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Federal Register

Tuesday
July 10, 1984

Selected Subjects

Animal Diseases
Animal and Plant Health Inspection Service

Antitrust
Comptroller of Currency
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Reserve System
National Credit Union Administration

Archives and Records
Nuclear Regulatory Commission

Crop Insurance
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Education Department

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Hazardous Waste
Environmental Protection Agency

Hunting
Fish and Wildlife Service

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Farmers Home Administration

Marine Safety
Coast Guard

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Selected Subjects

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 405

[Docket No. 1121S]

Cherry Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Revocation.

SUMMARY: Part 405 of this Title was issued to prescribe procedures for insuring Red Tart Cherries effective with the 1963 crop year. Because of low participation and extremely high losses in the program, Federal Crop Insurance Corporation (FCIC), withdrew the program effective with the 1967 crop year. FCIC has not had a Red Tart Cherry Insurance Program since the 1967 crop year. The intended effect of this action is to revoke Part 405 of Title 7 CFR.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 477-3325.

SUPPLEMENTARY INFORMATION: On January 3, 1963, FCIC published a regulation in the Federal Register (28 FR 58) prescribing procedures for insuring Red Tart Cherries (7 CFR Part 405) effective with the 1963 crop year. At a Board of Directors meeting held on October 31, 1966, it was determined that the program was no longer feasible due to lack of participation and extremely high losses. For these reasons, FCIC cancelled all contracts under the program effective with the 1967 crop year. While the Corporation recognizes the need of cherry growers for insurance, a different type of program will need to be developed before the Corporation can again offer Cherry Crop Insurance.

FCIC has determined that this action is not a significant rule and does not require regulatory analysis under Executive Order 12291 or Departmental Regulation 1512-1 (December 15, 1983).

List of Subjects in 7 CFR Part 405

Crop insurance, Cherry.

PART 405—[REMOVED AND RESERVED]

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby revokes, removes and reserves 7 CFR Part 405.

Done in Washington, D.C., on June 6, 1984.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: June 26, 1984.

Approved by:
Merritt W. Sprague,
Manager.

[FR Doc. 84-18178 Filed 7-9-84; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 435

[No. 1096S; Amdt. No. 3]

Tobacco (Quota Plan) Crop Insurance Regulations

Correction

In FR Doc. 84-17021, beginning on page 26197 in the issue of Wednesday, June 27 1984, make the following correction:

On page 26201, second column, the line immediately preceding the heading "Appendix B [Redesignated as Appendix A]" should read, "4. The appendix to § 435.7 is removed."

BILLING CODE 1505-01-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 334]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 334 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period July 13-19, 1984. This regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 334 (§ 908.634) becomes effective July 13, 1984.

FOR FURTHER INFORMATION CONTACT: Wiliam J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-6740). The regulation is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

The regulation is consistent with the marketing policy for 1983-84. The marketing policy was recommended by the committee following discussion at a public meeting on February 14, 1984. The committee met again publicly on July 3, 1984, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges. The committee reports the demand for Valencia oranges continues to decline.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when

information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

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

PART 908—[AMENDED]

Section 908.634 is added as follows:

§ 908.634 Valencia Orange Regulation 334.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period July 13, 1984, through July 19, 1984, are established as follows:

(a) District 1: 195,000 cartons;
(b) District 2: 305,000 cartons;
(c) District 3: Unlimited cartons.

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

Dated: July 5, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 84-18220 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 911

[Lime Reg. 43, Amdt. 2]

Limes Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action terminates the lowering of minimum diameter requirements for shipments of fresh limes grown in Florida, and for limes imported into the United States from 1⅞ inches to 1¾ inches during a specified period during July–September of each year. The minimum diameter requirement for such limes will remain at 1⅞ inches. Such action is necessary to assure the shipment of limes of acceptable size and quality in the interest of producers and consumers.

DATES: Effective on and after July 9, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Florida lime regulation is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674).

The regulation applicable to limes grown in Florida is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by grade and size under Florida Lime Regulation 43 (46 FR 35910, 47 FR 29646). This regulation, which is effective on a continuing basis, requires seedless limes for fresh shipment to: (1) Grade at least U.S. Combination mixed color; (2) meet a minimum juice content of 42% by volume, and (3) have a minimum diameter of 1⅞ inches. Currently, there is a relaxation in the minimum size requirement for seedless limes from 1⅞ inches in diameter to 1¾ inches in diameter each year during the period beginning on the first Monday after July 4 and continuing through the Sunday before the third Monday in September of the same year. This action terminates that relaxation so that limes at all times will have to meet the minimum diameter requirement of 1⅞ inches.

This action was unanimously recommended by the Florida Lime Administrative Committee at a public meeting on April 11, 1984. The committee reports that fresh shipments during 1984–85 should total about 1.25 million bushels. This is approximately 50 percent of the estimated total production of Florida limes. Consequently, there are more than adequate supplies of limes available which meet the higher minimum diameter requirement. Limes not marketed fresh are processed into juice and pectin.

Notice of the proposed termination of this regulatory requirement was published in the June 20, 1984, issue of the Federal Register (49 FR 25243). No comments on the proposal were received during the period provided in the notice.

Under section 8e of the Act, whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, size requirements for imported limes will also change to conform to the size requirements for domestic shipments of Florida limes. It is hereby found that this regulation will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date of these regulations until 30 days after publication in the Federal Register (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that: (1) Shipment of the current crop of limes grown in Florida is now underway; (2) the amendment to the Florida lime regulation was recommended by the committee following discussion at a public meeting on April 11, 1984; (3) Florida lime handlers have been apprised of these requirements for Florida limes and the effective date; (4) the lime import requirements are mandatory under section 8e of the Act, and they should become effective on the date specified; (5) the size requirements for imported limes are the same as those for Florida limes; and (6) at least three days notice of this import regulation is provided, the minimum prescribed by section 8e of the Act.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Florida, Limes.

PART 911—[AMENDED]

Accordingly, it is found that the provisions of § 911.344 Lime Regulation 43 (46 FR 35910, 47 FR 29646) should be and are amended by revising paragraph (a)(3), to read as follows:

§ 911.344 Florida Lime Regulation 43

(a) * * *

(3) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) shall be at least 1⅞ inches in diameter; *Provided*, That not more than 10 percent, by count, of the limes in any lot of containers may fail to meet these minimum size requirements; *Provided further*, That not more than 15 percent, by count, in any individual container containing more than four pounds of

limes may fail to meet these minimum size requirements.

* * * * *

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

Dated: July 3, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-18165 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations regarding guaranteed loans to correct typographical errors, make editorial changes for clarity and remove reference to obsolete forms. The intended effect is to clarify and correct a final rule published July 6, 1983.

EFFECTIVE DATE: July 9, 1984.

FOR FURTHER INFORMATION CONTACT: Dwight A. Carmon, Loan Specialist, Business and Industry Loan Division, USDA, FmHA, Washington, D.C. 20250, telephone (202) 475–3811.

SUPPLEMENTARY INFORMATION: This final 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 to correct typographical errors, make administrative changes, and make other editorial changes for clarity. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exceptions in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since the purpose of this change involves only internal Agency management and publication for comments is not necessary. The Catalog of Federal Domestic Assistance programs affected are:

Sec.
10.404 Emergency Loans.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low to Moderate Income Housing Loans.
10.422 Business and Industrial Loans.
10.428 Economic Emergency Loans.
10.429 Above Moderate Income Housing Loans.

This document has been reviewed in accordance with 7 CFR Part 1940 Subpart G, "Environmental Program." FmHA has determined 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 Impact Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Comments made by FmHA employees regarding the July 1, 1983 revision of FmHA Instruction 1980–A and 1980–E published in the July 6, 1983 issue of the Federal Register (48 FR 30941) indicated the need to amend these Instructions for purposes of correction, clarification and administrative modification. Typographical errors, unclear language and the need for administrative changes caused confusion and the lack of continuity in the administration of the program.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Housing and community development, Rural areas.

PART 1980—GENERAL

Therefore, Subparts A and E of Part 1980, Chapter XVIII Title 7 Code of Federal Regulations are amended as follows:

Subpart A—General

§ 1980.41 [Amended]

1. In § 1980.41(b)(2), "Form FmHA 440–1, "Equal Opportunity Agreement" is amended to read, "Form FmHA 400–1, "Equal Opportunity Agreement."

§ 1980.60 [Amended]

2. Section 1980.60(a)(2) is amended by adding the phrase, "for B&I projects" in the first sentence following the words, "specifications, and" and adding the phrase "B&I guaranteed" in the third sentence following the words, "guidelines for."

3. Section 1980.60(a)(12) is amended by adding the title of Form FmHA 449–1, "Application for Loan and Guarantee," at the end of the first sentence.

Subpart E—Business and Industrial Loan Program

§ 1980.419 [Amended]

4. In § 1980.419 *Administrative* B., the reference to "Par. (b)(2), (h)" is changed to read, "Par. (b)(5)."

§ 1980.451 [Amended]

5. Section 1980.451 *Administrative* C 7 under "Description of Record and Form No. and Title," is amended as follows:

a. The filing position of Form FmHA 400–4 is changed from 6 to 3.

b. The duplicate entry for Form FmHA 1940–1 following the entry for Form FmHA 449–29 is removed.

c. Form "FmHA 440–59" is changed to read "FmHA 440–57"

d. The entries for Forms FmHA 449–5, FmHA 449–7, FmHA 449–8, FmHA 449–19 and FmHA 1940–57 are removed.

e. The title of Form FmHA 1980–19 is changed to read, "Guaranteed Loan Closing Report."

§ 1980.452 [Amended]

6. Section 1980.452 *Administrative* D.5., "Form FmHA 1940–50" is changed to read, "Form FmHA 1980–50."

§ 1980.453 [Amended]

7 Section 1980.453(a) is amended by removing the phrase, "and the options listed on the back of the form."

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93–357, 83 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegation of authority by Director of OEO 29 FR 14764, 33 FR 9850.

Dated: May 25, 1984.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 84-18164 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 84-058]

Animals Destroyed Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Rescission of interim rule.

SUMMARY: The regulations in 9 CFR Part 50 (referred to below as the regulations) contain provisions for the payment of indemnities for certain animals destroyed because of tuberculosis. A document published in the Federal Register on June 28, 1984 (49 FR 26566–26567) amended the regulations to allow for the payment of indemnities for certain bison. This document rescinds these amendments. This action is necessary because it has been determined that all policy and budget

ramifications have not been fully addressed.

DATES: The effective date of this document is July 6, 1984. Written comments must be received on or before September 10, 1984.

ADDRESS: Written comments concerning this action should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell Essey, Cattle Disease Staff, VS, APHIS, USDA, Room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711

SUPPLEMENTARY INFORMATION:

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule upon signature. It is necessary to make this action effective immediately since it has been determined that all policy and budget ramifications have not been fully addressed.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days following publication and a final document discussing comments received and any amendments required will be published in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that this action will affect less than one percent of the bison in the United States.

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

List of Subjects in 9 CFR Part 50

Animal diseases, Cattle, Hogs, Indemnity payments, Tuberculosis.

Accordingly, the amendments to 9 CFR Part 50 appearing in the June 28, 1984, issue of the Federal Register (49 FR 26566-26567) are rescinded, and the prior text of 9 CFR Part 50 is in effect.

Authority: Secs. 3, 4, 5, 11, and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 3, 76 Stat. 130; 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 6th day of July, 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-18326 Filed 7-6-84; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 50

[Docket No. 84-061]

Bovine Tuberculosis Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the tuberculosis indemnity regulations in 9 CFR Part 50 to make the provisions that apply to cattle also apply to certain bison. This action is necessary to help eradicate an outbreak of bovine tuberculosis in bison.

DATES: The effective date of this document is July 6, 1984. Written comments must be received on or before September 10, 1984.

ADDRESS: Written comments concerning this interim rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell Essey, Cattle Diseases Staff, VS, APHIS, USDA, Room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease of cattle, bison, and other species, including humans. Tuberculosis in affected animals is characterized by weight loss and general debilitation. Also, the disease can be fatal.

The regulations in 9 CFR Part 50 (referred to below as the regulations) contain provisions for the payment of indemnities to owners of cattle (and under very limited circumstances to owners of swine) destroyed because of bovine tuberculosis. Under these regulations indemnity is paid to an owner of such animals destroyed because of tuberculosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove foci of infection in an otherwise clean area and thereby prevent transmission of tuberculosis to nearby susceptible herds. The regulations were amended on June 25, 1984 (49 FR 26566-26567), to establish provisions concerning bison and these amendments were recinded by a companion document published in this issue of the Federal Register. This document now amends the regulations on an emergency basis to make the provisions that apply to cattle also apply to certain bison.

The action is necessary to help eradicate an outbreak of bovine tuberculosis originating from two herds of bison in South Dakota. Laboratory confirmation of *Nycobacterium bovis*, the cause of bovine tuberculosis, was made on June 8, 1984. Bison known to have been exposed to tuberculosis have been traced from the two infected herds in South Dakota, the foci of infection, to at least 80 premises in 20 States. This is the first outbreak of tuberculosis in bison herds known to have occurred in the United States in the past 30 years. Bison affected with tuberculosis present a significant risk of spreading the disease to other bison and to cattle.

The regulations were designed to provide an indemnity program which

would be effective in helping to eradicate tuberculosis in cattle. Cattle and bison are both of the bovine family. These animals are often raised and marketed under similar management practices and the provisions in the regulations for cattle apply equally well for bison.

