposal of existing stocks of the product.

(c) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number. The registrant is responsible for ensuring that distributors under his cancelled registration are notified and comply with the terms of the cancellation.

8. By adding Subpart H to read as follows:

Subpart H—Agency Actions Affecting Registrations

Sec.
152.140 Classification of pesticide products.
152.142 Submission of information to maintain registration in effect.
152.144 Reregistration.
152.146 Special review of pesticides.
152.148 Cancellation of registration.
152.150 Suspension of registration.
152.152 Child-resistant packaging.
152.159 Policies applicable to registration and registered products.

Subpart H—Agency Actions Affecting Registrations

§ 152.140 Classification of pesticide products.

FIFRA sec. 3(d) authorizes the Agency, as part of the registration or reregistration of a pesticide, or by issuing a regulation, or by an order under FIFRA sec. 6, to classify a product, its uses, or a class of products or uses for restricted use, in accordance with the criteria and procedures in Subpart I of this part.

§ 152.142 Submission of information to maintain registration in effect.

(a) FIFRA sec. 3(c)(2)(B) authorizes the Agency to require that a registrant submit information necessary to maintain his registration in effect. Such information may consist of data on the chemistry, efficacy, toxicity, environmental fate, environmental effects or other characteristics of the product or its ingredients, or on the exposure of humans or other organisms to the product or its components, or any other information necessary to support the continued registration of the product.

(b) If the Agency determines that additional information is necessary in order to maintain a registration in effect, the procedures set out in FIFRA sec. 3(c)(2)(B) will be used. The Agency will notify each affected registrant, and list the information needed and the required submission date. The information, when submitted to the Agency, is subject to the requirements of §§ 158.32, 158.33, and 158.34 of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070-0057.)

§ 152.144 Reregistration.

Under FIFRA sec. 3(g), the Agency must evaluate all currently registered pesticides against the standards of FIFRA sec. 3(c)(5) and reregister the products that meet those standards. The Agency has an ongoing program for the systematic review of pesticides. In that program, the Agency develops and maintains a Registration Standard for products containing a specified ingredient. The Registration Standard sets out the Agency's position with respect to regulation of products containing the ingredient, and is updated periodically as the Agency receives additional information. Based on the Registration Standard, the Agency may require a registrant to change a product's composition, labeling, packaging, or uses in order to

be reregistered and to maintain his registration in compliance with FIFRA. The procedures for reregistration are found in Subpart D of this Part.

§ 152.146 Special review of pesticides.

The Agency has established a special review process that, in its discretion, may be used to assist in identifying and evaluating pesticides that may cause unreasonable adverse effects on the environment. If the Agency determines through the special review process that the product or its uses may cause unreasonable adverse effects, or that the risks posed by the pesticide outweigh its benefits, the Agency may initiate cancellation proceedings under § 152.148. Criteria and procedures for the special review process are contained in Part 154 of this chapter.

§ 152.148 Cancellation of registration.

(a) *Grounds for cancellation.* The Agency may issue a notice of intent to cancel the registration of a product or to cancel the registration unless it is amended as specified in the notice, if the Agency determines that any of the following criteria has been met:

(1) Under FIFRA sec. 6(b), the pesticide, its labeling, or other material required to be submitted, does not comply with the Act. For example, the Agency may propose cancellation if a registrant fails to comply with a requirement that a product bear restricted use labeling, or if a registrant submits to the Agency a false statement concerning compliance of a study with the Good Laboratory Practices requirements of Part 160 of this chapter.

(2) Under FIFRA sec. 6(b), the pesticide, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment;

(3) Under FIFRA sec. 6(e), a registrant fails to initiate or pursue appropriate action toward meeting any conditions imposed on the registration;

(4) Under FIFRA sec. 6(c), a registrant fails to meet any conditions imposed on the registration;

(5) Under FIFRA sec. 3(c)(1)(D)(ii), the Agency determines, based upon a petition by an original data submitter, that a registrant has failed to comply with the requirements of Subpart E of this Part concerning compensation for use of data. Such cancellations are governed by the procedures of § 152.99, and are not subject to the procedures of this section.

(b) *Notice of intent to cancel.* The Agency will notify the registrant by certified mail at the address of record of the Agency's intent to cancel, and will state the reasons for the proposed cancellation. The Agency will also issue in the **Federal Register** a notice of its intent to cancel a registration.

(c) *Opportunity for corrections.* The registrant may, within 30 days of his receipt of the notice or publication in the **Federal Register**, whichever is later, make any corrections identified in the notice. If he does so, the cancellation action will not become final.

(d) *Hearing*—(1) *Requested by a registrant.* A registrant may, within 30 days of his receipt of a notice of intent to cancel, or publication in the **Federal Register**, whichever is later, request that a hearing be held. The registrant may request a hearing on any or all of the Agency's requirements, as stated in the Agency's notice of intent to cancel. The registrant must state in his request the specific requirements he objects to, and the reasons for his objection. He need not comply with the requirements in dispute until a final hearing decision has been issued. The registrant must, however, within the timeframes specified, comply with all other Agency requirements that are not at issue.

(2) *Requested by another person.* Any other person adversely affected by a proposed cancellation may, within 30 days of publication in the **Federal Register**, request that a hearing be held. The request must identify in what manner the person is adversely affected by the Agency's proposed cancellation.

(3) *Initiated by the Agency.* Under FIFRA sec. 6(b)(2), in lieu of issuing a notice of intent to cancel, the Agency may hold a hearing to determine whether a registration should be cancelled.

(4) *Hearing procedures.* A hearing will be conducted according to FIFRA sec. 6(d) or 6(e) and Part 164 of this chapter.

(e) *Effective date of cancellation.* (1) If a hearing request is not received in a timely manner and the registrant fails to make required corrections in a timely manner, the cancellation shall be effective at the end of 30 days from the date of publication in the **Federal Register** or receipt by the registrant, whichever is later.

(2) If a hearing is held to challenge the cancellation, and thereafter the cancellation is sustained, or if the Agency holds a hearing in which it is concluded that a registration should be cancelled, the cancellation shall be effective immediately upon issuance of the final Agency order in the proceeding.

(f) *Effect of cancellation.* After the effective date of cancellation, distribution or sale of a cancelled product, except in accordance with the terms of the notice of cancellation, will be considered a violation of FIFRA sec. 12(a)(1)(A) or 12(a)(2)(K). The Agency will specify in the order of final cancellation whether existing stocks of the product may be distributed or sold, what conditions of distribution, sale, and use (if any) have been established, and the date after which such distribution or sale will no longer be permitted.

(g) *Reinstatement of registration.* The Agency will reinstate a cancelled registration if the registrant can show that the cancellation was the result of Agency clerical or administative error.

§ 152.150 Suspension of registration.

(a) *Grounds for suspension.* The Agency may issue a notice of intent to suspend the registration of a product if:

(1) Under FIFRA sec. 6(c)(1), the Agency determines that suspension is necessary in order to prevent an imminent hazard during the time necessary for cancellation or change in classification proceedings.

(2) Under FIFRA sec. 3(c)(2)(B), a registrant has failed, within the time required by the Agency:

(i) To take appropriate steps to provide information necessary for continued registration;

(ii) To participate in a procedure for reaching agreement concerning joint development of data or in an arbitration proceeding; or

(iii) To comply with the terms of any agreement or arbitration decision.

(b) *Suspension order.* The Agency may issue a suspension order if:

(1) The registrant who has received a notice of intent to suspend fails to request a hearing in a timely manner;

(2) A hearing is held, and the suspension is sustained; or

(3) Under FIFRA sec. 6(c)(3), the Agency determines that an emergency exists which warrants immediate suspension.

(c) *Procedures of suspension.* The Agency will conduct proceedings to suspend products in accordance with the provisions of Subpart C of Part 164 of this chapter, or FIFRA sec. 3(c)(2)(B), as applicable.

(d) *Effect of suspension.* After the effective date of suspension, the distribution, sale, or use of a suspended product, except in accordance with the terms of the suspension notice, will be considered a violation of FIFRA sec. 12(a)(2)(J).

§ 152.152 Child-resistant packaging.

The Agency has established criteria, standards and recordkeeping requirements for child-resistant packaging of products that are highly toxic and are intended for residential use. Refer to Part 157 of this chapter.

§ 152.159 Policies applicable to registration and registered products.

Codified policies and interpretations pertaining to registration and registered products may be found in Part 153 of this chapter. Additional policies and interpretations may be published in the **Federal Register**, mailed directly to registrants, or both.

9. By adding Subpart I to read as follows:

Subpart I—Classification of Pesticides

152.160 Scope.
152.161 Definitions.
152.164 Classification procedures.
152.166 Labeling of restricted use products.
152.167 Distribution and sale of restricted use products.
152.168 Advertising of restricted use products.
152.170 Criteria for restriction to use by certified applicators.
152.171 Restrictions other than those relating to use by certified applicators.

Subpart I—Classification of Pesticides

§ 152.160 Scope.

(a) *Types of classification.* A pesticide product may be unclassified, or it may be classified for restricted use or for general use. The Agency does not normally classify products for general use; products that are not restricted remain unclassified.

(b) *Kinds of restrictions.* The Agency may restrict a product or its uses to use by a certified applicator, or by or under the direct supervision of a certified applicator, as described in FIFRA sec. 3(d)(1)(C). The Agency may also, by regulation, prescribe restrictions relating to the product's composition, labeling, packaging, uses, or distribution and sale, or to the status or qualifications of the user.

§ 152.161 Definitions.

In addition to the definitions in § 152.3, the following terms are defined for the purposes of this subpart:

(a) "Dietary LC_{50}" means a statistically derived estimate of the concentration of a test substance in the diet that would cause 50 percent mortality to the test population under specified conditions.

(b) "Outdoor use" means any pesticide application that occurs outside enclosed manmade structures or the consequences of which extend beyond enclosed manmade structures, including, but not limited to, pulp and paper mill water treatments and industrial cooling water treatments.

§ 152.164 Classification procedures.

(a) *Grouping of products for classification purposes.* In its discretion, the Agency may identify a group of products having common characteristics or uses and may classify for restricted use same or all of the products or uses included in that group. Such a group may be comprised of, but is not limited to, products that:

(1) Contain the same active ingredients.

(2) Contain the same active ingredients in a particular concentration range, formulation type, or combination of concentration range and formulation type.

(3) Have uses in common.

(4) Have other characteristics, such as toxicity, flammability, or physical properties, in common.

(b) *Classification reviews.* The Agency may conduct classification reviews and classify products at any time, if it determines that a restriction on the use of a pesticide product is necessary to avoid unreasonable adverse effects on the environment. However, classification reviews normally will be conducted and products classified only in the following circumstances:

(1) As part of the review of an application for new registration of a product containing an active ingredient not contained in any currently registered product.

(2) As part of the review of an application for a new use of a product, if existing uses of that product previously have been classified for restricted use. Review of a restricted use product at this time is for the purpose of determining whether the new use should also be classified for restricted use. Normally the Agency will not conduct initial classification reviews for existing uses of individual products in conjunction with an application for amended registration.

(3) As part of the process of developing or amending a registration standard for a pesticide. The Agency normally will conduct classification reviews of all uses of a currently registered pesticide at this time.

(4) As part of any special review of a pesticide, in accordance with the procedures of 40 CFR Part 154.

(c) *Classification procedures.* (1) If the Agency determines that a product or one or more of its uses should be classified for restricted use, the Agency initially may classify the product by regulation. In this case, within 60 days after the effective date of a final rule, each registrant of a product subject to the rule must submit to the Agency one of the following, as directed in the final rule:

(i) A copy of the amended label and any supplemental labeling to be used as an interim compliance measure.

(ii) A statement, which the Agency considers a report under the Act, that the registrant will comply with the labeling requirements prescribed by the Agency within the timeframes prescribed by the regulation.

(iii) An application for amended registration to delete the uses which have been restricted, or to "split" the registration into two registrations, one including only restricted or all uses, and the other including only uses that have not been classified.

(2) Alternatively, EPA may notify the applicant or registrant of the classification decision and require that he submit the information required by paragraph (c)(1) of this section. The Agency may deny registration or initiate cancellation proceedings if the registrant fails to comply within the timeframes established by the Agency in its notification.

§ 152.166 Labeling of restricted use products.

(a) *Products intended for end use.* A product whose labeling bears directions for end use and that has been classified for restricted use must be labeled in accordance with the requirements of § 156.10 of this chapter or other Agency instructions. The Agency will permit the use of stickers or supplemental labeling as an interim alternative to the use of an approved amended label, in accordance with § 152.167.

(b) *Products intended only for formulation.* A product whose labeling does not bear directions for end use (a product that is intended and labeled solely for further formulation into other pesticide products) is not subject to the labeling requirements of this subpart.

§ 152.167 Distribution and sale of restricted use products.

Unless modified by the Agency, the compliance dates in this section shall apply to restricted use products.

(a) *Sale by registrant or producer.* (1) No product with a use classified for restricted use may be distributed or sold by the registrant or producer after the 120th day after the effective date of such classification unless the product:

(i) Bears an approved amended label which contains the terms of restricted use imposed by the Agency and otherwise complies with Part 156 of this chapter;

(ii) Bears a sticker containing the product name, EPA registration number, and any terms of restricted use imposed by the Agency; or

(iii) Is accompanied by supplemental labeling bearing the information listed in paragraph (a)(1)(ii) of this section.

(2) If the registrant chooses to delete the restricted uses from his product label, that product may not be distributed or sold after the 180th day after the effective date of classification unless the product bears amended labeling with the restricted uses deleted.

(3) Notwithstanding paragraphs (a)(1) and (2) of this section, after the 270th day after the effective date of classification, no registrant or producer may distribute or sell a product that does not bear the approved amended label. After that date, stickers and supplemental labeling described in paragraph (a)(1)(ii) and (iii) are not longer acceptable.

(b) *Sale by retailer.* No product with a use classified for restricted use by a regulation may be distributed or sold by a retailer or other person after the 270th day after the effective date of the final rule unless the product bears a label or labeling which complies with paragraph (a)(1) of this section.

§ 152.168 Advertising of restricted use products.

(a) Any product classified for restricted use shall not be advertised unless the advertisement contains a statement of its restricted use classification.

(b) The requirement in paragraph (a) of this section applies to all advertisements of the product, including, but not limited, to:

(1) Brochures, pamphlets, circulars and similar material offered to purchasers at the point of sale or by direct mail.

(2) Newspapers, magazines, newsletters and other material in circulation or available to the public.

(3) Broadcast media such as radio and television.

(4) Telephone advertising.

(5) Billboards and posters.

(c) The requirement may be satisfied for printed material by inclusion of the statement "Restricted Use Pesticide," or the terms of restriction, prominently in the advertisement. The requirement may be satisfied with respect to broadcast or telephone advertising by inclusion in the broadcast of the spoken words "Restricted use pesticide," or a statement of the terms of restriction.

(d) The requirements of this section shall be effective:

(1) After 270 days after the effective date of restriction of a product that is currently registered, unless the Agency specifies a shorter time period;

(2) Upon the effective date of registration of a product not currently registered.

§ 152.170 Criteria for restriction to use by certified applicators.

(a) *General criteria.* An end-use product will be restricted to use by certified applicators (or persons under their direct supervision) if the Agency determines that:

(1) Its toxicity exceeds one or more of the specific hazard criteria in paragraph (b) or (c) of this section, or evidence described in paragraph (d) of this section substantiates that the product or use poses a serious hazard that may be mitigated by restricting its use;

(2) Its labeling, when considered according to the factors in paragraph (e)(2) of this section, is not adequate to mitigate these hazard(s);

(3) Restriction of the product would decrease the risk of adverse effects; and

(4) The decrease in risks of the pesticide as a result of restriction would exceed the decrease in benefits.

(b) *Criteria for human hazard*—(1) *Residential and institutional uses.* A pesticide product intended for residential or institutional use will be considered for restricted use classification if:

(i) The pesticide, as diluted for use, has an acute oral LD_{50} of 1.5 g/kg or less;

(ii) The pesticide, as formulated, has an acute dermal LD_{50} of 2000 mg/kg or less;

(iii) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.5 mg/liter or less, based upon a 4-hour exposure period;

(iv) The pesticide, as formulated, is corrosive to the eye (causes irreversible destruction of ocular tissue) or results in corneal involvement or irritation persisting for more than 7 days;

(v) The pesticide, as formulated, is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe irritation (severe erythema or edema) at 72 hours; or

(vi) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic, chronic or delayed toxic effects on man as a result of single or multiple exposures to the product ingredients or residues.

(2) *All other uses.* A pesticide product intended for uses other than residential or institutional use will be considered for restricted use classification if:

(i) The pesticide, as formulated, has an acute oral LD_{50} of 50 mg/kg or less;

(ii) The pesticide, as formulated, has an acute dermal LD_{50} of 200 mg/kg or less;

(iii) The pesticide, as diluted for use, has an acute dermal LD_{50} of 16 g/kg or less;

(iv) The pesticide, as formulated, has an acute inhalation LC_{50} of 0.05 mg/liter or less, based upon a 4-hour exposure period;

(v) The pesticide, as formulated, is corrosive to the eye or causes corneal involvement or irritation persisting for more than 21 days;

(vi) The pesticide, as formulated, is corrosive to the skin (causes tissue destruction into the dermis and/or scarring); or

(vii) When used in accordance with label directions, or widespread and commonly recognized practice, the pesticide may cause significant subchronic toxicity, chronic toxicity, or delayed toxic effects on man, as a result of single or multiple exposures to the product ingredients or residues.

(c) *Criteria for hazard to non-target species*—(1) *All products.* A pesticide product intended for outdoor use will be considered for restricted use classification if:

(i) When used according to label directions, application results in residues of the pesticide, its metabolites, or its degradation products, in the diet of exposed mammalian wildlife, immediately after application, such that:

(A) The level of such residues equals or exceeds one-fifth of the acute dietary LC_{50}; or

(B) The amount of pesticide consumed in one feeding day (mg/kg/day) equals or exceeds one-fifth of the mammalian acute oral LD_{50};

(ii) When used according to label directions, application results, immediately after application, in residues of the pesticide, its metabolites or its degradation products, in the diet of exposed birds at levels that equal or exceed one-fifth of the avian subacute dietary LC_{50};

(iii) When used according to label directions, application results in residues of the pesticide, its metabolites or its degradation products, in water that equal or exceed one-tenth of the acute LC_{50} for non-target aquatic organisms likely to be exposed; or

(iv) Under conditions of label use or widespread and commonly recognized practice, the pesticide may cause discernible adverse effects on non-target organisms, such as significant mortality or effects on the physiology, growth, population levels or reproduction rates of such organisms, resulting from direct or indirect exposure to the pesticide, its metabolites or its degradation products.

(2) *Granular products.* In addition to the criteria of paragraph (c)(1) of this

section, a pesticide intended for outdoor use and formulated as a granular product will be considered for restricted use classification if:

(i) The formulated product has an acute avian or mammalian oral LD_{50} of 50 mg/kg or less as determined by extrapolation from tests conducted with technical material or directly with the formulated product; and

(ii) It is intended to be applied in such a manner that significant exposure to birds or mammals may occur.

(d) *Other evidence.* The Agency may also consider evidence such as field studies, use history, accident data, monitoring data, or other pertinent evidence in deciding whether the product or use may pose a serious hazard to man or the environment that can reasonably be mitigated by restricted use classification.

(e) *Alternative labeling language.* (1) If the Agency determines that a product meets one or more of the criteria of paragraphs (b) or (c) of this section, or if other evidence identified in paragraph (d) of this section leads the Agency to conclude that the product should be considered for restricted use classification, the Agency will then determine if additional labeling language would be adequate to mitigate the identified hazard(s) without restricted use classification. If the labeling language meets all the criteria specified in paragraph(e)(2) of this section, the product will not be classified for restricted use.

(2) The labeling will be judged adequate if it meets all the following criteria:

(i) The user, in order to follow label directions, would not be required to perform complex operations or procedures requiring specialized training and/or experience.

(ii) The label directions do not call for specialized apparatus, protective equipment, or materials that reasonably would not be available to the general public.

(iii) Failure to follow label directions in a minor way would result in few or no significant adverse effects.

(iv) Following directions for use would result in few or no significant adverse effects of a delayed or indirect nature through bioaccumulation, persistence, or pesticide movement from the original application site.

(v) Widespread and commonly recognized practices of use would not nullify or detract from label directions such that unreasonable adverse effects on the environment might occur.

§ 152.171 Restrictions other than those relating to use by certified applicators.

The Agency may by regulation impose restrictions on a product or class of products if it determines that:

(a) Without such restrictions, the product when used in accordance with warnings, cautions and directions for use or in accordance with widespread and commonly recognized practices of use may cause unreasonable adverse effects on the environment; and

(b) The decrease in risks as a result of restricted use would exceed the decrease in benefits as a result of restricted use.

§ 162.31 [Redesignated as 152.175]

10. Section 152.175 is redesignated from § 162.31, the section heading is revised to read as set forth below, and the section is added to Subpart I.

§ 152.175 Pesticides classified for restricted use.

* * * * *

11. Part 152 is amended by adding and reserving Subparts J and K.

Subparts J and K—[Reserved]

12. By adding Subpart L, to read as follows:

Subpart L—Intrastate Pesticide Products

Sec.
152.220 Scope.
152.225 Application for Federal registration.
152.230 Sale and distribution of unregistered intrastate pesticide products.

Subpart L—Intrastate Pesticide Products

§ 152.220 Scope.

This subpart applies to any intrastate pesticide product defined as a product:

(a) Which is distributed and sold solely within a single State, in accordance with a registration issued to the producer by that State; and

(b) For which a proper Notice of Application for Federal Registration (EPA Form 8570–8) was filed (in accordance with regulations codified in 40 CFR 162.17(d) on July 3, 1975) by October 4, 1975 (or by a later date as allowed by the Agency).

§ 152.225 Application for Federal registration.

(a) Each current intrastate producer who has submitted a "Notice of Application for Federal Registration" must, no later than July 31, 1988, submit a full application for Federal registration complying with the requirements of this Part 152.

(b) The Agency may, at any time before that date, require the producer of an intrastate product to submit an application for Federal registration of the product. If the Agency requires the submission of an application for registration of an intrastate product prior to July 31, 1988, the Agency will notify the producer of the intrastate product in writing, and will specify a date by which the application must be submitted.

(c) The Agency will require the producer of an intrastate product to submit an application for Federal registration if the intrastate product contains the same active ingredient as, and is intended for the same or a substantially similar end use as, a federally registered product that is subject to:

(1) A notice of special review in accordance with § 154.25 of this chapter;

(2) A notice under FIFRA sec. 3(c)(2)(B) requiring the submission of data in support of Federal registration;

(3) A regulation or notice classifying the product for restricted use under FIFRA sec. 3(d)(1)(C); or

(4) A notice requiring the Federal registrant to submit an application for reregistration of his product.

§ 152.230 Sale and distribution of unregistered intrastate pesticide products.

(a) An intrastate product which is not federally registered may continue to be sold or distributed solely within a single State, provided that:

(1) Such product complies with FIFRA sec. 12(a)(1)(D) and (E), in accordance with definitions contained in:

(i) FIFRA sec. 2(q)(1)(A) through (G); and

(ii) FIFRA sec. 2(q)(2)(A), (C)(i) through (iii), and (D).

(2) The producer of such product has submitted a timely application for Federal registration of the pesticide (by July 31, 1988, or earlier if notified by the Agency to do so);

(3) The Agency has not issued in the **Federal Register** a notice of denial of an application for registration of such product under FIFRA sec. 3(c)(6);

(4) The Agency has not issued a notice of intent to cancel or suspend any federally registered pesticide products containing the same active ingredient as, and intended for the same (or substantially similar) end uses as, such intrastate product; and

(5) The pesticide product is registered under the applicable State pesticide registration law.

(b) No person may distribute or sell an intrastate product after the date specified in a notice furnished in accordance with § 152.225(b) that requires submission of a full application for Federal registration by such date.

(c) No person may distribute or sell an intrastate product after July 31, 1988, unless he has submitted an application for full Federal registration in accordance with § 152.225. Distribution or sale of any such product will be considered a violation of FIFRA sec. 12(a)(1)(A).

PART 153—REGISTRATION POLICIES AND INTERPRETATIONS

II. In Part 153:

1. The authority citation for Part 153 is revised to read as follows:

Authority: 7 U.S.C. 136–136y.

2. The Part heading is revised to read as set forth above.

3. By adding Subparts G, H, and M, to read as follows; and by adding and reserving Subparts E and F, I and J, and K and L.

Subparts E and F [Reserved]

Subpart G—Determination of Active and Inert Ingredients

Sec.
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Subpart M—Devices

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Subparts E and F [Reserved]

Subpart G—Determination of Active and Inert Ingredients

§ 153.125 Criteria for determination of pesticidal activity.

(a) An ingredient will be considered an active ingredient if it is contained in a pesticide product and:

(1) The ingredient has the capability by itself, and when used as directed at the proposed use dilution, to function as a pesticide; or

(2) The ingredient has the ability to elicit or enhance a pesticidal effect in another compound whose pesticidal activity is substantially increased due to the interaction of the compounds. Compounds which function simply to enhance or prolong the activity of an active ingredient by physical action, such as stickers and other adjuvants, are not generally considered to be active ingredients.

(b) Normally the applicant will determine and state in his application whether an ingredient is active or inert with respect to pesticidal activity. The Agency, as part of its review of an application for registration, or in conjunction with the Registration Standard or Special Review process, may require any ingredient (including those listed in § 153.139), to be designated as an active ingredient if the Agency finds that it meets the criteria in paragraph (a) of this section. Conversely, the Agency may determine that any ingredient designated as active by an applicant is an inert ingredient if it fails to meet those criteria.

(c) If an applicant or registrant submits data to the Agency which demonstrates to the Agency's satisfaction that an ingredient listed in § 153.139 is pesticidally active according to the criteria of this section, the ingredient may be deemed to be an active ingredient in that registrant's product.

(d) If an ingredient is designated as an active ingredient, it must be identified in the label ingredients statement. If an ingredient is designated as an inert ingredient, it must be included as part of the total inert ingredients in the label ingredients statement.

(e) Designation of a substance as a pesticidally inert ingredient does not relieve the applicant or registrant of other requirements of FIFRA with respect to labeling of inert ingredients or submission of data, or from the requirements of the Federal Food, Drug, and Cosmetic Act with respect to tolerances or other clearance of ingredients.

§ 153.139 Substances determined to be pesticidally inert.

(a) *Antimicrobial products.* The Agency has concluded that the following ingredients normally have no independent pesticidal activity when included in antimicrobial products for the designated uses, and thus normally are properly classified as inert ingredients of such products, within the meaning of FIFRA sec. 2(m):

Substance	Uses
Acetone	Solvent.
Alkyl* amino betaine (*46 percent C_{12}, 24 percent C_{14}, 10 percent C_{16}, 6 percent C_{10}, 7 percent C_8, 5 percent C_{18}).	Corrosion inhibitor, surfactant.
Alkyl monoethanolamide	Emulsifier.
Aluminum chloride	Detergent.
Aluminum hyroxybenzenesulfate sulfonate.	Emulsifier.
Aluminum powder	Filler.
Aluminum carbonate	Detergent.
Ammonium citrate	Sequestrant.
Ammonium lauryl sulfonate	Emulsifier.
Ammonium oleate	Detergent, emulsifier.
Ammonium oxalate	Detergent.
Amyl acetate	Diluent.
Borax	Detergent.
Butyl alcohol, tertiary	Solvent, odorant.
Carbon	Carrier, absorbent.
Castor oil	Emulsifier.
Citric acid	Sequestrant.
Diethanolamine dodecylbenzene sulfonate.	Detergent.
Sodium oleate	Emulsifier.
Dimethyl phthalate	Perfume.
Disodium monoethanolamine phosphate.	Emulsifier.
Dodecyl benzene sulfonic acid	Detergent.
Essential oils	Perfume.
Ethanol (ethyl alcohol)	Solvent, except in tinctures or where sole or major ingredient.
Ethanolamine	Emulsifier.
Ethanolamine dodecylbenzene sulfonate.	Detergent.
Ethoxylated lanolin	Ointment base.
Ethylenediamine	Emulsifier.
Ethylenediaminetetraacetic acid (including all salts and derivatives).	Sequestrant.
Fumaric acid	Sequestrant.
Gluconic acid	Buffer.
Isooctyl phenoxy polyethoxy ethanol	Surfactant.
Isopropanol (isopropyl alcohol)	Solvent, except in tinctures, or where sole or major ingredient.
Isopropyl myristate	Solvent.
Juniper tar	Odorant.
Lauryl alcohol	Detergent, odorant.
Lauryl methacrylate	Emulsifier.
Limonene	Odorant, perfume.
Magnesium chloride	Builder.
Magnesium lauryl sulfate	Detergent.
Magnesium silicate	Odor absorbent.
Menthol	Perfume.
Methanol (methyl alcohol)	Solvent, except in tinctures, or where sole or major ingredient.
Methyl ethyl ketone	Solvent.
Methyl salicylate	Perfume, odorant.
Mineral oil, mineral seal oil, or white mineral oil.	Lubricant.
Monoethanolamides of the fatty acids of coconut oil.	Emulsifier.
Monosodium phosphate	Emulsifier, buffer.
Morpholine	Corrosion inhibitor.
Nonylphenoxypolyethoxyethanol	Surfactant.
Octylphenol	Nonionic surfactant.
Oil of citronella	Perfume, odorant.
Oil of eucalyptus	Perfume.
Oil of lemongrass	Perfume.
Oleic acid	Solvent.

Substance	Uses
Petroleum distillate, oils, hydrocarbons, also paraffinic hydrocarbons, aliphatic hydrocarbons, paraffinic oil.	Lubricant, solvent.
Polyoxyethylene sorbitol, mixed ethyl ester of.	Emulsifier.
Polyvinylpyrrolidone	Emulsifier.
Potassium bisulfate	Builder.
Potassium carbonate	Detergent.
Potassium dodecylbenzenesulfonate	Anionic detergent.
Potassium laurate	Emulsifier.
Potassium myristate	Emulsifier.
Potassium *N*-(*s*-(nitroethyl)benzyl) ethylenediamine.	Emulsifier.
Potassium phosphate, tribasic	Sequestrant.
Potassium ricinoleate	Emulsifier.
Potassium toluene sulfonate	Detergent.
Potassium xylene sulfonate	Detergent.
Propanol (propyl alcohol)	Solvent, except in tinctures or where sole or major ingredient.
Soap	Detergent.
Sodium acetate	Buffer.
Sodium alkyl (100 percent C_9): benzene sulfonate.	Detergent.
Sodium bicarbonate	Detergent.
Sodium carbonate	Detergent.
Sodium chloride	Builder.
Sodium decylbenzene sulfonate	Detergent.
Sodium diacetate	Sequestrant.
Sodium dihydroxyethylglycine	Chelate, buffer.
Sodium diisopropylnaphthalene sulfonate.	Detergent.
Sodium di(monoethanolamine) phosphate.	Emulsifier.
Sodium dodecylbenzene sulfonate (may be active as a sanitizer in dishwashing formulations).	Detergent.
Sodium dodecyl diphenyl oxide sulfonate.	Perfume.
Sodium glycolate	Sequestrant.
Sodium laurate	Detergent.
Sodium *N*-lauroylsarcosinate	Detergent.
Sodium lauryl sulfate	Detergent.
Sodium metasilicate	Detergent.
Sodium *N*-methyl-*N* oleyltaurate	Emulsifier.
Sodium mono and dimethyl naphthalene sulfonate.	Detergent.
Sodium oleate	Emulsifier.
Sodium phosphate	Emulsifier, buffer.
Sodium salt of turkey red oil	Emulsifier.
Sodium sesquicarbonate	Detergent.
Sodium silicate	Detergent.
Sodium sulfate	Detergent.
Sodium sulfonated oleic acid	Emulsifier.
Sodium thiosulfate	Builder.
Sodium toluene sulfonate	Detergent.
Sodium tripolyphosphate	Sequestrant.
Sodium xylene sulfonate	Detergent.
Tetrapotassium pyrophosphate	Sequestrant.
Tetrasodium pyrophosphate	Sequestrant.
Toluene sulfonic acid	Emulsifier.
1,1,1-Trichloroethane	Diluent.
Triethanolamine	Emulsifier.
Triethanolamine dodecylbenzene sulfonate.	Detergent.
Triethanolamine laurate	Emulsifier.
Triethanolamine lauryl sulfate	Emulsifier.
Triisopropanolamine	Emulsifier.
Triisopropylamine	Emulsifier.
Trisodium phosphate	Detergent.
Turkey red oil	Emulsifier
Undecylenic acid	Perfume.
Xylene	Solvent.
Zirconium oxide	Dye.

(b) [Reserved]

(c) *Limitation.* This statement of policy does not bind decision makers in a formal adjudicatory proceeding under FIFRA sec. 3, 6, or 14. If this section becomes an issue in any such proceeding, the decision makers in that proceeding will make an independent judgment whether to adhere to it or not.

Subpart H—Coloration and Discoloration of Pesticides

§ 153.140 General.

Section 25(c)(5) of the Act authorizes the Administrator to prescribe regulations requiring coloration or discoloration of any pesticide if he determines that such requirement is feasible and necessary for the protection of health and the environment. The Munsell Manual of Color, or its equivalent, shall be used as a color standard. References in §§ 153.145 and 153.150 to hues, values, chromas and neutral lightness refer to the Munsell Manual of Color.

§ 153.142 Coloring agent.

The coloring agent must produce a uniformly colored product not subject to change beyond the minimum requirements specified in this subpart during ordinary conditions of distribution and storage and must not cause the product to be ineffective or result in adverse effects on non-target organisms when used as directed.

§ 153.145 Arsenicals and barium fluosilicate.

Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, and barium fluosilicate shall be colored any hue, except the yellow-reds and yellows, having a value of not more than 8 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

§ 153.150 Sodium fluoride and sodium fluosilicate.

(a) Products containing sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than 2 and a chroma of not less than 4, or shall be discolored to a neutral lightness value not over 7.

(b) A product containing sodium fluoride shall be exempt from the requirements of this section if:

(1) It is intended and labeled for use as a fungicide solely in the manufacture or processing of rubber, glue, or leather goods.

(2) Coloration of the pesticide in accordance with these requirements will be likely to impart objectionable color characteristics to the finished goods;

(3) The pesticide will not be present in such finished goods in sufficient quantities to cause injury to any person; and

(4) The pesticide will not come into the hands of the public except after incorporation into such finished goods.

§ 153.155 Seed treatment products.

(a) Pesticide products intended for use in treating seeds must contain an EPA-approved dye to impart an unnatural color to the seed, unless appropriate tolerances or other clearances have been established under the Federal Food, Drug and Cosmetic Act for residues of the pesticide.

(b) The following products are exempt from the requirement of paragraph (a) of this section:

(1) Products intended and labeled for use solely by commercial seed treaters, provided that the label bears a statement requiring the user to add an EPA-approved dye with the pesticide during the seed treatment process.

(2) Products intended and labeled for use solely as at-planting or hopper box treatments.

(3) Products which are gaseous in form or are used as fumigants.

(c) EPA-approved dyes are those listed in § 180.1001 (c) and (d) of this chapter. Upon written request additional dyes will be considered for inclusion in this listing.

§ 153.158 Exceptions.

(a) Notwithstanding other provisions of this subpart, the Agency may exempt a product from the requirements of this subpart, or may permit other colors to be used for any particular purpose, if it determines that use of the prescribed color is not feasible for such purpose and is not necessary for the protection of health and the environment.

(b) Any pesticide product specified in this subpart which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dryer as a mothproofing agent, and which would not be suitable for such use if colored, and which will not come into the hands of the public except when incorporated into a fabric, is exempt from the requirements of this subpart.

Subparts I, J, K, and L—[Reserved]

Subpart M—Devices

§ 153.240 Requirements for devices.

(a) A device is defined as any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a

bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.

(b) A device is not required to be registered under FIFRA sec. 3. The Agency has issued a policy statement concerning its authority and activities with respect to devices, which was published in the **Federal Register** of November 19, 1976 (41 FR 51065). A device is subject to the requirements set forth in:

(1) FIFRA sec. 2(q)(1) and Part 156 of this chapter, with respect to labeling;

(2) FIFRA sec. 7 and Part 167 of this chapter, with respect to establishment registration and reporting;

(3) FIFRA sec. 8 and Part 169 of this chapter, with respect to books and records;

(4) FIFRA sec. 9, with respect to inspection of establishments;

(5) FIFRA sec. 12, 13, and 14, with respect to violations, enforcement activities, and penalties;

(6) FIFRA sec. 17, with respect to import and export of devices;

(7) FIFRA sec. 25(c)(3), with respect to child-resistant packaging; and

(8) FIFRA sec. 25(c)(4), with respect to the Agency's authority to declare devices subject to certain provisions of the Act.

PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

§ 162.10 [Redesignated as §156.10]

III. 1. Part 156, entitled Labeling Requirements for Pesticides and Devices, is added, consisting of § 156.10, which is redesignated from §162.10.

2. The authority citation for Part 156 reads as follows:

Authority: 7 U.S.C. 136–136y.

PART 158—DATA REQUIREMENTS FOR REGISTRATION

IV. In Part 158:

1. The authority citation for Part 158 is revised to read as follows:

Authority: 7 U.S.C. 136–136y.

2. By adding §§ 158.32, 158.33, and 158.34 to Subpart A to read as follows:

§ 158.32 Format of data submission.

(a) *Transmittal document.* All data submitted at the same time and for review in support of a single administrative action (e.g., an application for registration, reregistration, experimental use permit, or in response to a requirement for data under the authority of FIFRA sec. 3(c)(2)(B), must be accompanied by a single transmittal document including the following information:

(1) The identity of the submitter, or the identity of each joint submitter and of the agent for joint submitters;

(2) The date of the submission;

(3) The identification of the Agency action in support of which the data are being submitted, such as the registration number or file symbol, petition number, experimental use permit number, or registration standard review; and

(4) A bibliography of all specific documents included in the submission and covered by the transmittal.

(b) *Individual studies.* (1) All data must be submitted in the form of individual studies. Unless otherwise specified by the Agency, each study should address a single data requirement, and be listed separately in the bibliography.

(2) Each study must include the following elements in addition to the study itself:

(i) A title page, as described in paragraph (c) of this section;

(ii) A Statement of Data Confidentiality Claims and, if desired, a Supplemental Statement of Data Confidentiality Claims, in accordance with § 158.33;•

(iii) A certification with respect to Good Laboratory Practice standards, if required by § 160.12 of this chapter;

(iv) If the original study is not in the English language, a complete and accurate English translation under the same cover; and

(v) If the study is of a type listed in § 158.34(b), the statement prescribed by paragraph (c) of that section.

(3) Three identical copies of each study must be submitted. If the study is submitted in conjunction with a pending Special Review or Registration Standard under development, four copies must be submitted. Three copies must be identical and must conform to the requirements of § 158.33 with respect to claims of confidentiality. The fourth copy will be placed in the public docket and must conform to the requirements of § 154.15(c) of this chapter or 155.30(c) of this chapter with respect to claimed confidential business information.

(4) All copies must be in black ink on uniform pages of white, 8½ × 11 inch paper. Copies must have high contrast and good resolution for microfilming. Frayed or oversize pages and glued bindings are not acceptable.

(c) *Contents of title page.* Each individual study must have a title page bearing the following identifying information:

(1) The title of the study, including identification of the substance(s) tested and the test name or data requirement addressed;

(2) The author(s) of the study;

(3) The date the study was completed;

(4) If the study was performed in a laboratory, the name and address of the laboratory and any laboratory project numbers or other identifying codes;

(5) If the study is a commentary on or supplement to another previously submitted study, full identification of the other study with which it should be associated in review; and

(6) If the study is a reprint of a published document, all relevant facts of publication, such as the journal title, volume, issue, inclusive page numbers, and date of publication.

(d) *EPA identification number.* EPA will assign each study an EPA Master Record Identification (MRID) number, and will promptly notify the submitter of the number assigned. This number should be used in all further communications with the Agency about the study.

(e) *Reference to previously submitted data.* Data which previously have been submitted need not be resubmitted unless resubmission is specifically requested by the Agency. If an applicant or registrant wishes the Agency to consider such data in the review of an Agency action, he should cite the data by providing:

(1) The title or adequate description of the study;

(2) The transmittal information required by paragraph (a) (1), (2), and (3) of this section; and

(3) The MRID number assigned in accordance with paragraph (d) of this section.

§ 158.33 Procedures for claims of confidentiality of data.

(a) *General.* A data submitter must clearly identify any information which he claims is entitled to confidential treatment under FIFRA sec. 10. The procedures in this section must be followed to assert a claim of confidentiality.

(b) *Claims of confidentiality for information described by FIFRA sec. 10(d)(1) (A), (B), and (C).* Any information claimed to be confidential under FIFRA sec. 10(d)(1) (A) through (C) must be submitted in accordance with the following procedures:

(1) The information must be contained in a separate attachment to the study. If any information is included in the body of the study rather than in the confidential attachment, the submitter waives a claim of confidentiality for

such information under FIFRA sec. 10(d)(1) (A), (B), or (C).

(2) The attachment must have a cover page which is clearly marked to indicate that the material contained in the attachment falls within the scope of FIFRA sec. 10(d)(1) (A), (B), or (C).

(3) Each item in the attachment must be numbered. For each item, the submitter must cite the applicable portion of FIFRA sec. 10(d)(1) (A), (B), or (C) on which the claim of confidentiality is based. In addition, for each item, the submitter must provide a list of page numbers in the study where the item is cited (i.e., identified by number).

(4) Each item in the attachment must be referenced in the body of the study by its number in the attachment.

(5) The following statement must appear on the Statement of Data Confidentiality Claims:

Information claimed confidential on the basis of its falling within the scope of FIFRA sec. 10(d)(1)(A), (B), or (C) has been removed to a confidential appendix, and is cited by cross-reference number in the body of the study.

The statement must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

(c) *No claim of confidentiality under FIFRA sec. 10(d)(1)(A), (B), or (C).* If no claim of confidentiality is being made for information described by FIFRA sec. 10(d)(1)(A), (B), or (C), or if such information is not contained in the body of the study, the Statement of Data Confidentiality Claims must include the following statement:

No claim of confidentiality is made for any information contained in this study on the basis of its falling within the scope of FIFRA sec. 10(d)(1)(A), (B), or (C).

This statement must bear the name, title and signature of the submitter or his properly designated agent, and the date of signature.

(d) *Claim of confidentiality for information not described by FIFRA sec. 10(d)(1) (A), (B), or (C).* Any information not described by FIFRA sec. 10(d)(1) (A), (B), or (C) for which a claim of confidentiality is made must be submitted in accordance with the following procedures:

(1) The information must be clearly marked in the body of the study as being claimed confidential.

(2) A separate Supplemental Statement of Data Confidentiality Claims must be submitted identifying by page and line number the location within the study of each item claimed confidential, and stating the basis for the claim.

(3) The Supplemental Statement of Data Confidentiality Claims must bear the name, title, and signature of the submitter or his properly designated agent, and the date of signature.

§ 158.34 Flagging of studies for potential adverse effects.

(a) Any person who submits a study of a type listed in paragraph (b) of this section to support an application for new or amended registration, or to satisfy a requirement imposed under FIFRA sec. 3(c)(2)(B), must submit with the study a statement in accordance with paragraph (c) of this section.

(b) The following table indicates that study types and the criteria to be applied to each. Column 1 lists the study types by name. Column 2 lists the associated Pesticide Assessment Guideline number. Column 3 lists the criteria applicable to each type of study. Column 4 lists the reporting code to be included in the statement specified in § 158.34(c) when any criterion is met or exceeded.

TABLE.—FLAGGING CRITERIA

Toxicity studies	Pesticide assessment guidelines No.	Criteria	Reporting code
Oncogenicity [or combined oncogenicity/chronic feeding study] or	83-2	Treated animals show any of the following:	
Subchronic feeding study	82-1	An incidence of neoplasms in male or female animals which increases with dose;	1
		or	
		A statistically significant ($p < 0.05$) incidence of any type of neoplasm in any test group (male or female animals at any dose level) compared to concurrent control animals of the same sex;	2
		or	
		An increase in any type of uncommon or rare neoplasms in any test group (male or female animals at any dose level) compared to concurrent control animals	3
		or	
		A decrease in the time to development of any type of neoplasms in any test group (male or female animals at any dose level) compared to concurrent control animals	4
Teratogenicity	83-3	When compared with concurrent controls, treated animals show a dose-related increase in malformations (or deaths) on a litter basis in the absence of significant maternal toxicity at the same dose levels	5
Neurotoxicity	81-7	When compared with controls, treated animals show a response indicative of acute delayed neurotoxicity	6
Chronic feeding study or combined chronic feeding/oncogenicity study	83-1	Cholinesterase inhibition NOEL less than 10 times the current existing ADI	7
		or	
		General (systemic) toxicity NOEL less than 100 times the current existing ADI	8
Reproduction study	83-4	Reproductive effects NOEL less than 100 times the current ADI	9
Subchronic feeding study	82-1	Cholinesterase inhibition NOEL less than 100 times the current existing ADI	10
		or	
		General (systemic) toxicity NOEL less than 1000 times the current existing ADI	11

(c) *Identification of studies.* For each study of a type identified in paragraph (b) of this section, the applicant (or registrant in the case of information submitted under FIFRA sec. 3(c)(2)(B)) shall include the appropriate one of the following two statements, together with the signature of the authorized representative of the company, and the date of signature:

(1) "I have applied the criteria of 40 CFR 158.34 for flagging studies for potential adverse effects to the results of the attached study. This study neither meets nor exceeds any of the applicable criteria."

(2) "I have applied the criteria of 40 CFR 158.34 for flagging studies for potential adverse effects to the results of the attached study. This study meets or exceeds the criteria numbered [insert all applicable reporting codes.]"

(Approved by the Office of Management and Budget under Control Numbers 2070-0057 and 2070-0060)

Subpart B—How to Use Data Tables

3. By revising the title of Subpart B to read as set forth above.

4. By revising paragraph (a) of § 158.100 to read as follows:

§ 158.100 How to determine registration data requirements.

* * * * *

(a) Refer to Subparts C and D (§§ 158.150 through 158.740). These subparts describe the data requirements, including data tables for each subject area. The corresponding subdivisions in the Pesticide Assessment Guidelines are listed in § 158.108.

* * * * *

§ 158.105 [Amended]

5. a. By removing and reserving paragraph (b) of § 158.105.

§ 158.105 [Redesignated as § 158.202]

b. By redesignating § 158.105 under Subpart B as § 158.202 under new Subpart D.

§§ 158.108, 158.110, 158.112, and 158.120 [Removed]

6. By removing §§ 158.108, 158.110, 158.112, and 158.120.

§ 158.115 [Redesignated as § 158.108]

7. By revising and redesignating § 158.115 as § 158.108, to read as follows:

§ 158.108 Relationship of Pesticide Assessment Guidelines to data requirements.

The Pesticide Assessment Guidelines contain the standards for conducting acceptable tests, guidance on evaluation and reporting of data, definition of terms, further guidance on when data are required, and examples of acceptable protocols. They are available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703-487-4650). The following Subdivisions of the Pesticide Assessment Guidelines, referenced to the appropriate sections of this part, are currently available:

Subdivision	Title	NTIS order no.	Corresponding section(s) in this part
D	Product Chemistry	PB83-153890	§§ 158.150-158.190
E	Hazard Evaluation: Wildlife and Aquatic Organisms	PB83-153908	§ 158.490
F	Hazard Evaluation: Humans and Domestic Animals	PB83-153916	§ 158.340
G	Product Performance	PB83-153924	§ 158.640
I	Experimental Use Permits	PB83-153932	§§ 158.20-158.740
J	Hazard Evaluation: Nontarget Plants	PB83-153940	§ 158.540
K	Reentry Protection	PB85-120962	§ 158.390
L	Hazard Evaluation: Nontarget Insect	PB83-153957	§ 158.590
M	Biorational Pesticides	PB83-153965	§§ 158.690-158.740
N	Environmental Fate	PB83-153973	§ 158.290
O	Residue Chemistry	PB83-153961	§ 158.240
R	Spray Drift Evaluation	PB84-189216	§ 158.440

8. By redesignating §§ 158.125, 158.130, 158.135, 158.140, 158.142, 158.145, 158.150, 158.155, 158.160, 158.165, and 158.170 under Subpart B as §§ 158.240, 158.290, 158.340, 158.390, 158.440, 158.490, 158.540, 158.590, 158.640, 158.690, and 158.740, respectively, under new Subpart D.

9. By adding new Subpart C, to read as follows:

Subpart C—Product Chemistry Data Requirements

Sec.
158.150 General.
158.153 Definitions.
158.155 Product composition.
158.160 Description of materials used to produce the product.
158.162 Description of production process.
158.165 Description of formulation process.
158.167 Discussion of formation of impurities.
158.170 Preliminary analysis.
158.175 Certified limits.
158.180 Enforcement analytical method.
158.190 Physical and chemical characteristics.

§ 158.150 General.

(a) *Applicability.* This subpart describes the product chemistry data that are required to support the registration of each pesticide product. The information specified in this subpart must be submitted with each application for new or amended registration or for reregistration, if it has not been submitted previously or if the previously submitted information is not complete and accurate. References in this subpart to the "applicant" include the registrant if the information is required for a registered product.

(b) *Purpose*—(1) *Product composition.* (i) Data on product composition are needed to support the conclusions expressed in the statement of formula. These data include information on the starting materials, production or formulating process, possible formation of impurities, results of preliminary analysis of product samples, a description of analytical methods to identify and quantify ingredients and validation data for such methods. In addition, an applicant is required to certify the limits for ingredients of his product.

(ii) Product composition data are compared to the composition of materials used in required testing under Subpart D of this part. This comparison indicates which components of a pesticide product have been evaluated by a particular study, and might lead to a conclusion that another study is needed. Based on conclusions concerning the product's composition and its toxic properties, appropriate use restrictions, labeling requirements, or special packaging requirements may be imposed.

(iii) Product composition data, including certified limits of components, are used to determine whether a product is "identical or substantially similar" to

another product or "differs only in ways that do not significantly increase the risk of unreasonable adverse effects on the environment" (FIFRA sec. 3(c)(7)(A)). In nearly every case, this determination involves a comparison of the composition of an applicant's product with that of currently registered products.

(2) *Certified limits.* Certified limits required by § 158.175 are used in two ways. First, the Agency considers the certified limits in making the registration determination required by sections 3(c)(5), 3(c)(7) and 3(d) of the Act and making other regulatory decisions required by the Act. Second, the Agency may collect commercial samples of the registered products and analyze them for the active ingredient(s), inert ingredients, or impurities determined by the Agency to be toxicologically significant. If, upon analysis the composition of such a sample is found to differ from that certified, the results may be used by the Agency in regulatory actions under FIFRA sec. 12(a)(1)(C) and other pertinent sections.

(3) *Nominal concentration.* The nominal concentration required by § 158.155 is the amount of active ingredient that is most likely to be present in the product when produced. Unlike the certified limits, which are the outer limits of the range of the product's ingredients and thus are present only in a small proportion of the products, the nominal concentration is the amount that typically is expected to result from the applicant's production or formulating process. The nominal concentration together with production process information is used to gauge the acceptability of the certified limits presented by the applicant. The nominal concentration is used by the Agency as the basis for enforceable certified limits if the applicant has chosen not to specify certified limits of his own (thereby agreeing to abide by the standard limits in § 158.175).

(4) *Physical and chemical characteristics.* (i) Data on the physical and chemical characteristics of pesticide active ingredients and products are used to confirm or provide supportive information on their identity. Such data are also used in reviewing the production or formulating process used to produce the pesticide or product. For example, data that indicate significant changes in production or formulation might indicate the need for additional information on product composition.

(ii) Certain information (e.g., color, odor, physical state) is needed for the Agency to respond to emergency requests for identification of unlabeled pesticides involved in accidents or spills. Physicians, hospitals, and poison control centers also request this information to aid in their identification of materials implicated in poisoning episodes.

(iii) Certain physical and chemical data are used directly in the hazard assessment. These include stability, oxidizing and reducing action, flammability, explodability, storage stability, corrosion, and dielectric breakdown voltage. For example, a study of the corrosion characteristics of a pesticide is needed to evaluate effects of the product formulation on its container. If the pesticide is highly corrosive, measures can be taken to ensure that lids, liners, seams or container sides will not be damaged and cause the contents to leak during storage, transport, handling, or use. The storage stability study provides data on change (or lack of change) in product composition over time. If certain ingredients decompose, other new chemicals are formed whose toxicity and other characteristics must be considered.

(iv) Certain data are needed as basic or supportive evidence in initiating or evaluating other studies. For example, the octanol/water partition coefficient is used as one of the criteria to determine whether certain fish and wildlife toxicity or accumulation studies must be conducted. Vapor pressure data are needed, among other things, to determine suitable reentry intervals and other label cautions pertaining to worker protection. Data on viscosity and miscibility provide necessary information to support acceptable labeling for tank mix and spray applications.

§ 158.153 Definitions.

The following terms are defined for the purposes of this subpart:

(a) "Active ingredient" means any substance (or group of structurally similar substances, if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a).

(b) "End use product" means a pesticide product whose labeling

(1) Includes directions for use of the product (as distributed or sold, or after combination by the user with other substances) for controlling pests or defoliating, desiccating or regulating growth of plants, and

(2) Does not state that the product may be used to manufacture or formulate other pesticide products.

(c) "Formulation" means

(1) The process of mixing, blending, or dilution of one or more active ingredients with one or more other active or inert ingredients, without an intended chemical reaction, to obtain a manufacturing use product or an end use product, or

(2) The repackaging of any registered product.

(d) "Impurity" means any substance (or group of structurally similar substances if specified by the Agency) in a pesticide product other than an active ingredient or an inert ingredient, including unreacted starting materials, side reaction products, contaminants, and degradation products.

(e) "Impurity associated with an active ingredient" means:

(1) Any impurity present in the technical grade of active ingredient; and

(2) Any impurity which forms in the pesticide product through reactions between the active ingredient and any other component of the product or packaging of the product.

(f) "Inert ingredient" means any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, which is intentionally included in a pesticide product.

(g) "Integrated system" means a process for producing a pesticide product that:

(1) Contains any active ingredient derived from a source that is not an EPA-registered product; or

(2) Contains any active ingredient that was produced or acquired in a manner that does not permit its inspection by the Agency under FIFRA sec. 9(a) prior to its use in the process.

(h) "Manufacturing use product" means any pesticide product other than an end use product. A product may consist of the technical grade of active ingredient only, or may contan inert ingredients, such as stabilizers or solvents.

(i) "Nominal concentration" means the amount of an ingredient which is expected to be present in a typical sample of a pesticide product at the time the product is produced, expressed as a percentage by weight.

(j) "Starting material" means a substance used to synthesize or purify a technical grade of active ingredient (or the practical equivalent of the technical grade ingredient if the technical grade cannot be isolated) by chemical reaction.

(k) "Technical grade of active ingredient" means a material containing an active ingredient:

(1) Which contains no inert ingredient, other than one used for purification of the active ingredient; and

(2) Which is produced on a commercial or pilot-plant production scale (whether or not it is ever held for sale).

§ 158.155 Product composition.

Information on the composition of the pesticide product must be furnished. The information required by paragraphs (a), (b) and (f) of this section must be provided for each product. In addition, if the product is produced by an integrated system, the information on impurities required by paragraphs (c) and (d) must be provided.

(a) *Active ingredient.* The following information is required for each active ingredient in the product:

(1) If the source of any active ingredient in the product is an EPA-registered product:

(i) The chemical and common name (if any) of the active ingredient, as listed on the source product.

(ii) The nominal concentration of the active ingredient in the product, based upon the nominal concentration of active ingredient in the source product.

(iii) Upper and lower certified limits of the active ingredient in the product, in accordance with § 158.175.

(2) If the source of any active ingredient in the product is not an EPA-registered product:

(i) The chemical name according to Chemical Abstracts Society nomenclature, the CAS Registry Number, and any common names.

(ii) The molecular, structural, and empirical formulae, and the molecular weight or weight range.

(iii) The nominal concentration.

(iv) Upper and lower certified limits in accordance with § 158.175.

(v) The purpose of the ingredient in the formulation.

(b) *Inert ingredients.* The following information is required for each inert ingredient (if any) in the product:

(1) The chemical name of the ingredient according to Chemical Abstracts Society nomenclature, the CAS Registry Number, and any common names (if known). If the chemical identity or chemical composition of an ingredient is not known to the applicant because it is proprietary or trade secret information, the applicant must ensure that the supplier or producer of the ingredient submits to the Agency (or has on file with the Agency) information on the identity or chemical composition of the ingredient. Generally, it is not required that an applicant know the identity of each ingredient in a mixture that he uses in his product. However, in certain circumstances, the Agency may require that the applicant know the identity of a specific ingredient in such a mixture. If the Agency requires specific knowledge of an ingredient, it will notify the applicant in writing.

(2) The nominal concentration in the product.

(3) Upper and lower certified limits in accordance with § 158.175.

(4) The purpose of the ingredient in the formulation.

(c) *Impurities of toxicological significance associated with the active ingredient.* For each impurity associated with the active ingredient that is determined to be toxicologically significant, the following information is required:

(1) Identification of the ingredient as an impurity.

(2) The chemical name of the impurity.

(3) The nominal concentration of the impurity in the product.

(4) A certified upper limit, in accordance with § 158.175.

(d) *Other impurities associated with the active ingredient.* For each other impurity associated with an active ingredient that was found to be present in any sample at a level equal to or greater than 0.1 percent by weight of the technical grade active ingredient, the following information is required:

(1) Identification of the ingredient as an impurity.

(2) Chemical name of the impurity.

(3) The nominal concentration of the impurity in the final product.

(e) *Impurities associated with an inert ingredient* [Reserved].

(f) *Ingredients that cannot be characterized.* If the identity of any ingredient or impurity cannot be specified as a discrete chemical substance (such as mixtures that cannot be characterized or isomer mixtures), the applicant must provide sufficient information to enable EPA to identify its source and qualitative composition.