Under the circumstances explained above, the regulations applying to cattle are amended to apply to the bison herds in South Dakota found in June 1984 to be foci of tuberculosis infection and to any other bison affected with or exposed to tuberculosis because of such South Dakota foci of tuberculosis infection. The amendments made by this document are designed to address the immediate concern of preventing the spread of tuberculosis from the foci of infection. Also, the Department is working with State and industry officials to determine what additional efforts should be taken concerning tuberculosis in bison.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0001.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule upon signature. It is necessary to make this interim rule effective immediately in order to allow for proper payment of indemnities to owners of bison destroyed because of tuberculosis, thereby encouraging the elimination of these bison as a disease source.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days following publication and a final document discussing comments received and any amendments required will be published in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

This emergency action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the interim rule will affect less than one percent of the bison in the United States.

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

List of Subjects in 9 CFR Part 50

Animal diseases, Cattle, Hogs, Indemnity payments, Tuberculosis.

PART 50—[AMENDED]

Under the circumstances referred to above, 9 CFR Part 50 is amended as follows:

1. The heading for Part 50 is revised to read "BOVINE TUBERCULOSIS INDEMNITY"

2. In § 50.3 a new paragraph (e) is added to read as follows:

§ 50.3 Payment to owners for animals destroyed.

* * * * *

(e) *Bison.* The provisions of this Part applying to cattle shall also apply to bison in herds in South Dakota found in June 1984 to be foci of tuberculosis infection and to any other bison affected with or exposed to tuberculosis because of such South Dakota foci of tuberculosis infection.

Authority: Secs. 3, 4, 5, 11, and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 3, 76 Stat. 130; 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 6th day of July, 1984.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-16325 Filed 7-6-84; 4:06 pm]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 26

FEDERAL RESERVE SYSTEM

12 CFR Part 212

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563f

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 711

[Docket No. 84-21]

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration (collectively referred to as the "agencies") are amending their respective regulations implementing the Depository Institution Management Interlocks Act which generally prohibit certain management official interlocks between unaffiliated depository institutions and depository holding companies depending upon their asset size and location. The regulations are amended to conform to a change in the Depository Institution Management Interlocks Act which deleted all references to "Standard Metropolitan Statistical Areas" ("SMSA") and substituted therefor the new classifications for Metropolitan Statistical Areas adopted by the Office of Management and Budget.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Bronwen Mason Chaffetz ((202) 452-3564) or Melanie Fein ((202) 452-3594), Board of Governors of the Federal Reserve System; Chari Anhouse ((202) 447-1880) or Jonathan Rushdoony ((202) 447-1880), Office of the Comptroller of

the Currency; Fredric H. Karr or Pamela E.F LeCren ((202) 389-4171) Federal Deposit Insurance Corporation; David J. Bristol ((202) 377-6461) or George Scruggs ((202) 377-6963), Federal Home Loan Bank Board; or Steven R. Bisker ((202) 357-1030), National Credit Union Administration.

SUPPLEMENTARY INFORMATION: On November 30, 1983, Pub. L. 98-181 amended the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*, "Interlocks Act") by deleting the reference to Standard Metropolitan Statistical Area and substituting therefor the new classifications of Metropolitan Statistical Areas promulgated by the Office of Management and Budget ("OMB"). The statutory amendment was necessitated by a change in the standards and terminology used by OMB.

As originally enacted, section 203(1) of the Interlocks Act (12 U.S.C. 3202) prohibited, in certain instances, management interlocks between unaffiliated depository organizations if both depository organizations had offices located in "the same metropolitan area as defined by the Office of Management and Budget * * *" However, standard metropolitan statistical area is no longer a defined term used by OMB. As a result of the reclassification of metropolitan statistical areas initiated by the Department of Commerce in 1980 (*see* 45 FR 956), OMB published a new listing of statistical areas ("Metropolitan Statistical Areas 1983," NIS PB 83-218891) which omitted any reference to standard metropolitan statistical areas. The new listing substituted in its place the terms Metropolitan Statistical Area ("MSA"), Primary Metropolitan Statistical Area ("PMSA"), and Consolidated Metropolitan Statistical Area ("CMSA"). Essentially, the new standards provided that any MSA with a population of one million or more could be subdivided into PMSAs which are smaller areas with very strong internal ties. Furthermore, two or more PMSAs could be combined and designated as a CMSA.

The changes rendered obsolete the language of section 203(1) of the Interlocks Act as originally enacted. Accordingly, section 701(c) of Pub. L. 98-181 amended the Interlocks Act by striking out "standard metropolitan statistical area" and inserting in lieu thereof "primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas."

This regulatory amendment will simply conform the agencies' regulations to the amended statute. It does so by amending the regulation to preclude, in certain instances, interlocks among unaffiliated depository organizations where such depository organizations have offices in the same "relevant metropolitan statistical area." The phrase "relevant metropolitan statistical area" is defined to mean a MSA, PMSA, or CMSA that is not comprised of designated PMSAs.

Inasmuch as the agencies are merely conforming their respective regulations to changes in the underlying statute, the amendment is being issued as a final rule without opportunity for public comment and is immediately effective upon publication in the **Federal Register**. This action is being taken under authority of sections 553(b)(A) and 553(d)(1) of the Administrative Procedure Act which authorizes waiver of public comment and waiver of delayed effective date when the adopting agency finds for good cause that public comment and the 30-day delayed effective date are unnecessary. Because the amendments were not the subject of a notice of proposed rulemaking, they are not subject to review under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Additionally, it is certified that the amendments are not a major rule as defined by Executive Order 12291.

List of Subjects

12 CFR Parts 26 and 212

Antitrust, Banks, Banking, Credit unions, Savings and loan associations, Holding companies, Management official interlocks.

12 CFR Part 348

Antitrust, Banks, Banking, Federal Deposit Insurance Corporation, Holding companies.

12 CFR Part 563f

Antitrust, Savings and loan associations, Federal Home Loan Bank, Holding companies.

12 CFR Part 711

Antitrust, Credit unions.

Accordingly, pursuant to the respective authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207), the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration, hereby amend Title 12 of the Code of Federal Regulations, Parts 26, 212, 348, 563f, and 711, respectively, as follows:

Comptroller of the Currency

PART 26—[AMENDED]

For the reasons set out in the preamble, 12 CFR Part 26 is amended as follows:

1. Section 26.2(n) is added as follows:

§ 26.2 Definitions.

* * * * *

(n) "Relevant metropolitan statistical area" means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Statistical Areas as defined by the Office of Management and Budget.

2. Section 26.3(b) is revised as follows:

§ 26.3 General prohibitions.

* * * * *

(b) *Metropolitan Statistical Area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of $20 million or more;

(2) Offices of depository institution affiliates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) One is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

3. Section 26.6(a) is revised as follows:

§ 26.6 Changes in circumstances.

(a) Non-grandfathered interlocks. If a person's service as a management official is not grandfathered under § 26.5 of this part, the person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in relevant metropolitan statistical area or community boundaries or the designation of a new relevant

metropolitan statistical area, an acquisition, merger or consolidation, the establishment of an office, or a disaffiliation.

* * * * *

Dated: June 29, 1984.

C. T. Conover,

Comptroller of the Currency.

Federal Reserve System

PART 212—[AMENDED]

12 CFR Part 212 is amended as follows:

1. The authority citation for Part 212 reads as follows:

Authority: 12 U.S.C. 3201 et seq.

2. Section 212.2 is amended by adding a new paragraph (n) to read as follows:

§ 212.2 Definitions.

* * * * *

(n) "Relevant metropolitan statistical area" means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Statistical Areas as defined by the Office of Management and Budget.

3. Section 212.3 is amended by revising paragraph (b) to read as follows:

§ 212.3 General prohibitions.

* * * * *

(b) *Metropolitan Statistical Area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of $20 million or more;

(2) Offices of depository institution affiliates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) One is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

4. Section 212.6 is amended by revising paragraph (a) to read as follows:

§ 212.6 Changes in circumstances.

(a) *Non-grandfathered interlocks.* If a person's service as a management official is not grandfathered under § 212.5 of this part, the person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in relevant metropolitan statistical area or community boundaries or the designation of a new relevant metropolitan statistical area, an acquisition, merger, or consolidation, the establishment of an office, or a disaffiliation.

* * * * *

By Order of the Board of Governors of the Federal Reserve System, effective June 8, 1984.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

PART 348—[AMENDED]

12 CFR Part 348 is amended as follows:

1. The authority citation for Part 348 reads as follows:

Authority: Sec. 209, Pub. L. 95-630, 92 Stat. 3675 (12 U.S.C. 3207).

2. Section 348.2 is amended by adding a new paragraph (n) to read as follows:

§ 348.2 Definitions.

* * * * *

(n) "Relevant metropolitan statistical area" means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Areas as defined by the Office of Management and Budget.

3. Section 348.3 is amended by revising paragraph (b) to read as follows:

§ 348.3 General prohibitions.

* * * * *

(b) *Relevant Metropolitan Statistical Area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of $20 million or more;

(2) Offices of depository institution affiliates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) One is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

4. Section 348.6 is amended by revising paragraph (a) to read as follows:

§ 348.6 Changes in circumstances.

(a) *Non-grandfathered interlocks.* If a person's service as a management official is not grandfathered under § 348.5 of this part, this person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in relevant metropolitan statistical area or community boundaries or the designation of a new relevant metropolitan statistical area, an acquisition, merger, or consolidation, the establishment of an office, or a disaffiliation.

* * * * *

By Order of the Board of Directors, February 21, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

National Credit Union Administration

PART 711—[AMENDED]

12 CFR Part 711 is amended as follows:

1. The authority citation for Part 711 reads as follows:

Authority: Sec. 209, Pub. L. 95-630, 92 Stat. 3675 (12 U.S.C. 3207).

2. Section 711.2 is amended by adding a new paragraph (n) to read as follows:

§ 711.2 Definitions.

* * * *

(n) "Relevant Metropolitan Statistical Area" means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget.

3. Section 711.3 is amended by revising paragraph (b) to read as follows:

§ 711.3 General prohibitions.

* * * * *

(b) *Metropolitan Statistical Area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of $20 million or more;

(2) Offices of depository institution affiliates of both are located in the same metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) One is a depository institution that has an office in the same metropolitan statistical area as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

4. Section 711.6 is amended by revising paragraph (a) to read as follows:

§ 711.6 Changes in circumstances.

(a) *Non-grandfathered interlocks.* If a person's service as a management official is not grandfathered under § 711.5 of this part, this person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in relevant metropolitan statistical area or community boundaries or the designation of a new relevant metropolitan statistical area, an acquisition, merger, or consolidation, the establishment of an office, or a disaffiliation.

* * * * *

By the National Credit Union Administration Board on the 9th day of March 1984.

Rosemary Brady,

Secretary of the Board.

Federal Home Loan Bank Board

PART 563f—[AMENDED]

12 CFR Part 563f is amended as follows:

1. The authority citation for Part 563f reads as follows:

Authority: Sec. 209, Pub. L. 95-630, 92 Stat. 3675 (12 U.S.C. 3207).

2. Section 563f.2 is amended by adding a new paragraph (l) as follows:

§ 563f.2 Definitions.

* * * * *

(l) Relevant metropolitan statistical area: means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Areas as defined by the Office of Management and Budget.

3. Section 563f.3 is amended by revising paragraph (b) as follows:

§ 563f.3 General prohibitions.

* * * * *

(b) *Relevant Metropolitan Statistical Area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of $20 million or more;

(2) Offices of depository institution affiliates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) One is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

* * * * *

4. Section 563f.6 is amended by revising paragraph (a) as follows:

§ 563f.6 Changes in circumstances.

(a) *Non-grandfathered interlocks.* If a person's service as a management official is not grandfathered under § 563f.5 of this Part, that person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth; a change in relevant metropolitan statistical area or community boundaries, or the designation of a new relevant metropolitan statistical area; an acquisition, merger, or consolidation; the establishment of an office; or a disaffiliation.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-17973 Filed 7-9-84; 8:45 am]

BILLING CODE 4810-33-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Rev. 6, Amdt. 30]

Business Loan Policy; Interest Rates

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error which appeared in the Federal Register on June 18, 1984 (49 FR 24879).

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Analyst, Small Business Administration, 1441 L Street, NW., Room 800, Washington, D.C. 20416, 202-653-5954.

The following correction is made in FR Doc. 84-15611 starting on page 24879 in the issue of June 18, 1984:

On page 24880 at the top of column one in paragraph numbered 3, "SBA Optional Re Rate" is corrected to read "SBA Optional Peg Rate"

(Catalog of Federal Domestic Assistance Program No. 59.012, Small Business Loans)

Dated: July 2, 1984.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 84-18241 Filed 7-9-84; 8:45 am]

BILLING CODE 8025-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240, 249, 260, and 269

[Release Nos. 33-6539; 34-21107; 39-911; File No. S7-25-84]

Temporary Rules and Forms for the Pilot Electronic Disclosure System

AGENCY: Securities and Exchange Commission.

ACTION: Temporary rules and forms.

SUMMARY: The Commission announces the adoption of temporary rules and forms to facilitate the operation of a pilot electronic disclosure system ("Pilot"). The Pilot will develop and test, with actual filings, an electronic disclosure system, designated "EDGAR" for Electronic Data Gathering, Analysis and Retrieval. The temporary rules adapt various procedural rules to

accommodate the filing and review of documents in an electronic format. Temporary forms also are necessary to facilitate electronic filing. These rules and forms will apply only to companies which have volunteered and have been selected to submit their filings to the Commission in an acceptable form of direct digital transmission, diskette or magnetic tape. These computerized documents will replace "paper" documents in the filing and review process.

EFFECTIVE DATES: August 1, 1984, for § 239.63 and Form ID and September 24, 1984, for Forms ET and SE and the temporary rules.

Comment date: Interested persons will have until August 17 1984, to comment on the temporary rules and forms. The Commission will review the comments and make any changes in the rules or forms which it deems necessary and appropriate. If no material changes are necessitated by the comments, § 239.63 and Form ID will become effective on August 1, 1984, and Forms ET and SE and these new rules will become effective on September 24, 1984.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comment letters should refer to File No. S7-25-84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: (Legal) Leslie Murphy, at (202) 272-2589, Office of Disclosure Policy; (Operational) George Eckard or Herbert Scholl at (202) 272-3192 until July 15, 1984, and 272-3770 after such date, EDGAR Pilot Branch; Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") announces today the adoption of temporary rules and forms necessary to facilitate the operation of the EDGAR pilot. The temporary rules are as follows: Rule 499 of Regulation C,[1] under the Securities Act of 1933 (the "Securities Act");[2] Rule 12b-37 [3] under the Securities Exchange Act of 1934 (the "Exchange Act");[4] and Rule 12 [5] under the Trust Indenture Act of 1939 (the "Trust Indenture Act").[6] The temporary forms are as follows: Form ET,[7] Form ID [8] and Form SE,[9] under the Securities Act, the Exchange Act and the Trust Indenture Act.

I. Executive Summary

With the EDGAR Pilot, the Commission is continuing its efforts to develop an effective and efficient means of using computer technology to improve the receipt, storage, review and dissemination of filed information.[10] In January 1984, the Commission issued a request for proposals seeking a contractor to install and support the EDGAR pilot system.[11] On May 1, 1984, the contract was awarded to Arthur Andersen & Co. ["AA"]. As prime contractor, AA will have overall responsibility for the project. Dow Jones & Co., Inc., a subcontractor, will provide expert assistance in financial data base management and dissemination. International Business Machines Corporation, another subcontractor, will provide the majority of the hardware and systems software for the pilot. Several other vendors will provide specialized hardware and software.

On March 30, 1984, the Commission issued a release soliciting comment on EDGAR and requesting companies to indicate an interest in participating in the Pilot.[12] Over 200 companies, representing a variety of industries and asset sizes, have indicated an interest. Over the course of the Pilot, additional companies, up to a capacity of 1,000 registrants, will be phased in.[13]

The Commission expects that on September 24, 1984, it will begin to accept corporate disclosure documents filed electronically by volunteer registrants selected to participate in the Pilot project.[14] The Pilot is designed to develop and test EDGAR with actual filings pursuant to the Securities Act, the Exchange Act and the Trust Indenture Act. The filings will be electronically submitted in one of three forms: direct digital transmission, diskette or magnetic tape.

Filings made by direct digital transmission will be submitted to the Commission over communication lines.[15] Filings made by diskette or magnetic tape will be delivered to the Commission in the same manner as currently, *i.e.*, by mail or hand delivery. Once in the possession of the Commission, the tapes or diskettes will be entered into the EDGAR system using equipment capable of reading and translating a large variety of electronic formats.[16] Thereafter, the electronically submitted documents will be processed, screened and reviewed in the same manner as other filings in the Division of Corporation Finance.[17] These documents will be available to the public in three of the Commission's Public Reference Rooms (Washington, Chicago and New York) by means of viewing terminals. They also will be microfiched and available to the public in the same manner as documents currently filed on paper.

The dynamic nature of the EDGAR pilot requires a two part approach to changes in Commission filing procedures. The first is a set of temporary rules which, for purposes of electronic filing, will augment, amplify, replace and suspend certain provisions of the procedural rules otherwise applicable to Commission filings. These are the rules that are being adopted today. The Commission anticipates that these temporary rules will not require frequent revision.

The second part is a set of directions to EDGAR filers, which will spell out technical procedures for making an electronic filing. The directions will be subject to revision as the technology evolves and experience with the Pilot grows. An example of the matters to be

[1] 17 CFR 230.499.

[2] 15 U.S.C. 77a-77aa (1982).

[3] 17 CFR 240.12b-37.

[4] 15 U.S.C. 78a-78jj (1982), as amended by Act of June 6, 1983 Pub. L. No. 98-38, 97 Stat. 20 (1983).

[5] 17 CFR 260.02-12.

[6] 15 U.S.C. 77aaa-77bbbb (1982).

[7] 17 CFR 239.62, 249.445, 269.5.

[8] 17 CFR 239.63, 249.446, 269.6.

[9] 17 CFR 239.64, 249.444, 269.7.

[10] Securities Act of 1933 Release No. 6519 (March 30, 1984) [49 FR 12707].

[11] The Request for Proposals ["RFP"] was issued January 9, 1984. Copies of the RFP are available from the Commission's Public Reference Room.

[12] For background information on the Pilot, *see* Release No. 33-6519, *supra* note 10.

[13] Interested registrants who have not submitted completed questionnaires pursuant to Release 33-6519 should contact the Pilot Branch ((202) 272-3770). *Supra* note 10.

[14] Selection of volunteer participants will be based on the capabilities of the Pilot. Participants will be phased in during the course of the Pilot.

[15] The communication lines over which the Commission will accept filings will be specified in the directions to be given EDGAR filers. Initially, filings may be made directly to the EDGAR computer pursuant to specific communication protocols and equipment or over two public networks to be specified in the directions to EDGAR filers. Due to hardware limitations, only two networks can be supported initially. With an upgrade in equipment in fiscal year 1985, additional public networks will be supported.

[16] As with all filings, certain verification procedures will be followed with respect to electronic filings. For example, registration statements under the Securities Act are verified for fee payment and signatures.

[17] During the initial stage of the Pilot, the following filings will not be accepted electronically: annual reports to shareholders; Forms 3, 4, and 144; contested solicitations; confidential treatment requests and certain Williams Act filings. As experience is gained, these filings will be phased in. The directions to EDGAR filers will specify which forms may be submitted electronically.

covered in the directions is published as an attachment to this release. The revisions will be sent to all Pilot participants and will be available upon request.[18]

Changes to the rules are necessary because the Commission's current rules for filing procedures were written to apply to the specific characteristics of paper. Certain portions do not apply to an electronically submitted document and others must be modified to permit electronic documents to replace paper documents and to meet the filing requirements. The temporary rules will apply only to companies who have volunteered and have been selected to participate in the Pilot. Because the temporary rules are procedural in nature, their promulgation is not subject to the requirements of the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 533(b). Nevertheless, the Commission is soliciting comments to assist it in developing the Pilot.

II. The Temporary Rules and Forms

The following discussion is intended to assist interested parties in their understanding of the temporary rules and forms and the effect the rules will have on the filings of Pilot participants. Because the filings made in the Pilot are limited to those processed by the Division of Corporation Finance, the rule changes affect only the Securities Act, the Exchange Act and the Trust Indenture Act.

This discussion will refer primarily to Rule 499 under the Securities Act since Rules 12b-37 under the Exchange Act and 12 under the Trust Indenture Act are modeled on Rule 499 and incorporate the same adaptations to the rules under their respective Acts.

A. Definitions

The definition of certain words primarily associated with ink and paper have been augmented to include terms that will either convey the same meaning or which will accomplish the same purpose for documents submitted in an electronic format.

1. Electronic Format

Since the basic difference in the filings made in the Pilot from those made in the regular course is that of format, the term "electronic format" is used to refer to the format style of EDGAR filings.[19] The term is limited to the types of magnetic impulse or computer data compilation that can be accommodated in the Pilot.

There are three categories in which an electronically formatted document can be submitted to the Commission: by direct digital transmission over communication lines; or by delivery of diskette or magnetic tape. Within these categories, the Pilot is prepared to accept a large variety of types from different manufacturers. The directions to filers contain a list of equipment, including over fifty word processors, that will be accommodated at the start of the Pilot. This list will be expanded during the course of the Pilot.

2. Graphic Communication

The term "graphic communication," which comes from the definition of "write or written" in Section 2(9) of the Securities Act,[20] is defined by the temporary rules to include electronically formatted documents.[21] Thus, each rule containing the words "write or written" will accommodate electronic formats as well as paper.

3. Original

The term "original" is defined to allow for the fact that electronically formatted documents are written in a language only read by machines (computers) and must be translated to viewing screens or other media in order to be comprehended.[22] For evidentiary purposes, the Commission is defining the term "original" to include an output that accurately reflects the data contained in an electronic format in a manner that can be read by sight.[23]

4. Received

The term "received" as it is used to determine the filing date, is defined to include the date the filing is "accepted" to accommodate the fact that the Pilot will be receiving direct digital transmissions as well as diskettes, magnetic tapes and some paper documents.[24] Initially, the Pilot will receive direct digital transmissions from 7:00 a.m. to 7:00 p.m. (Washington, D.C. time). As the Pilot develops, the daily time frame for receiving filings may vary. In any case, the date of filing would be the hours in which the Commission is in operation.[25] In other words, a direct digital transmission made after 5:30 p.m. would be "received" the following day. This definition also allows the Commission to adjust the filing date in case of any equipment malfunction.

5. Signatures

To accommodate the development of technology and law in the area of electronic signatures, the temporary rules define "signed" to include the entry in the form of a magnetic impulse or other form of computer data compilation of any symbol or series of symbols executed, adopted or authorized by the person signing as his/her signature.[26] By requiring that the symbol be manually entered into the document, the necessary present intention to authenticate will be demonstrated. The presumption contained in Section 6 of the Securities Act[27] that the signature is valid will continue to remain in effect.

Initially, filings made on diskette or magnetic tape will be accompanied by an executed paper signature page which will identify and attest to the statement or report being signed as well as executed copies of any required opinions or consents. The electronic filing shall contain conformed signatures, opinions or consents. Further information will be contained in the directions to EDGAR filers.

Because it is not possible to provide a paper signature page contemporaneously with a direct digital transmission, another approach is necessary. Initially, for filings made by direct digital transmission, the Pilot will use Personal Identification Numbers ("PIN"s) as signature symbols. Individuals required to provide signatures in the documents of the EDGAR files, including officers, directors, accountants and other experts, will be issued PINs upon application to the Commission. A new form, Form ID,[28] has been adopted for this purpose. The form requires the applicant to agree that his/her "execution, adoption or authorization to enter the PIN * * * constitutes * * * [his/her] signature." The directions to filers will contain additional information on obtaining and using PINs.

6. Bold-Face Type and Red Ink

Since the viewing screens or printout facilities in the Pilot do not produce bold-face type or red colored print, it is necessary to find another means of

[18] Copies of the directions to EDGAR filers will be available from the Commission's Public Reference Room.

[19] 17 CFR 230.499(b)(1), 240.12b-37(b), 260.12(b).

[20] 15 U.S.C. 77(b)(9).

[21] 17 CFR 230.499(b)(3), 240.12b-37(b), 260.12(b).

[22] 17 CFR 230.499(b)(4), 240.12b-37(b), 260.12(b).

[23] This definition is similar to the definition of "original" in the Federal Rules of Evidence. *See* Fed. R. Evid. 1001.3.

[24] 17 CFR 230.499(b)(5), 240.12b-37(b), 260.12(b).

[25] *See, e.g.*, Business hours of the Commission, 17 CFR 230.110.

[26] 17 CFR 230.499(b)(7), 240.12b-37(b), 260.12(b).

[27] 15 U.S.C. 77f (1982).

[28] 17 CFR 239.63.

accomplishing the purpose of these requirements, *i.e.*, to direct the readers' attention to the information presented.[29] The substitution of capital letters for bold-face type and boxes for red ink is not meant to replace the requirement for bold-face type or red ink, but rather to provide a substitute until technology develops to better accommodate these requirements in an electronic format.

B. Suspended or Substituted Requirements

Certain rule changes cannot be accomplished by a definitional change. Accordingly, a separate paragraph of Rule 499, paragraph (c), addresses rules that are suspended or replaced, in whole or in part, for electronic documents.[30]

1. Paper

Rather than adapt every rule that contains the word paper, the Commission is expanding the term paper to include the term "electronic format" in the temporary rules. In this way, any rule that specifies paper also includes "electronic format" [31]

Certain terms, such as quality and size of paper or type size, do not apply to electronic formats and must therefore be suspended to permit electronic filings.[32] The directions to filers will designate analogous standards for the Pilot and may change as experience with the Pilot grows and technology evolves.

Registrants in the Pilot will continue to distribute paper documents, such as prospectuses and proxy statements, to investors and shareholders. These paper copies must continue to comply with the rules as they exist for paper formatted documents, such as those concerning legends and print size.[33]

2. Numbers of Copies and Other Technical Requirements

Rules relating to numbers of copies and other technical matters need to be suspended for documents submitted in an electronic format.[34] For example, more than one copy is not necessary.[35] These requirements can be satisfied by one electronically formatted copy since the nature of a computer allows anyone, with an output device and proper authorization access, to produce a copy of the document as needed.

"Binding" also is a term specific to paper, but the purpose of keeping together the different documents comprising a single filing applies to electronically formatted documents as well. In the Pilot, documents comprising a filing that are required to be bound and filed together will be required to be submitted together in or with a single electronic submission as described in the directions to filers.[36] (This single submission may be comprised of more than one diskette or magnetic tape, where necessary.) Since the paper signature pages are a part of the statements or reports filed on diskette or magnetic tape, pursuant to the rule, they must accompany these electronic documents.