§ 158.160 Description of materials used to produce the product.

The following information must be submitted on the materials used to produce the product:

(a) *Products not produced by an integrated system.*

(1) For each active ingredient that is derived from an EPA-registered product:

(i) The name of the EPA-registered product.

(ii) The EPA registration number of that product.

(2) For each inert ingredient:

(i) Each brand name, trade name, or other commercial designation of the ingredient.

(ii) All information that the applicant knows (or that is reasonably available to him) concerning the composition (and, if requested by the Agency, chemical and physical properties) of the ingredient, including a copy of technical specifications, data sheets, or other documents describing the ingredient.

(iii) If requested by the Agency, the name and address of the producer of the ingredient or, if that information is not known to the applicant, the name and address of the supplier of the ingredient.

(b) *Products produced by an integrated system.* (1) The information required by paragraph (a)(1) of this section concerning each active ingredient that is derived from an EPA-registered product (if any).

(2) The following information concerning each active ingredient that is not derived from an EPA-registered product:

(i) The name and address of the producer of the ingredient (if different from the applicant).

(ii) Information on each starting material used to produce the active ingredient, as follows:

(A) Each brand name, trade name, or other commercial designation of the starting material.

(B) The name and address of the person who produces the starting material or, if that information is not known to the applicant, the name and address of each person who supplies the starting material.

(C) All information that the applicant knows (or that is reasonably available to him) concerning the composition (and if requested by the Agency, chemical or physical properties) of the starting material, including a copy of all technical specifications, data sheets, or other documents describing it.

(3) The information required by paragraph (a)(2) of this section concerning each inert ingredient.

(c) *Additional information.* On a case-by-case basis, the Agency may require additional information on substances used in the production of the product.

§ 158.162 Description of production process.

If the product is produced by an integrated system, the applicant must submit information on the production (reaction) processes used to produce the active ingredients in the product. The applicant must also submit information on the formulation process, in accordance with § 158.165.

(a) Information must be submitted for the current production process for each active ingredient that is not derived from an EPA-registered product. If the production process is not continuous (a single reaction process from starting materials to active ingredient), but is accomplished in stages or by different

producers, the information must be provided for each such production process.

(b) The following information must be provided for each process resulting in a separately isolated substance:

(1) the name and address of the producer who uses the process, if not the same as the applicant.

(2) A general characterization of the process (e.g., whether it is a batch or continuous process).

(3) A flow chart of the chemical equations of each intended reaction occurring at each step of the process, the necessary reaction conditions, and the duration of each step and of the entire process.

(4) The identity of the materials used to produce the product, their relative amounts, and the order in which they are added.

(5) A description of the equipment used that may influence the composition of the substance produced.

(6) A description of the conditions (e.g., temperature, pressure, pH, humidity) that are controlled during each step of the process to affect the composition of the substance produced, and the limits that are maintained.

(7) A description of any purification procedures (including procedures to recover or recycle starting materials, intermediates or the substance produced).

(8) A description of the procedures used to assure consistent composition of the substance produced, e.g., calibration of equipment, sampling regimens, analytical methods, and other quality control methods.

§ 158.165 Description of formulation process.

The applicant must provide information on the formulation process of the product (unless the product consists solely of a technical grade of active ingredient), as required by the following sections:

(a) Section 158.162(b)(2), pertaining to characterization of the process.

(b) Section 158.162(b)(4), pertaining to ingredients used in the process.

(c) Section 158.162(b)(5), pertaining to process equipment.

(d) Section 158.162(b)(6), pertaining to the conditions of the process.

(e) Section 158.162(b)(8), pertaining to quality control measures.

§ 158.167 Discussion of formation of impurities.

The applicant must provide a discussion of the impurities that may be present in the product, and why they may be present. The discussion should be based on established chemical theory and on what the applicant knows about the starting materials, technical grade of active ingredient, inert ingredients, and production or formulation process. If the applicant has reason to believe that an impurity that EPA would consider toxicologically significant may be present, the discussion must include an expanded discussion of the possible formation of the impurity and the amounts at which it might be present. The impurities which must be discussed are the following, as applicable:

(a) *Technical grade active ingredients and products produced by an integrated system.* (1) Each impurity associated with the active ingredient which was found to be present in any analysis of the product conducted by or for the applicant.

(2) Each other impurity which the applicant has reason to believe may be present in his product at any time before use at a level equal to or greater than 0.1 percent (1000 ppm) by weight of the technical grade of the active ingredient, based on what he knows about the following:

(i) The composition (or composition range) of each starting material used to produce his product.

(ii) The impurities which he knows are present (or believes are likely to be present) in the starting materials, and the known or presumed level (or range of levels) of those impurities.

(iii) The intended reactions and side reactions which may occur in the production of the product, and the relative amounts of byproduct impurities produced by such reactions.

(iv) The possible degradation of the ingredients in the product after its production but prior to its use.

(v) Post-production reactions between the ingredients in the product.

(vi) The possible migration of components of packaging materials into the pesticide.

(vii) The possible carryover of contaminants from use of production equipment previously used to produce other products or substances.

(viii) The process control, purification and quality control measures used to produce the product.

(b) *Products not produced by an integrated system.* Each impurity associated with the active ingredient which the applicant has reason to believe may be present in the product at any time before use at a level equal to or greater than 0.1 percent (1000 ppm) by weight of the product based on what he knows about the following:

(1) The possible carryover of impurities present in any registered product which serves as the source of any of the product's active ingredients. The identity and level of impurities in the registered source need not be discussed or quantified unless known to the formulator.

(2) The possible carryover of impurities present in the inert ingredients in the product.

(3) Possible reactions occurring during the formulation of the product between any of its active ingredients, between the active ingredients and inert ingredients, or between the active ingredients and the production equipment.

(4) Post-production reactions between any of the product's active ingredients and any other component of the product or its packaging.

(5) Possible migration of packaging materials into the product.

(6) Possible contaminants resulting from earlier use of equipment to produce other products.

(c) *Expanded discussion.* On a case-by-case basis, the Agency may require an expanded discussion of information of impurities:

(1) From other possible chemical reactions;

(2) Involving other ingredients; or

(3) At additional points in the production or formulation process.

§ 158.170 Preliminary analysis.

(a) If the product is produced by an integrated system, the applicant must provide a preliminary analysis of each technical grade of active ingredient contained in the product to identify all impurities present at 0.1 percent or greater of the TGAI. The preliminary analysis should be conducted at the point in the production process after which no further chemical reactions designed to produce or purify the substance are intended.

(b) Based on the preliminary analysis, a statement of the composition of the technical grade of active ingredient must be provided. If the technical grade of active ingredient cannot be isolated, a statement of the composition of the practical equivalent of the technical grade of active ingredient must be submitted.

§ 158.175 Certified limits.

The applicant must propose certified limits for the ingredients in the product. Certified limits become legally binding limits upon approval of the application. Certified limits will apply to the product from the date of production to date of use, unless the product label bears a statement prohibiting use after a certain date, in which case the certified limits will apply only until that date.

(a) *Ingredients for which certified limits are required.* Certified limits are required on the following ingredients of a pesticide product:

(1) An upper and lower limit for each active ingredient.

(2) An upper and lower limit for each inert ingredient.

(3) If the product is a technical grade of active ingredient or is produced by an integrated system, an upper limit for each impurity of toxicological significance associated with the active ingredient and found to be present in any sample of the product.

(4) On a case-by-case basis, certified limits for other ingredients or impurities as specified by EPA.

(b) *EPA determination of certified limits for active and inert ingredients.* (1) Unless the applicant proposes different limits as provided in paragraph (c) of this section, the upper and lower certified limits for active and inert ingredients will be determined by EPA. EPA will calculate the certified limits on the basis of the nominal concentration of the ingredient in the product, according to the table in paragraph (b)(2) of this section.

(2) Table of standard certified limits.

If the nominal concentration (N) for the ingredient is:	The certified limits for that ingredient will be as follows:	
	Upper limit	Lower limit
N < 1.0%	N + 10%N	N − 10%N
1.0% < N < 20.0%.	N + 5%N	N − 5%N
20.0% < N < 100.0%	N + 3%N	N − 3%N

(c) *Applicant proposed limits.* (1) The applicant may propose a certified limit for an active or inert ingredient that differs from the standard certified limit calculated according to paragraph (b)(2) of this section.

(2) If certified limits are required for impurities, the applicant must propose a certified limit. The standard certified limits may not be used for such substances.

(3) Certified limits should:

(i) Be based on a consideration of the variability of the concentration of the ingredient in the product when good manufacturing practices and normal quality control procedures are used.

(ii) Allow for all sources of variability likely to be encountered in the production process.

(iii) Take into account the stability of the ingredient in the product and the possible formation of impurities between production and sale of distribution.

(4) The applicant may include an explanation of the basis of his proposed certified limits, including how the certified limits were arrived at (e.g., sample analysis, quantitative estimate based on production process), and its accuracy and precision. This will be particularly useful if the range of the certified limit for an active or inert ingredient is greater than the standard certified limits.

(d) *Special cases.* If the Agency finds unacceptable any certified limit (either standard or applicant-proposed), the Agency will inform the applicant of its determination and will provide supporting reasons. EPA may also recommend alternative limits to the applicant. The Agency may require, on a case-by-case basis, any or all of the following:

(1) More precise limits.

(2) More thorough explanation of how the certified limits were determined.

(3) A narrower range between the upper and lower certified limits than that proposed.

(e) *Certification statement.* The applicant must certify the accuracy of the information presented, and that the certified limits of the ingredients will be maintained. The following statement, signed by the authorized representative of the company, is acceptable:

I hereby certify that, for purposes of FIFRA sec. 12(a)(1)(C), the description of the composition of [*product name*], EPA Reg. No. [*insert registration number*], refers to the composition set forth on the Statement of Formula and supporting materials. This description includes the representations that: (1) no ingredient will be present in the product in an amount greater than the upper certified limit or in an amount less than the lower certified limit (if required) specified for that ingredient in a currently approved Statement of Formula (or as calculated by the Agency); and (2) if the Agency requires that the source of supply of an ingredient be specified, that all quantities of such ingredient will be obtained from the source specified in the Statement of Formula.

§ 158.180 Enforcement analytical method.

An analytical method suitable for enforcement purposes must be provided for each active ingredient in the product and for each other ingredient or impurity that is determined to be toxicologically significant.

§ 158.190 Physical and chemical characteristics.

(a) *Table.* Sections 158.50 and 158.100 through 158.102 describe how to use this table to determine the physical and chemical characteristics data requirements and the substance to be tested.

Kind of data required	(b) Notes	All general use patterns (requirements are the same for every use pattern)	Test substance		Guidelines reference No.
			Data to support MP	Data to support EP	
Color		[R]	MP and TGAI	EP* and TGAI	63-2
Physical state		[R]	MP and TGAI	EP* and TGAI	63-3
Odor		[R]	MP and TGAI	EP* and TGAI	63-4
Melting point	(1)	[R]	TGAI	TGAI	63-5
Boiling point	(2)	[R]	TGAI	TGAI	63-6
Density, bulk density, or specific gravity		[R]	MP and TGAI	EP* and TGAI	63-7
Solubility		[R]	TGAI or PAI	TGAI or PAI	63-8
Vapor pressure		[R]	TGAI or PAI	TGAI or PAI	63-9
Dissociation constant		[R]	TGAI or PAI	TGAI or PAI	63-10
Octanol/water partition coefficient	(3)	[CR]	PAI	PAI	63-11
pH	(4)	[CR]	MP and TGAI	EP* and TGAI	63-12
Stability		[R]	TGAI	TGAI	63-13
Oxidizing or reducing action	(5)	[CR]			
Flammability	(6)	[CR]	MP	EP*	63-15
Explodability	(7)	[R]	MP	EP*	63-16
Storage stability		[R]	MP	EP*	63-17
Viscosity	(8)	[CR]	MP	EP*	63-18
Miscibility	(9)	[CR]	MP	EP*	63-19
Corrosion characteristics		[R]	MP	EP*	63-20

Kind of data required	(b) Notes	All general use patterns (requirements are the same for every use pattern)	Test substance		Guidelines reference No.
			Data to support MP	Data to support EP	
Dielectric breakdown voltage	(10)	[CR]		EP*	63-21
Other requirements: Submittal of samples	(11)	[CR]	MP, TGAI, PAI	EP*, TGAI, PAI	64-1

Key: R = Required; CR = Conditionally Required; [ ] = Brackets (i.e. [R],[CR]) indicate data requirements that apply when an experimental use permit is being sought; MP = Manufacturing Use Product, EP* = End Use Product; asterisk indicates those registrants that end-use applicants (i.e. formulators) need not satisfy, if their active ingredient(s) is (are) purchased from a registered source; TGAI = Technical Grade of the Active Ingredient; PAI = Pure Active Ingredient.

(b) Notes.—The following notes are referenced in column two of the table contained in paragraph (a) of this section.

(1) Required if technical chemical is a solid at room temperature.
(2) Required if technical chemical is a liquid at room temparature.
(3) Required if technical chemical is organic and non-polar.
(4) Required if test substance is dispersible with water.
(5) Required if product contains an oxidizing or reducing agent.
(6) Required if product contains combustible liquids.
(7) Required if product is potentially explosive.
(8) Required if product is a liquid.
(9) Required if product is a emulsifiable liquid and is to be diluted with petroleum solvents.
(10) Required if end-use product is a liquid and is to be used around electrical equipment.
(11) Basic manufacturers are required to provide the Agency with a sample of each TGAI used to formulate a product produced by an integrated system when the new TGAI is first used as a formulating ingredient in products registered under FIFRA. A sample of the active ingredient (PAI) suitable for use as an analytical standard is also required at this time. Samples of end use products produced by an integrated system must be submitted on a case-by-case basis.

(Approved by the Office of Management and Budget under control numbers 2070-0057 and 2070-0060.)

10. By adding Subpart D, Data Requirement Tables, consisting of §§ 158.105, 158.125, 158.130, 158.135, 158.140, 158.142, 158.145, 158.150, 158.155, 158.160, 158.165, and 158.170, which are transferred from Subpart B and redesignated as §§ 158.202, 158.240, 158.290, 158.340, 158.390, 158.440, 158.490, 158.540, 158.590, 158.640, 158.690, and 158.740, respectively, under new Subpart D. The Table of Contents for Subpart D reads as follows:

Subpart D—Data Requirement Tables

Sec.
158.202 Purposes of the registration data requirements.
158.240 Residue chemistry date requirements.
158.290 Environmental fate data requirements.
158.340 Toxicology data requirements.
158.390 Reentry protection data requirements.
158.440 Spray drift data requirements.
158.490 Wildlife and aquatic organisms data requirements.
158.540 Plant protection data requirements.
158.590 Nontarget insect data requirements.
158.640 Product performance data requirements.
158.690 Biochemical pesticides data requirements.
158.740 Microbial pesticides—Product analysis data requirements.

PART 162—STATE REGISTRATION OF PESTICIDE PRODUCTS

V. In Part 162:

1. The Part heading is revised to read as set forth above.

2. The authority citation for Part 162 is revised to read as follows:

Authority: 7 U.S.C. 136v, 136w.

Subparts A and E [Removed and Reserved]

3. By removing and reserving Subparts A and E, consisting of §§ 162.1 through 162.60 and 162.160 through 162.177.

[FR Doc. 88-9747 Filed 5-3-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 153, 156, 158, 162 and 163

[OPP-36132; FRL-3266-9a]

Cross References; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical Amendments.

SUMMARY: This document revises cross references in 40 CFR Parts 153, 156, 158, 162, and 163 to reflect changes made by the promulgation of final rules revising Parts 152, 153, 158, and 162, as published elsewhere in today's **Federal Register.** This regulation is a technical amendment which requires no opportunity for comment or public participation.

EFFECTIVE DATE: This rule will become effective after 60 days of continuous congressional session from the date of promulgation as provided in section 25(a)(4) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). After that period has elapsed, the Agency will issue for publication in the **Federal Register** a notice announcing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 1114B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0944).

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Parts 153, 156, 158, 162, and 163

Administrative practice and procedure, Data requirements, Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: April 12, 1988.

Lee M. Thomas,

Administrator.

Therefore, Title 40, Chapter I, Subchapter E, is amended as follows:

PART 153—[AMENDED]

I. In Part 153:

1. The authority citation for Part 153 continues to read as follows:

Authority: 7 U.S.C. 136-126y.

§ 153.62 [Amended]

2. In § 153.62(a), the reference to "Part 162" is revised to read "Part 152."

§ 153.69 [Amended]

3. In § 153.69(c)(2), the reference to "§ 162.11 of this chapter" is revised to read "Part 154 of this chapter."

§ 153.72 [Amended]

4. In § 153.72(a)(1), the reference to "§ 162.163(b)(2)" is revised to read "§ 158.640."

§ 153.76 [Amended]

5. In § 153.76(a)(2)(iii), the reference to "§ 162.163(a)(2)" is revised to read "§ 158.640."

PART 156—[AMENDED]

II. In Part 156:

1. The authority citation for Part 156 continues to read as folows:

Authority: 7 U.S.C. 136–136y.

§ 156.10 [Amended]

2. In § 156.10:

a. In the introductory text of paragraph (a)(5), the reference to "§ 162.15" is revised to read "§ 153.240."

b. In paragraph (b)(2)(ii), the reference to "§ 162.6(b)(4)" is revised to read "§ 152.132."

c. In paragraph (i)(2)(i), the reference to "§ 162.10(j)" is revised to read "paragraph (j) of this section."

d. In the introductory text of paragraph (j), the reference to "§ 162.10(j)(2)" is revised to read "paragraph (j)(2) of this section."

e. In paragraph (j)(2)(i), the reference to "§ 162.10(h)(1)(iv) is revised to read "paragraph (h)(1)(iv) of this section."

PART 158—[AMENDED]

III. In Part 158:

1. The authority citation for Part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

§ 158.25 [Amended]

2. In § 158.25(a), the reference to "§§ 158.120 through 158.170" is revised to read "Subparts C and D of this part."

§ 158.30 [Amended]

3. In § 158.30(b):

a. In the introductory text, the reference to "40 CFR 162.7 (d) and (e)" is revised to read "§ 152.111 of this chapter."

b. In paragraph (b)(3)(i), the reference to "§ 158.120" is revised to read "Subpart C of this part."

c. In paragraph (b)(4)(i), the reference to "§ 158.120" is revised to read "Subpart C of this part."

§ 158.35 [Amended]

4. In § 158.35(c), the reference to "§§ 158.108, 158.110, 159.112 and 158.120 through 158.170" is revised to read "Subparts C and D of this part."

§ 158.50 [Amended]

5. In § 158.50:

a. In paragraph (c), the reference to "158.120 through 158.170" is revised to read "Subparts C and D of this part."

b. In paragraph (d), the reference to "§158.120 through 158.170" is revised to read "Subparts C and D of this part."

§ 158.55 [Amended]

6. In § 158.55, the parenthetic phrase "(§§ 158.120 through 157.170)" is removed.

§ 158.65 [Amended]

7. In § 158.65(b)(3), the reference to "40 CFR 162.5(c)" is revised to read "§ 152.20(a) of this chapter."

§ 158.75 [Amended]

8. In § 158.75(b), the reference to "§§ 158.120 through 158.165" is revised to read "Subparts C and D of this part."

§ 158.102 [Amended]

9. In § 158.102(a), the words "under §§ 158.120 through 158.170)" are removed.

§ 158.240 [Amended]

10. In § 158.240(b)(1), the reference to "§ 158.120" is revised to read "Subpart C of this part."

§ 158.340 [Amended]

11. In § 158.340, in the introductory text of paragraph (b)(22)(i), the reference to "§ 158.105" is revised to read "§ 158.202."

PART 162—[AMENDED]

IV. In Part 162:

1. The authority citation for Part 162 continues to read as follows:

Authority: 7 U.S.C. 136v, 136w.

§ 162.150 [Amended]

2. In § 162.150(b), the reference to "§ 162.17" is revised to read "§ 152.230 of this chapter."

§ 162.151 [Amended]

3. In § 162.151(h), the reference to "§ 162.10(h)" is revised to read "§ 156.10(h) of this chapter."

§ 162.153 [Amended]

4. In § 162.153:

a. In paragraph (e)(2), the reference to "§ 162.10" is revised to read "§ 156.10 of this chapter."

b. In § 162.153(e)(3)(ii), the reference to "§ 162.10(i)" is revised to read "§ 156.10(i) of this chapter."

c. In § 162.153(f), the reference to "§ 162.13" is revised to read "Subpart H of Part 153 of this chapter."

d. In § 162.153(g)(1)(ii), the reference to "§ 162.11(c) (1) through (4)" is revised to read "§ 152.170 of this chapter."

PART 163—[AMENDED]

V. In Part 163:

1. The authority citation for Part 163 continues to read as follows:

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

§ 163.2 [Amended]

2. In § 163.2(e), the reference to "(Part 162 of this chapter)" is removed.

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Wednesday
May 4, 1988

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Emergency Interim Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) issues an emergency interim rule to establish fishery management measures for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California for 1988. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among non-Indian commercial and recreational and treaty Indian fisheries. The regulations also are calculated to allow a portion of the salmon runs to escape the ocean fisheries to provide for Indian and non-Indian inside fisheries and spawning. Most of the management measures comport with the regulations implementing the 1984 framework amendment to the Fishery Management Plan for Ocean Salmon Fisheries off the Coast of Washington, Oregon, and California. Several deviations from the framework regulations also are included, necessitating implementation by an emergency interim rule.

EFFECTIVE DATES: These 1988 management measures are effective from 0001 hours Pacific Daylight Time (PDT), May 1, 1988, until 2400 hours PDT, July 29, 1988. Comments will be accepted until May 15, 1988.

ADDRESSES: Comments on the 1988 management measures, including those being implemented under 50 CFR Part 661 and those being implemented under emergency authority of section 305(e) of the Magnuson Fishery Conservation and Management Act, may be submitted to Rolland A. Schmitten, Director, Northwest Region (Northwest Director), National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731-7415.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150; E. Charles Fullerton, 213-514-6196; or the Pacific Fishery Management Council, 503-221-6352.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a "framework" Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP) (49 FR 43679; October 31, 1984). The FMP was prepared by the Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce as provided by the Magnuson Act. Regulations at 50 CFR Part 661 provide the mechanism for making preseason and in-season adjustments to management measures, within limits set by the FMP, by notice in the **Federal Register**.

The majority of 1987 management measures (52 FR 17264, May 6, 1987), which were implemented under the framework FMP, remain in effect until modified, superseded, or rescinded by the 1988 management measures.

This emergency interim rule implements management measures for 1988 ocean salmon fisheries which were recommended and adopted by the Council at its April 4-8 meeting. Most management measures in this rule comport with the framework regulations implementing the FMP. Deviations from the framework and implementing regulations, recommended by the Council and requiring implementation through use of the emergency rulemaking authority of section 305(e) of the Magnuson Act, are also included. This emergency interim rule will remain in effect for 90 days and may be extended for a second 90-day period.

Schedule Used to Establish 1988 Management Measures

The annual regulatory process concerning the Council's formulation and adoption of season management measures and their promulgation as Federal rules is established by framework regulations implementing the FMP. In accordance with the season setting procedures of the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1987 Ocean Salmon Fisheries," summarizes the 1987 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1987. The second report, "Preseason Report I: Stock Abundance Analysis for 1988 Ocean Salmon Fisheries," provides the 1988 salmon stock status projections and analyzes the impacts on the stocks and Council management goals under 1987 regulations or regulatory procedures.

The Council met on March 8-11, 1988, in Seattle, Washington, to develop proposed management options for 1988. Four commercial and recreational fishery management options were proposed for further analysis and public comment. These options presented various combinations of management measures designed to protect weak stocks and provide for ocean harvests of more abundant stocks of coho and chinook salmon. After the March Council meeting, the STT and staff economist prepared a third report, "Preseason Report II: Analysis of Proposed Regulatory Options for 1988 Ocean Salmon Fisheries," which analyzes the effects of the proposed 1988 management options. This report also was distributed to the Council, its advisors, and the public.

Public hearings on the proposed options were held from March 29 to April 4, 1988, in Seattle, Washington, Coos Bay and Astoria, Oregon, and Millbrae and Eureka, California.

The Council met on April 5-8, 1988, in Millbrae, to adopt its final 1988 recommendations. Following the April Council meeting, the STT and staff economist prepared a fourth report, "Preseason Report III: 1988 Ocean Salmon Fisheries, Analysis of Impacts of Council Adopted 1988 Regulations," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report includes an environmental assessment and a coastal zone consistency determination, and was distributed to the Council, its advisors, and the public.

Resource Status

Some salmon runs returning to Washington, Oregon, and California streams in 1988 are expected to be larger than in recent years. They include a predicted return of 450,700 upper Columbia River bright fall chinook adults destined for areas above Bonneville Dam, the largest run in recent history, and the predicted abundance of Oregon Production Index (OPI) coho salmon destined for coastal and Columbia River public hatcheries south of Leadbetter Point, Washington, which at 1,590,600 fish is 281 percent of the 1987 prediction of 565,400 fish.

Primary resource concerns are for Klamath River fall, and Columbia River spring and summer chinook salmon, and some Washington coastal and Puget Sound natural coho salamon. Management of all these stocks is impacted by interjurisdictional agreements among Tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

Abundance of California Central Valley chinook stocks is expected to be less than that of recent years (1988: 707,100 chinook; 1987: 812,600 chinook). However, Sacramento River fall-run chinook, which comprise the majority of Central Valley salmon, are healthy. Spawning escapement for Sacramento fall chinook is predicted to be above the 122,000–180,000 goal range in 1988.

Escapements of upper Sacramento winter-run chinook have dwindled from over 100,000 fish in the late 1960s to above 2,000 adult fish in recent years. This depressed run is only slightly impacted by ocean fisheries as they currently are configured, and that impact is primarily on two-year-old fish in the recreational fishery. This run was considered by NMFS for listing as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, in 1987. At that time, NMFS determined that its proposed listing as endangered or threatened was not warranted because State and Federal fishery management agencies were addressing the habitat problems that contributed to its decline (52 FR 6041, February 27, 1987).

Klamath River fall chinook salmon is the primary management concern in the area from Oxford Reef Red Buoy off southern Oregon to Horse Mountain off northern California, the so-called "Klamath River management zone." The estimated total ocean population of Klamath River fall chinook in 1988 is 334,500 fish, considerably lower than the 1987 postseason abundance estimate of 615,600 fish. Ocean escapement to the Klamath River in 1987 totaled 199,000 adult fish, over twice the framework FMP ocean escapement goal of 82,700 adult fall chinook. The projected ocean escapement to the Klamath River in 1988 is about 132,000 fish.

Oregon coastal chinook stocks are expected to be above average in abundance in 1988. The south-migrating and localized components of these stocks are important contributors to ocean fisheries off Oregon and northern California, while the north-migrating component primarily contributes to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook escapement goal of 150,000 to 200,000 naturally spawning adults will continue to be met or exceeded.

Estimates of Columbia River chinook abundance vary by stock as follows:

(1) Numbers of upriver spring chinook predicted to return to the river in 1988 (75,200 fish) are below the 1987 return (99,800 fish), but nearly 33 percent greater than the 1979–84 average (56,600 fish). The 1988 stock status is extremely depressed, and ocean escapement will be substantially below the goal of 100,000 to 120,000 adults counted at Bonneville Dam. Upriver spring chinook are affected only slightly by ocean harvests off Washington and Oregon.

(2) The expectation for ocean escapement of upper Columbia River summer chinook salmon in 1988 is about 33,000 fish, the same as in 1987. In-river abundance of upper Columbia River summer chinook, which are primarily of natural spawning origin, steadily declined over the period 1979–1983. Although the 1987 in-river run size was the largest since 1978, the stock's status remains extremely depressed, with ocean escapement levels being about 59 percent below the goal of 80,000 to 90,000 adults counted at Bonneville Dam.

(3) Lower river spring chinook (Willamette) returns are expected to be better than in 1987 (1988: 97,000 fish; 1987: 93,800 fish).

(4) The upriver bright fall chinook run is in excellent condition, with about 446,500 fish forecasted to return to the river. The in-river return of this stock in 1987, 421,000 fish, also was excellent, the largest since 1971. The escapement goal for upriver bright chinook is 40,000 fish above McNary Dam.

(5) Spring Creek hatchery fall chinook abundance continues to be a concern. The projection for a return to the Columbia River of only 5,900 Spring Creek hatchery fall chinook in 1988 is a record low.

(6) Lower river hatchery fall chinook stocks are healthy, with ocean escapement forecasted at 246,500 adults, more than twice the average level for the 1981–1985 period (107,700 fish). Over 42,000 lower river wild fall chinook are predicted to return to the river in 1988, compared with 37,000 fish in 1987.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly be ocean harvests south of the U.S.-Canada border.