3. Exact Copies

The requirement to file a copy of any document in the form in which it was circulated (for example, Rule 424 [37] will be satisfied for the temporary rule by a copy of the document in an electronic format. However, this document must contain a detailed explanation which describes any differences between the circulated document and the document in an electronic format.[38] This explanation should include, but is not limited to: Colors, type size, type style, and a description of photographs or other images. This explanation should be sufficiently thorough to ensure that the purpose of the rule is fulfilled while at the same time permitting the document to be filed electronically.

4. Fees

In order to facilitate the payment of fees, EDGAR filers are directed to Release No. 33-6540 (June 27, 1984) which provides an optional means for EDGAR filers and others to pay their fees by mail or wire transfer to a lockbox at a U.S. Treasury Department designated depository in Pittsburgh, Pennsylvania.

5. Exhibits and Form SE

Many of the commentators expressed concern about the difficulty of submitting electronically an entire exhibit package for a filing since many exhibits, at least currently, are not created initially in an electronic format. The Commission recognizes the difficulties involved, and, accordingly, is permitting EDGAR filers to file certain of their exhibits in paper format under cover of a separate form and incorporate them by reference into the electronically formatted filing. Nevertheless, the Commisssion encourages the submission of exhibits in electronic format to the maximum extent practicable and anticipates that, over time, most exhibits will be prepared in an electronic format.

The existing rules concerning what is permitted to be incorporated by reference need no modification and will not be changed by the temporary rules for the Pilot. New temporary Rule 499(c)(2) [39] will provide the means for EDGAR filers, who so choose, to file some or all of their exhibits on paper and incorporate them by reference into an electronic filing. A new form, Form SE, is being adopted for this purpose. Form SE is to be used for filing paper exhibits under all three Acts, the Securities Act, the Exchange Act and the Trust Indenture Act.

Rule 411 under the Securities Act [40] Rule 12b-32 under the Exchange Act [41] Rules 7a-30, 7a-31, 7a-32 under the Trust Indenture Act [42] and Rule 24 of Rules of Practice,[43] as well as the various Forms under each Act, will continue to govern what is permitted to be incorporated by reference into the filing.

C. Other New Forms

In addition to a new exhibit form, two other new forms are necessitated by the Pilot: a transmittal form to accompany diskette and magnetic tape submissions, Form ET, and a uniform application form for identification numbers and passwords, Form ID.

Form ET is to accompany any magnetic tape or diskette used to file registration statements, periodic reports or other documents. The form is intended to identify the registrant and contact person and to provide technical data to enable the Commission to transfer the filings from the tapes or diskettes to the EDGAR computer system.

Form ID is a uniform application form to be used by all registrants selected to participate in the Pilot to request assignment of a CIK [44] and password

[29] 17 CFR 230.499(b) (1) and (7), 240.12b (3) and (4), 260.12(c)(3).

[30] 17 CFR 230.499(c). Also see 12b-37(c), 12(c).

[31] 17 CFR 230.499(c)(4), 240.12b-37(c)(4), 260.12(c)(6).

[32] 17 CFR 230.499(c) (5) and (6), 240.12b-37(c) (5) and (6), 260.12(c)(5).

[33] *See supra*, note 17 and the accompanying text for a discussion of certain filings that will continue to be made on paper.

[34] 17 CFR 230.499(c) (3) and (6), 240.12b-(c)(3), 260.12c(4).

[35] Pursuant to 17 CFR 230.418 (supplemental information), a hard copy printout of each electronic submission will be requested for quality control purposes. The printout will accompany diskette or magnetic tape submissions and will be provided as soon as practicable after the direct digital transmissions.

[36] 17 CFR 230.499(c)(1), 240.12b-37(c)(1), 260.12(c)(1).

[37] 17 CFR 230.424.

[38] 17 CFR 230.499(c) (7) and (8), 240.12b-37(c)(7).

[39] 17 CFR 230.499(c)(2). Also see 17 CFR 240.12b-37(c)(2), 260.12(c)(2).

[40] 17 CFR 230.411.

[41] 17 CFR 240.12b-32.

[42] 17 CFR 260.7a-30 to -32.

[43] 17 CFR 201.24.

[44] Registrant identification number.

and by individuals to request assignment of a PIN. The CIK in combination with the password will enable the registrant to protect against other parties filing data under its name and will enable the Commission to ensure that the materials received are from the registrant. Similarly, as discussed above, each individual signing any document submitted to the Commission via direct digital transmission should request and receive a unique PIN to serve the same purpose. The application solicits the information necessary for the assignment of this number.

III. Request for Comments

In order to give interested parties an opportunity to comment on the temporary rules and forms, comments will be accepted on or before August 17 1984, after which the Commission will review the comments and make such changes, if any, that it deems necessary and appropriate. If no material changes are necessitated by the comments, the temporary rules will become effective on September 24, 1984. Form ID, however, will become effective on August 1, 1984.

Further suggestions concerning EDGAR from registrants, potential users of the electronic disclosure system, shareholders and other members of the public may be submitted throughout the Pilot. During the course of the Pilot, the Commission may find it necessary to amend the temporary rules or forms to make minor technical changes, especially in the areas of signatures, date of filing, and general filing requirements.

List of Subjects in 17 CFR Parts 230, 239, 240, 249, 260, and 269

Reporting and recordkeeping requirements, Securities.

IV Text of New Rules and Forms

In accordance with the foregoing, Title 17 Chapter II, of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding § 230.499 to read as follows:

§ 230.499 EDGAR temporary rule.

(a) *Scope.* In conjunction with the applicable rules and regulations under the Securities Act, particularly Regulation C (§ 230.400 *et seq.* of this chapter), this rule shall govern registration of securities under the Act by registrants permitted to participate in the EDGAR pilot and shall be controlling for an electronic format document in the manner and respects provided for in paragraphs (b)(1) through (c)(8) of this section.

(b) *Definitions.* Unless otherwise specifically provided, the terms used in this rule have the same meanings as in the Act and in the general rules, regulations and forms. In addition, the following definitions of terms apply specifically to a document in an electronic format and shall define such terms wherever they appear in the Act, rules, regulations or forms, unless the context otherwise requires:

(1) *Bold-face type.* The term "bold-face" type shall include capital letters in a document in an electronic format.

(2) *Electronic format.* The term "electronic format" shall refer to a computerized format of a document that is submitted to the Commission by direct digital transmission, magnetic tape or diskette.

(3) *Graphic communication.* The term "graphic communication," which appears in the definition of "write, written" in section 2(9) of the Securities Act, shall include magnetic impulse or other form of computer data compilation.

(4) *Original.* The term "original" when used or implied in the act, rules, regulations or forms, shall include the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original"

(5) *Received.* The term "received" when used to determine the filing date, *i.e.,* the date "received" by the Commission, shall be the date on which such filing is accepted, as determined by the Commission for a document filed in an electronic format.

(6) *Red ink.* The required presentation of any legend, statement or caption in red ink (horizontal or vertical to the page) is satisfied in an electronic format if such legend, statement or caption is in a prominent position and set off from the rest of the text by a box or similar form of border enclosing such legend, statement or caption on all four sides.

(7) *Signed.* The term "signed" shall include the entry in the form of a magnetic impulse or other form of computer data compilation of any symbol or series of symbols executed, adopted or authorized as a signature.

(c) *Suspended or substituted requirements.* The following paragraphs refer to requirements that are suspended or replaced, in whole or in part, for a document in an electronic format.

(1) *Binding.* The requirement for a copy to be bound in one or more parts shall be satisfied by including in or with a single submission in an electronic format all documents required to be so bound.

(2) *Filing of documents incorporated by reference.* Wherever a document, or part thereof, which is incorporated by reference into a directly transmitted electronic filing is required to be filed with, provided with, or is to accompany the filing to the Commission and such document is not in an electronic format, such requirement shall be suspended, provided that the document has been filed with or provided to the Commission previously. Any requirement as to delivery or provision to persons other than the Commission shall not be affected by this paragraph.

(3) *Number of copies required to be filed.* One copy of a document filed in an electronic format shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

(4) *Paper.* Whenever the term "paper" appears, the term "electronic format" also shall be included unless the context refers specifically to characteristics of paper.

(5) *Type size required.* Any reference to specific size type shall be suspended for documents while in an electronic format.

(6) *Rule 403 of Regulation C, "Requirements as to paper, printing, language and pagination"* Paragraph (a) of Rule 403 (§ 230.403 of this chapter) is suspended for documents while in an electronic format.

(7) *Rule 424 of Regulation C, "Filing of prospectuses—number of copies."* The copies required to be filed by Paragraphs (a), (b) and (c) of Rule 424 (§ 230.424 of this chapter) shall consist of a copy of the document in an electronic format with an explanation before the cover page that narratively describes in detail the variations from such document of any form of prospectus sent or given to any person prior to the effective date of the registration statement or used after the effective date. The explanation shall be a part of the filed document.

(8) *Rule 431 of Regulation C, "Summary prospectuses"* The requirement in Paragraph (g) of Rule 431 (§ 230.431 of this chapter) to file the summary prospectus in the exact form in which it was used or published shall be satisfied by filing such document in an electronic format with an explanation before the cover page that narratively describes in detail the variations from such document of any summary

prospectus so used or published. The explanation shall be a part of the filed document.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

2. By adding § 239.62 to read as follows:

§ 239.62 Form ET, transmittal form for electronic format documents under the EDGAR pilot.

This Form shall accompany each electronic filing under the EDGAR pilot project when the reporting medium is either diskette or magnetic tape.

Note.—The text of Form ET does not appear in the Code of Federal Regulations.

OMB Approval
OMB 3235-0329
Expires Oct. 1986

Securities and Exchange Commission, Washington, D.C. 20549

Form ET

Transmittal Form for Electronic Format Documents Under the Edgar Pilot

PART I—REPORTING MEDIUM

(a) Magnetic tape [ ]
1600 bpi [ ] 6250 bpi [ ]
Number of tapes in package _____

(b) Diskette [ ]
Number of diskettes in package _____

Word processing data (see directions to EDGAR filers for acceptable formats)
Format: Print [ ] Page image [ ]
Revisable [ ]
Type _____
Model number _____
Sides: Single [ ] Double [ ]
Density: Single [ ] Double [ ]

PART II—PERSON TO CONTACT REGARDING ELECTRONIC FILING

(a) Name _____
(b) Address _____
(c) Telephone number (include area code) _____

PART III—PAYMENT OF FEES (check one)

(a) Check is attached [ ]
(b) Payment made via lockbox [ ]
(c) No fee required [ ]

PART IV—REGISTRANT INFORMATION (list each filing for each registrant separately)

(a) Name of registrant as specified in charter _____
(b) CIK Number _____
(c) Form type and period (if applicable) _____
(d) Specify file name on reporting medium where document may be located _____
(e) Identify executed signature pages, opinions and consents accompanying each filing _____

General Instructions

I. Rule as to Use of Form ET

This form shall accompany each electronic submission under the EDGAR Pilot project when the reporting medium is either diskette or magnetic tape.

II. Preparation of Form

A. One copy of the form must be submitted with each electronic submission. The form should be completed carefully as this data will be used by the Commission to transfer the documents from the reporting medium to the EDGAR computer system. Particular attention should be given to Part IV(d) of the form to identify each of the documents contained on the diskette or magnetic tape.

B. If more than one registrant is included on the magnetic tape or diskette submitted, it is not necessary to complete a separate form for each registrant if:

1. The information contained in Parts I, II and III is identical for all registrants; and

2. A separate entry in Part IV is completed for each filing of each registrant. (Items a through e should be repeated and additional sheets attached as necessary to list other filings or registrants.)

III. Signatures, Consents and Other Manually Signed Documents

The registrant is directed to the signature requirements of each of the various forms to be filed. All such signatures and other documents required to be manually signed shall be furnished in paper format with the filing on diskette or magnetic tape. The electronic format documents shall contain conformed signatures.

IV. Application of General Rules and Regulations and Directions

Attention is directed to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, and Trust Indenture Act of 1939, as modified by temporary Rules 499, 12b-37 and 12, respectively. Attention also is directed to the directions to EDGAR filers which contain information and procedures for filing of electronic submissions.

3. By adding § 239.63 to read as follows:

§ 239.63 Form ID, uniform application for identification numbers and passwords under the EDGAR pilot.

(a) Form ID is to be used by persons participating in the EDGAR Pilot for the purpose of requesting assignment of:

(1) Company Identification Number (CIK)—used internally by the Commission to uniquely identify each registrant;

(2) Company Password—a unique command assigned to a registrant which is essential to obtain access to the electronic filing system for the purpose of inputting data on behalf of that registrant;

(3) Personal Identification Number (PIN)—a series of symbols, which serves as a signature, to be assigned upon request to each individual who may sign documents filed with the Commission.

(b)(1) CIK and Passwords may be requested only by the registrant or by a duly authorized person (*e.g.*, officer, director or trustee) on its behalf.

(2) PIN may be requested only by the person to whom the number is to be assigned.

Note.—Text of Form ID does not appear in the Code of Federal Regulations.

OMB Approval
OMB 3235-0328
Expires Oct. 1986

Securities and Exchange Commission, Washington, D.C. 20549

Form ID

Uniform Application for Identification Numbers and Passwords Under the EDGAR Pilot

Initial application [ ]
Amended application [ ]
Application for (check one or more as applicable):
Company identification number (CIK) [ ]
Company password [ ]
Personal identification number (PIN) [ ]

PART I—REGISTRANT INFORMATION

Complete this section only if requesting CIK or Company Password.

(a) Full name of registrant as specified in charter _____
(b) Former name if changed since last application _____
(c) Mailing address _____
(d) Telephone number (include area code) _____
(e) Contact person _____
(f) If amended application, state the Password to be eliminated from system _____

PART II—INDIVIDUAL INFORMATION

Complete this section only if requesting a PIN. Each person requesting a PIN must complete a separate form.

(a) Name as used for signature purposes ———

(b) Former name if changed since last application ———

(c) Date of birth ———

(d) Mailing address ———

(e) Telephone number (include area code) ———

(f) Relationship to company(s) participating in EDGAR project: Director [ ] Officer [ ] Accountant [ ] Attorney [ ] Underwriter [ ] Other (specify) ———

(g) If amended application, state PIN to be eliminated from system ———

PART III—SIGNATURES

(a) For CIK and Company Password

Registrant ———

Date ———

Signature ———

Print Name ———

Title ———

(b) For PIN only:

The undersigned hereby agrees that my execution, adoption or authorization to enter the PIN assigned to me by the Commission pursuant to this Form constitutes my signature.

Date ———

Signature of applicant ———

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), sections 13(a) and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78w) and section 319 of the Trust Indenture Act (15 U.S.C. 77sss) authorizes solicitation of this information. This information will be used to assign a number or password to the registrant or individual. This will thereby allow the Commission to identify the registrant, grant access to the EDGAR system, and provide a means for individuals to sign direct digital transmissions. This information will not be shared with other agencies. The providing of this information by an individual is voluntary, but the registrant may be excluded from the use of direct digital transmission in the EDGAR pilot project for failure to do so.

PART IV—FOR COMMISSION USE ONLY—CONFIDENTIAL INFORMATION

CIK issued to company [ ]

Password issued to company [ ]

PIN issued to individual [ ]

General Instructions

I. Rule as to Use of Form ID

A. Form ID is to be used by persons participating in the EDGAR Pilot for the purpose of requesting assignment of:

1. Company Identification Number (CIK)—used internally by the Commission to uniquely identify each registrant;

2. Company Password—a unique command assigned to a registrant which is essential to obtain access to the electronic filing system for the purpose of inputting data on behalf of that registrant;

3. Personal Identification Number (PIN)—a protective device to be assigned upon request to each individual who may sign documents filed with the Commission.

B.1. CIK and Passwords may be requested only by the registrant or by a duly authorized person (*e.g.*, officer, director or trustee) on its behalf.

2. PIN may be requested only by the person to whom the number is to be assigned.

II. Signature and Filing of Form

The form should be completed and filed in duplicate. At least the original must be manually signed. The copy of the form will be completed by the Commission and returned by registered mail to the applicant.

III. Preparation of the Form

The form is intended to be used as a blank form to be filled in by the applicant.

A. Registrants should indicate whether the application is an initial or amended filing, whether a CIK or Password or both are requested, and complete Parts I and III(a).

B. Individuals should indicate whether the application is an initial or amended filing, that a PIN is requested, and complete Parts II and III(b).

IV Amended Filings

Amended filings should be made when a new CIK, Password or PIN is necessary or desirable.

A. For CIK—new CIK will generally not be assigned except in limited, specific instances determined by the Commission. The registrant should contact the Office or Applications and Reports Services with any questions about the need for a new CIK.

B. For Password—a new Password may be requested anytime that the registrant believes that the security of its transmissions may be jeopardized by the continued use of its present Password.

C. For PIN—a new PIN may be requested anytime that the individual believes that the integrity of the assigned PIN has been compromised.

4. By adding § 239.64 to read as follows:

§ 239.64 Form SE, for exhibits of registrants filing under the EDGAR pilot.

This form shall be used for the filing of any exhibits(s) by persons filing registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934 or the Trust Indenture Act of 1939 provided such registrant:

(a) Is filing in an electronic format under the EDGAR Pilot project; and

(b) Determines that it is impracticable, in its judgment, to file such exhibit(s) in an electronic format.

Note.—The text of Form SE does not appear in the Code of Federal Regulations.

OMB Approval
OMB 3235-0327
Expires Oct. 1986

Securities and Exchange Commission, Washington, D.C. 20549

Form SE

Form for Exhibits Under the Edgar Pilot

(Exact name of registrant as specified in charter)

CIK number ———

The undersigned registrant hereby files the following exhibits to be incorporated by reference into its electronic format filings with the Commission

(Attach an exhibit index and the exhibits as required by Item 601 of Regulation S-K)

The registrant has duly caused this form to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ——— State of ——— on ——— 198—

Registrant ———

Signature ———

Print Name ———

Title ———

General Instructions

I. Rule as to Use of Form SE

This form shall be used for the filing of any exhibit(s) by persons filing registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, or Trust Indenture Act of 1939, provided such registrant: (1) Is filing in an electronic format under the EDGAR Pilot project; and (2) determines that it is impracticable, in its judgment, to file such exhibit(s) in an electronic format.

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the

Securities Act, the Exchange Act, and Trust Indenture Act, as modified by temporary Rules 499, 12b-37, and 12, respectively. These general rules should be carefully read and observed in the preparation and filing of this form.

B. Particular attention is directed to Rules 411 and 499(c)(2) under the Securities Act; Rules 12b-23, 12b-32, and 12b-37 under the Exchange Act, the specific registration or reporting form to be used, and Item 601 of Regulation S-K.

III. Preparation of Form

Form SE shall serve as a covering sheet for all exhibits to be filed in paper format. An exhibit index shall be included which lists all exhibits filed according to the number assigned to such exhibit in the table contained in Item 601 of Regulation S-K.

IV Signature and Filing of Form

Three complete copies of this form including exhibits shall be filed. At least one complete copy of the form shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. By adding § 240.12b-37 to read as follows:

§ 240.12b-37 EDGAR temporary rule.

(a) *Scope.* In conjunction with the applicable rules and regulations under the Exchange Act, particularly § 240.12b-1, this rule shall govern all statements, reports and documents filed with the Commission by registrants permitted to participate in the EDGAR pilot who are registered under section 12 or subject to section 15(d) of the Exchange Act and shall be controlling for an electronic format document in the manner and respects provided for in paragraphs (b)(1) through (c)(7) of this section.

(b) *Definitions.* Unless otherwise specifically provided, the terms used in this rule have the same meaning as in the Act and in the rules and regulations prescribed under the Act. In addition, the definitions of terms provided in § 230.499(b) under the Securities Act of 1933 shall apply under this Act to a document in an electronic format and shall define such terms wherever they appear in this Act, rules, regulations or forms, unless the context otherwise requires.

(c) *Suspended or substituted requirements.* The following paragraphs refer to rules that are suspended or replaced, in whole or in part, for a document in an electronic format.

(1) *Binding.* The requirement for a copy to be bound in one or more parts shall be satisfied by including in or with a single submission in an electronic format all documents required to be so bound.

(2) *Filing of documents incorporated by reference.* Wherever a document, or part thereof, which is incorporated by reference into a directly transmitted electronic filing is required to be filed with, provided with, or to accompany the filing to the Commission and such document is not in an electronic format, such requirement shall be suspended, provided that the exhibit has been filed with or provided to the Commission previously. Any requirement as to delivery or provision to persons other than the Commission shall not be affected by this rule.

(3) *Number of copies required.* One copy of a document, or any portion thereof, which is filed in an electronic format, shall satisfy any requirement that more than one copy of such document or portion thereof must be filed with or provided to the Commission.

(4) *Paper.* Whenever the term "paper" appears the term "electronic format" also shall be included unless the context refers specifically to characteristics of paper.

(5) *Type size required.* Any reference to specific size type shall be suspended for documents while in an electronic format.

(6) *Rule 12b-12 of Regulation 12B "Requirements as to paper, printing and language."* Paragraphs (a) and (c) of Rule 12b-12 (§ 240.12b-12 of this chapter) are suspended for documents while in an electronic format.

(7) *Rule 14a-6(c) of Regulation 14A, "Material Required to be Filed," and Rule 14a-5(b) of Regulation 14C, "Filing of Information Statement."*

(i) The copies required to be filed with the Commission by Part (c) of Rule 14a-6 (§ 240.14a-6 of this chapter) shall consist of a definitive copy of the documents specified in the Rule in an electronic format with an explanation before the initial page that narratively describes in detail the variations from such document of any form of proxy, proxy statement and other soliciting material furnished to security holders. The explanation shall be a part of the filed definitive copy.

(ii) The copies required to be filed with the Commission by paragraph (b) of Rule 14c-5 (§ 240.14c-5 of this chapter) shall consist of a definitive copy of the information statement in an electronic format with an explanation before the initial page that narratively describes in detail the variations from such document of any information statement furnished to security holders. The explanation shall be a part of the filed definitive copy.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Subpart D—Forms for Annual and Other Reports of Issuers Required Under Sections 13 and 15(d) of the Securities Exchange Act of 1934

6. By adding § 249.444 to read as follows:

§ 249.444 Form SE, for exhibits of registrants filing under the EDGAR pilot.

This form shall be used for the filing of any exhibit(s) by persons filing registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934 or the Trust Indenture Act of 1939 provided such registrant:

(a) Is filing in an electronic format under the EDGAR pilot project; and

(b) Determines that it is impracticable, in its judgment, to file such exhibit(s) in an electronic format.

7. By adding § 249.445 to read as follows:

§ 249.445 Form ET, transmittal form for electronic format documents under the EDGAR pilot.

This Form shall accompany each electronic filing under the EDGAR pilot project when the reporting medium is either diskette or magnetic tape.

8. By adding § 249.446 to read as follows:

§ 249.446 Form ID, uniform application for identification numbers and passwords under the EDGAR pilot.

(a) Form ID is to be used by persons participating in the EDGAR Pilot for the purpose of requesting assignment of:

(1) Company Identification Number (CIK)—used internally by the Commission to uniquely identify each registrant;

(2) Company Password—a unique command assigned to a registrant which is essential to obtain access to the electronic filing system for the purpose of inputting data on behalf of that registrant;

(3) Personal Identification Number (PIN)—a series of symbols, which serves as a signature, to be assigned upon request to each individual who may sign documents filed with the Commission.

(b)(1) CIK and Passwords may be requested only by the registrant or by a duly authorized person (*e.g.*, officer, director or trustee) on its behalf.

(2) PIN may be requested only by the person to whom the number is to be assigned.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

9. By adding § 260.0-12 to read as follows:

§ 260.0-12 EDGAR temporary rule.

(a) *Scope.* In conjunction with the rules and regulations under the Trust Indenture Act of 1939, this rule shall govern all statements and reports required to be filed or provided under this Act by registrants permitted to participate in the EDGAR pilot and shall be controlling for an electronic format document in the manner and respects provided for in paragraphs (b)(1)-(c)(6) of this section.

(b) *Definitions.* Unless otherwise specifically provided, the terms used in this rule have the same meaning as in the Act and in the rules and regulations prescribed under the Act. In addition, the definitions of terms provided in § 230.499(b) under the Securities Act of 1933 shall apply under this Act to a document in an electronic format and shall define such terms wherever they appear in the Act, rules, regulations, or forms unless the context otherwise requires.

(c) *Suspended or substituted requirements.* The following paragraphs refer to rules that are suspended or replaced, in whole or in part, for a document in an electronic format.

(1) *Binding.* The requirement for a copy to be bound in one or more parts shall be satisfied by including in or with single a submission in an electronic format all documents required to be so bound.

(2) *Filing of documents incorporated by reference.* Wherever a document, or part thereof, which is incorporated by reference into a directly transmitted electronic filing is required to be filed with, provided, with or to accompany the filing to the Commission and such document is not in an electronic format, such requirement shall be suspended, provided that the exhibit has been filed with or provided to the Commission previously. Any requirement as to delivery of provision to persons other than the Commission shall not be affected by this paragraph.

(3) *Legibility.* The requirement of Rule 7a-18 (§ 260.7a-17 of this chapter) for specific ink color does not apply to documents in an electronic format and shall be suspended for such documents in an electronic format.

(4) *Number of copies required to be filed.* One copy of a document filed in an electronic format shall satisfy any requirement that more than one copy of such document be filed with or provided to the Commission.

(5) *Quality, color and size of paper.* The requirements of Rule 7a-17 (§ 260.7a-17 of this chapter) referring to characteristics of paper that do not apply to documents in an electronic format shall be suspended for such documents in an electronic format.

(6) *Paper.* Whenever the term "paper" appears the term "electronic format" also shall be included unless the context refers specifically to characteristics of paper.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

10. By adding § 269.5 to read as follows:

§ 269.5 Form ET, transmittal form for electronic format documents under the EDGAR pilot.

This Form shall accompany each electronic filing under the EDGAR pilot project when the reporting medium is either diskette or magnetic tape.

11. By adding § 269.6 to read as follows:

§ 269.6 Form ID, uniform application for identification numbers and passwords under the EDGAR pilot.

(a) Form ID is to be used by persons participating in the EDGAR Pilot for the purpose of requesting assignment of:

(1) Company Identification Number (CIK)—used internally by the Commission to uniquely identify each registrant;

(2) Company Password—a unique command assigned to a registrant which is essential to obtain access to the electronic filing system for the purpose of inputting data on behalf of that registrant;

(3) Personal Identification Number (PIN)—a series of symbols, which serves as a signature, to be assigned upon request to each individual who may sign documents filed with the Commission.