Coho Salmon Stocks

The Oregon Production Index (OPI) is an annual index of coho abundance from Leadbetter, Point, Washington, south through California. Oregon coastal and Columbia River coho stocks are the primary components of the OPI. In 1988, the Council approved methodologies for predicting OPI area coho salmon stock abundance which partitioned coho stocks into three groups: private hatchery, public hatchery, and Oregon coastal natural. Prediction methodologies for each group are described below:

Private Hatchery. Private hatchery coho adults were predicted by multiplying the number of smolts released in 1987 by the estimated survival rate of these smolts. Smolts were grouped by stock type based on expected differences in ocean catch distribution and contribution to the fishery. Survival estimates were scaled from the previous year survival rate based on (1) the ratio of change in OPI public hatchery jack returns adjusted for smolt releases, and (2) the ratio of change in ocean upwelling during the period smolts were released.

Public Hatchery. The OPI area public hatchery stocks include fish from all public hatcheries on the Columbia River, the Oregon coast, and the Klamath River. Data years used were adult years 1971 to 1987, except for 1983. Adult abundance was predicted in a multiple linear regression with three independent variables: (1) Previous year jack counts in th Columbia River, corrected for overestimates due to small adults in recent years, (2) previous year jack counts from the Oregon coast and the Klamath River, again corrected for small adults, and (3) previous year Columbia River jack counts times the proportion of smolts released in the Columbia River, which were released after May 19.

This adjusts for the reduced maturation rate and increased survival rate observed for these smolt releases.

Oregon Coastal Natural (OCN) Coho Salmon. Predicted OCN stocks comprise lake and river stocks. Lake stocks (less than five percent of the total OCN) were predicted as the average of the preceding three years. River stocks are predicted based on a Ricker spawner-recruit relationship plus a survival factor. The survival factor is the ratio of public hatchery jacks to smolts in the previous year.

The methodologies to estimate OPI abundance, including the abundance of OCN coho, were reviewed by the Council's Scientific and Statistical Committee, and were determined by the Council to be based on the best scientific information and methodology available in accordance with the seventh amendment to the FMP (52 FR 4146, February 10, 1987).

The preseason estimate of OPI abundance in 1988 is 2,373,800 coho salmon, nearly 188 percent of the postseason estimate of OPI abundance in 1987 (1,260,000 coho salmon).

The 1988 estimate includes 480,300 OCN coho salmon, a slight increase over the 1987 predicted abundance level (476,000). In 1987, the FMP was amended

to, among other things, provide a formula for annual alteration of the escapement goal for ONC coho salmon based on stock abundance (52 FR 4146). Based on the new formula, the annual escapment goal in 1987 and 1988 is 200,000 OCN coho salmon. The goal was not achieved in 1987, but it is anticipated that it will be achieved in 1988.

Ocean escapement is expected to be below framework FMP escapement ranges or goals for several Washington coastal and Puget Sound natural coho stocks in 1988. These include natural coho stocks from the Queets River, Grays Harbor, and Hood Canal. Several other Washington coastal and Puget Sound natural coho stocks, such as those returning to the Hoh River, will not meet spawning escapement goals after inside fisheries take place. These stocks have been severely impacted by Canadian coho catches off the west coast of Vancouver Island, which have increased greatly in recent years. Federal, State, and tribal managers negotiated revised 1988 escapement goals for these stocks based on the predicted very low stock abundance and socio-economic concerns of treaty-Indian and non-Indian fishermen.

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. Consequently, pink salmon runs are not of management concern in 1988.

Emergency Actions

Facing critical resource conservation and socioeconomic problems in coastal salmon fisheries and communities, the Council recommended, at its April meeting, 1988 annual management measures, some of which require deviation from the framework FMP and its implementing regulations. The Council determined these deviations to be necessary to address these identified problems this season and therefore requested that the Secretary implement the 1988 management measures through the emergency authority of section 305(e) of the Magnuson Act. The Council's request for emergency changes to the FMP is based upon the following:

(1) The 1988 annual management measures, including the emergency changes, represent several complicated and negotiated compromises among numerous user groups. The compromises are intended to protect, to the extent possible, the weakest salmon runs, to provide the greatest opportunity for users to harvest the more abundant stocks, and to alleviate depressed economic conditions in the salmon fishing industry and its dependent communities;

(2) There was insufficient time to amend the FMP through the formal Magnuson Act procedure between February, when biological data on the abundance of coastal salmon runs became available to the Council, and the first of May, when the major commercial fishing seasons begin;

(3) Given the very low levels of allowable coho harvest in 1988 north of Cape Falcon and the depressed economic conditions of coastal communities, it is imperative that the 1988 management measures allow managers to make preseason and inseason adjustments to ensure that all available coho and chinook quotas are harvested and that the season not end with unused quotas as has occurred in recent years;

(4) Unless amended by this emergency rule, the current provisions of the framework FMP would deny southern Oregon commercial fishermen an equitable opportunity to harvest coho salmon; and

(5) The emergency action to change the Klamath River fall chinook escapement goal will accommodate, as much as possible, the recent agreement among users of Klamath River fall run chinook, which was signed by members of the Klamath Fishery Management Council. The agreement provides for a sharing of harvests between ocean and inside fisheries, and adequate escapement of chinook for spawning.

The specific changes in the framework FMP and regulations requiring implementation through use of the emergency authority of the Magnuson Act are described below:

I. Allocation of Coho and Chinook Salmon North of Cape Falcon, Oregon

Based upon a request by the Council, NOAA issued a proposed rule (53 FR 8234, March 14, 1988) to alter the schedule in the FMP in 1988 for allocating coho and chinook salmon between non-Indian ocean fisheries north of Cape Falcon, Oregon. The Council's request was denied by the Secretary of Commerce on March 29, 1988. Notification of withdrawal of that proposed rule will be issued by NOAA. Among the reasons stated by NOAA for denying the rule was that, based upon the Council's economic analysis, it appeared that economic losses would have occurred during 1988. The negative economic returns would have resulted from the proposed allocation schedule and the predicted extremely low abundance of coho and chinook salmon in the area.

When the total allowable ocean harvest of coho salmon (100,000 fish) North of Cape Falcon was adopted by the Council at its April 5–8 meeting, it became evident that the quantity of coho (34,000 fish) allocated to the commercial fishery under the framework FMP was too small to be fully harvested without leaving some of the coho quota uncaught. Thus, the Council adopted an agreement reached between commercial and recreational representatives to trade the 34,000 commercial coho on a 4:1 basis for 8,500 recreational chinook. In addition, the Council adopted a provision to reallocate any unharvested commercial chinook to the recreational fishery at the end of the season. Both groups perceived benefits from the swap that would maximize the value of both fisheries for 1988. However, the proposed species substitution represents 34 percent of the total coho allocations whereas the framework FMP limits such swaps only to 25 percent of the allocation.

The deviations from the framework regulations north of Cape Falcon will allow commercial fishermen a larger share of chinook salmon, which is the more commercially valuable species. In exchange, the increased share of coho salmon and any reallocated chinook not harvested during the commercial season will extend the recreational season. The net economic benefit of these deviations from the framework regulations is estimated to be from $223,000 to $428,000.

2. Commercial Coho Fishery North of Oregon-California Border in June

Current framework regulations prohibit commercial fishing for coho salmon north of the California-Oregon border prior to July 1. However, the Council adopted an all-species commercial season beginning June 5 in the Klamath River management zone (KMZ) which includes the Southern Oregon Coast south of Humbug Mountain. This season was designed to harvest the allowable ocean catch of Klamath River fall chinook and other chinook stocks in the KMZ. Because it is expected that the chinook quota in the zone will be taken by the end of June, the fishery is scheduled to be closed for the first two weeks of July to limit any further impacts on Klamath River Fall chinook. After mid-July most coho have left the southern Oregon area and are no longer available. Thus, the only opportunity for southern Oregon fishermen to harvest coho salmon is during the June all-species fishery.

A deviation from the framework regulations to implement a June all-

species fishery in the Zone, both north and south of the state boundary, will provide an opportunity for southern Oregon fishermen to harvest a fair share of the available coho salmon. The consistent all-species opening throughout the Zone also will help to prevent an effort shift to California in June.

3. Klamath River Fall Chinook Escapement

The framework escapement goal for Klamath River fall chinook is to achieve an average annual ocean escapement of 82,700 chinook to the mouth of the Klamath River during the 1987–1990 stock rebuilding period established under the framework FMP. In 1987, the first year of the 1987–1990 four-year period, 199,000 adult fall chinook entered the river. An average of only 43,900 adult fish would be needed in the next three years of this period to average 82,700 fish ocean escapement and thus meet the framework goal. Nevertheless, the 1988 preseason package includes ocean management measures that are anticipated to result in 132,000 fall chinook returning to the mouth of the River.

This deviation from the framework FMP's escapement goal is justified because the FMP anticipated that the escapement goal would have to be changed as in-river harvest allocations were agreed upon, and noted in the FMP that when such an agreement was reached, the escapement goal would be modified by FMP amendment.

In late 1987, the Klamath Fishery Management Council (Klamath Council), consisting of harvesters and managers of Klamath River chinook, agreed upon allocations of the fall chinook run for ocean and in-river fisheries and for spawning escapement. The Klamath Council was established under 16 U.S.C. 460 to, among other things, provide recommendations on ocean harvesting regulations to the Pacific Fishery Management Council [section 3(b)(1)(B)(iii)]. The 1987 agreement was signed by representatives of Federal, State, and Tribal entities and commercial and recreational representatives. That same year, the Indian people of the Klamath River were allowed to conduct a commercial gillnet harvest under Bureau of Indian Affairs supervision in the lower river (52 FR 27329, July 21, 1987) for the first year since California banned commercial gillnetting in 1933. The Indian net catch on the river was estimated to be 53,100 chinook salmon. The in-river sport fishery was estimated to take an additional 16,500 chinook in 1987, for a total in-river harvest of 69,600 chinook salmon. An estimated 129,300 chinook escaped ocean and in-river fisheries to spawn in 1987.

If applied in 1988, the 1987 agreement, the so-called "Harvest Sharing Agreement," would result in an in-river harvest of 67,300 chinook (down from 1987) and a spawning escapement of 85,300 adult fall chinook, including both hatchery and natural spawners. Together these would require an escapement from the ocean to the river of approximately 153,000 chinook in 1988, nearly 21,000 more chinook than are expected to escape the ocean fisheries under these Pacific Council's recommended regulations for 1988.

On the other hand, if the in-river run size were limited to either the average goal in the Council's framework FMP for this period (82,700 chinook) or the average required for the next three years of the period (43,900 chinook), there would be insufficient chinook left for in-river fisheries and spawning escapement. The likely result would be an extremely low spawning escapement and the failure to meet even the hatchery goals.

When developing the framework FMP escapement goal for Klamath chinook, the Council realized that the escapement averages contained in its framework FMP might have to be modified upward to reflect agreements on in-river harvest sharing and spawning. However, at its April meeting, the Pacific Council considered that ocean troll fishing off California and Oregon would have to suffer too great an economic loss to achieve the 153,000 chinook escapement figure of the Klamath Council for 1988. Consequently, to ease the 1988 economic impacts on the ocean fisheries and coastal communities, the Pacific Council adopted a fishing regime that will result in an ocean escapement of 132,000 Klamath River fall run chinook, some 21,000 fewer fish than the 153,000 recommended by the Klamath Council. Ocean quotas for 1988 are based on this compromise. These recommendations will provide increased economic return to the ocean fishery above what it would have experienced had the Klamath Council's escapement recommendation been followed. At the same time, the recommendations of the Klamath Council for in-river harvests and threshold spawning escapements can come close to being realized.

The Council has begun the process of amending its framework FMP to address the Klamath River Council's fall chinook escapement goal. Other aspects of that FMP amendment have delayed its implementation until at least 1989.

For these reasons, the Council adopted 1988 ocean management measures, which are expected to provide 132,000 Klamath River fall chinook to the mouth of the river.

4. Definition of "Land or Landing"

The definition of "land or landing" in the framework regulations is as follows:

Land or *landing* means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

The Council was told by its enforcement consultants that the current definition is confusing, and it is difficult to determine when a fishermen intends to offload. The revised definition which follows is intended to eliminate this confusion, and to bring the salmon regulations into conformity with the definition of "landing" regulations implementing other Council management plans.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are considered part of the landing.

Management Measures for 1988

The following tables and text are the management measures recommended by the Council for 1988. Specific measures vary by fishery and area. Together they establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nautical miles) off Washington, Oregon, and California. The Secretary concurs with these recommendations and finds them responsive to the goals of the FMP, the requirements of the resource, and the socio-economic conditions affected by ocean fisheries. The recommendations are consistent with the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law including United States obligations to Indian tribes with treaty-secured fishing rights.

The Northwest Regional Director will monitor salmon catches in the territorial sea (0–3 miles) seaward of Washington, Oregon, and California. If the Regional Director determines that salmon catches have occurred in the territorial sea or a portion thereof, which were not accounted for when the Federal quotas and seasons were established and which may cause the Federal quotas or the anticipated catch during the Federal seasons to be exceeded, he may reduce the Federal quotas or shorten the Federal seasons accordingly by publishing a **Federal Register** notice

pursuant to 661.21(b) and Appendix III.B. of the framework regulations.

The following management measures are adopted for 1988 under Part 661.

Table 1. Commercial management measures for the 1988 ocean salmon fishery:

U.S.-Canada Border to Cape Falcon

1. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-Off
Chinook	28.0 inches	21.5 inches.
Coho	16.0 inches	12.0 inches.

Chinook salmon less than 28 inches (21.5 inches head-off) may not be landed north of Cape Falcon, except that chinook salmon not less than 26 inches (19.5 inches head-off) taken south of Cape Falcon may be landed north of Cape Falcon at times when the season is closed north of Cape Falcon and open south of Cape Falcon.

2. Single point, single shank barbless hooks are required.

3. The non-Indian ocean fisheries north of Cape Falcon (recreational and troll) will be managed not to exceed either (a) an overall 103,500 chinook quota, or (b) impact on critical Washington, coastal and Puget Sound natural coho stocks equivalent to the overall preseason coho quota of 100,000 fish.

4. Conservation Zone 1, which is the ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty, is closed.

5. Two commercial all-except-coho seasons have been set for the area north of Cape Falcon. The first season, which begins May 1, has a 55,300 chinook quota. The second season, which begins June 1, has an 18,400 chinook quota. Any over- or under-harvest during the May season will be deducted from or added to the June quota as necessary to achieve the overall 73,700 chinook quota. If, following the closure of the June season, it is discovered that the actual catch was overestimated and the season was closed prematurely, the fishery will be reopened if the shortfall is sufficient to allow at least one full day's fishing (24 hours) in the entire area north of Cape Falcon, based on the best information available concerning expected catch and effort, and if the unused portion of the quota can be taken before June 15. Any chinook remaining unharvested at the end of the commercial season will be reallocated to the recreational chinook quota north of Cape Falcon.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
U.S.-CANADA BORDER to CAPE FALCON:				
May 1 thru earlier of May 31 or chinook quota	All except coho	55.3		Conservation Zone 1 (Columbia River mouth) is closed.
June 1 thru earlier of June 15 or chinook quota	All except coho	18.4		Conservation Zone 1 (Columbia River mouth) is closed.

Cape Falcon to Orford Reef Red Buoy

1. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-except-coho fisheries in state waters.

2. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches.
Coho	16.0 inches	12.0 inches.

Chinook salmon less than 28 inches (21.5 inches head-off) may not be landed north of Cape Falcon, except that chinook salmon not less than 26 inches (19.5 inches head-off) and taken south of Cape Falcon may be landed north of Cape Falcon at times when the season is closed north of Cape Falcon and open south of Cape Falcon.

3. Single point, single shank barbless hooks are required.

4. During all closures of three days or less duration, except for the 12-hour period following closure, no vessel can be underway at sea inside a closed area with salmon on board unless there has been a notification to an acknowledgement from the U.S. Coast Guard through the nearest Coast Guard station. In those areas closed to salmon for three days or less, it is unlawful for a vessel, which has been issued an ocean salmon permit by any State, to have troll gear in the water.

5. The commercial fishery from Cape Falcon to the U.S.-Mexico border will be managed not to exceed an impact (hooking mortality and landings) limitation of 684,700 coho salmon. There is an impact limitation of 153,900 coho salmon from Florence South Jetty to Orford Reef Red Buoy.

6. On or about August 1, the Council's Salmon Technical Team (STT) will estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon. Any coho salmon allocated to the recreational fishery, which are not needed to complete the recreational seasons, will be reallocated to the commercial fishery.

7. When the STT estimates that 85 percent of the coho quota for the area south of Cape Falcon has been reached, the area fom Cape Falcon to Horse Mountain will close to all ocean commercial salmon fishing for three days to assess landings and project the remaining all-species fishing period. During this closure, all vessels must arrive in port with intent to land their fish within 12 hours of the closure. If the STT determines that additional coho may be harvested the season will be reopened in accordance with framework inseason management procedures.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
CAPE FALCON to ORFORD REEF RED BUOY:				
May 1 thru June 30	All except coho	None		None.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
CAPE FALCON to CASCADE HEAD:				
July 1 thru earlier of August 31 or coho quota.	All	None	See #5 above	Mixed loads of chinook and coho, or coho only, between July 1-13 cannot be landed between Cascade Head and Cape Arago unless the load meets the possession and landing ratios required in that area.
Earlier of coho quota or September 1 thru October 31.	All except coho	None		None.
CASCADE HEAD to CAPE ARAGO:				
July 1 thru earlier of July 13 or coho quota.	All	None	See #5 above	From July 1 thru July 15, at least 1 chinook must be possessed or landed for each 2 coho possessed or landed, except there may be a single daily possession and landing per vessel of 2 coho without the ratio requirement. Mixed loads of chinook and coho or coho-only loads must be delivered in the sub-area. Chinook must be delivered with the coho. There are no restrictions on the place of delivery of chinook-only loads. Chinook salmon possessed or landed in this management area may not be returned or transferred to any vessels except vessels licensed to buy salmon. Fish taken during the season beginning July 1 may be landed after the season closes provided that possession, landing, and delivery requirements stated above are met. There is no ratio requirement in the fishery beginning July 16.
July 14 thru July July 15		Closed	Closed	
July 16 thru earlier of August 31 or coho quota.	All	None	See #5 above	
Earlier of coho quota or September 1 thru October 31.	All except coho	None		
CAPE ARAGO to ORFORD REEF RED BUOY:				
July 1 thru July 15	Closed	Closed	Closed	
July 16 thru earlier of August 31 or coho quota.	All	None	See #5 above	None.
Coho quota thru August 31	All except coho	None		None.
September 1 thru September 15	Closed	Closed	Closed	
September 16 thru October 31	All except coho	None		None.

Orford Reef Red Buoy to Horse Mountain

1. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-except-coho fisheries in state waters.

2. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches
Coho	22.0 inches	16.5 inches

3. Single point, single shank barbless hooks are required.

4. Off California, no more than 6 lines per boat are allowed.

5. During all closures of three days or less duration, except for the 12-hour period following closure, no vessel can be underway at sea inside a closed area with salmon on board unless there has been a notification to and acknowledgement from the U.S. Coast Guard through the nearest Coast Guard station. In those areas closed to salmon for three days or less, it is unlawful for a vessel which has been issued an ocean salmon permit by any state to have troll gear in the water.

6. The commercial fishery in the area from Cape Falcon to the U.S.-Mexico border will be managed not to exceed an impact (hooking mortality and landings) limitation of 684,700 coho salmon. There is an impact limitation of 100,000 coho salmon in the commercial fishery from Humbug Mountain south to the U.S.-Mexico border. If the coho impact is projectd to be less than 100,000 fish for the area south of Humbug Mountain, the remainder may be transferred to the commercial fishery north of Orford Reef Red Buoy on or about August 1.

7. On or about August 1, the STT will estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon. Any coho salmon allocated to the recreational fishery, which are not needed to complete the recreational seasons, will be reallocated to the commercial fishery.

8. When the STT estimates that 85 percent of the coho quota for the area south of Cape Falcon has been reached, the area from the Cape Falcon to Horse Mountain will close to all ocean commercial salmon fishing for three days to assess landings and project the remaining all-species fishing period. During this closure, all vessels must arrive in port with intent to land their fish within 12 hours of closure. If the STT determines that additional coho remain in the quota to be caught, the season will be reopened in accordance with framework inseason management procedures.

9. The commercial fishery in this area will be managed not to exceed a 63,000 chinook quota through August 31, 1988, except as provided below. On or about July 27, the STT will estimate the number of chinook salmon needed to complete the recreational season in this area. Any remainder in the recreational catch of Klamath River fall chinook and other stocks will be reallocated to the commercial quota for the area between Humbug Mountain and Punta Gorda.

The number of chinook available for reallocation will be based on the contribution rate percentage in the STT's Klamath River ocean harvest model as presented to the Council on April 7, 1988, and will not exceed a total landing of ages 3 and 4 Klamath River fall chinook in the area and in both fisheries through August 31 of 27,250 fish.

10. Conservation Zone 2 is the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nautical miles of shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth).

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
ORFORD REEF RED BUOY to HUMBUG MTN.	Closed	Closed	Closed	
HUMBUG MTN to PUNTA GORDA:				
June 5 thru earliest of June 28 or chinook or coho quota Sunday thru Wednesday only.	All	See #9 above	See #6 above	Conservation Zone 2 (Klamath River mouth) is closed.
Coho quota through earlier of June 28 or chinook quota.	All except coho	See #9 above		Conservation Zone 2 (Klamath River mouth) is closed.
Earliest of chinook quota or June 29 thru July 16.	Closed	Closed	Closed	Conservation Zone 2 (Klamath River mouth) is closed.
July 17 thru earliest of August 31 or chinook or coho quota Sunday thru Wednesday only.	All	See #9 above	See #6 above	Conservation Zone 2 (Klamath River mouth) is closed.
Coho quota to earlier of chinook quota or August 31, Sunday thru Wednesday only.	All except coho	See #9 above		
SISTERS ROCKS to CHETCO POINT:				
May 1 thru earlier of May 31 or subarea chinook quota.	All except coho	7.5		Closed from 6 to 200 nautical miles of shore.
SISTERS ROCKS to MACK ARCH:				
Later of August 15 or end of troll fishery from Humbug Mtn. to Punta Gorda thru earlier of August 31 or subarea chinook quota.	All except coho	7.5		Closed from 6 to 200 nautical miles of shore.
September 1 thru earlier September 14 or chinook quota.	All except coho	7.5		Closed from 6 to 200 nautical miles of shore.
TRINIDAD HEAD to PUNTA GORDA:				
September 1 thru earlier October 31 or chinook quota.	All	15.0	None	Closed from 6 to 200 nautical miles of shore. The Klamath River fall chinook portion of the catch during this season, as determined by the STT, may be subtracted from the 1989 allocation.
PUNTA GORDA to HORSE MOUNTAIN	Closed	Closed	Closed	

Horse Mountain to U.S.-Mexico Border

1. Minimum length restrictions for salmon in this area are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches.
Coho	22.0 inches	16.5 inches.

2. Single point, single shank barbless hooks are required.

3. Off California, no more than 6 lines per boat are allowed.

4. During all closures of three days or less duration, except for the 12-hour period following closure, no vessel can be underway at sea inside a closed area with salmon on board unless there has been a notification to and acknowledgement from the U.S. Coast Guard through the nearest Coast Guard station. In those areas closed to salmon for three days or less, it is unlawful for a vessel, which has been issued an ocean salmon permit by any State, to have troll gear in the water.

5. The commercial fishery in the area from Cape Falcon to the U.S.-Mexico border will be managed not to exceed an impact (hooking mortality and landings) limitation of 684,700 coho salmon. There is an impact limitation of 100,000 coho salmon from Humbug Mountain to the U.S.-Mexico border. If the coho impact is projected to be less than 100,000 fish for the area south of Humbug Mountain, the remainder may be transferred to the commercial fishery north of Orford Reef Red Buoy on or about August 1. If the impact limitation from Cape Falcon to the U.S.-Mexico border is reached before September 30, the commercial fishery from Horse Mountain to the U.S.-Mexico border will continue for all-except-coho salmon. If the impact limitation south of Humbug Mountain is reached before the impact limitation from Cape Falcon to the U.S.-Mexico border or before September 30, the commercial fishery south of the Horse Mountain will continue for all-except-coho salmon.

6. On or about August 1, the STT will estimate the number of coho salmon needed to complete the recreational seasons south of Cape Falcon. Any coho salmon allocated to the recreational fishery which are not needed to complete the recreational seasons will be reallocated to the commercial fishery.

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
HORSE MTN. to CAPE VIZCAINO:				
May 1 thru June 4	Closed	Closed	Closed.	

Subarea and season	Salmon species	Quota (thousands)		Subarea restrictions and exceptions
		Chinook	Coho	
CAPE VIZCAINO to POINT ARENA:				
June 1 thru June 4	Closed	Closed	Closed.	
CAPE VIZCAINO to U.S.-MEXICO BORDER:				
May 1 thru May 31	All except coho	None		None.
HORSE MTN. to POINT ARENA:				
June 5 thru July 13 Sunday thru Wednesday only.	All	None	See #5 above	None.
July 14 thru July 16	Closed	Closed	Closed.	
July 17 thru earlier of September 30 or coho quota.	All	None	See #5 above	None.
Coho quota thru September 30	All	None	See #5 above	None.
POINT ARENA to U.S.-MEXICO BORDER:				
June 1 thru earlier of September 30 or Coho quota.	All	None	See #5 above	None.
Coho quota thru September 30	All except coho	None	See #5 above.	None.

Table 2. Recreational management measures for the 1988 ocean salmon fishery:

U.S.-Canada Border to Cape Falcon

1. Minimum length restrictions for salmon in this area are as follows:

	Total length
Chinook	24.0 inches.
Coho	16.0 inches.

2. Single point, single shank barbless hooks are required.

3. The non-Indian ocean fisheries north of Cape Falcon (recreational and troll) will be managed not to exceed either (a) an overall 103,500 chinook quota, or (b) impact on critical Washington coastal and Puget Sound natural coho stocks equivalent to the overall preseason coho quota of 100,000 fish.

4. The recreational fishery will be managed not to exceed an overall chinook quota of 29,800 fish. Three subareas will be managed during the season to achieve separate subarea harvest guidelines (not quotas). In-season management actions may be taken to extend the fishery in each subarea to the end of its scheduled season. Such actions might include: closure from 0–3 nautical miles of shore; closure from 3–200 nautical miles of shore; closure from 5 to 200 nautical miles of shore; close from a point extending due west from Tatoosh Island for 5 miles, then south to a point due west of Umatilla Reef Buoy, then due east to shore; close from the Red Buoy Line at the Columbia River mouth north to Klipsan Beach; change species which may be landed to all except coho salmon. (For information concerning inseason actions, contact the National Marine Fisheries Service, Northwest Area Law Enforcement Office, 7600 Sand Point Way N.E., Seattle, WA 98115, telephone: 206–526–6133.)

5. These management measures are based on a Buoy 10 fishery (Columbia River mouth to the Astoria-Megler Bridge) with harvest guidelines of 200,000 coho and 50,000 chinook salmon.

6. Conservation Zone 3 is the ocean area surrounding the Columbia River mouth bounded on the north by a line extending for 200 nautical miles due west from North Head along 46°18′00″ N. latitude, then southerly to 46°11′06″ N. latitude, then east to 124°11′00″ W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the South Jetty.

7. Any chinook remaining unharvested at the end of the commercial all-except-coho fishery north of Cape Falcon will be reallocated to the recreational chinook quota north of Cape Falcon.

Subarea and season	Salmon species	Guideline (*) or quota (thousands)		Subarea bag limits and restrictions
		Chinook	Coho	
U.S.-CANADA BORDER to QUEETS RIVER:				
July 3 thru earliest of September 5 or chinook or coho quota Sunday thru Thursday only.	All	*2.8 See # 4 above	20.0	2 fish, only 1 of which may be a chinook. Closed from 6 to 200 nautical miles of shore.
QUEETS RIVER to KLIPSAN BEACH:				
July 3 thru earliest of September 5 or chinook or coho quota Sunday thru Thursday only.	All	*17.8 See # 4 above	50.0	2 fish, only 1 of which may be a chinook. Closed from 6 to 200 nautical miles of shore.
KLIPSAN BEACH to CAPE FALCON:				
July 11 thru ealiest of September 5 or chinook or coho quota Sunday thru Thursday only.	All	*9.2 See # 4 above	30.0	2 fish, only 1 of which may be a chinook. Conservation Zone 3 (Columbia River mouth) is closed. Closed from 5 to 200 nautical miles off shore between North Head and Klipsan Beach, and, south of the Red Buoy Line. Closed from 3 to 200 nautical miles of a shore between the Columbia River south jetty and Cape Falcon.

Cape Falcon to Orford Reef Red Buoy

1. Consistent with management objectives, the State of Oregon may establish some additional late season, all-salmon-except-coho fisheries in state waters.

2. Minimum length restrictions for salmon in this area are as follows:

	Total length
Chinook	20.0. inches.
Coho	16.0 inches.

3. Single point, single shank barbless hooks are required.

4. Overall recreational impact (hooking mortality and landings) is limited to 298,400 coho salmon from Cape Falcon to the U.S.-Mexico border. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery about August 1.