(b)(1) CIK and Passwords may be requested only by the registrant or by a duly authorized person (*e.g.*, officer, director or trustee) on its behalf.

(2) PIN may be requested only by the person to whom the number is to be assigned.

12. By adding § 269.7 to read as follows:

§ 269.7 Form SE, for exhibits of registrants filing under the EDGAR pilot.

This form shall be used for the filing of any exhibit(s) by persons filing registration statements or reports pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934 or the Trust Indenture Act of 1939 provided such registrant:

(a) Is filing in an electronic format under the EDGAR Pilot project; and

(b) Determines that it is impracticable, in its judgment, to file such exhibit(s) in an electronic format.

V. Statutory Authority and Findings

The Commission hereby adopts the rulemaking actions set forth above pursuant to the following statutory authority. The actions revising 17 CFR Part 230 are adopted pursuant to the authority in sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933. The actions revising 17 CFR Part 240 are adopted pursuant to the authority in sections 3(b), 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934. The actions revising 17 CFR Part 260 are adopted pursuant to the authority in section 319(a) of the Trust Indenture Act of 1939.

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact which the temporary rules and forms adopted herein would have on competition and does not believe that they would impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. To the extent that any burden on comptetition would result, the Commission believes it necessary in order to facilitate the dissemination of information to investors and shareholders.

In accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), these temporary rules and forms relate solely to agency organization, procedure, or practice, and thus notice and public comment procedure are not necessary.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; sec. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455,, secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

By the Commission.

Dated: June 27, 1984.

George A. Fitzsimmons,

Secretary.

Regulatory Flexbility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed EDGAR temporary rules and forms promulgated, will not have a significant impact on a substantial number of small entities. The reason for this certification is as follows: The EDGAR Pilot Project ("Pilot") is designed to develop and test, using actual filings, an electronic disclosure system, designated "EDGAR" for Electronic Data Gathering, Analysis and Retrieval. The proposed rules and forms would merely adapt the current procedural rules for filing to accommodate electronic filings. The electronic filings will be made by companies that have volunteered to participate in the Pilot and that already have (or are willing to purchase) the computer facilities necessary to make their filings electronically. Since participation in the Pilot is voluntary, small companies may avoid possible burdens of the program by not volunteering. Moreover, no substantial number of companies meeting the definition of small entity pursuant to Rule 157 under the Securities Act of 1933 and Rule 0-10 under the Securities Exchange Act of 1934 have volunteered to participate in the Pilot.

Dated: June 27, 1984.

John S. R. Shad,

Chairman.

Example of a Portion of the Directions to EDGAR Filers

A. Filing Requirements

1. Direct transmission filings can be submitted under the following conditions:

a. Dial-up through two public networks to be specified later (please note that to use these services the filer must be specifically registered with the network as a user of EDGAR), or

b. Direct dial-up to the EDGAR computer.

2. Electronic filings can be submitted on the following diskettes:

a. 5" floppy diskettes:

—AES-DATA rev 4.08
—AES SUPER PLUS rev 4.08
—APPLE II CP/M 43v 4.03
—APPLE DOS 3.3 rev 4.08
—BITSY (TRIUMPH ADLER) rev 4.03
—BURROUGHS rev 4.04
—COMPUCOR 675 rev 4.03
—CTM rev 4.00
—EXXON 500 rev 4.03
—IBM PC CP/M rev 4.02
—LANIER LTD-3 rev 4.08
—LANIER LTD-5 rev 4.03
—LANIER LTD-6 rev 4.08
—LANIER LTD-7 rev 4.01
—LANIER LTD-9 rev 4.01
—LEXITRON rev 4.01
—LOGICA VTS rev 4.05
—OLYMPIA rev 4.02
—OSBORN II CP/M rev 4.02
—PHILIPS rev 4.02
—REDACTOR II rev 4.04
—ROYAL OMNIWRITER rev 4.04
—SE-2000 (TRIUMPH-ADLER) rev 4.01
—SYNTREX rev 4.04
—SYSTEL CP/M rev 4.02
—WANGWRITER rev 4.00
—WANG OIS rev 4.06
—WORDPLEX rev 4.03

b. 8" floppy diskettes:

—AB DICK rev 4.05
—AES MULTI-PLUS rev 4.07A
—AES-PLUS rev 4.07
—A.M. COMP/SET rev 4.07
—A.M. 425 rev 4.02
—ARTEC SINGLE DENSITY rev 4.02
—BERTHOLD rev 4.06
—COMPUGRAPHIC VIDEO SETTER rev 4.00
—CPT rev 4.07
—CPT rev 4.00
—DATA DIAMOND rev 4.06
—DEC WPS-8 rev 4.04
—DICTAPHONE rev 4.05
—IBM DISPLAYWRITER SINGLE DENSITY rev 4.10
—IBM DISPLAYWRITER DOUBLE DENSITY rev 4.10
—IBM SYSTEMS/6 rev 4.31
—IBM 3730 SINGLE DENSITY rev 4.07
—IBM 3730 DOUBLE DENSITY rev 4.07
—IBM 5520 rev 4.31
—IBM 8100 SINGLE DENSITY rev 4.07
—IBM 8100 DOUBLE DENSITY rev 4.07
—JACOUARD rev 4.04
—LANIER LTD-1 rev 4.07
—LANIER LTD-2 rev 4.07
—LANIER LTD-3 rev 4.08
—LANIER LTD-4 rev 4.07A
—LINDLEX (3M) rev 4.04
—MERGENTHALER rev 4.05
—MI COM rev 4.06
—NBI-II rev 4.03
—NBI-3000 SS/SD rev 4.09
—NBI-3000 DS/DD rev 4.09
—OLIVETTI-701 rev 4.09
—SIEMENS rev 4.02
—TRS-80 (8') CP/M REV 4.02
—VYDEC rev 4.04
—WANG rev 4.09
—WORDPLEX rev 4.03
—WORDSTREAM rev 4.05
—XEROX 820 CP/M rev 4.02
—XEROX-850 rev 4.10
—XEROX-860 rev 4.06

3. Electronic submissions submitted on magnetic tape must be on IBM compatible tape with standard labels and 1600 bpi or 6250 bpi density.

B. Electronic Submission Format

1. Under the EDGAR pilot, an electronic submission shall consist of a set of documents where a document is one of the following:

a. Each form, schedule or report
b. Each exhibit submitted with (a) above
c. Cover letter
d. Each supplemental submission with (a) above

2. The first page of an electronic submission must contain only the following header information:

a. Line 1—ELECTRONIC SUBMISSION HEADER
b. Line 2—CIK NUMBER (CIK is the company index key assigned by the SEC to the filer)
c. Line 3—PASSWORD (Password for the filer)
d. Line 4—FORM TYPE
e. Line 5—DOCUMENTS NUMBER (Number of documents being filed as part of the electronic submission)

3. The first page of each document within the filing must contain the following header information:

a. Line 1—at least 6 blanks followed by PAGE 0
b. Line 2—DOCUMENT HEADER
c. Line 3—DOCUMENT DESCRIPTION (A 20 character description of the document to be used for retrieval purposes)
d. Line 4—PAGE COUNT (The number of pages in the document)

4. A page will consist of no more than 70 lines of *text* with no more than 79 characters per line. Tables, such as financial statement summaries, may contain up to 131 characters.

5. The first line of each page must contain the following data in this sequence:

a. At least 6 blanks
b. PAGE
c. The page number (numerics only)

6. The filing must be composed and submitted in one format. If the filing was prepared using several word processing formats, it is the responsibility of the filer to convert them into one format prior to submission to the SEC.

7. Additional information included in amendments must be preceded by a double colon (::), and concluded with a double semi-colon (;;). Deletions must be denoted by inserting double colons immediately followed by double semi-colons (::;;) where text was deleted. In addition an asterisk character (*) must

appear in the last column of each line that was changed. These characters are for internal use only and will not appear on any terminal display or microfiche copies available to the public.

8. The sequential numbering of all pages of the forms, schedules, or reports including exhibits should be continued. The last line of each page should contain this sequential number. Header pages (electronic submission header and document header) should not be included in the sequential numbering.

C. Direct Transmission Filing Procedures

1. Direct transmission of filings can be accomplished through use of the two public networks or by direct dial-up to the EDGAR computer. Direct dial-up requires the following:

Protocol	Equipment compatible with		Line speed	Duplex
	Device	Modem		
Asynchronous	*TWX	Bell 221A	1,200	Half.
SDLC	3770	Bell 201C	2,400	Half.
SDLC	3770	Bell 201B	4,800	Half.

* Models 33, 33ASR, 35.

2. All filings must be submitted in page image format.

3. Once communication is established between the filer and the EDGAR computer, the filer begins transmission of the filing.

4. The EDGAR receipt processing module will validate the electronic submission and document header records. If any errors are found, the filing will be rejected and the computer center will notify the filer of the reason for the error. These errors include:

a. Invalid CIK number
b. Invalid Password

5. The filer will be responsible for correcting the errors and reinitiating the transmission process.

6. At the end of the transmission, the SEC communication software will notify the sender that the transmission was successful and that it has been verified by the communications protocol.

D. Diskette and Magnetic Tape Filing Procedures

1. Filers submitting filings on diskettes or magnetic tape must either submit them in person to the SEC Document Control desk or by mail to the SEC at the following address: 450 5th Street NW., Washington, D.C. 20549, Attn: Document Control *EDGAR*

2. The diskettes and magnetic tapes must be marked as to the sequence in which they are to be read in.

3. The transmittal form (Form ET) must accompany the diskettes or magnetic tapes.

4. When the diskettes or magnetic tapes are received by the SEC, they will be logged in and read into the EDGAR system. If errors are encountered, the filer contact will be notified by telephone. It will then be the responsibility of the filer to resubmit the filing.

[FR Doc. 84-18084 Filed 7-9-84; 8:45 am]
BILLING CODE 6010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Indiana regulatory program (hereinafter referred to as the Indiana program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On March 5, 1984, the State of Indiana submitted to OSM five modifications to the Indiana statute pertaining to the hearing on petitions to promulgate, amend or repeal a rule, filing location for permit applications, permit application denials, requirements for a permittee to submit an annual status report to the State, and adjustment of bond amounts. After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations with one exception discussed below. The Federal rules at 30 CFR Part 914 which codify the Indiana permanent regulatory program are being amended to implement this action.

EFFECTIVE DATE: July 10, 1984.

ADDRESSES: Copies of the Indiana program and the administrative Record on the Indiana Program are available for public inspection and copying during business hours at:

Office of Surface Mining, Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone (317) 269-2600.

Office of Surface Mining, Room 5124, 1100 L Street, NW., Washington, D.C. 20240; Telephone: (202) 343-7896.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

I. Background

On July 26, 1982, the Secretary of the Interior approved the Indiana State Program subject to the correction of nine minor deficiencies. The approval was effective July 29, 1982 (47 FR 32071, July 26, 1982). The Secretary removed the last of the conditions on August 19, 1983 (48 FR 37626). Information pertinent to the general background, revisions, modifications and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register.

II. Discussion of Program Amendments

On March 5, 1984, the Director, Indiana Department of Natural Resources, submitted to OSM pursuant to 30 CFR 732.17 a proposed State program amendment for approval. The proposed amendment is titled Senate Enrolled Act No. 30 which was signed by the Governor of Indiana on February 29, 1984. This statutory amendment proposes to amend five provisions of the approved Indiana program. Briefly, the proposed modifications concern: public hearings on petitions for promulgation, amendment, or repeal of a rule; filing location for permit applications; definition of "applicant" or "operators" in connection with a pattern of willful violations; and added requirement that the permittee submit and annual report; and, adjustment of the performance bond amount based on permittee history of mining and reclamation.

On March 27 1984, OSM announced receipt of the amendments and procedures for a public comment period and for a public hearing on the substantive adequacy of the proposed amendments (49 FR 11685). Since no requests were received, a public hearing scheduled for April 23, 1984, was not held. The comment period ended on April 26, 1984.

III. Directors Findings

A. General Findings

The Director finds, in accordance with 30 CFR 732.17 that the amendments submitted by Indiana on March 5, 1984, meet the requirements of SMCRA and the Federal regulations with the exception of the modification relating to bond adjustments based on the permittee's history of mining and reclamation. Action on this particular provision will be deferred to a later date as further discussed below. Only those provisions of particular interest or concern are discussed in the specific findings which follow. Unless specifically stated, the Director approves the revisions to the Indiana law. Discussion of only those provisions for which findings are made does not imply any deficiency in any provision not discussed. The provisions not specifically discussed are found to be consistent with SMCRA and no less effective than the Federal regulations. The amended provisions are cited at the end of this notice in the amendatory language for § 914.15. Indiana has also made some non-substantive changes to its statute. The Director finds these change consistent with SMRCA and the Federal regulations.

B. Findings on the Statutory Amendments

1. Indiana has amended its statute at IC 13-4.1-2-4 to no longer require that hearings held to determine whether to grant a petition to promulgate, amend, or repeal a rule, be held in accordance with the Indiana Administrative Adjudication Act. The Director finds that this is not inconsistent with section 201(g) of SMCRA and Federal rule 30 CFR 700.12(c) which do not specify provisions to be followed in holding a hearing to determine whether to accept a petition for rulemaking.