5. The 27 fathom curve is defined as follows: Within an area bounded by a line from Cape Falcon to 45°46'00" N., 124°01'20" W. (approximately 1.6 nautical miles west of Cape Falcon) to 45°04'15" N., 124°04'00" W. (approximately 2.2 nautical miles northwest of Cascade Head) to 44°40'40" N., 124°09'15" W. (approximately 3 nautical miles west of Yaquina Head) to 44°08'30" N., 124°12'00" W. (approximately 3 nautical miles west of Heceta Head) to 43°40'15" N., 124°14'30" W. (approximately 0.5 nautical miles west of the Umpqua Whistle Buoy) to 43°31'30" N., 124°17'00" W. (approximately 1.7 nautical miles west of the beach) to 43°15'15" N., 124°28'00" W. (approximately 3 nautical miles west of the beach) to 43°01'30" N., 124°29'05" W. (approximately 2 nautical miles west of Four Mile Creek) to 42°56'00" N., 124°33'10" W. (approximately 2.4 miles west of the mouth of Floras Creek) to 42°50'20" N., 124°38'30" W. (approximately 3.4 nautical miles west of Cape Blanco) to Cape Blanco.

Subarea and season	Salmon species	Quota (thousands)		Subarea bag limits and restrictions
		Chinook	Coho	
CAPE FALCON to ORFORD REEF RED BUOY:				
May 1 thru May 27 within the 27 fathom curve.	All	None	See # 4 above	2 salmon of any species no more than 6 fish may be retained in 7 consecutive days. Closed outside the 27 fathom curve (see # 5 above).
May 28 thru earlier September 11 or coho coho.	All	None	See # 4 above	2 salmon of any species no more than 6 fish may be retained in 7 consecutive days.

Orford Reef Red Buoy to U.S.-Mexico Border

1. Minimum length restrictions for salmon in this area are as

	Total length
Chinook	20.0 inches.
Coho	20.0 inches.

2. Single point, single shank barbless hooks are required north of Point Conception.

3. Between Orford Reef Red Buoy and Horse Mountain, there is a preseason reservation of 55,000 chinook salmon for the recreational fishery to complete its season through September 11. On or about July 27, the STT will estimate the number of chinook salmon needed to complete the recreational season in this area. Any remainder in the recreational catch of Klamath River fall chinook and other stocks will be reallocated to the commercial quota for the area between Humbug Mountain and Punta Gorda. The number of chinook available for reallocation will be based on the contribution rate percentage in the STT's Klamath River ocean harvest model as presented to the Council on April 7, 1988, and will not exceed a total landing of ages 3 and 4 Klamath River fall chinook in the area and in both fisheries through August 31 of 27,250 fish.

4. Overall recreational impact (hooking mortality and landings) is limited to 298,400 coho salmon from Cape Falcon to the U.S.-Mexico border, but the recreational fishery south of the Orford Reef Red Buoy will not close when the quota is reached. Any portion of the recreational quota not needed to complete scheduled recreational seasons will be reallocated to the commercial fishery on or about August 1.

5. Conservation Zone 2 is the ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nautical miles from shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Kamath River mouth).

Subarea and season	Salmon species	Quota (thousands)		Subarea bag limits restrictions
		Chinook	Coho	
ORFORD REEF RED BUOY to HORSE MTN.:				
May 28 thru September 11	All	See #3 above	See #4 above	2 fish of any species; no more than 6 fish may be retained in 7 consecutive days. Conservation Zone 2 (Klamath River mouth) is closed August 1 thru August 31 (see #5 above).
TRINIDAD HEAD to PUNTA GORDA:				
September 12 thru September 30	All	None	None	2 fish of any species; no more than 6 fish may be retained in 7 consecutive days. Closed from 6 to 200 nautical miles of shore.
HORSE MTN. to U.S.-MEXICO BORDER:				
Nearest Saturday to February 15 thru nearest Sunday to November 15.	All	None	None	2 fish of any species.

Table 3. Treaty-Indian management measures for the 1988 ocean salmon fishery.

1. Minimum length restrictions for salmon are as follows:

	Total length	Head-off
Chinook	26.0 inches	19.5 inches.
Coho	16.0 inches	12.0 inches.

2. Single point, single shank barbless hooks are required except that hooks used with bait and plugs may be barbed.

3. No more than 8 fixed lines per boat are allowed in the Hoh, Quileute, and Quinault areas. In the Makah area, no more than 8 fixed lines per boat or no more than 4 hand-held lines per person are allowed.

4. All boundaries may be changed to include such areas as may hereafter be authorized for the tribe's treaty fishery by a federal court.

5. There are no minimum length restrictions for salmon taken for ceremonial and subsistence purposes by the Makah tribe. For the Quileute, Hoh, and Quinault tribes, not more than 2 chinook salmon between the lengths of 24 and 26 inches per day may be retained.

6. The overall ocean quotas for the Washington coastal tribes are: 60,000 chinook and 68,000 coho salmon. These quotas include troll catches by the Klallam and Makah tribes in State of Washington Area 4B.

7. The areas within 6 nautical mile radii of the mouths of the Queens River (47°31'42" N. latitude) and the Hoh River (47°15'12" N. latitude) are closed to commercial fishing. A closure within 2 nautical miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Quinault Tribe and/or the State of Washington and will not adversely affect the Secretary's management regime.

Tribe	Boundaries	Open seasons	Salmon species
Makah	That portion of the Fishery Management Area (FMA) north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.
Quileute	That portion of the FMA between 48=07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.
Hoh	That portion of the FMA between 47=54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.
Quinault	That portion of the FMA between 47=40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis) and east of 125°44'00" W. longitude.	May 1 to earlier of June 30 or chinook quota	All except coho. July 1 to earliest of September 30 or chinook or coho quota All.

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will be in effect.

Troll Fishing Gear

Troll fishing gear for the Fishery Management Area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle, consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed four (4) pounds. There is no limit to the number of lines that a person may use while recreationally fishing off California.

Geographical Landmarks

Wherever the words "nautical miles of shore" are used in this rule, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this rule are at the following locations:

Umatilla-Tatoosh Line, A straight line drawn southerly from the Cape Flattery light (48°23'50" N. latitude) to Umatilla Buoy (48°11'20" N. latitude)
Queets River, 47°31'42" N. lat.
Klipsan Beach, 46°28'12" N. lat.
Red Buoy Line, Seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Columbia River Buoy, then due west along 46°11'06" N. latitude.
Cape Falcon, 45°46'00" N. lat.
Cascade Head, 45°03'50" N. lat.
Florence South Jetty, 44°01'00" N. lat.
Cape Arago Light, 43°20'50" N. lat.
Oxford Reef Red Buoy, 42°45'11" N. lat.
Humbug Mountain, 42°40'30" N. lat.
Sisters Rocks, 42°35'45" N. lat.
Mack Arch, 42°13'40" N. lat.
Chetco Point, 42°02'35" N. lat.
Trinidad Head, 41°03'30" N. lat.
Punta Gorda, 40°15'30" N. lat.
Horse Mountain, 40°05'00" N. lat.
Cape Vizcaino, 39°43'05" N. lat.
Point Arena, 38°57'30" N. lat.
Point Conception, 34°27'00" N. lat.

Classification

The 1988 management measures described above are based on the most recent data available. The aggregate

data, upon which the measures are based, are available for public inspection at the offices of the Regional Directors (see ADDRESSES) during business hours until the end of the comment period.

Preseason Notice of 1988 Management Measures

Most of the actions in this rule are taken under 50 CFR Part 661 which implements the framework FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that they are consistent with the Magnuson Act and other applicable law, are in compliance with Executive Order 12291, and are covered by the Regulatory Flexibility Analysis (RFA), and Final Supplemental Environment Impact Statement (SEIS), prepared for the framework FMP. These actions impose no information collection requirements under the Paperwork Reduction Act.

Section 661.23 of the framework regulations states that the Secretary will publish a notice establishing management measures each year and will invite public comments prior to its effective date. If the Secretary determines, for good cause, that a notice must be issued without affording a prior opportunity for public comment, comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice.

Because of the depressed status of some salmon stocks, and the need to reduce harvest in some areas or to establish different opening dates than those in the 1987 regulations for some fisheries, the Secretary has determined that time does not permit a comment period prior to the date the management measures must be in effect. Comment will be accepted for 15 days after the effective date of this notice.

The public has had opportunity to comment on these management measures during the process of their development. The public participated in the March and April Council, SST, and Salmon Advisory Subpanel meetings, and in public hearings held in Washington, Oregon, and California in late March and early April, which generated the management actions recommended by the Council and approved by the Secretary. Written public comments were invited by the Council between the March and April Council meeting.

Emergency Actions

The Assistant Administrator also determined that the measures described in the preamble which deviate from the framework FMP and its implementing regulations are necessary to respond to emergency situations and are consistent with the Magnuson Act and other applicable law. The measures falling under emergency authority of section 305(e) of the Magnuson Act involve the following as listed in the preamble: (1) Allocation of coho and chinok salmon north of Cape Falcon, Oregon, (2) commercial coho fishery north of Oregon-California border in June, (3) Klamath River Fall chinook escapement, and (4) definition of landing. He has determined that continuation of the regulations which the emergency measures are intended to replace would not prevent overfishing and would not apportion the ocean harvest equitably among non-Indian commercial and recreational and treaty Indian fisheries, and that it is therefore necessary to amend those portions of the framework FMP and its implementing regulations by emergency rule pursuant to 16 U.S.C. 1855(e).

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations, as required by section 553 (b) and (d) of the Administrative Procedure Act. The public had opportunities to comment on the substance of this emergency rule during meetings of the Council and its advisory committees in March and April, 1988, as above. The public will also have an opportunity to comment on the emergency measures during the comment period provided by this rule.

The Assistant Administrator had determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, California, and the San Francisco Bay Conservation and Development Commission. This determination has been submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

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

The Council prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the Regional Directors (see **ADDRESSES**).

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

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act no initial or final regulatory flexibility analysis has to be or will be prepared.

This emergency rule does not contain policy with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. Washington, Oregon, and California are expected to implement State regulations compatible with the Federal rule.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: April 29, 1988.

Rolland Schmitten,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 661 and its Appendix are amended, to be effective from May 1, 1988, through July 29, 1988, as follows:

PART 661—[AMENDED]

1. The authority citation for Part 661 continues to read as follows:

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

2. In § 661.3, the current definition for "Land" or "landing", is revised to read as follows:

§ 661.3 Definitions.

* * * * *

Land or *landing*, means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are considered part of the landing.

* * * * *

Appendix [Amended]

3. In the Appendix, section II.B.2., in paragraph (a)(iii) in the last sentence, the value "25 percent" is suspended, and the value "34 percent" is added to be

effective from May 1 through July 29, 1988.

4. In the Appendix, section II.B.2. is amended by adding paragraph (a)(v), to read as follows:

II. Annual Changes to Management Specifications

* * * * *

B. * * *

2. * * *

(a) * * *

(v) On or about July 1, 1988, the Salmon Technical Team will estimate the number of chinook salmon caught in the all-except-coho commercial season. Any chinook salmon remaining in the commercial quota will be reallocated to the reactional fishery.

* * * * *

5. In the Appendix, in section II.B.7. paragraph (c)(ii) is suspended from May 1 through July 29, 1988.

6. In the Appendix, in section IV.A., in the table, Summary of Specific Management Goals for Stocks in the Salmon Management Unit, the line pertaining to Klamath Fall Chinook is amended in the third column by adding a Note following the list of years to read as follows:

IV. Escapement Goals

A. * * *

System	Spawning escapement goal	Rebuilding schedule
*	*	*
Klamath Fall Chinook.	**Note:** 1988	132,000

* * * * *

[FR Doc. 88-9883 Filed 4-29-88; 4:46 pm]

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federal register

Wednesday
May 4, 1988

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 845

Surface Coal Mining and Reclamation Operations; Permanent Program Inspections and Enforcement Procedures; Civil Penalties; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 845

Surface Coal Mining and Reclamation Operations; Permanent Program Inspections and Enforcement Procedures; Civil Penalties

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) is amending its regulations to allow OSMRE to use money collected from the payment of Federal civil penalties levied under section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act) to reclaim lands that have been mined, abandoned, or left inadequately reclaimed, since the passage of the Act and therefore are ineligible for Title IV (Abandoned Mine land Reclamation) funding. This rule is necessary to implement a provison of the Omnibus Continuing Resolution for Fiscal Year 1988.

EFFECTIVE DATE: May 4, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond E. Aufmuth, PG, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-343-1514 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule
III. Procedural Matters

I. Background

Congress, in the continuing resolution appropriating funds for fiscal year 1988 (Pub. L. 100-202), authorized the Secretary of the Interior to utilize any money collected pursuant to the payment of civil penalties under section 518 of the Act to reclaim lands adversely affected by coal mining practices after August 3, 1977. The continuing resolution provides: "Provided, that notwithstanding any other provision of law, the Secretary of the Interior, pursuant to regulations may utilize directly or through grants to the States in fiscal year 1988, moneys collected pursuant to the assessment of civil penalties under section 518 of the Office of Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1268) (SMCRA) to reclaim lands adversely affected by coal mining practices after August 3, 1977." This rule implements these provisions.

Under this direction, the Secretary is working with the Office of Management and Budget and the Department of the Treasury to set up an appropriate tracking system for funds used to finance reclamation of lands adversely affected by coal mining practices after August 3, 1977. These lands are ineligible for funding under the abandoned mine land program established in Title IV of SMCRA.

SMCRA requires reclamation bonds for all permitted surface coal mining operations. These bonds are intended to cover the cost of reclamation should the permitted entity not be able to complete the required reclamation. However, bonding was not required under the interim regulatory program. In addition, there are instances where "Post-Act" sites have not been fully reclaimed or were inadequately reclaimed. Under this rule, Federal civil penalties collected because of violations of the Act, may be used for reclamation of "Post-Act" sites.

This rule will afford the Secretary the option of accomplishing reclamation of Post-Act sites directly through OSMRE or through grants to the States where appropriate. The allocation of Federal civil penalty money for reclamation parallels a similar practice followed in several States that assign State-collected penalties for reclamation. In fiscal 1987 the total civil penalties collected were $1,017,847.

Under this rule the selection and mechanism of funding will be at the discretion of the Director, OSMRE. Approved projects will be conducted either directly by OSMRE or through grants to the States. Projects will be selected for funding on a priority basis and will employ in part the priorities from the Abandoned Mine Reclamation Fund. The highest priority will be emergency projects as that term is defined in 30 CFR 870.5. The next priority will be given to projects which would qualify as priority 1 and then priority 2 as these priorities are described in section 403 of the Act. If there are residual funds, they will be available for Federal bond forfeiture sites. The prioritization of sites using Congressionally described criteria from the Abandoned Mine Reclamation Program is a proven methodology for such disbursement and ensures that the limited funds are allocated to the sites which are most in need of reclamation.

II. Discussion of Final Rule

Taking into consideration the language of the continuing resolution for fiscal year 1988, it is clearly the intent of Congress to allow OSMRE to utilize civil penalty money for the purpose of reclamation of lands adversely affected by coal mining practices after August 3, 1977. Therefore, OSMRE has amended its regulations dealing with civil penalties at 30 CFR Part 845 by adding a new section, 30 CFR 845.21, to address "Use of the civil penalties for reclamation."

Paragraph 845.21(a) authorizes the Director to use money collected pursuant to civil penalties levied under Section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977.

Paragraph 845.21(b) identifies the priorities which will be used to allocate the funds collected. Under § 845.21(b)(1) top priority will be given to emergency projects as that term is defined in 30 CFR 870.5. This will be followed under § 845.21(b)(2) by projects which would qualify as priority 1 and then under § 845.21(b)(3), as priority 2, as these terms are defined in Section 403 of the Act. Although terminology used in the rule is derived from the Abandoned Mine Land Program, the moneys disbursed under § 845.21 will be used only to reclaim lands adversely affected by coal mining practices after August 3, 1977.

Paragraph 845.21(b)(4) provides that after addressing the priorities set forth in § 845.21(b)(1) through (b)(3), funds may be made available for reclamation of Federal bond forfeiture sites.

Paragraph 845.21(c) provides the Director some flexibility in the selection process to account for unforeseen circumstances and provides authority to the Director to allocate funds for any other project which constitutes a danger to the environment or to the public health and safety.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3407.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule will not change

costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSMRE has prepared a final environmental assessment (EA), and has determined that the final rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A finding of No Significant Impact has been approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record.

Administrative Procedure Act

This regulation is exempt from the public notice rulemaking requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) and 553(b)(3). The regulation deals primarily with contracts and grants to benefit the public. Additionally, the legislation deals solely with monies collected during fiscal year 1988 and therefore it is essential that OSMRE move as rapidly as possible to ensure that reclamation projects are selected and bid before the end of the fiscal year. Similarly, good cause exists to make this rule effective immediately under the authority of 5 U.S.C. 553(d). OSMRE must move rapidly to select and design projects to ensure that the fiscal year 1988 penalty monies are obligated within the fiscal year.

Author

The principal author of this rule is Raymond E. Aufmuth, PG, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-1514 (Commercial or FTS).

List of Subjects in 30 CFR Part 845

Administrative practice procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: March 4, 1988.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

Accordingly 30 CFR Part 845 is amended as set forth below.

PART 845—CIVIL PENALTIES

1. The authority citation for Part 845 is revised to read:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, Pub. L. 100-34, and Pub. L. 100-202

2. Part 845 is amended by adding § 845.21 as follows:

§ 845.21 Use of civil penalties for reclamation.

(a) The Director of OSMRE may utilize money collected by the United States during fiscal year 1988 pursuant to the assessment of civil penalties under section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977.

(b) The Director may allocate funds at his discretion for reclamation projects on lands within any State or on Federal lands or Indian lands based on the following priorities:

(1) Emergency projects as defined in § 870.5 of this chapter;

(2) Reclamation projects which qualify as priority 1 under section 403 of the Act;

(3) Reclamation Projects which qualify as priority 2 under section 403 of the Act; and

(4) Reclamation of Federal bond forfeiture sites.

(c) Notwithstanding paragraph (b) of this section, at his discretion, the Director may allocate funds for any other reclamation project which constitutes a danger to the environment or to the public health and safety.

[FR Doc. 88-9816 Filed 5-3-88; 8:45 am]
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Wednesday
May 4, 1988

Part V

Department of Health and Human Services

Social Security Administration

Demonstration Grants; Announcement of Fiscal Year 1988 Research Demonstration Program, Availability of Funds and Request for Applications

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Demonstration Grants; Announcement of Fiscal Year (FY) 1988 Research Demonstration Program (RDP); Availability of Grant Funds and Request for Applications

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the availability of FY 1988 funds and request for applications under SSA's RDP.

SUMMARY: In FY 1987, SSA announced the beginning of its RDP. The current announcement pertains to SSA's RDP for FY 1988 and consists of four sections:

- Section I provides background information, discusses the purpose of the RDP, lists funding authorities and briefly describes the application process.
- Section II describes the programmatic priorities and subpriorities under which SSA is requesting applications for funding.
- Section III describes in detail the application process.
- Section IV provides guidance on how to prepare and submit an application.

ALL OF THE FORMS AND INSTRUCTIONS NECESSARY TO SUBMIT AN APPLICATION ARE PUBLISHED AS PART OF THIS ANNOUNCEMENT FOLLOWING SECTION IV. THEREFORE, NO SEPARATE APPLICATION KIT IS NEEDED FOR SUBMITTING AN APPLICATION. THE CLOSING DATE FOR SUBMISSION OF APPLICATIONS IS *JUNE 30, 1988.* (SEE SECTION III, PART I.)

Note: For purposes of this announcement, we are using the Social Security Disability Insurance (DI) program terms "beneficiary" and "benefit" to also represent the Supplemental Security Income (SSI) Program terms "recipient" and "payment."

FOR FURTHER INFORMATION CONTACT: Social Security Administration, Division of Disability Program Information and Studies, 6401 Security Boulevard, Room 2223 Annex Building, Baltimore, Maryland 21235, Telephone: (301) 965-0105.

SUPPLEMENTARY INFORMATION:

Section I—Preamble

A. Goals of the Social Security Administration (SSA)

A major goal of SSA is to assist Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) disabled and blind beneficiaries who have the potential to return to work. SSA is seeking to test new approaches to achieve this goal. These include more effective and efficient use of available vocational rehabilitation (VR) and to the employment services, and new work incentives (WI).

SSA's focus is on significantly improved integration and use of VR and other employment program resources for our beneficiaries. This reflects a national concern with assisting disabled persons to become more productive contributors to the economy, while enhancing their self-esteem. This concern was recently expressed in the report of the Disability Advisory Council (DAC) which was commissioned by the Congress to study and make recommendations related to SSA's disability and VR programs. In its report, the DAC emphasized that the Social Security Administration should strongly emphasize employment and attainment of self-sufficiency for disability beneficiaries and conduct demonstrations to test effective methods to achieve this goal. SSA wishes to directly achieve this goal and is seeking to test new approaches which, if successful, can lead to the introduction of effective policies and programs of employment services for our beneficiary populations throughout the country.

One of SSA's highest priorities for achieving these goals is to help and assure that as many beneficiaries as possible return to work at a level of earnings that will end or reduce dependency on SSA's disability programs. Currently, there are about 4 million disabled (and blind) beneficiaries on the DI rolls, and 2.9 million disabled and blind on the SSI rolls. Total costs in payments to DI and SSI blind and disabled in 1987 (the latest year such figures are available) were 28.4 billion dollars. Over the years, most persons coming onto the rolls have remained there, but we know from survey information on and group interviews of our DI beneficiaries (who generally have extensive and recent work experience when they apply for disability) and from surveys of SSI beneficiaries as well as the growth in the use of WI features of the SSI program, that many would prefer to do some form of work, if the conditions were favorable. This might include conditions such as: An accommodating employer; assistance in finding a new position; encouragement and support; skills enhancement; transportation; alternative coverage of customary medical costs; various economic incentives; a longer trial work period (TWP) (e.g., for transitional employment); or some degree of medical improvement/rehabilitation leading to employment.

We are seeking projects designed to make the most effective and efficient use of existing rehabilitation and employment service programs and systems, and for the creative application of available resources and technologies to assist beneficiaries to return to work. These projects should clearly contribute to SSA's employment priorities including:

- information that will lead to programmatic changes to systematically increase the number of beneficiaries who return to work;
- methods of linking beneficiaries with employment assistance that feature cost-effective, state-of-the-art techniques;
- more efficient and effective mechanisms for identifying and referring candidates for rehabilitation and employment services;
- increased access by beneficiaries to employment service systems and networks;
- more effective and efficient employment intervention for beneficiaries; and
- more effective incentives for rehabilitation and employment.

B. Research Demonstration Program (RDP) of SSA

The RDP is designed to coordinate several funding authorities and to serve as SSA's major demonstration effort on behalf of both the DI and SSI disabled and blind populations in a single **Federal Register** announcement. This nationwide competition to select demonstration projects designed to stimulate, test and coordinate effective approaches toward employment assistance is part of an innovative and systematic SSA-wide initiative for assisting beneficiaries to enter the workforce or return to work.

SSA expects to use grant funds to begin a series of employment demonstrations of national significance in FY 1988. We anticipate funding up to 50 demonstration grants totaling about 6 million dollars. In general, demonstration activities are intended to add to existing knowledge and to improve methods and techniques.

Additionally, priority will be placed on selection of approaches that are cost-effective, can be replicated, and show promise for improvement of systems for the coordination of effective employment opportunities for SSA's disability populations.

Priority area in this announcement request innovative demonstrations which extend and enhance employment outcomes for DI and SSI beneficiaries, including approaches which fill gaps in existing programs, link programs with public and private sector employment services, or create and test entirely new mechanisms to assist beneficiaries to secure employment. APPLICATIONS WHICH REPLICATE EXISTING EMPLOYMENT STRATEGIES ARE NOT BEING SOUGHT, UNLESS THESE IDEAS INCLUDE A MAJOR NEW COMPONENT WHICH WILL LEAD TO SIGNIFICANT IMPROVEMENT IN EMPLOYMENT OUTCOMES FOR DI AND SSI BENEFICIARIES.

In addition to these concerns, SSA wishes to pursue demonstrations suggested in the recent report of the Disability Advisory Council (DAC). The DAC was mandated by section 12101 of Pub. L. 99-272 to study and make recommendations related to the effectiveness of VR services for DI and SSI beneficiaries, the use of specialists for medical/vocational evaluations, alternative approaches to medical evaluations, and possible criteria for assessing the probability that an applicant or recipient of disability benefits might benefits from rehabilitation services. The DAC was chartered by the Commissioner of Social Security on July 3, 1986, and its final report was transmitted by the Secretary of Health and Human Services (HHS) to the Congress and the Board of Trustees of the Disability Insurance Trust Fund on March 11, 1988.

The DAC heard testimony from many experts in VR, medical/work evaluations, Social Security policy, and the economic implications of SSA's disability programs. After more than a year of study, the DAC concluded that SSA should further emphasize return to work as the appropriate goal of SSA's VR efforts and that SSA needs to develop additional ways to get many more of its disability beneficiaries into VR and programs leading to permanent employment. In developing new VR/employment strategies, the DAC recommended that SSA conduct demonstrations, using all available sources of VR services (both public and private) and emphasizing case management and client/counselor cooperation to achieve maximum efficiency and effectiveness in returning disability beneficiaries to employment. Many of these recommendations are reflected in the specific demonstration topics requested under the priority areas in this announcement.

SSA is particularly interested in approaches that: (a) Link the resources of Federal and State agencies serving DI or SSI beneficiaries; (b) link the resources of Federal, State, and private agencies; (c) link SSA programs with private employers or employer associations possibly including Private Industry Councils (PICs); (d) link Federal and/or State resources with private sector organizations serving the disabled; and/or (e) promote additional private sector involvement with DI and SSI beneficiaries, e.g., direct job development and placement of beneficiaries or innovative uses of rehabilitation engineering techniques to return beneficiaries to the workforce.

C. Legislative Authorities

Authority for this activity is contained in sections 702 and 1110(a) of the Social Security Act (the Act), for projects to promote economic security and reduced dependency; section 1110(b) of the Act, for projects that assist in promoting the objectives or facilitate the administration of the SSI program; and section 505(a) of Public Law (Pub. L.) 96-265, for projects to improve employment outcomes for DI beneficiaries. In addition, section 505(a) of Pub. L. 96-265, as extended by Pub. L. 99-272, section 12101, requires the Secretary of HHS to test new forms of rehabilitation and other employment-related initiatives that will help DI beneficiaries return to work.

It should be noted that certain of these authorities contain the flexibility to waive provisions of the Act to test new employment service arrangements and WI on a demonstration basis. Specifically, section 505(a)(3) authorizes the Secretary to waive titles II (DI) and XVIII (Medicare) benefit restrictions. Additionally, section 1110(b) authorizes the Secretary to waive requirements, conditions or limitations of title XVI (SSI), subject to certain safeguards such as voluntary participation by SSI recipients. The waiver authority under both titles has been redelegated by the Secretary to the Commissioner of SSA.

Under sections 702 and 1110 (a) and (b), SSA anticipates funding projects in the last quarter of FY 1988, or first quarter of FY 1989. However, section 505(a) requires that "no experiment or project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only, and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate." Additional processing time will be required to fulfill this requirement.

D. Competitive Review of Applications

Applications received under this announcement will be reviewed competitively against the evaluation criteria of this announcement (see Section III) by qualified independent reviewers. SSA will use these evaluations as an element in the selection process. The results of this review will assist SSA in deciding which applications should receive funding.

E. Background

1. Definition of Disability

SSA administers two programs (DI and SSI) for the disabled, as well as a separate SSI program for the blind. (The DI program for the disabled covers disabled blind.) The DI and SSI programs use the same definition of disability and overlap to some extent, but they differ in significant ways.

The statutory definition of disability for both programs is: *inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which has lasted or would be expected to last for a continuous period of 12 months or result in death.* There is a separate statutory definition of blindness for the SSI blind program.

To qualify for DI benefits on this or her own earnings record, a disabled person must meet the definition of disability, and also meet an "insured status" requirement (sufficient past work in Social Security covered employment). To qualify for SSI benefits a disabled or blind person must meet the definition of disability or blindness and also meet certain other eligibility requirements, including an income and resources (financial need) test.

New DI beneficiaries must wait 5 months from the onset of disability to receive cash benefits, and another 24 months to qualify for Medicare benefits. A waiting period is not required for new SSI beneficiaries to qualify for cash benefits and Medicaid benefits (in those States that provide Medicaid based on SSI eligibility).

With certain exceptions, DI benefits generally continue until death or age 65 unless the beneficiary medically improves or performs SGA. Ordinarily SSA considers a person to be performing SGA when his or her earnings (excluding subsidies and certain impairment-related work expenses) average more than $300 per month ($700 for blind DI beneficiaries who are subject to different rules).

SSI benefits generally continue until death with no age cut-off unless the beneficiary medically improves or ceases to meet other eligibility requirements, such as the income and resources test. SGA is not a factor for SSI beneficiaries who perform work after entitlement (see No. 3 below, Work Incentives).

2. Determination of Disability

While SSA's disability programs are Federally administered and funded, SSA uses State agencies, generically known as disability determination services (DDSs) to determine disability and blindness. Thirty-seven of these DDSs operate under a State vocational rehabilitation agency (VRA). The remainder operate under a State umbrella agency, under a welfare agency or as an independent State agency.

Social Security regulations provide a five-step sequential evaluation process which is used in determining whether a claimant meets the legal definition of disability. When a decision that an individual is or is not disabled can be made at any step, evaluation under subsequent steps is not necessary. In this way, an eligibility decision for a claim is made as quickly and efficiently as possible.

The first consideration, except for the SSI blind who are not subject to an SGA standard, is whether the applicant is performing SGA. If a DI or SSI applicant is performing SGA, his/her claim will be denied.

Second, the individual's medical condition is considered to determine whether his/her impairment(s) has more than a minimal effect on the individual's ability(ies) to perform basic work-related functions such as walking, lifting, and following simple instructions. If the impairment(s) does not impose such a restriction on physical or mental capacities, the claim is denied for lack of necessary severity.

Next, if the individual is not performing SGA and has an impairment which has more than a minimal effect on the individual's ability(ies) to perform work-related functions, the individual's medical condition is compared with the criteria set forth in SSA's Listing of Impairments in the Social Security regulations. If the impairment(s) meets the listed criteria, or is medically equivalent to those criteria, the claim is allowed without further evaluation.

If a claim has not been decided at any of the earlier steps in the sequential evaluation process, the individual's ability to perform work-related physical and mental activities is determined based on all of the relevant medical evidence. This determination of residual functional capacity (RFC) is then compared with the demands of his/her past work. If the individual retains the capacity to perform work done in the past, the claim is denied.

A claim that cannot be decided at this step in the process is further evaluated to determine whether the individual can return to work other than past work. In making this determination, the individual's age, education, and work experience are considered, as well as RFC.

This is only a general description of the sequential evaluation process for determining disability. The sequential evaluation process does not apply in full to DI claims for widows, widowers, or surviving divorced spouses, or to SSI claims for children under age 18. To be eligible under the criteria in the law, these claimants must have an impairment(s) which is so severe that it meets (or is equivalent to) the medical criteria in the Listing of Impairments. Also, blindness determinations for SSI claimants are based on medical criteria prescribed by statute and do not follow the disability evaluation process.

3. Work Incentives

Prior to 1980, there were few WI for DI or SSI beneficiaries. The Social Security Disability Amendments of 1980 (P.L. 96-265) added some new incentives. The Employment Opportunities for Disabled Americans Act, P.L. 99-643, liberalized some of these incentives for SSI beneficiaries effective July 1, 1987, and the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203, added still additional DI incentives effective January 1, 1988.

Major DI WI for beneficiaries who do not medically improve include:

• A 9-month TWP and a 3-month grace period for individuals who work:

This offers a disabled beneficiary an opportunity to test his/her ability to work without losing benefits. Under this provision, the beneficiary is credited with a month of work for each month that earnings exceed 75 dollars (or 15 hours of work for the self-employed). When the beneficiary has accumulated 9 such months (not necessarily consecutive), the TWP is completed. After the TWP, SSA will determine whether the work the individual performed during the TWP was SGA. If SSA determines that the individual is no longer disabled, the beneficiary will receive benefits for the month disability ceases and at least the next 2 months (the 3-month "grace period").

• A 36-month reentitlement period:

This provision provides a reentitlement period for disabled persons who complete a TWP and continue to have a disabling impairment. It is not an extension of the TWP, but rather a period during which benefits can be reinstated without need for a new application, disability determination or waiting period if the person's work falls below the SGA level.

• An extension of Medicare coverage:

Medicare coverage for DI beneficiaries who have not medically recovered will continue for 39 months following the end of the TWP or until the last month of payment of disability benefits, whichever is later. For individuals whose disability benefit entitlement ends for reasons other than SGA, Medicare coverage ends at the same time disability benefits end.

• Elimination of second waiting period for Medicare for people who become reentitled to disability benefits based on the same medical condition:

Prior to 1988, a beneficiary who became entitled to DI benefits more than 5 years after his/her previous entitlement to DI benefits terminated had to serve another 24-month waiting period before Medicare coverage could begin. Now, a person who becomes reentitled to DI benefits on the basis of an impairment that is the same or directly related to the impairment that was the basis for the previous entitlement does not have to serve another 24-month waiting period for Medicare benefits; months in the previous period of disability would count towards the 24-month waiting period.

• Deduction of impairment-related work expenses

The cost of impairment-related items and services *that a person needs in order to work* can be deducted from earnings in determinations of SGA, even if these items and services are also needed for non-work activities. The person must not have been nor expect to be reimbursed for the expenses.

Major SSI WI for beneficiaries who do not medically improve now include:

• Section 1619(a)—Special SSI Payments:

This incentive allows special SSI cash payments to *disabled* persons on the rolls, in place of their regular SSI payments when their earnings are at the amount ordinarily designated as the SGA level. (*It does not apply to blind SSI recipients.*) To qualify for this incentive, the person must continue to have the original disabling impairment under which eligibility for SSI was initially determined and currently meet all other eligibility rules including the income and resources tests.

People who receive special SSI cash benefits keep their disability status until they are determined to have medically improved or are terminated for a nondisability-related reason(s). If the earnings of a person receiving special SSI cash benefits drops below the SGA level, the individual will be paid regular SSI benefits if all other eligibility requirements are met. Individuals who receive special SSI cash benefits are SSI recipients for all purposes, including Medicaid eligibility determinations. Under the special rules, the individual's payment amount is still calculated in the same way as regular SSI cash benefits (e.g., as earnings rise, the SSI benefit is reduced according to a formula).

• Section 1619(b)—Recipient Status for Medicaid

This incentive is important because it protects Medicaid benefits (if the State provides Medicaid coverage to SSI eligibles) when income is too high for cash payments but not high enough to replace the loss of Medicaid.

This incentive continues Medicaid coverage for *working disabled or blind* people under age 65 when their income becomes high enough to cause SSI cash benefits or Federally-administered State supplementary payments to stop. To qualify for extended Medicaid coverage under section 1619(b), a person must:

—continue to have a disabling condition or continue to be blind;
—need Medicaid in order to continue to work;
—be unable to afford benefits equivalent to the SSI Federally-administered State supplementary payments, Medicaid coverage and publicly funded attendant care services (including personal care assistance) the person would be eligible for if he/she were not working; and
—meet all nondisability requirements for SSI payment other than earnings.

• Plan for Achieving Self-Support (PASS)

PASS can help an individual establish or maintain SSI eligibility and can also increase the individual's SSI payment amount. It allows a disabled or blind person to set aside income and/or resources for a specified period of time for a work goal such as education, vocational training, starting a business, or the purchase of work-related equipment. A plan is for SSI benefits only and does *not* affect an SGA determination. Income and resources that are set aside are excluded only under the SSI income and resources test.

The individual must have a feasible work goal, a specific savings/spending plan, and must provide for a clearly identifiable accounting for the funds which are set aside. The plan must be in writing and have a specific timeframe.

• Impairment-Related Work Expenses (IRWE)

The cost of certain impairment-related services and items that a person needs in order to work can be deducted from earnings in determinations of SGA, even if these items and services are also needed for nonwork activities. IRWE are also excluded from earned income in determining an SSI recipient's monthly payment amount. However, individuals must first etablish Federal SSI eligibility without the IRWE expenses exclusion.

• Blind Work Expenses (BWE)

Any earned income of a blind person which is used to meet any expenses reasonably attributable to earning the income is not counted in determining SSI eligibility and payment amount if the blind person is under age 65; or age 65 or older and received SSI payments due to blindness (or received payments under a former State plan for aid to the blind) for the month before he/she attained age 65. A BWE need not relate directly to an individual's blindness; it need only be a work-related expense of the individual.

4. Current SSA VR program:

SSA's VR program generally operates as follows:

• SSA's field offices (FOs) alert new disability or blindness applicants that they might be referred to a State VRA. SSA now uses only State VRAs to provide reimbursable VR services.

• The State DDSs, the agencies that collect the medical information and make SSA's disability and blindness determinations, screen claims for possible VR referrals in conjunction with determining whether the applicants are disabled or blind. The DDS screening for VR is a manual process, generally carried out by disability examiners, using gross screening criteria and relying on medical and vocational information collected for purposes of determining disability or blindness. Generally, no special information is gathered for VR assessment.

• DDSs refer selected disability or blindness applicants (both beneficiaries and non-beneficiaries) to State VRAs. DDSs provide copies of the disability or blindness determination and relevant medical and vocational information to the State VRAs.

• The State VRAs decide which of the DDS referrals appear to be good candidates for VR and should be contacted. Disability beneficiaries who apply to these agencies for VR are subject to the same standards of eligibility as others served by the agencies. Those who are determined eligible for VR are substantively and consensually involved in the development of an "individualized written rehabilitation program [plan]." State VR eligibility and service decisions are based on the Rehabilitation Act of 1973.

• SSA reimburses the State VRAs for the costs of certain VR services provided to DI and SSI beneficiaries. With certain exceptions, reimbursement may be made only for those VR services that result in beneficiaries performing SGA for a continuous period of 9 months.

Section II—Priority Areas

In developing the priority areas for the FY 1988 RDP, SSA has reviewed and updated the critical needs of its disability programs based on:

• suggestions by rehabilitation and employment professionals;
• recommendations from SSA's central and regional offices;
• results of prior research and demonstration activities;
• grant awards made under the FY 1987 RDP; and
• recommendations from the DAC.

The current critical needs of SSA's program to help beneficiaries who have ability to work include:

• early intervention;
• rapid assessment;
• improved coordinated referral; and
• management of service provision that is cost-effective in achieving sustained employment outcome.

The priorities that follow focus primarily on employment assistance. In reviewing proposals, SSA will also consider proposed WI features (e.g., extension of TWP) that are potentially cost-effective and administratively feasible on a demonstration basis and that are proposed using methods that will effectively measure their impact.

Note.—Because new WI affect the structure of SSA's disability programs and have major policy and cost implications, testing of new WI generally must be carried out on a sufficient scale and using appropriate experimental designs, to assure that findings are representative, can be generalized, and provide definitive information on impact. Additionally, WI involving benefit adjustments cannot be tested without manipulation of SSA's benefit records, thus such tests require SSA management. This includes testing of a benefit offset (reduction of benefits based on earnings).

SSA RECOGNIZES THAT THE SCOPE OF WORK OF ANY SINGLE APPLICATION MAY ADDRESS ASPECTS OF SEVERAL OF THE PRIORITY OR SUBPRIORITY AREAS LISTED. IN SELECTING THE *ONE*

PRIORITY AND SUBPRIORITY AREA UNDER WHICH YOUR PROPOSAL WILL BE REVIEWED, PLEASE SELECT THE SINGLE PRIORITY OR SUBPRIORITY AREA WHICH MOST CLEARLY MATCHES THE OVERALL PURPOSE OF THE PROJECT BEING PROPOSED. SSA WILL NOT ASSIST APPLICANTS IN MAKING THIS SELECTION. SUBPRIORITY AREAS (E.G., 4.1, 4.6, ETC.) ENDING WITH THE WORD "RESEARCH" ARE INTENDED TO BE RESEARCH PROJECTS AS CONTRASTED WITH DEMONSTRATION PROJECTS. GRANTEE MATCHING OR COST-SHARING REQUIREMENTS DIFFER FOR RESEARCH AND DEMONSTRATION PROJECTS. (SEE SECTION III, PART C).

The programmatic priority areas of SSA's RDP are as follows:

Priority Area 1.0:
Comprehensive and Systematic Employment Assistance.

Priority Area 2.0:
Better Coordination Between Public and Private Sector Programs to Increase Beneficiary Interest in and Access to Employment.

Priority Area 3.0:
Strategies for Assisting Members of the Disability Population with Limited Access to Employment Services.

Priority Area 4.0:
Mechanisms for Matching Beneficiaries with Employment and Employment Assistance.

Priority Area 5.0:
State Vocational Rehabilitation Systems Improvement.

Priority Area 6.0:
Application of New Technologies to Assist Return to Employment.

Priority Area 7.0:
Communication and Marketing of Work Incentives, Vocational Rehabilitation and Employment Information to Directly Assist Beneficiaries in Returning to Work.

Priority Area 8.0:
Development of State-of-the-Art Information on the Functional Capacity and Compatible Occupations for Persons With Various Impairments.

Priority Area 9.0:
Improved Interagency Record Matching.

Priority Area 10.0:
Special Studies.

Priority Area 11.0:
Nonpriority Area Projects.

Descriptions of Priority and Subpriority Areas

Priority Area 1.0:
Comprehensive and Systematic Employment Assistance

Under the RDP, SSA has identified and tested different approaches to assist disabled beneficiaries to return to work. Preliminary findings suggest many of our beneficiaries would return if they were provided with comprehensive and systematic VR and employment services which were appropriately targeted and responsive to their actual employment needs. Identification and testing of the most promising forms of employment assistance is underway. The following key elements are needed for a comprehensive approach to employment assistance:

- early and cost-effective client assessment;
- rapid referral to needed employment services;
- managed service provision to assure appropriate, timely and cost-effective service delivery;
- methods to assure employment outcome; and
- cost management and cost containment measures for the entire rehabilitation and employment process.

1.1 Comprehensive Employment Services Using Case Management. SSA is seeking a medium-to-large-scale demonstration project to provide beneficiaries with consistent and comprehensive employment services using a case management approach. Proposals should include cost-containment mechanisms to assure effective and cost-beneficial service provision. Projects can include tests of direct beneficiary involvement in the development of plans to return to work and in the selection of VR/employment service providers. Such a project must be of sufficient size and scope to permit a scientific evaluation of outcome and must involve use of multiple rehabilitation and employment service providers through a case management system. The demonstration should involve the use of case managers who operate outside of the SSA field structure and are able to establish effective, replicable linkages with and between SSA FOs, beneficiaries, and multiple employment service providers. The project should clearly focus on SSA's critical needs: early intervention; rapid assessment; coordinated referral; and management of service provision to achieve sustained employment outcome. And, the project should test a comprehensive employment approach for SSA beneficiaries. Also, the project must include a carefully and thoroughly designed evaluation component using objective evaluative expertise which will provide appropriate scientific evidence on outcomes and include evaluation of costs and benefits using accepted cost-benefit analysis techniques. The project may focus on a regional area of the nation, but should produce results which could be used on a national basis.

Priority Area 2.0:
Better Coordination Between Public and Private Sector Programs to Increase Beneficiary Interests in and Access to Employment

A commonly observed problem for beneficiaries considering employment is the lack of coordination between public and private sector programs designed to assist people with disabilities. Beneficiaries may encounter conflicting goals and eligibility requirements, misinformation about the interaction of programs, and lack of cooperation between program representatives. This results in severely limiting the effectiveness of such programs.

2.1 Public and Private Sector Program Collaborations. SSA is interested in demonstrating collaboration and cooperation to increase employment opportunities for disabled beneficiaries. This collaboration and cooperation could involve SSA and employers, private insurers, PICs, labor unions, hospitals, State VRAs, State offices for mental retardation and mental health, private VR organizations, employment agencies, disability organizations, self-help organizations, residential programs, etc. Potential areas of collaboration and cooperation include informing beneficiaries about program interactions and available assistance, developing job opportunities, training and accommodation, shared funding of employment assistance, access to private medical benefits and services, and State VRA cooperation with other public sector, nonprofit or private sector employment service organizations in providing services to beneficiaries. Where possible, such cooperation could also involve use of the Targeted Jobs Tax Credit and/or available on-the-job training funds provided through the Job Training Partnership Act.

SSA is seeking coordinated *programs* based on the collaborative efforts of two or more agencies or organizations. These programs should target DI/SSI beneficiaries and be programs should target DI SSI beneficiaries and be structured so that assessment, referral, intervention, and employment components are used. Efforts should be made to use existing employment networks. Projects must include specific and measurable employment outcomes,

be cost beneficial and have potential for national replication.

2.2 Worker's Compensation and Costs Risl Reduction. Some study findings have indicated that one barrier which prevents rehabilitated clients from obtaining jobs is employers' concerns about worker's compensation liability. Although most states have established "second injury funds," this apparently has not entirely alleviated the problem.

Therefore, SSA is seeking small-scale employment demonstrations involving placement of beneficiaries in competitive employment. These demonstrations should involve collaboration and cooperation between employers, insurers, other organizations, and/or SSA to reduce the risk which employers face for worker's compensation payments for beneficiaries who become employed. The risk reduction period should be for a limited time, not to exceed 2 years and cost-sharing of the worker's compensation payment risk is anticipated.

Additionally, these demonstrations must include the following fundamental elements:

(1) Identification of beneficiaries for employment;

(2) Identification of employers and specific placement opportunities;

(3) A specific approach which defines how employer worker's compensation risk will be reduced; and

(4) An evaluation plan that clearly indicates the differential enhancement of employability for these beneficiaries.

2.3 Referral to Part-time and Full-time Trial Work Opportunities. In addition to coordinated public and private sector employment programs, SSA is also seeking innovative proposals for demonstrations to aid disabled beneficiaries in trying out their capacity to perform competitive employment through temporary short-term employment (e.g., 6 months or less) in real work settings. SSA believes that in general, more use of trial work can assist many more beneficiaries to secure permanent, competitive employment and ultimately reduce dependency on/or leave the disability benefit rolls. This might involve planned phases from part-time to full-time work, the use of major employers who would implement temporary trial work programs for the disabled, or testing trial work opportunities in communities representative of typical employment centers, including employment with large corporations or small employers.

One particular area of interest would be a test using both private and public referral sources in the development of such trial work opportunities. Another possible approach would involve opportunities for temporary trial work in the home that would be linked to competitive work opportunities outside the home once full-time work capacity was established. Waiver of elements of the existing TWP is available and will be considered is requested.

Priority Area 3.0:

Strategies for assisting members of the disability population with limited access to employment services

While a significant portion of disability beneficiaries have indicated that they want to work, not all segments of the disability population have had the same opportunities for employment or employment assistance. There have been dramatic and innovative advances in the treatment and rehabilitation of various severe impairments, such as cardiovascular and musculoskeletal problems. And, these treatments have led to restoration of functional capacity and return to employment. However, too few disability beneficiaries have had the opportunity to benefit from these advances and obtain assistance in locating employment.

SSA is interested in exploring new methods and techniques for particular groups of beneficiaries, but such efforts must reflect a service model that relates to the SSA program and demonstrate generic VR/employment methods which could be replicated and accessed systematically by SSA for use with beneficiary groups.

SSA is interested in supporting demonstrations that will increase rehabilitation and employment opportunities for these specialized beneficiary populations. These projects must be designed to enable disability beneficiaries to achieve SGA, must be innovative and must test comprehensive VR/employment interventions which include the following key components: early intervention, rapid assessment, improved coordinated referral, and management of service provision to achieve employment outcome. We are interested in the replication potential of these strategies. In addition, an objective evaluation design must be proposed which specifically addresses the issue of replicability with particular attention to measuring the efficiency, effectiveness and cost-benefit ratio of the techniques used when integrated with SSA disability program operations.

Populations of particular interest are:

3.1 beneficiaries over age 50;

3.2 SSI beneficiaries with little or no employment history in need of employment services;

3.3 beneficiaries disabled based on cardiovascular disease;

3.4 beneficiaries disabled based on respiratory disease;

3.5 beneficiaries disabled based on traumatic brain injury;

3.6 beneficiaries disabled based on chronic mental illuess;

3.7 beneficiaries disabled based on drug addiction or alcoholism; and

3.8 beneficiaries disabled based on orthopedic injuries.

Priority Area 4.0:

Mechanisms for Matching Beneficiaries With Employment and Employment Assistance

One of the greatest difficulties for organizations attempting to help disability beneficiaries return to work has been the lack of a reliable mechanism(s) for matching beneficiaries with available and appropriate employment and employment assistance. Survey information has indicated that many beneficiaries want to work. Numerous employers have volunteered to hire beneficiaries and many organizations have offered to assist beneficiaries in preparing for and obtaining employment. However, there has been only limited success in actually making the necessary linkages between beneficiaries and employers or employment assistance. SSA is interested in supporting the development of effective and efficient screening and referral models that will link disability beneficiaries to employment assistance and direct job opportunities. These demonstrations must be designed to rapidly and efficiently link beneficiaries with appropriate employment opportunities and job assistance services. And, the techniques used must be replicable within SSA's disability programs.

4.1 Screening for Vocational Rehabilitation. Currently, the State DDSs use model screening criteria to identify disability applicants who will benefit from State VR services. Originally developed by a Federal/State workgroup, these criteria are unvalidated and of questionable effectiveness. (A copy of these criteria may be obtained from any local DDS or from SSA.) SSA would support promising proposals for developing and validating new and effective screening criteria to identify good candidates for VR and employment services who will return to SGA. (Note: Proposals to develop new screening systems *must* also include validation.) SSA is particularly interested in testing systems involving criteria which can be rapidly applied using computer automation, or

other technical advances which are cost-effective and which can be validated through appropriate evaluative techniques (research).

4.2 Mechanisms for Matching Beneficiaries with Available and Appropriate Employment Assistance. Since prior SSA demonstrations have shown that private sector employment assistance is available and can be effective in helping beneficiaries return to work, it is necessary to develop methods for matching beneficiaries with these services.

SSA is not aware of any available and validated mechanism(s) that could be used to match disability beneficiaries with the most suitable public or private sector employment assistance.

SSA is interested in supporting development and validation of mechanism(s) that could be used to screen and match beneficiaries with the most effective and efficient employment assistance. This could include mechanisms that feature:

- information on employment trends, available jobs (e.g., job banks) and job requirements;
- employment-related rehabilitation services;
- a practical and cost-effective method of determining beneficiaries' motivation to return to work; and
- information on job accommodation needs.

SSA is interested not only in matching models that have general applicability but also those that are appropriate for specific physical and mental impairments. Proposals in this subpriority area should not be designed to develop job matching systems alone but should focus on systems which screen beneficiaries, identify appropriate and cost-effective employment services and/or job opportunities, and create methods of linking beneficiaries with services/jobs.

4.3 Referral to Providers. Following the matching of beneficiaries with potential employers or employment services, SSA is seeking rapid referral systems which could be implemented to move clients to providers efficiently, track the services provided, and also provide continuous data on costs of services and outcomes. Such projects should involve automated capability to refer, track, and monitor the progress of beneficiaries being provided employment services and/or jobs. And, such systems should be highly cost-effective and capable of being used with locally available SSA computer capacity.

4.4 Screening of Mentally Retarded Clients. Demonstrations of on-the-job (transitional employment) training for the retarded have indicated that the trainee's motivation to succeed, or at least to cooperate, is a major factor in successful work attempts. There is also indication that clients whose level of functioning is low in some areas can still succeed, as long as they have some compensating strengths. SSA is interested in supporting projects to develop measures of motivation and indices for evaluating the strengths and weaknesses of retarded trainees in terms of functional capacities to perform employment. The role of family support and encouragement or similar support from elsewhere in the community, as a factor in motivation and job success, should be a particular focus of interest. The measures should be applicable to persons with low levels of ability and multiple severe impairments, and avoid use of implicit screening methods which could weaken the validity and usefulness of results on explicit screening methods. Rigorous techniques should be used in studying complex issues like motivation and indices of abilities. Tests of the applicability of measures to SSA beneficiaries are essential (research).

4.5 Types of Jobs Suitable for Mentally Retarded Beneficiaries. At present, employment programs serving the retarded place a large percentage of clients in food service and custodial occupations. This appears due to the greater accessibility of such jobs for job development and placement. In fact, jobs in light industry, such as benchwork jobs, are frequently simpler and more routine, and might be more suitable for certain mentally retarded persons. SSA is interested in information on the characteristics of types of jobs that are suitable for persons with particular intellectual deficiencies. Demonstrations of employmernt in which production takes place at smaller scale might produce the opportunity to develop information on light industry jobs suitable for the mentally retarded. These demonstrations must target the SSA beneficiary population and must provide detailed information on employment outcomes.

4.6 VR Referral and Tracking Systems. SSA is interested in improving the currrent referral of disability applicants to State VRAs through more effective follow-up activity. Currently, DDSs refer a small percentage of recently allowed claims to the State VRAs.

Some beneficiaries who might benefit from such VRA evaluations and services do not actively seek VRA aid, nor respond to VRA invitations to assist them to return to work. This may be due to a lack of understanding of what is being proposed and/or a fear of losing their benefits. Thus, when administrative follow-up efforts are made (after the VR referrals) to determine later beneficiary rehabilitation status, these efforts may be time consuming and non-productive.

Demonstrations should focus on a more efficient and productive type of referral and tracking system which would help SSA and DDS administrative staffs improve referral of beneficiaries to VRA, carry out more productive administrative follow-up activities to encourage beneficiaries to apply for VR services, and track the referred beneficiaries through referral, acceptance of VR services, receipt of services, and return to work.

An additional referral issue is when would be the best times for SSA to refer beneficiaries to the State VRAs (or other employment services), and how many times referrals should be made of the same beneficiaries. One conventional wisdom about VR referral is that the earlier the intervention the better, and that it is critical to intervene before an individual develops a disability mindset, becomes dependent on disability status (e.g., secondary gain) and/or ceases to have marketable skills. However, VRAs have noted that disability applicants are often not receptive to VR while they are awaiting a disability determination and that, for some impairments, there are medical reasons to delay VR. Most SSA referrals are currently made by the State DDSs at the time of the disability decision to allow or deny benefits to applicants. Sometimes the applicants are still too disabled by a recent medical condition to believe VR services could be useful. Demonstrations are needed of referral systems including early referral at time of application and referral at later points in time that would result in more beneficiary response and return to work. However, such demonstrations must be cost-effective and not increase administrative workloads of State DDSs (research).

4.7 Potential for Direct Involvement of Beneficiaries in the Selection of Rehabilitation Providers (e.g., use of vouchers) and in the Design of Their VR Programs. The Act requires that disability applicants be referred to State VRAs. Moreover, while State VRAs develop an individualized written rehabilitation program for each client accepted for VR services, these programs must meet Rehabilitation Services Administration (RSA) guidelines, and the availability of services offered is sometimes restricted by budgetary constraints. Therefore,

SSA is interested in demonstrations to measure, within a reasonable range of options, the degree to which client participation in the selection of VR services and VR providers may enhance participation in the VR programs, reduce the duration of the VR program, enhance the effectiveness of the program, and improve employment placement outcomes. SSA anticipates that projects in this area will include some form of case management involving client participation in planning rehabilitation and employment program services, selecting appropriate providers of services, and monitoring their own progress. In addition, SSA is particularly interested in projects using vouchers which include cost-sharing options supported by SSA, beneficiary co-payments or other funding sources. (Note: Monies for cost-sharing must be budgeted. See Part III, Section B, 6h.) The objective is to demonstrate ways in which client-directed rehabilitation/employment programs can be developed and implemented on a cost-effective basis with replication potential.

Priority Area 5.0:

State Vocational Rehabilitation Systems Improvement

SSA's principal and long-standing employment service resource has been the network of State VRAs and agencies for the blind that are responsible for administering State plans for VR under the Rehabilitation Act of 1973 (Pub. L. 93–112, as amended). (See Section I, subsection E, "Background," 2, for description of SSA's program with States). Over the years, these agencies have helped many beneficiaries return to work, but in recent years, fewer beneficiaries have received State VR services. Additionally the most recent report on State agency rehabilitations (RSA–300, 1985) shows that less than half of all DI/SSI disabled and blind beneficiaries reported as rehabilitated were in the competitive labor market. SSA is interested in *innovative* State VA/employment agency demonstrations leading to successful job placement which specialize in the following areas:

5.1 linkages with employers and private sector employment resources;

5.2 creative cost-containment approaches that will reduce average costs of rehabilitation/job placement;

5.3 new measures of successful rehabilitation that are predictive of sustained competitive employment to replace the current standard (9 months of SGA);

5.4 new structural approaches to assign State VRA staff to specialize in beneficiary rehabilitation and employment which result in more beneficiaries being served and returned to SGA at reasonable costs. Such approaches must lead to measurable and significant increases in employment placement of SSA beneficiaries, be replicable on a national basis, and be highly cost-effective. Approaches which merely assign staff to work with SSA beneficiaries are not being sought. The demonstrations of interest to SSA involve changes in the structural approach within the VRA related to serving SSA beneficiaries. These changes must result in significantly more beneficiaries returning to work and must be capable of continuing without support from SSA; and

5.5 innovative use of technology which permits impaired persons to work and/or directly ameliorate and/or improve their impairment(s) to improve functional capacity to work.

Priority Area 6.0:

Application of New Technologies To Assist Return to Employment

Advances in technology offer opportunities for disability beneficiaries both as consumers and producers. Significant advances are continuing to be made in the development and refinement of new technologies for reducing impairments and overcoming the handicapping effects of impairments. These developments and refinements, which are not always known and accessible to beneficiaries, make it possible for more disabled persons to return to work. Additionally, some companies that market new technology to and for disabled persons have found that it can be very cost-effective to employ disabled persons in the delivery of services to other disabled persons. And, in many areas of high technology production in general, companies have found that persons with certain disabilities are particularly suitable for employment.