2. Indiana has amended its statute at IC 13-4.1-3-3 to change the filing location of permit applications for surface coal mining and reclamation permits, and for all amendments, transfers or renewals, from the recorder in the county in which the mining is proposed to occur, to the main public library in said county or in an appropriate public office in that county, as approved by the Director, Indiana Department of Natural Resources. The applicant may remove the application 30 days after the Natural Resources Commission's final decision on the application, but a copy of the application must remain on file at the office of the Division of Reclamation nearest the mining. The Director finds that this change is consistent with section 507(e) of SMCRA and no less effective than 30 CFR 786.11(d)(1) which require the applicant to file a copy of the application at the county recorder or another public office approved by the regulatory authority, in the county in which mining is proposed to occur.

3. Indiana has amended its statute at IC 13-4.1-4-3 to provide that a permit can be denied if the applicant owns or controls operations currently in violation of the old Indiana Coal Mining Law, or if the applicant or operator controls or has controlled coal mining operations with a demonstrated pattern of willful violations of the old Indiana Coal Mining Laws, in addition to the existing language based on violations of the new Indiana law and the Federal law. Further, the term "applicant" or "operator" is defined to include the officers, partners or director of the named applicant, allowing the Natural Resources Commission to consider violations of operations owned or controlled by the persons behind the named applicant.

The Director finds these changes to be consistent with section 510(c) of SMRCA and no less effective than 30 CFR 778.14(c) and 786.19 which concern the required listing of violation notices to be filed by the applicant and criteria for regulatory authority permit approval or denial.

4. Indiana has added a requirement at IC 13-4.1-5-7 that the permittee submit an annual status report to the Natural Resources Commission. Since SMCRA and the Federal regulations do not require an annual status report on the permittee's mining and reclamation activities, the Director finds that this amendment is not inconsistent with the Federal requirements.

5. Indiana has added a provision at IC 13-4.1-6-6 to allow adjustment to the amount of a performance bond based on the history of the permittee's mining and reclamation. OSM has raised some concerns with this issue and is currently working with the State of Indiana to come to a resolution of certain problems. Therefore, action on this particular amendment will be deferred to a later date. OSM will reopen the comment period after the State and OSM have come to agreement on resolution of the problem, to allow the public to consider and comment on additional information generated by the State and OSM concerning this issue.

IV Public Comment

There were no public comments received on these amendments to the Indiana State program.

V. Procedural Matters

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 914 is amended as set forth herein.

Dated: July 3, 1984.

J. Lisle Reed,

Acting Director, Office of Surface Mining.

PART 914—INDIANA

1. 30 CFR 914.15 is amended by adding a new paragraph (d) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(d) The following amendments are approved effective July 10, 1984. Revisions submitted March 5, 1984, to the Indiana Statute at IC 13-4.1-2-4, 13-4.1-3-3, 13-4.1-4-3, and 13-4.1-5-7.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*).

[FR Doc. 84-18196 Filed 7-9-84; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 84-23]

REGATTA; New Jersey Offshore Grand Prix

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the New Jersey Offshore Grand Prix Regatta being sponsored by the New Jersey Offshore Powerboat Racing Association to be held on July 11, 1984 between the hours of 8:00 a.m. and 5:00 p.m. This regulation is needed to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATE: This regulation will be effective from 8:00 a.m. to 5:00 p.m. on July 11, 1984.

FOR FURTHER INFORMATION CONTACT: Ltjg D. R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On May 29, 1984, the Coast Guard published a notice of proposed rulemaking in the Federal Register for this regulation (49 FR 22345). Interested persons were requested to submit comments and no comments were received, accordingly no changes are made to the regulation as proposed. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG D. R. Cilley, Project Officer, Boating Safety Office and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual New Jersey Offshore Grand Prix (previously called the Benihana Grand Prix sponsored by Benihana of Tokyo) is an offshore powerboat race sponsored by the New Jersey Offshore Powerboat Racing Association and is well known to the boaters and residents of this area. The race is sanctioned by the American Powerboat Association and the Union of International Motorboating. It is composed of six classes of boats racing on two different race courses. The open class will have approximately 20 vessels racing on a course 155.8 statute miles in length. There will be approximately 70 vessels in the four other classes racing on a course 90.0 statute miles in length. Both courses run along the New Jersey coastline between Asbury Park and Seaside Park. Race headquarters will be located at Jenkinson's Pavilion, in Point Pleasant. To mark the southeast offshore corner of the race course, the Coast Guard will establish an orange and white lighted buoy in the following approximate position: Latitude 40 degrees 07.9 minutes north, longitude 73 degrees 51.9 minutes west. Race participants will exit Manasquan Inlet between 9:00-9:30 a.m. on the day of the race escorted by race committee patrol vessels. An extensive Regatta Patrol under the control of the Coast Guard Patrol Commander will supervise this even in conjunction with vessels provided by the race sponsor and the other local government agencies. A Safety Voice Broadcast will be issued by the Coast Guard to properly notify boaters of this event and the regulations issued for its control. In order to provide for the safety of life and property, the Coast Guard will regulate the movement of vessels and establish special anchorages for spectator vessels prior to and during this event.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event and associated promotional activities. This should easily compensate area merchants for the slight inconvenience of having navigation restricted.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section 100.35-304 to read as follows:

§ 100.35-304 New Jersey Offshore Grand Prix.

(a) *Regulated area.* The Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all the navigable water of the United States from Asbury Park, New Jersey latitude 40 degrees 14 minutes N, southward to Seaside Park, New Jersey latitude 30 degrees 55 minutes N from the New Jersey seacoast to 8.4 miles seaward, off Sea Girt, New Jersey.

(b) *Effective period.* This regulation will be effective from 8:00 a.m. to 5:00 p.m. on July 11, 1984. In case of postponement, the raindate will be July 12 or 13, 1984 and this regulation will be in effect for the same time period.

(c) *Special local regulations.* (1) The regulated area shall be closed intermittently to general navigation during the effective period. No person or vessel may enter or remain in the regulated area while it is closed unless participating in the event or authorized by the sponsor or regatta patrol personnel.

(2) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(3) The spectator fleet will be controlled by establishing special anchorage areas. These areas will keep spectators away from the race participants while still allowing them to watch the races safely. The anchorage areas will be marked by patrol vessels either at anchor or on patrol provided by the sponsor or the Coast Guard. The sponsor-provided boats shall be flying colored pennants to aid in their identification. Special Anchorages are established as follows:

(i) *Asbury Park, NJ south to Manasquan Inlet, NJ.* The spectator fleet will be held behind (west of) a line running north to south from the Asbury Park Convention Center to the north jetty at Manasquan Inlet. At the Asbury Park Convention Center the spectator fleet shall be held behind a line north of the Convention Center Pier. These lines will be set up by the Coast Guard Patrol Commander on the day of the race.

(ii) *Seaside Heights.* The spectator fleet shall be held behind a line south of the Seaside Funtown Pier. This line shall be set by the Coast Guard Patrol Commander on race day.

(4) No spectator, press or commercial fishing boats will be allowed to cross the race course without the permission of the Patrol Commander. Those vessels

wishing to cross the race course shall obtain permission to do so by contacting the nearest Coast Guard patrol vessel.

(5) Party fishing boats will be permitted to fish either inside the special anchorage area, or in a specially designated fishing area south of Manasquan Inlet inside a line 500 yards off shore and parallel to the beach extending south to the Seaside Heights special anchorage area. All other fishing boats must completely exit the regulated area by 8:00 a.m. on race day.

(6) The sponsor shall anchor a race committee boat 100 yards off the north breakwater at Manasquan to mark the southern end of the spectator area and another race committee boat shall be 100 yards off the south breakwater to mark the start-finish line. In addition, two race committee boats shall be anchored halfway between the south breakwater and lighted Gong Buoy #2 to mark the mid channel for the race boats. A press boat will also be anchored just north of this boat.

(7) The sponsor shall anchor a race committee boat approximately 250 yards off the Asbury Park Convention Center. A second race committee boat shall be positioned by the sponsor another 250 yards further offshore. These two vessels shall serve as the turn boats for the northern boundary turn.

(8) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period.

(9) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(10) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: June 29, 1984.

W. E. Caldwell,

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

[FR Doc. 84-18200 Filed 7-9-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[OW-FRL-2625-4]

South Carolina Department of Health and Environmental Control; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of South Carolina has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program meets the requirements of section 1422 of the Act. Therefore, this application is approved.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on July 24, 1984. This approval shall become effective on July 24, 1984.

FOR FURTHER INFORMATION CONTACT: Donald J. Guinyard, Chief, Water Supply Branch, Environmental Protection Agency, Region IV 345 Courtland Street, Atlanta, Georgia 30365. PH: (404) 881-3866.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the Federal Register each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of South Carolina was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under section 1422 on October 24, 1983, for a UIC program to be administered by the South Carolina Department of Health and Environmental Control (SCDHEC). On December 5, 1983, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the SCDHEC (48 FR 54507). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31 (c), the public hearing was cancelled because of lack of sufficient public interest.

After careful review of the application, I have determined that the South Carolina UIC program submitted by the SCDHEC to regulate Classes I, II, III, IV, and V, injection wells meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby approve it. The effect of this approval is to establish this program as the applicable undergound injection control program under the SDWA for the State of South Carolina.

This approval will be codified in 40 CFR 147.2050. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, as enforceable by EPA pursuant to section 1423 of the SDWA.

On May 11, 1984, EPA proposed a Federally-administered UIC program for the State of South Carolina (49 FR 20238). Approval of the State-administered program withdraws the proposed EPA-administered program (§ 147.2051).

Since this approval, in large part, simply approves as the Federal UIC program State regulations and requirements already in effect under State law, EPA is publishing this approval effective two weeks after the date of publication in the Federal Register. This will enable South Carolina to begin issuing UIC permits for injection wells under the Federally

approved program at the earliest possible date.

List of Subjects in 40 CFR Part 147

Incorporation by reference, Indians—lands, Reporting and recordkeeping requirements, Intergovernmental regulations, Penalties, Confidential business information, Water Supply.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under section 1422 of the Safe Drinking Water Act of the application by the South Carolina Department of Health and Environmental Control will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Authority: SDWA Section 1422, U.S.C. 300.

Dated: July 3, 1984.

Alvin L. Alm,

Assistant Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart PP—South Carolina

Amend 40 CFR Part 147 by revising § 147.2050 to read as follows:

§ 147.2050 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV and V wells in the State of South Carolina is the program administered by the South Carolina Department of Health and Environmental Control, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the Federal Register on July 10, 1984; the effective date of this program is July 24, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of South Carolina. This incorporation by reference was approved by the Director of the Federal Register effective July 24, 1984.

(1) Pollution Control Act, S.C. Code Ann. Sections 48-1-10, 48-1-90, 48-1-100, 48-1-110 (Law. Co-op. 1976 and Supp. 1983).

(2) South Carolina Department of Health and Environmental Control, Ground-Water Protection Division, Underground Injection Control Regulations, R-61-87 Effective Date: June 24, 1983 Published in South Carolina State Register, Volume 7, Issue 6; Amended Date: March 23, 1984, as amended by notice in South Carolina State Register, Volume 8, Issue 3.

(b) *Other Laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-Administered program:

(1) Pollution Control Act, S.C. Code Ann. Sections 48-1-10 to 48-1-350 (Law. Co-op. 1976 and Supp. 1983).

(2) State Safe Drinking Water Act, S.C. Code Ann. Sections 44-55-10 to 44-55-100 (Law. Co-op. 1976 and Supp. 1983).

(3) Administrative Procedures Act, S.C. Code Ann. Sections 1-23-10 et seq., and 1-23-310 to 1-23-400 (Law. Co-op. 1976 and Supp. 1983).

(4) S.C. Code Ann. Sections 15-5-20, 15-5-200 (Law. Co-op. 1976 and Supp. 1983).

(c)(1) The Memorandum of Agreement between EPA Region IV and the South Carolina Department of Health and Environmental Control signed by the EPA Regional Administrator on May 29, 1984.

(d) *Statement of Legal Authority.* (1) "Underground Injection Control Program, Attorney General's Statement for Class I, II, III, IV and VA and VB Wells," signed by the Attorney General of South Carolina on April 27 1984.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[FR Doc. 84-18156 Filed 7-9-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 403

[FRL-2621-4]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 20, 1983, the United States Court of Appeals for the Third Circuit issued an order holding that EPA's regulatory definition of "new source," as applied to indirect dischargers regulated under the Clean Water Act (CWA), was invalid and remanded the definition to EPA. On February 10, 1984, EPA suspended the definition (49 FR 5131). Today, EPA is promulgating a revised definition consistent with the Court's decision. No other substantive changes have been made to the definition.

DATE: The effective date of this action is July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Craig Jakubowics, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 426-4793.

SUPPLEMENTARY INFORMATION: On June 26, 1978, EPA promulgated the General Pretreatment Regulations (40 CFR Part 403) establishing mechanisms and procedures for controlling the introduction of wastes from industry and other non-domestic sources into publicly owned treatment works (POTWs) (43 FR 27736). EPA amended these regulations on January 28, 1981 (46 FR 9404). Included in the regulation was a definition of "new source" (40 CFR 403.3(k)) to be used for determining whether a source is subject to the pretreatment standards for new sources (PSNS) or pretreatment standards for existing sources (PSES).

A "new source" is defined in section 306(a) of the Clean Water Act as "any source, the construction of which is commenced after the publication of proposed regulations prescribing a [new source performance standard] which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section." Section 307(c) of the Act directs EPA to define the category of new sources for indirect dischargers in an equivalent manner.