6.1 *Rehabilitation Engineering and Other Forms of Technological Assistance.* The Rehabilitation Amendments of 1986 (P.L. 99–506) raised the national priority of rehabilitation engineering, which the amendments define as "systematic application of technologies, engineering methodologies or scientific principles to meet the needs of individuals with handicaps in areas including education, rehabilitation, employment, transportation, independent living and recreation." Rehabilitation engineering itself usually only extends the functional capabilities of the handicapped. It offers its greatest potential when it is combined with other support services, such as VR and employment services, in a concerted effort to help the disabled return to work. SSA is interested in projects which use rehabilitation engineering technologies in conjunction with employment services to assist persons to return to work, and projects which link beneficiaries needing technological intervention in order to return to work to sources of these services. SSA is particularly interested in projects which can link beneficiaries to both rehabilitation engineering technology *and* employment services resulting in return to work. Such projects should be cost-effective, permit the use of multiple resources combined with SSA payment for services, and be replicable. In designing such projects, attention should be given to mechanisms that would permit SSA to rapidly refer beneficiaries to appropriate engineering technology *and* employment services.

6.2 *Enhanced Access to Providers of Rehabilitation Engineering.* There is a need to expand the opportunities for disability beneficiaries to access new technologies, particularly technologies that are marketed to disabled persons. We are particularly interested in projects that provide improved methods for beneficiaries to gain access to new technologies, or projects which provide beneficiaries with access to networks which use technology to develop employment. SSA is seeking to link these networks and/or programs with beneficiaries.

Priority Area 7.0:

Communication and Marketing of Work Incentives, Vocational Rehabilitation, and Employment Information to Directly Assist Beneficiaries in Returning to work

The Social Security Disability Amendments of 1980 liberalized existing WI with the introduction of multiple new provisions (see I–E–3). However, to a large degree, these WI have not been used by beneficiaries, raising the question of how effectively they have been communicated. Recent amendments added new incentives (see I–E–3). The problem of lack of awareness and/or understanding of WI exists despite legislative initiatives, SSA information initiatives, recent changes in attitudes toward the disabled, advances in medical care, and wider availability of rehabilitation and employment services.

We know that the success of program WI in large part depends on:

- the beneficiary population's awareness of their rights, obligations and opportunities under the law;
- the knowledge of SSA's field staff about WI to respond to claimant inquiries accurately and timely; and

• the knowledge and relationships between SSA and disability organizations, public and private VR/employment agencies, job placement programs, physicians, employers, insurers and others.

There is a need to develop new, more effective marketing strategies and materials which would encourage greater use of the incentives by SSA's disabled populations.

Since treating physicians, insurers, State VRAs, private VRs, and employers share in SSA's goal of returning disabled beneficiaries to economic self-sufficiency, we seek their involvement in program promotion and delivery. SSA believes that these organizations can interrelate much more closely by sharing information and expediting return-to-work efforts for beneficiaries. But for this to occur, systematic and ongoing linkage procedures must be developed.

The need is to accommodate, encourage and support increased beneficiary interest in using the WI, expedite linking beneficiaries with appropriate service providers, and provide follow-up services for beneficiaries who become involved in work activity. Through increased awareness of the WI, and direct linkages to VR/employment service providers, we seek to develop improved attitudes towards SSA as a helping and nonadversarial agency, increase inquiries at FOs about the use of WI, and increase referrals to employment service providers.

A comprehensive, integrated communications and service approach is necessary to encourage larger numbers of DI and SSI beneficiaries to return to work and, ultimately, achieve independent status through productive employment. This approach will require clear communication, timely referral to service providers, and effective, efficient placement methods. The WI must be clearly presented to beneficiaries, advocates, physicians, insurers, employers and others as an important part of the DI and SSI programs.

Through the establishment of systematic SSA–VR/employment agency linkages, many more beneficiaries will be assisted in returning to employment and regaining their economic independence and self-esteem.

SSA is particularly interested in projects which:

7.1 examine comprehensive integrated communications approaches that will change knowledge and behaviors of disabled beneficiaries in order to increase their understanding and use of the WI;

7.2 improve the knowledge and awareness of WI by VR and employment service providers, physicians, insurers, and employers;

7.3 create information exchange relationships between SSA, beneficiaries and service providers to encourge return-to-work;

7.4 increase the knowledge of the SSI program, particularly the basic rules for treating income and resources and how these are modified by the WI provisions (1619 (a) and (b), PASS, IRWE and BWE) among VR/employment agencies, insurers, rehabilitation organizations, social workers, counselors, and other professionals in the rehabilitation field; and

7.5 create and test direct linkages between SSA FOs and VR/employment providers which are effective in assisting beneficiaries to receive services and return to work.

Projects in these subpriority areas must be highly cost-effective, replicable and involve appropriate evaluation and measurement techniques to assure that the tests effectively increase knowledge, affect beneficiary behavior and *measurably* improve linkages between SSA, beneficiaries and VR/employment service providers.

Priority Area 8.0:

Development of State-of-the-Art Information on the Functional Capacity and Compatible Occupations for Persons With Various Impairments

While many beneficiaries have impairments which make them unable to perform any work-related activities, others have impairments which leave them with the physical and/or mental capacity to perform some forms of work. For example, an individual suffering from epilepsy is often precluded from performing work around dangerous machinery or at heights but may not be prevented from performing a job in an office setting. Accurate assessment of remaining functional capacity despite impairment is a distinct challenge to providers of health care, DI, and VR.

8.1 Measurement of Functional Capacity for Work Performance. SSA is interested in projects which provide state-of-the-art information on the functional capacity of persons with various impairments. Measures and variables need to be defined which can, in a valid and reliable manner, provide accurate estimation of capacity for performance of work-related functions. A project which develops indices of functional capacity for specific health conditions, such as musculoskeletal and neurological impairments, would be of particular interest to SSA. In such projects, specific measures and variables must be defined, tested, and validated with disability beneficiaries and the measures must specifically focus on functional capacity for work. Empirical validation of measures is therefore necessary. New prototypes for measuring functional capacity of persons with specific impairments will be considered so long as the measurements involve assessing capacity for performing work. In developing measurement instruments, SSA will provide support only for instruments which could be used on an industry-wide basis (research).

8.2 Functional Capacity for Particular Occupations. Currently, the *Dictionary of Occupational Titles* and the *Selected Characteristics of Occupations* are the primary sources of information which assist in the determination of which occupations are compatible with the remaining functional capacity of individuals with disabilities. However, no compendium of regular and modified jobs that have been successfully performed by persons with specific types and degrees of losses of function has been compiled. Having such information available when first encountering an impaired individual, employment and VR counselors could begin early efforts on appropriate educational programs or vocational skill training that may be needed in assisting beneficiaries to return to work.

SSA is interested in projects which develop a compendium of information identifying various body systems and impairments, including common functional limitations imposed by such impairments, and specific jobs or occupations which might be performed within those limitations. Such a compendium should be based on empirical information as to the functional limitations associated with certain impairments and the specific types of occupations and jobs being performed by persons with such impairments. SSA is particularly interested in focusing on such impairment categories as cardiovascular, musculoskeletal, and mental, although other categories will be considered as well. The development and testing of prototype systems is feasible in this subpriority area (research).

Priority Area 9.0:

Improved Interagency Record Matching

For many years, SSA has provided beneficiary information via computer files to State agencies to assist in

accurately administering various State programs. These data files permit States to employ computer matching and thus are cost-effective in permitting efficient administration of State programs. Also, SSA has sponsored tests of automated matching of beneficiary data to facilitate VR service provision. However, not all data files that the State/local governments maintain are compatible with other State and Federal data files. These differences in systems often preclude effective inter/intra-State/Federal matching.

There are a variety of voluntary organizations that have excellent knowledge of the working of Federal, State and local programs which SSA believes could assist in coordination and development of interagency data linkages.

9.1 Computerized Data Matching Systems. SAA is interested in supporting projects with States and voluntary agencies that involve the development of computerized record systems (for such records as marriage, divorce, etc.) using established standardized formats which can match Federal, State, and voluntary agency records to assist in providing accurate benefits, and increase efficiency in providing rehabilitation services. Such projects must clearly identify the specific data systems to be used, their potential for matching State/Federal records, the specific outcomes to be achieved and the methods for providing an empirical test of the system(s).

Priority Area 10.0:

Special Studies

SSA has identified a number of special study priorities related to increasing employment opportunities for beneficiaries. SSA is interested in supporting studies in the following areas:

10.1 Health Insurance Coverage of Disability Beneficiaries. Organizations attempting to help beneficiaries return to work have expressed concern about health insurance coverage gaps (actual or anticipated) that may cause beneficiaries to delay or avoid rehabilitation and employment. SSA is interested in studies using available microdata which examine health insurance coverage of disability beneficiaries (and families) and health insurance available in connection with employment of beneficiaries, the timing and availability of such coverage, limitations on coverage, and exclusions preventing coverage. In general, SSA is seeking to learn what medical benefit coverage is available for DI/SSI beneficiaries (especially coverage available for beneficiaries who return to work), the extent of such coverage, gaps in coverage, and when these gaps occur. It is not expected that projects will propose new data collection but rather that existing data will be used to provide information about the medical benefit coverage of DI/SSI beneficiaries. Applicants should clearly identify the data sources to be used in such analyses, the specific data items to be analyzed, the extent and limitations of the proposed analyses, and the specific questions that will be answered by the analyses proposed (research).

10.2 Profile Data and Information on Employment Placement Success With Disability Beneficiaries. SSA is interested in developing profile data on factors which are associated with successful employment placements for various categories of disability beneficiaries. The grantee must provide SSA with specific profiles of disability beneficiaries who return to work, based on analysis of data on the demographic, economic, social, health and psychological characteristics of beneficiaries. Use of secondary data sources is anticipated. Profiles should be validated based on actual data and returned to work by beneficiaries. Profiles should clearly identify the key variables associated with employment outcomes. Profile development cannot be based on case histories but case histories can be used to further explain or emphasize profile data. The objective is to develop profile information on key beneficiary characteristics associated with employment success. Projects must demonstrate the use of this information in referring individuals for employment services.

10.3 Employment Services and Rehabilitation Needs of Persons no Longer Sufficiently Disabled to Qualify for Disability Benefits. SAA is interested in supporting demonstrations that will increase rehabilitation and employment opportunities for persons leaving the disability rolls due to medical improvement. Demonstrations must target on beneficiaries who are leaving the SSA disability program because of medical improvement, must specifically provide employment placement services which are highly cost-effective and which can be replicated on a national basis. Proposals must clearly present a systematic method of identifying appropriate beneficiaries, assure their actual need for placement services, present a rapid approach for planning and delivering such services, assuring a job placement outcome and closely monitoring costs. Proposals must include an objective evaluation design which will measure the efficiency, effectiveness, and cost-benefit ratio of the techniques used when integrated with disability program operations.

10.4 Traumatic Brain Injury (TBI) Studies. Head trauma, primarily (but not exclusively) due to accidents, has become an important public health problem. There are many individuals who, because of TBI, apply for disability benefits. Some of them qualify because of the neurological components of the injury and others because of mental components of the injury. It is estimated that 75 percent of head injuries are of mild to moderate severity. Many of these injuries involve a great deal of brain injury, but to distinguish them from the category of "severe" head injury is not an easy task even after all of the information is known. We still do not have full understanding of the components of post-traumatic sequelae of brain injury. SSA believes that the following issues should be recognized when considering projects in this area:

- mental impairments tend to be most incapacitating in individuals with mild to moderate head injury, thus, the course of recovery needs to be assessed in these claimants to determine when their impairments are stable.
- since mental impairments tend to be a frequent cause of disability in head injury cases, an assessment should be made of what types of rehabilitation services, specifically designed for mental impairments, are the most likely to restore the capacity and motivation to return to work; and
- since a significant number of individuals with TBI do return to work, prognostic factors such as the type of injury, nature of early impairments, etc., should be examined to determine which claimants are the most likely to respond to rehabilitative intervention.

Because the continuum of severity in head injury and its sequelae are not well understood, this renders medical evaluation of these claimants difficult and makes estimation of functional capacity for purposes of establishing any employable skills particularly hard to accomplish.

Therefore, SSA is interested in projects in which TBI data are analyzed to answer such questions as:

1. What percent of mild to moderate head injured individuals return to work?

2. Can return to work be predicted by the nature of the injury? (What are the medical/diagnostic symptoms of injuries over time and how do these change in the first year after injury? Does the severity of acute mental or neurological symptoms correlate with long-term functional capacity?)

3. What is the most effective medical intervention for these mild to moderate injuries? (Does treatment aimed specifically at the mental symptoms (e.g., cognitive therapy or psychiatric treatment) provide a better rate of return to work than standard treatment or no treatment?)

4. How does work evaluation performance relate to actual return to work? (When some claimants with competitive level skills do not return to work, what is the difference in symptoms, nature of injury or demographic features, etc., between those claimants and the ones who do return to work?)

SSA would anticipate use of primary and secondary diagnoses in developing information on these questions. Also, SSA will require appropriate scientific designs for such projects to assure that data and analyses produced are valid and reliable (research).

10.5 Support Needed to Continue Employment. SSA recognizes that many beneficiaries who return to work after extended periods of absence from the workforce due to disability, need help and encouragement to enable them to remain at work. SSA is interested in proposals for effective follow-up services for disabled beneficiaries who return to work and need support to assist them to retain their employment, or, if they fail on an initial return to work, services designed to help them to succeed at another work opportunity.

SSA is seeking innovative projects designed to assist disabled beneficiaries who are placed in employment to remain employed for significant periods or, if employment ends, to secure another job without delay. Such projects might involve specialized follow-up services (only where required) to assure continuation of employment, provide information on available WI, and resolve employment-related problems. Such services would have to be targeted on employed beneficiaries and be highly efficient and cost-effective. SSA is not interested in projects which simply follow-up beneficiaries who are placed in employment. The demonstrations we are seeking must focus on providing services which are essential so that beneficiaries continue employment or rapidly locate new employment.

SSA anticipates that projects in this subpriority area will be targeted on special populations of beneficiaries who require follow-up services in order to retain employment or locate new employment. Through such demonstrations, SSA is seeking to learn about the types of beneficiaries who require job retention services, the essential services needed, and their costs. These projects must be based on tests with employed disabled beneficiaries and involve empirical data collection and appropriate data analysis to ascertain the effects of the demonstrated interventions.

10.6 Measurements of Fatigue in Individuals with Multiple Sclerosis (MS).

Fatigue is among the most common and debilitating symptoms of MS. Many people with MS have significant disabilities resulting at least in part from fatigue-related dysfunction, yet it is a symptom that has proven difficult to measure.

SSA would support an effort to develop a set of objective tests for measuring fatigue in beneficiaries impaired by MS. The effort might include development of some psychological test instruments, functional tests, tests of performance decline in the fatigued state and development of criteria correlated with fatigue. The latter might be based on preliminary evidence suggesting a correlation between the extent of lesions on magnetic resonance imaging and fatigue or on evidence of increased energy expenditure in certain tasks. A modest effort to document functional failure using simple clinical tests before and after exercise might also prove useful. Exploration of changes in delay (evoked potentials) or in the amplitude of cortically-evoked responses with fatigue could lead to the development of more objective criteria for functional failure with fatigue.

Some MS-impaired individuals may also have difficulty with mental tasks when fatigued even though they may function very well when rested. Documentation in this area may be difficult but testing mental functioning in the fatigued state might prove useful. A thoughtful selection of those mental subtests where the performance of MS-impaired beneficiaries is reduced with fatique might lead to development of criteria for mental performance at various levels of fatigue. A comparison of tests of mental performance in the rested and fatigued state, adjusted for practice effects, might provide useful new information (research).

Priority Area 11.0:

Nonpriority Area Projects

Applicants may also submit applications for funding in areas not specifically identified in this announcement but which are relevant to the goals and objectives of the disability program. These applications will be designated as "nonpriority" but also will be competitively evaluated by independent reviewers with other "nonpriority" applications. A limited number of projects may be funded depending upon available funds.

Section III—Application Process

A. Eligible Applicants

Any State or local government and public or private organization or agency may apply for a grant under this announcement. (Individuals are not eligible to apply.) For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient.

B. Availability and Duration of Funding

Federal grant funds may be requested for reimbursement of allowable costs incurred by applicants in conducting the demonstration. These funds, however, are not intended to cover costs that are reimbursable under an existing public or private program. We generally expect, under this announcement, to fund the initial 12-month budget period of demonstrations designed to be completed in 12 to 24 months. Awards for the continuation of selected projects will be based on acceptable performance, availability of funds, and assessment of the continuing relevance of the demonstration or research effort. In general, we anticipate funding projects that cost a total of between $100,000 and $200,000 per year. Actual awards may vary and eligible applicants may request smaller or larger awards.

C. Grantee Share of the Project Costs

Grant recipients are expected to contribute towards the cost of each project. SSA does not make grant awards for the total cost of the projects. Successful applicants for *demonstration grants* are eligible to receive 3 dollars in Federal funding for each 1 dollar secured from non-Federal sources, up to the limits specified in the priority area descriptions in this announcement.

Therefore, at least 25 percent of the total costs for demonstration projects must come from a source other than the Federal Government (1 DOLLAR MATCH FOR EVERY 3 DOLLARS REQUESTED FROM SSA). HOWEVER, FOR APPLICANTS SUBMITTING *RESEARCH* PROPOSALS, A 5-PERCENT (MINIMUM) MATCH IS REQUIRED.

D. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by

writing or telephoning the Grants Management Staff, Division of Contract and Grant Operations OAG, DCM, Social Security Administration: 1-E-4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21241, Attention: SSA RDP-2, Telephone: (301) 965-9500.

E. Application Submission

An original and a minimum of two signed copies of the application must be submitted to the above address. Submittal of *six additional copies is optional and will expedite processing. However, there is no penalty for not submitting the additional copies.*

F. Application Consideration

All applications requesting Federal grant funds must be submitted on the standard forms provided in this announcement. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of a grant award.

Applications that conform to the requirements of this program announcement will be reviewed and scored by independent reviewers against the evaluation criteria specified in Section III, H.2 of this announcement. Although the results of this review are a primary factor considered in making the decision about an application, review scores are not the only factor.

SSA reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when it is determined to be in the best interest of the Federal government or the applicant.

G. Special Considerations for Funding

Within the limits of available Federal funds, SSA will make financial assistance awards consistent with the statutory authorities governing the SSP RDP and this announcement. In making these decisions, preference may be given to applications which feature: a substantial innovation that has the potential to improve practice in the VR/employment of persons on SSA's disability rolls; a model practice or set of procedures that hold the potential for dissemination to, and utilization by organizations involved in the administration or delivery of rehabilitation services; and, substantial involvement (either financial or programmatic) of the private sector and the possibility of a large degree of benefit for a small Federal investment. SSA will also take into account the need to avoid duplication of effort in making funding decisions.

H. Criteria for Screening and Review

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete, comforming applications will then be reviewed and evaluated.

1. Screening Requirements

In order for an application to be in conformance, it must meet all of the following requirements:

(a) Number of copies: An original and two signed copies of the application *must* be submitted. Six *additional* copies are optional but will expedite processing.

(b) Length: The program narrative portion of the application MUST NOT EXCEED 25 DOUBLE-SPACED PAGES (or 13 single-spaced pages) typewritten on one side of the paper only.

(c) Selection of priority area: In item 7 of the Face Sheet (SF-424), indicate one subpriority area only for which the application is being submitted, (e.g., 4.3, 7.1, 7.2, etc.). If not submitted in response to any of the subpriority areas specified by this announcement, indicate "nonpriority."

2. Evaluation Criteria

Applications which pass the screening will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the following criteria:

(a) *Project Objectives: 5 points.* The application details the specific objectives of the project. How closely do the project's objectives fit the objectives of the subpriority area under which the application is submitted? For nonpriority projects, how well do the objectives of the project fit the goals and objectives of the announcement?

(b) *Background/Importance of Project: 10 points.* The application clearly describes the problem, issue or situation that prompts the applicant's proposal. The need for the project is discussed in terms of local, regional or national significance and the importance of the issues to be addressed. It also summarizes the state-of-the-art in resolving these problems, including how this project builds upon previous work, how it advances the state of knowledge from a national perspective, and how it addresses a priority need identified in this announcement (or in the case of a "nonpriority" project, how it addresses the goals and objectives of this announcement). Where appropriate, attention is paid to the larger significance (regional, national) of the project, beyond its actual implementation site(s).

(c) *Project Methodology: 35 points.* 1. List the concepts to be tested. Make them clearly relate to the objectives of the priority area(s) chosen. For example, in priority area 3, it is stated that the project must be designed to return disability beneficiaries to SGA. Therefore, the basic concept should be that the procedure you are demonstrating will return more beneficiaries to SGA.

2. Describe how you plan to conduct your test(s). Provide a detailed description of the methods and procedures you plan to use and indicate *how you plan to measure* the effects of your test(s) relative to some benchmark, e.g., how many more of your test subjects achieve SGA as compared with your estimate of the number you would expect under the current SSA disability programs.

3. Indicate the size of your sample and describe how you arrived at your sample size in light of the test(s) you intend to conduct and the design considerations of your demonstration. For example, a demonstration with chronic brain damaged beneficiaries in a medium-size metropolitan area may be difficult, given the small numbers of such beneficiaries who may reside within that area. Your proposal should give assurances that you have determined that a sufficient number of subjects reside in the geographic area of the demonstration site to permit an adequate sample size.

4. Explain how you propose to select your sample. Describe the process of acquiring eligible subjects. Describe any incentives used to encourage subjects to participate.

5. It is probable that an observation period which is longer than the treatment period will be required for your tests. Discuss the length of the treatment and observation periods and describe how the length of your observation period will be sufficient to gather the necessary data. Describe how contact will be made for gathering data during the observation period, e.g., mail contact, phone contact, personal contact, employer follow-up, etc.

Note: In some instances, primarily with the larger demonstrations, it may be possible to construct a *statistically valid experimental design.* In those instances, a full project protocol should be provided, including a statement of hypotheses to be tested, a detailed explanation of the methodology to be used (nature of statistical tests and methods, etc.), a description of the sample design and explanation of how the sample design is suited to the statistical methodology and hypotheses to be tested, rationale for specification of sample size, and an estimate with explanation of the statistical power of

the tests resulting from all of the above. In such designs, the use of an appropriate, randomly-selected control group is highly desirable.

6. List the data to be collected. Discuss how the data will be used in the analysis. Discuss the data that will be supplied for further evaluation by SSA. Describe the evaluation approach to be used indicating the types of outcome information expected.

7. Discuss potential problems that may arise and how they will be resolved, e.g., describe how dropouts, inadequate number of referrals, etc., will be handled.

8. Greater consideration will be given to proposals which meet the following criteria:

• where the size and scope of the proposed demonstration dictate a statistically valid experimental design, and provision is made for the establishment of a control group of individuals with similar characteristics to the participants receiving the treatment (SSA prefers that the project participants be identified prior to the start of the treatment so that the participants may be randomly assigned between the treatment and control groups);

• plans to provide SSA with project data on both the treatment (and control group where appropriate), on an ongoing basis, so that SSA may continue an evaluation after that performed by the grantee. It is recommended that the data for each participant include, but need not be limited to, the following:

a. Education
b. Date of birth
c. Prior occupation
d. Sex
e. Type of disability
f. The following dates
• start of treatment
• start of each job and type of job
• end of each job
• date of completion of TWP
• date of termination
• death
• withdrawal from study
• medical termination
g. Income from all sources (e.g., other disability income, monthly earnings on jobs, spousal earnings)

• plans to provide SSA with information to enable it to follow project participants for a period sufficient to observe whether work attempts are sustained and terminations from the DI and/or SSI program result; and

• for projects designed to provide SSA with data, information, or involving a test of a particular system, methodology or measurement scale, the evaluation plan specifies how the particular products being developed in the project will be reviewed and provides SSA with sufficient details to assure that the products will be thoroughly evaluated.

(d) *Work Plan: 20 points.* The application provides specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about: (1) The tasks to be completed in the project, (2) a chart with tasks laid out over time (Gantt chart), (3) a clear description of how much time and how many staff will be needed to complete each task, (4) the products to be developed over the course of the project, and (5) if an independent contractor is to be used for any part of the project, include the scope of work to be performed by such contractor, the tasks to be completed, a time chart for such tasks and the products to be provided by the sub-contractor.

(e) *Organizational Capability: 10 points.* The resources that will be needed to conduct the project are specified including personnel, time, funds and facilities (including computer capability and specialized technical equipment, where relevant). These resources should be adequate to accomplish the work plan described in the application. The staff (or other personnel resources) should be qualified and possess the variety of skills and abilities required to produce final results that are readily comprehensible and usable. The qualifications of top staff who would have little or no direct impact on the project would not be relevant. The staffing pattern clearly links responsibilities to project tasks. The total cost of the project is reasonable in view of the anticipated results. Any collaborative effort with other agencies or organizations is clearly identified, and written assurances referenced. A description by category (personnel, travel, etc.) of total funds required and of the sources of outside support that will be used to meet the matching requirement is included. The funds (total of Federal funds and non-Federal funds) are specified. The location and adequacy of the facilities are provided.

(f) *Implementation Potential: 15 points.* The application addresses the costs and benefits that might accrue from replication of the project results. Discussion is included of special features of the target group(s) for which this proposal is designed, how final products will facilitate utilization of project findings, and plans to continue the project or implement its findings after completion.

(g) *Dissemination of Results: 5 points.* The proposed project specifies the means to be used to disseminate results and promote utilization of these results by others in the field. If applicable, specific training methods, training materials and target audiences to which methods and materials would be addressed should be identified.

THESE EVALUATION CRITERIA CORRESPOND TO THE OUTLINE FOR THE NARRATIVE SECTION OF THE APPLICATION. THE DESCRIPTIONS OF THE SEVEN CRITERIA ABOVE SHOULD BE USED IN DEVELOPING THE PROGRAM NARRATIVE. ALSO REFER TO THE OUTLINE IN SECTION IV.

I. Closing Date for Receipt of Applications

The closing date for submittal of applications under this announcement is *June 30, 1988.* Applications must be mailed or hand-delivered to: Grants Management Staff, Division of Contract and Grant Operations, OAG, DCM, Social Security Administration, 1-E-4, Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21241, Attention: SSA RDP-2, Subpriority Area:

Hand-delivered applications are accepted during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. received on or before the deadline date at the above address; or

2. mailed through the United States Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely filing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered in the current competition.

Paperwork Reduction Act

This notice contains reporting requirements in "The Application Process" section. However, the information is collected using Form SSA-96, Federal Assistance, which has OMB clearance number 0960-0184.

Executive Order 12372—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372

relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

Catalog of Federal Domestic Assistance Program (CFDA) No. 13.812—Assistance Payments—Research and Demonstrations.

David A. Rust,

Associate Commissioner for Disability.

Rhoda Davis,

Associate Commissioner for Supplemental Security Income.

Louis D. Enoff,

Deputy Commissioner for Programs.

Approved: April 29, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Section IV—Instructions for Completing Applications

A. Application Package

In order to expedite the processing of applications, we request that you *adhere to the following instructions explicitly.* An application may be considered incomplete and returned if it fails to follow the instructions or if the material presented is insufficient to permit an adequate review.

- Type the application using standard-size type.
- Type on one side only.
- Reproduced copies should be single-sided.
- Do not bind or staple the applications. Secure them with rubber bands or paper clips.
- If continuation pages are required, please use standard-size (8½" × 11") white bond paper.
- All items on the forms must be completed. Enter "NONE" or "NA" (not applicable) whenever appropriate.
- Do not use covers, binders or tabs.
- Do not include extraneous materials such as agency promotion brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.
- All applicants will be immediately notified of receipt and the identification number assigned to their application. This number and the subpriority area must be referred to in *ALL* subsequent communication with SSA concerning the application. If acknowledgement is not received within 30 days after the deadline date, please notify SSA by telephone (301) *965–9500.*
- Applicants should be advised that SSA STAFF CANNOT RELEASE PREDECISIONAL INFORMATION relative to an application other than that it has been received and that it is going through the review process. Unnecessary inquiries delay the award process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.
- ALL APPLICANTS MUST SUBMIT AN ORIGINAL AND 2 COPIES OF THE COMPLETED APPLICATION FORM SSA–96.

B. Content of the Application

Each copy of the application must contain a FACE SHEET (SF–424), and be completed and assembled in accordance with the following instructions:

1. PART I, FACE SHEET of the application including a project summary description;
2. PART II, PROJECT APPROVAL INFORMATION;
3. PART III, BUDGET INFORMATION;
4. PART IV, PROGRAM NARRATIVE;
5. PART V, ASSURANCES; and,
6. Projects which require collaboration or substantive commitment by Federal, State, or local governments or organizations other than the applicant's organization should (if possible) include letters of cooperation. These letters are not part of the narrative and, therefore, are not counted against the 25-page limit for the narrative.

C. Preparing the Application

Part I—Face Sheet (SF–424)

The following instructions are provided for completing Sections I and II:

Item 1. Not applicable.

Item 2a. Applicant's own control number, if desired.

Item 2b. Date SECTION I is prepared (at applicant's option).

Item 3a. Not applicable.

Item 3b. Not applicable.

Items 4a. Legal name of applicant, name of primary

Thru 4h. organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number (including area code) of the person who can provide further information about this request.

If the payee will be other than the applicant, enter under SECTION IV—REMARKS, the payee's name, department or division, complete address, and employer identification or HHS entity number.

If the contact person is other than the Project Director, furnish (if known) the Project Director's name, title, and telephone number under SECTION IV—REMARKS.

Item 5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service (IRS).

If the applicant has been assigned a Department of Health and Human Services (DHHS) entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit code, enter the full DHHS entity number. Otherwise, enter the IRS EIN.

Item 6a. Use CFDA number 13.812.

Item 6b. Not applicable.

Item 7. Select a title that is both short (60 characters or less) and descriptive. Include the subpriority area under which this application is submitted. If the application is not submitted in response to any of the subpriority areas specified in this announcement, indicate "nonpriority."

Project Summary Description. Item 7 also asks for a summary description of the project using Section IV of SF–424. In place of Section IV, attach a separate sheet of 8½ x 11" plain paper to provide this summary description of the project. Clearly mark this separate page with the applicant name as shown in item 4a. and the subpriority areas as shown in item 7. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer database on each project.

The description should be specific and concise. It should describe the objectives of the project, the approaches to be used and the outcomes expected. At the end of the summary, list major products that will result from the proposed project (such as software packages, materials, management procedures, data collection instruments, training packages or videos) and any restrictions or limitations on its use by SSA. Remember this summary description is limited to 1,200 characters. This information, in conjunction with the information on the Face Sheet (SF–424), becomes the project's "abstract", and will be the major source of information about the project.

Item 8. "City" includes town, township and other municipality.

Item 9. List only largest unit or units affected, such as State, county, or city.

Item 10. Estimated number of persons directly benefiting from project.

Item 11. Not applicable.

Item 12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included.

Item 12a. Amount requested from the Federal government.

Item 12b. Amount applicant will contribute.

Item 12c. Amount from State, if applicant is not a State.

Item 12d. Amount from local government, if applicant is not a local government.

Item 12e. Amount from any other sources. Explain in SECTION IV.

Item 12f. Total of lines 12a through 12e.

Item 13a. Congressional district of the applicant.

Item 13b. The district(s) where most of the action work will be accomplished. If city-wide or State-wide covering several districts, write "city-wide" or "State-wide."

Item 14. Not applicable.

Item 15. Approximate date project expected to begin.

Item 16. Estimated number of months to complete project after Federal funds are available.

Item 17 thru 20. Not applicable.

Item 21. Check appropriate box as to whether SECTION IV of form contains remarks and/or additional remarks are attached.

Item 22a. Not applicable.

Item 22b. Not applicable.

Item 23a. Name and title of authorized representative of legal applicant.

Item 23b. To be valid and acceptable for review, an application must be properly executed by an individual authorized to act for the applicant organization and to assume the obligations imposed by the requirements and conditions for any grant award including the applicable Federal regulations. If the authorized official is not available, an individual authorized to act on his/her behalf may sign as "acting for" the designated official.

Part II—Project Approval Information

Negative answers will not require an explanation. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

Item 1. Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2. Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3. Attach the clearinghouse comments for the application. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4. Furnish the name of the approving agency and the approval date.

Item 5. Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6. Show the population residing or working on the Federal installation who will benefit from this project.

Item 7. Show the percentage of the project work that will be conducted on Federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8. Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact.

Item 9. State the number of individuals, families, businesses or farms this project will displace.

Item 10. Show the FDAC number, the program name, the type of assistance, the status and the amount of each project where there is related previous, pending or anticipated assistance. Use additional sheets, if needed

Part III—Budget Information.

SECTIONS A, B, C, and D should include budget estimates for the first budget period (usually 12 months) and SECTION E should present the need for Federal assistance in the subsequent budget period(s).

Section A—Budget Summary. Grant applicants requesting assistance to conduct activities under grant programs administered by SSA are expected to contribute towards the total cost of the activity. These costs must be reflected in the grant application. The budget for the activity must include funds requested from SSA and the applicant's share of allowance costs.

Line 1, Columns a and b—In column a, enter "SSA" and in column b, enter the CFDA number.

Leave columns c and d blank. Enter in column e the amount of Federal funds needed to support the project for the first funding period (usually 12 months). Enter in column f the amount of the cost of the project to be borne by the applicant. Enter in column g the total of columns e and f.

Lines 2 through 5, columns a through g of this section are not to be completed.

Section B—Budget Categories. Use column 1 only. Leave columns 2, 3, 4, and 5 blank.

Lines 6a–h—Show the estimated Federal costs for each object class category in column 1.

Line 6a—Personnel. Show salaries and wages only. Fees and expenses for consultants should be included on line h—Other. In computing estimated salary changes, an individual's base salary represents the total authorized annual compensation that an applicant organization would be prepared to pay for a specified work period. The base salary excludes income that an individual may be permitted to earn outside of full-time duties to the applicant organization.

Line 6b—Fringe Benefits. Fringe benefits may be requested as a direct cost to the extent that they are treated consistently by the applicant organization as a direct cost to all sponsors. As an alternative, fringe benefits may be included in the calculation of the applicant organization's indirect costs. If a fringe benefit rate has been negotiated with DHHS or another Federal agency, indicate the agency and the applicable rate under SECTION F. Otherwise, indicate the method used in computing the amount of fringe benefits claimed.

Line 6c—Travel. Include the cost of travel for employees only. Travel for consultants should be included on line 6h—Other. Under SECTION F describe the purpose of any travel, number of trips involved, destinations, individuals who will be traveling and the projected cost per trip, i.e., local transportation, air travel, per diem, etc. Include the computations used in determining the cost.

Line 6d—Equipment. Include only nonexpendable personal property which has a useful life of more than 2 years and an acquisition cost of $500 or more per unit. Under SECTION F, list and explain the need for each item of equipment.

Line 6e—Supplies. Include all tangible personal property except that listed on line 6d. If the total exceeds $500, list and explain the need for the items under SECTION F.

Line 6f—Contractual. Include all procurement contracts (except those which belong on other lines such as equipment, supplies, consultant services, etc.). List each contract, the amount and purpose under SECTION F.

Line 6g—Construction. SSA programs do not have construction authority but may support limited alteration and renovation costs. Amounts included under this category must be fully explained under SECTION F.

Line 6h—Other. Use for all direct costs not clearly covered by lines a through g. Examples are computer use charges, consultant costs, equipment rentals, and voucher cost-sharing monies for proposals submitted under subpriority area 4.7. Amounts entered under this category must be itemized and fully explained under SECTION F including the method used in computing the cost.

Line 6i—Total Direct Costs. Enter the total of lines 6a through 6h.

Line 6j—Indirect Costs. Applicants which are State and local governments, enter the amount of indirect costs. List and explain these costs under SECTION F. Indicate if the costs are claimed in accordance with an approved State cost allocation plan.

Applicants other than State and local governments, enter the amount of indirect costs. If the costs are claimed in accordance with an approved indirect cost rate negotiated with DHHS or another Federal agency, include the name of the agency and the rate under SECTION F. If a rate has not been negotiated, list and explain the costs including the method of computation.

Link 6k—Totals. Enter the total of lines 6i and 6j.

Line 7—Program Income. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Explain the nature and source of income under SECTION F.

Section C—Nonfederal Resources. On line 8, column a, enter SSA. In column b enter the amount of funds or the value of in-kind contributions to be provided by the applicant. In column c, enter the amount of State funds. In column d, enter the amount of funds or the value of in-kind contributions from other sources. Enter the totals in column e. Line 12 need not be completed.

Section D—Forecasted Cash Needs. Line 13—Enter the amount of Federal funds needed by quarter during the first year.

Line 14—Enter the amount of funds from all other non-Federal sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project. Enter in the proper columns the amounts of Federal funds which will be needed to complete the project over the succeeding funding periods (in years). Enter the total for each of the future years on line 16k.

Section F—Other Budget Information. Attach additional sheets if necessary in explaining and justifying the items contained in the project budget (SECTION B). The information provided should include sufficient detail (including the method of computation) to facilitate a determination as to the allowability, relevance to the project, and cost/benefit.

Section G—Personnel. 1. Personnel. List all personnel chargeable as a direct cost to the project by title, salary and percentage of effort. Include names for key positions only.

Enter in column 1 the annual (12 months) salary rate for each position which will be filled for all or any part of the year by an incumbent working on the project. This rate may not be more than that paid by the grantee to other employees in comparable positions or, if the grantee has no comparable positions, the rate may not be more than that paid for such services elsewhere in the community.

Enter in column 2 the number of months the position will be filled by an incumbent working on the project.

Enter in column 3 the percent of time or effort the incumbent will devote to the project during the number of months shown in column 2.

Enter in column 4 the total amount required, as computed from the information shown in columns 1 through 3. Use the following formula:

Annual Salary (col. 1) times No. of Months (col. 2) divided by 12 times Percent of Effort (col. 3) equals Total Amount Required (col. 4)

2. Fringe Benefits. Enter in the parentheses the applicable fringe benefit rate(s). In column 4, enter the amount determined by applying the rate to the total of the salaries in column 4 to which the rate(s) applies.

3. Option for Salary Detail Submission. Applicants may request that the salary rates and amount requested for individuals not be made available to DHHS reviewing consultants. To do so, an additional copy of this page must be submitted, complete in all respects, except that columns 1 and 4 may be left blank.

4. Function/Task Description. Attach a description of the function or task to be performed for all personnel listed.

Part IV—Program Narrative

The review of grant applications is aided materially when project descriptions are presented in a reasonably uniform pattern. For this reason, the following guidelines should be used in completing the program narrative. The program narrative is not to exceed 25 pages typed double-spaced, or 13 pages typed single-spaced and should provide information on how the application meets the evaluation criteria in Section III. Pages should be typed on one side only of standard-sized white bond paper. Each page should be numbered consecutively at the bottom beginning with page IV-1.

The program narrative should describe the major issues of concern, the research and demonstration methodology to be used in addressing these issues, and the potential for implementation of the results. Review of the narrative will concentrate on the above and on the manageability of the design as reflected in the work plan. Should the proposed project be funded, the information provided in the narrative will form the basis for monitoring the project and evaluating progress for future funding decisions, as well as aid SSA in planning for required technical assistance and for the implementation and dissemination of project findings.

Note.—A consultant in research design may be useful in preparing a proposal under this announcement. Such a person is knowledgeable about the issues to be addressed in the research and demonstration methodology section, and may be helpful in developing a work plan as well as disseminating the results. Persons trained in research project planning and design may work in many different occupations and for a wide variety of employers, most notably in the social science department (e.g., Sociology, Economics, Political Science, etc.) of colleges or universities.

The narrative should be organized under the following major headings as appropriate:

A. Project Title and Objectives

B. Background and Importance of Project

C. Research and Demonstration Methodology

D. Work Plan

E. Organizational Capacity

F. Implementation Potential

G. Dissemination of Results

The program narrative should be completed as follows:

A. Project Title and Objectives. 1. Select a title that is both short (60 characters or less) and descriptive.

2. Specify the objectives of the project.

B. Background and Importance of Project. 1. Discuss the major areas the project will address and the national significance of these problem areas. Include factual comments on the number of individuals (recipients) affected and the magnitude of the human, physical and fiscal resources involved.

2. Discuss the state-of-the-art in resolving these problems. Include approaches that have been or are being taken in resolving the problems and the outcomes of these approaches. Also include: (1) The organizational structures which currently deal with the problems, (2) the services provided, and (3) the administrative methods currently used.

3. Discuss the approaches proposed for resolving the problems included with this project and the rationale supporting the proposed resolution.

4. If the performance of any of the project activities is to be transferred to a third party (e.g., evaluation of the project—see Section IV., D) include the following information:

(a) a description of the activities in question; (b) a justification for the performance by a third party; (c) estimated costs and time schedule; and (d) a description of the kinds of organizations or other parties to be selected and the method of selection.

5. Summarize important results obtained by others which bear on this project, citing publications where applicable. It should be apparent from the summary that existing literature has been critically reviewed and that related programs being carried on elsewhere are known to the applicant.

6. Cite the most important publications of the project staff on this or closely related work. If none, list the most important publications in other related fields over the last 5 years.

C. Research and Demonstration Methodology. 1. List the hypotheses to be tested. Make them clearly relate to the objectives of the priority area(s) chosen. For example, in priority area 3, it is stated that the project must be designed to return disability beneficiaries to SGA. Therefore, the basic hypothesis should be that the treatment will return more beneficiaries to SGA.

2. Describe how you propose to test your hypotheses. If a comparison of the new treatment with the present program is indicated, a treatment and control group structure needs to be established.

Note.—In some instances, a hypothesis testing methodology may not be appropriate or feasible for projects. In such cases, the research and demonstration methodology must be explicitly described including a detailed explanation of the methodology to be used for conducting the project emphasizing the procedures and methods to be used in determining project impact.

3. Indicate the size of your sample and describe how you arrived at your sample size in light of the hypotheses to be tested. Explain how the sample size will be sufficient to detect differences between the treatment and control group in which you are interested, e.g., indicate the statistical power of test.

4. It is probable that an observation period which is longer than the treatment period will be required to test the hypotheses. Discuss the length of the treatment and observation periods and describe how the length of your observation period will be sufficient to gather the necessary data for your hypotheses to be tested. Describe how contact will be made for gathering data during the pre- and post-treatment observation period, e.g., mail contact, phone contact, personal contact, employer follow-up, etc.

5. Explain how you propose to select your sample. Describe the process of acquiring eligible subjects. Describe the process of selecting a control group of subjects identical to the treatment group. Describe any incentives used to encourage subjects to participate.

6. List the data to be collected. Explain how these data will be used to test the hypotheses. Discuss how the data will be used in the analysis. Discuss the data that will be supplied for further evaluation by SSA. For project findings that are not suitable for hypothesis testing, describe in detail the evaluation approach to be used indicating the type of outcome information expected.

7. Discuss potential problems that may arise and how they will be resolved, e.g., describe how dropouts, inadequate number of referrals, etc., will be handled (see especially Section III, H., 2, (c)).

D. Work Plan. 1. List and describe each task (at lease one paragraph per task) that must be completed to carry out the project. (Most projects should have between 10 and 20 tasks.)

2. Specify the project(s) for each task that can be provided to SSA on request as proof that the task has been completed.

3. Prepare a Gantt chart showing the start and end dates for each task. Including milestones such as:

- onsite acquisition of staff;
- physical acquisition of facilities and equipment;
- pretest of measurement devices;
- establishment of linkages with ongoing programs;
- acquisition of subjects for testing;
- signing of agreements and contracts;
- arrangements with public and private agencies to provide services, data or other support;
- steps to involve potential users; and
- completion and dissemination of final report.

4. Show the level of effort in work-months (by project personnel, if possible) required to complete each task.

5. Indicate the formats for the interim and final progress reports to be submitted to SSA.

6. If an independent sub-contractor is to be used for any part of the project, include the scope of work to be performed by such contractor, the tasks to be completed, a time chart for such tasks, and the products to be provided by the sub-contractor.

E. Organizational Capacity. Project staff and Facilities

1. Include a project staff organization chart and, if applicable, show the linkages with State/county organization charts. Note that the Project Director should be full-time, if possible or devote a substantial portion of his/her time to the project.

2. Staff Qualifications—Include a biographical sketch of the proposed Project Director and other key project staff, highlighting special qualifications that relate to the accomplishment of project objectives, such as education and experience. For each of the key staff not identified at the time of application, provide (in lieu of a biographical sketch) a job description, qualifications sought and a projection of how long after notification of grant award the recruitment of these staff will take.

3. Discuss other qualifications of staff or of organizations affiliated with the project that enhance its potential success.

4. Describe the facilities where the activity will be conducted and the location (including computer capability and specialized technical equipment where relevant).

Organizational Capability Statement. Provide a brief (maximum 2 pages double-spaced or one page single-spaced) background description of how the applicant agency (or the particular division of a larger agency which will have responsibility for this project) is organized and the types and quantity of services it provides or research capabilities it possesses. This description should cover capabilities not included in the program narrative under project staff and responsibilities. It may include description of any current or previous relevant experience or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable.

F. Implementation Potential. 1. Estimate the costs and the benefits that might accrue from replication or installation on a State-wide (or nationwide) basis, specifying the assumptions and logic used in making the estimate. Provide a description of the specific uses of the project results which are directly relevant to the needs of SSA disabled beneficiaries and suggest how the results could be applied to assist beneficiaries.

2. Specify any special features of the target group(s) and the operational environment in which the project will operate that would vary in other locations, thus influencing utilization potential, e.g., rural population, minority

composition, political climate, governmental centralization or decentralization, etc.

3. Specify how final products will be oriented toward facilitating implementation in other locations.

4. Discuss commitments made by Federal, State or local governments and other organizations to continue the project or implement its findings after completion.

G. Dissemination of Results. 1. Specify the means to disseminate the results and promote utilization of these results by others in the field.

2. Describe (where appropriate) the training methods and content to be packaged for dissemination and use for others. Note any restrictions or limitations (patent, copyright, proprietary interest, etc.) on its use by SSA.

Part V—Assurances

Applicants are required to file Part V, Assurances, and the Assurance of Compliance with the DHHS Regulations under Title VI of the Civil Rights Act of 1964 (Form HHS–441). Copies of these assurances are reprinted at the end of this announcement.

A. Check List of Application Requirements. Before submitting the application for grant support, check to assure that the following items are included:

Formal application prepared on Form SSA–96, assembled in the following order:

———— PART I, Face Sheet (SF–424) has been completed according to the instructions, includes subpriority area in item 7, is signed by an authorized official, and has a project summary description attached;

———— PART II, Project Approval Information;

———— PART III, Budget Information, sections A, B, C, D, and E are completed;

———— PART IV, Program Narrative, does not exceed 25 pages and includes an organizational capability statement not exceeding 2 pages; and

———— PART V, Assurances.

Other Forms: CIVIL RIGHTS:

———— Assurance Filed with HHS

or

———— Completed Form HHS–441 enclosed

APPLICATION CERTIFICATIONS (to be completed by for-profit organizations applying for grant support):

———— Certifications Included

———— Certifications Not Applicable

MAILING:

———— An Original and 2 copies of the Application

B. Points to Remember.

• At least 25 percent of the TOTAL cost for the proposed demonstration projects must come from a source other than the Federal government (1 dollar match for every 3 dollars requested by SSA). Research projects require cost-sharing of 5 percent. An application may be unduly penalized in the review process by careless errors relating to the computation of the non-Federal share or match.

• Submit an original and two copies of the application. Six *additional* copies are optional, but will expedite processing.

• Designate in item 7 of the Face Sheet (SF–424) the subpriority area under which the application is being submitted. If not submitted in response to any of the subpriority areas specified in this announcement, indicate "nonpriority."

• APPLICATIONS ARE NOT TO CONTAIN NARRATIVES IN EXCESS OF *25* TYPEWRITTEN DOUBLE-SPACED PAGES (OR *13* SINGLESPACED PAGES).

• The project summary description of 1,200 characters or less is an essential element of the application. It is important that the summary description accurately reflect the nature and scope of the proposed project.

• Follow the recommended format as closely as possible in preparing the program narrative. The format reflects the evaluative criteria which will be used by reviewers to evaluate applications.

• Do not include letters endorsing or supporting the project.

• The qualifications of key staff should be described in a few paragraphs rather than in formal vitae. Vitae or resumes are not to be provided and will not be included in the applications provided to reviewers.

• Although multiple applications (of different concepts) from the same applicant are not prohibited, they are not encouraged.

• THE ACTIVITIES BELOW GENERALLY WILL NOT MEET THE PURPOSES OF THIS ANNOUNCEMENT

—projects whose main activity is a conference or meeting;

—projects whose major product is a manual;

—proposals which request expansion or continuation of existing services or programs;

—proposals which would establish clearinghouses; or,

—projects which are not within the goals and objectives of this announcement.

BILLING CODE 4190-11-M

PART I

OMB Approval No. 0348-0008

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE
- a. NUMBER
- b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code.
- h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER ___ . ___
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

Subpriority Area

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

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PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

PART I (Continued) DETACH AND, AS NECESSARY, STAPLE TO ABOVE SHEET.

SECTION IV—REMARKS *(Please reference the proper item number from Section I, II or III, if applicable.)*

FORM APPROVED
OMB NO. 0960-0184

PART II

PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local, regional, or other priority rating?

_____ Yes _____ No

Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State or local advisory, educational or health clearance?

_____ Yes _____ No

Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require clearinghouse review in accordance with Executive Order 12372?

_____ Yes _____ No

(Attach Comments)

Item 4.
Does this assistance request require State, local, regional or other planning approval?

_____ Yes _____ No

Name of Approving Agency _____
Date _____

Item 5.
Is the proposed project covered by an approved comprehensive plan?

_____ Yes _____ No

Check one: State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 6.
Will the assistance requested serve a Federal installation?

_____ Yes _____ No

Name of Federal Installation _____
Federal Population benefiting from Project

Item 7.
Will the assistance requested be on Federal land or installation:

_____ Yes _____ No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 8.
Will the assistance requested have an impact or effect on the environment?

_____ Yes _____ No

See instructions for additional information to be provided.

Item 9.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.
Is there other related assistance on this project previous, pending, or anticiated?

_____ Yes _____ No

See instructions for additional information to be provided.

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PART III – BUDGET INFORMATION

SECTION A – BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6. Object Class Categories	Grant Program, Function or Activity				Total
	(1) Federal Funds	(2) N/A	(3) N/A	(4) N/A	(5)
a. Personnel	$	$ N/A	$ N/A	$ N/A	$ N/A
b. Fringe Benefits		N/A	N/A	N/A	N/A
c. Travel		N/A	N/A	N/A	N/A
d. Equipment		N/A	N/A	N/A	N/A
e. Supplies		N/A	N/A	N/A	N/A
f. Contractual		N/A	N/A	N/A	N/A
g. Construction		N/A	N/A	N/A	N/A
h. Other		N/A	N/A	N/A	N/A
i. Total Direct Costs		N/A	N/A	N/A	N/A
j. Indirect Costs		N/A	N/A	N/A	N/A
k. TOTALS	$	$ N/A	$ N/A	$ N/A	$ N/A
7. Program Income	$	$ N/A	$ N/A	$ N/A	$ N/A

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PART III (continued)

SECTION C—NON-FEDERAL RESOURCES				
(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D—FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E—BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT						
	FUTURE FUNDING PERIODS (YEARS)					
16. Objective Class Categories	Second	Third	Fourth	Fifth		
a. Personnel	$	$	$	$	$	$
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Others						
i. Total Direct Costs						
j. Indirect Costs						
k. TOTALS	$	$	$	$	$	$

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PART III (continued)

SECTION F—OTHER BUDGET INFORMATION
(Attach additional sheets if necessary)

17. Direct Costs

18. Indirect Costs

19. Remarks:

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SECTION G — PERSONNEL

Part III (Continued)

Name and Position Title	Annual Salary Rate	No. Mos. Budg.	% Time	Total Amount Required
	(1)	(2)	(3)	(4)
Fringe Benefits (Rate _____)				
			CATEGORY TOTAL	$

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PART V
ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements including Executive Order 12372, and 45 CFR Part 74 as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the Applicant assures and certifies with respect to the grant that:

1 It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2 It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

7 It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the grantor agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

9. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with 45 CFR Part 74.

10. It will insure that the facilities under its ownership, lease, or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency (EPA) list of violating facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

11. It will comply, to the extent applicable, with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder.

12. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 13, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct of indirect Federal assistance.

13. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966, (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

14. The applicant agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health and Human Services (45 C.F.R. Parts 80, 81, and 84), promulgated under the foregoing statute. The applicant agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and assures that it will take any measures necessary to effectuate this agreement.

PART V
ASSURANCES (Continued)

15. It will comply with the Laboratory Animal Welfare Act of 1965 (P.L. 89-544, as amended, 7 U.S.C. 231 et seq.) and regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R., Subchapter H) pertaining to the care, handling, and treatment of warm blooded animals held or used for research, teaching or other activities supported by Federal awards.

16. It will comply, to the extent applicable, with Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et. seq., which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

PRIVACY ACT

The Privacy Act of 1974 (5 U.S.C. 552a) gives individuals the right of access to information concerning themselves and provides a mechanism for correction or amendment of the records. The Privacy Act also provides for protection of information pertaining to an individual, but it does not prevent disclosure of such information if required to be released under the Freedom of Information Act. The Privacy Act requires that a Federal agency, advise each individual whom it asks to supply information of the authority which authorizes the solicitation, whether disclosure is voluntary or mandatory, the principal purpose or purposes for which the information is intended to be used, the use outside the agency which may be made of the information, and the effects on the individual, if any, of not providing all or any part of the requested information.

SSA is requesting the information called for in this application pursuant to its statutory authority for awarding grants. Provision of the information requested is entirely voluntary. The collection of this information is for the purpose of aiding in the review of applications prior to grant award decisions and for management of SSA programs. A lack of sufficient information may hinder SSA's ability to review applications, monitor grantee performance, or perform overall management of grant programs.

This information will be used within the Department of Health and Human Services, and may also be disclosed outside the Department as permitted by the Privacy Act, including disclosures to the public as required by the Freedom of Information Act, to the Congress, the National Archives, the Bureau of the Census, law enforcement agencies upon their request, the General Accounting Office, and pursuant to court order. It may also be disclosed outside the Department, if necessary, for the following purposes:

1. To the cognizant audit agency for auditing.
2. To the Department of Justice as required for litigation.
3. To a congressional office from the record of an individual in the response to an inquiry from the congressional office made at the request of that individual.
4. To qualified experts not within the definition of Department employees as prescribed in the Department regulations (45 CFR, Part 5b.2) for opinions as a part of the application review process.
5. To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.
6. To individuals and organizations deemed qualified by SSA to carry out specific research related to the review and award processes of SSA.
7. To organizations in the private sector with whom SSA has contracted for the purpose of collating, analyzing, aggregating, or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.
8. To the grantee institution relative to performance or administration under the terms and conditions of the award.

FREEDOM OF INFORMATION ACT

The Freedom of Information Act and the associated Public Information Regulations (45 CFR Part 5) of the Department of Health and Human Services-require the release of certain information regarding grants requested by any member of the public. The intended use of the information will not be a criterion for release. Grant applications and grant related reports are generally available for inspection and copying except that information considered to be an unwarranted invasion of personal privacy will not be disclosed. For specific guidance on the availability of information, refer to 45 CFR Part 5.

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____

_____
Applicant (type or print)

By _____
Signature and Title of Authorized Official

_____

_____
Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

HHS-441 (Rev. 12/82)

APPLICATION CERTIFICATIONS

To be completed by for-profit organizations only

1. SMALL BUSINESS CERTIFICATION

The applicant ( ) is, ( ) is not, a small business concern. A small business concern is defined as a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.

2. MINORITY BUSINESS ENTERPRISE CERTIFICATION

The applicant ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a business, at least 51 percent of which is owned, controlled, and managed by minority group members who are citizens of the U.S. In case of a corporation, 51 percent of all classes of voting stock of such corporations must be owned by an individual(s) determined to be minority. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia, or Taiwan) and members of other groups designated from time to time by the Small Business Administration according to the procedures set forth at 13 CFR Part 124.1.

3. WOMAN-OWNED BUSINESS CERTIFICATION

The applicant ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

Signature of Authorized Official_____ _____

Title: _____

Date: _____

BILLING CODE 4190-11-C

Notice

GRANT FUNDS MAY NOT BE USED TO ATTEMPT TO INFLUENCE LEGISLATION PENDING BEFORE CONGRESS.

We direct the attention of potential HHS grantees to the fact that the following statutory provision (part of Sec. 407 of Pub. L. 95–480, 92 Stat. 1589) has applied to the Department's appropriations beginning with those for fiscal year 1979 and that such a provision is likely to continue to apply to its appropriations:

"No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress."

This means that the costs of attempting to influence legislation pending before Congress may not be charged either as direct or indirect costs to any HHS grant awarded from funds subject to the provision. Attempting to influence legislation is commonly called lobbying.

This notice concerns only the charging to HHS grants of certain costs. Nothing in this notice is intended in any way to inhibit or discourage any party from exercising its lawful rights to attempt to influence legislation pending before Congress as long as the costs are not charged to an HSS grant.

Department of Health and Human Services.

[FR Doc. 88–9924 Filed 5–3–88; 8:45 am]

BILLING CODE 4190–11–M

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H.R. 3971/Pub. L. 100-300

International Child Abduction Remedies Act. (Apr. 29, 1988; 102 Stat. 437; 6 pages) Price: $1.00

S. 90/Pub. L. 100-301

Big Cypress National Preserve Addition Act. (Apr. 29, 1988; 102 Stat. 443; 6 pages) Price: $1.00

S.J. Res. 227/Pub. L. 100-302

To express gratitude for law enforcement personnel. (Apr. 29, 1988; 102 Stat. 449; 1 page) Price: $1.00

S.J. Res. 247/Pub. L. 100-303

To authorize the President to proclaim the last Friday of April 1988 as "National Arbor Day." (Apr. 29, 1988; 102 Stat. 450; 1 page) Price: $1.00

H.J. Res. 552/Pub. L. 100-304

Making emergency mandatory veterans supplemental appropriations for the fiscal year ending September 30, 1988. (Apr. 29, 1988; 102 Stat. 451; 1 page) Price: $1.00