EPA interpreted this statutory provision to mean that a source would be a "new source" if its discharge is commenced (1) after promulgation of a pretreatment standard under section 307(c) of the Act applicable to such source, or (2) after proposal of a standard, but only if the standard was promulgated within 120 days of its proposal. This approach was based upon EPA's reading of section 306(b)(1)(B), which contemplates that EPA would promulgate standards for new sources within 120 days of proposal.

In *National Association of Metal Finishers* v. *EPA*, 719 F.2d 624 (3rd Cir. 1983), the United States Court of Appeals for the Third Circuit held that EPA's definition of "new source" was contrary to the plain meaning of the CWA and remanded the definition to EPA. Essentially, the Court struck down

the definition because of the 120 day limit for promulgating final new source standards. On February 10, 1984, EPA suspended the regulatory definition of "new source" (49 FR 5131).

To further clarify the status of new and existing sources under the *NAMF* decision, EPA is today promulgating a revised definition of "new source" that is essentially a restatement of the statutory definition. It is substantively the same as the previous regulatory definition except that, consistent with the Court's construction of the statutory definition, it classifies any source commencing construction after the proposal of an applicable PSNS as a new source.

EPA plans to conduct a rulemaking in the future to provide criteria for determining when modification of an existing source would be considered construction of a new source for purposes of the General Pretreatment Regulations. EPA is finalizing such criteria in the NPDES permit regulations as applied to direct dischargers (40 CFR 122.29). It is, however, a separate issue from the issue resolved today and will be addressed in a separate rulemaking.

Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This change does not satisfy any of the criteria specified in § 1(b) of the Executive Order and, as such, does not constitute a major rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must submit a copy of any rule that contains a collection of information requirements to the Director of OMB for review and approval. These changes contain no additional information collection requests and, therefore, the Paperwork Reduction Act is not applicable.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 4 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of all proposed rules on small entities. Although this rule is not subject to this requirement because it is not being proposed, EPA has determined that the rule will not have significant economic impact on a substantial number of small entities.

Final Agency Action and Effective Date

Today's action constitutes final Agency action. EPA has determined that this action does not necessitate notice and comment under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, because it is being taken to respond to the Court's decision in *NAMF* v. *EPA*. Delay in compliance with the court's ruling would not be in the public interest. Therefore, good cause exists for taking this final action without providing for notice and comment as prescribed by the APA. For the same reason, the Agency has determined that good cause exists for the final action taken today to become effective immediately.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 3, 1984.

Alvin L. Alm,

Deputy Administrator.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reason set out in the preamble, 40 CFR Part 403 is amended as follows:

1. The authority citation for Part 403 reads as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95-217), section 204(b)(1)(c), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500), as amended by the Clean Water Act of 1977).

2. On February 10, 1984 (49 FR 5131), paragraph (k) of § 403.3 was suspended until further notice. The suspension is lifted and paragraph (k) is revised to read as follows:

§ 403.3 Definitions.

* * * * *

(k) The term "New source" means any building, structure, facility, or installation from which there is or may be a Discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section.

* * * *

[FR Doc. 84-18155 Filed 7-9-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 30519-89]

Shrimp Fishery of the Gulf of Mexico; Adjustment to Texas Closure

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

ACTION: Notice of adjustment to Texas closure.

SUMMARY: NOAA opens the fishery conservation zone off Texas to trawl fishing for shrimp at 30 minutes after sunset on July 6, 1984, earlier than that scheduled by the Texas closure provisions (May 16, 1984, through July 14, 1984). This action is prescribed by existing regulations, and its intended effect is to allow harvest of brown shrimp at optimal commercial size.

EFFECTIVE DATE: The opening is effective at 30 minutes after sunset on July 6, 1984. Public notice has been issued at least 24 hours prior to the opening as required under 50 CFR 658.24.

FOR FURTHER INFORMATION CONTACT: Edward E. Burgess, National Marine Fisheries Service, Southeast Regional Office, Fishery Operations Branch, 9450 Koger Boulevard, St. Petersburg, Florida 33702; telephone number: 813-893-3723.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico provides for adjustments to the closing and opening dates for the seasonal closure of the fishery conservation zone off Texas. Implementing rules at 50 CFR 658.24 describe the Texas closure and specify that these adjustments be made by the Regional Director under criteria set out in that section. NOAA adjusted the Texas closure on May 16, 1984 (49 FR 20710) based upon these specified criteria.

Available information and estimates indicate that an early opening is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department on the size of shrimp indicate that shrimp within the closed area have reached an average size which supports the early opening, and a period of strong tidal activity begins on July 6.

Other Matters

This action is taken under the authority of 50 CFR 658.24, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 658

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: July 5, 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 84-15970 Filed 7-5-84; 10:29 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 133
Tuesday, July 10, 1984

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

Federal Crop Insurance Corporation

7 CFR Part 419

[Doc. 1026S Amdt. No.1]

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1985 and succeeding crop years by (1) changing the end of insurance period date in Alaska to September 25; (2) eliminating the "7-day residue" provision; (3) clarifying specific quality standards stated in the policy; (4) changing the term "mature production" to "harvested production" to eliminate procedural problems involving loss adjustment; (5) adding "failure of the water supply after planting due to unavoidable causes" as an insured cause of loss; and (6) providing procedures for insuring malting barley grown under contract. The intended effect of this rule is to update the provisions of the contract for insuring barley, clarify terminology, add another cause of loss, provide for a different insurance period in Alaska to conform with current farming practices, and provide for insurance to be offered on malting barley grown under contract.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 10, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under that memorandum. The sunset review date established for these regulations is February 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more, and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

As set forth in the notice related to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities are excluded from the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

The changes proposed in the Barley Crop Insurance Regulations, to become effective for the 1985 and succeeding crop years, are as follows:

1. Section 1—Add "failure of the water supply after planting due to unavoidable causes" as an insurable cause of loss.

2. Section 7—Change the date for the end of insurance period in Alaska to September 25.

3. Section 8—Eliminate the "7-day residue" provision.

4. Section 9e(2)—Clarify specific quality standards stated in the policy. This replaces the grade designation (e.g., U.S. No. 4) contained in current policies and states the specific factors which are involved in quality determinations.

5. Section 9e(3)—Change "mature production" to "harvested production" because of procedural problems involving loss adjustment.

In addition, the changes provide that malting barley grown under contract may be insurable, therefore FCIC proposes to add a new subsection to the Barley Crop Insurance Regulations (7 CFR 419.8) to provide procedures for such insurance.

The public is invited to submit written comments, data, and opinions on this proposed rule for 60 days after publication in the Federal Register. All comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 419

Crop insurance; Barley.

Proposed Rule

PART 419—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal crop Insurance Corporation herewith proposes to amend the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1985 and succeeding crop years, in the following instances:

1. The Authority for 7 CFR Part 419 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR § 419.7(d) is amended by revising the policy therein to read as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Barley Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;

(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply after planting due to unavoidable causes; Unless those causes are expected, excluded, or limited by the actuarial table or section 9e(7).

b. We shall not insure against any loss of production due to:
(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good barley farming practices;
(3) The impoundment of water by any governmental, public or private dam or reservoir project; or
(4) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be barley planted for harvest as grain, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table. A mixture of barley with either oats or wheat or both planted for harvest as grain may also be insured if provided for by the actuarial table. The production from such mixture will be considered as barley on a weight basis.

b. The acreage insured for each crop year will be barley planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured barley at the time of planting.

d. We do not insure any acreage:
(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed and it is practical to replant to barley but such acreage is not replanted;
(4) Initially planted after the final planting date contained in the actuarial table unless you agree in writing on our form to coverage reduction;
(5) Of volunteer barley;
(6) Planted to a type or variety of barley not established as adapted to the area or excluded by the actuarial table; or
(7) Planted with a crop other than barley except as provided in section 2a.

e. Where insurance is provided for an irrigated practice:
(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good barley irrigation practice; and
(2) Any loss of production caused by failure to carry out a good barley irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as sue to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice

You must report on our form:
a. All the acreage of barley in the county in which you have a share;
b. The practice; and
c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any barley planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract will be transferred to:

(1) The contract of your estate or surviving spouse if you die;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium will be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a will be applicable.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period

a. Insurance attaches when the barley is planted except that in counties with an April 15 cancellation date, insurance on fall planted barley will attach April 16 following planting, provided there is an adequate stand on this date to produce a normal crop.

b. Insurance ends at the earliest of:

(1) Total destruction of the barley;

(2) Combining, threshing, or removal from the field;

(3) Final adjustment of a loss; or

(4) The date shown below of the calendar year in which the barley is normally harvested:

(a) Alaska.....September 25; and

(b) All other states.....October 31.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the barley on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the barley and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined. A representative sample of the unharvested barley (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(3) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the barley on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the barley which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the barley on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of barley on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of barley to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Mature barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent; or

(2) Mature barley production which, due to insurable causes, has a test weight of less than 40 pounds per bushel or, as determined by a licensed grain grader in accordance with the Official United States Grain Standards, contains less than 85 percent sound barley; more than 8 percent damaged kernels; more than 35 percent thin barley; or more than 5 percent black barley; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of such barley by the price per bushel of U.S. No. 2 barley; and

(b) Multiplying the result by the number of bushels of such barley.

The applicable price for No. 2 barley will be the local market price on the earlier of the day the loss is adusted or the day such barley was sold.

(3) Any harvested production from other crops growing in the barley will be counted as barley on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good barley farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of barley becomes general in the country;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(6) We may determine the amount of production of any unharvested barley on the basis of field appraisals conducted after the end of the insurance period.

(7) When you have elected to exclude hail and fire as insured causes of loss and the barley is damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI-78, "Request To Exclude Hail And Fire"

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must

bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disapear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the barley is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right To Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all your rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of Loss From a Third Party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records to the harvesting, storage, shipment, sale or other disposition of all barley produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date where both the payment under such other program and set off have been approved.

d. The cancellation and termination dates are:

State and county	Cancellation date	Termination date for indebtedness
New Mexico, except Taos County; Oklahoma and Texas.	Aug. 31	Aug. 31
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado counties lying south and east thereof and Kansas.	do	Nov. 30.
Arkansas, Louisiana, Missouri, Illinois, Indiana, New Jersey, Ohio, Pennsylvania, and all states lying south and east thereof.	Sept. 30	Sept. 30.
Connecticut, Massachusetts and New York.	do	Nov. 30.
Arizona, California, and Clark and Nye Counties, Nevada.	Oct. 31	Do.
All other Colorado counties; all other Nevada counties; Taos County, New Mexico and all other states.	Apr. 15	Apr. 15

e. If you die or are judicially declared incompentent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner is a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no permium is earned for five consecutive year.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is not longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by May 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of barley crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding barley insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which he barley is normally grown and will be designated by the calendar year in which the barley is normally harvested.

d. "Harvest" means completion of combining of threshing of the barley on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" mean an individual, partnership association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "Tenant" means a person who rents land from another person for a share of the barley or a share of the proceeds therefrom.

j. "Unit" means all insurable acreage of barley in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the barley on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to

conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contracts.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

3. 7 CFR Part 419 is amended by adding a new § 419.8 to read as follows:

§ 419.8 Malting barley option.

(a) Notwithstanding the provisions of subsection (d)9c and e of the policy found at § 419.7, an insured producer may, upon submission and approval by the Corporation of a Malting Barley Option Amendment, elect to insure all insurable acreage in which the isured has a share which is grown under contract or agreement with a company in the business of buying Malting Barley: *providing*

(1) All acreage of malting barley in the county in which the insured has a share and which is grown under the contract or agreement which is executed by both parties before the acreage report, must be insured, and

(2) The Malting Barley Option Amendment will be applicable only for the crop year for which it is submitted. A new Amendment must be submitted for each subsequent crop year.

(b) For those insureds who elect to insure malting barley under the Malting Barley Option Amendment, all provisions of the Barley crop insurance policy will apply, except those in conflict with the Amendment. The terms of the amendment are:

FCI—
(3-84)

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Barley Crop Insurance Policy—Malting Barley Option Amendment

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____ Tax _____

It is hereby agreed that a signed Malting Barley Option Amendment will be submitted to us on or before the final date for accepting applications for each crop year you wish to insure your maulting barley under this Amendment and upon our approval, the following terms and conditions will apply:

(1) You must have a Federal Crop Insurance Barley Policy (Basic Policy) in force.

(2) All acreage of malting barley in the county in which you have a share grown under contract or agreement (contract) with a company in the business of buying Malting Barley (company), must be insured under this Amendment. All other barley acreage will be insured under the terms of the basic policy. The contract must be executed and binding on both the insured and the company before the acreage report is due.

(3) Failure to submit an Amendment for the crop year will result in your barley being insure under the terms of the basic policy.

(4) Your production guarantee will be based on your actual production history of malting barley.

(5) In lieu of section 9c of the basic policy, the indemnity will be determined on each unit by:

a. Multiplying the number of bushels of malting barley under contract (not to exceed your production guarantee) by your price election for malting barley;

b. Adding to that product the amount obtained by subtracting from your production guarantee the number of bushels under contract, if any, and multiplying that remainder by your price election for other barley;

c. Subtracting from this product, the dollar amount obtained by multiplying the number of bushels of malting barley to count by your price election for malting barley plus the dollar amount obtained by multiplying the number of bushels of barley that does not qualify as Malting Barley to count by your price election for barley under the basic contract; [1] and

d. Multiplying this result by your share.

(6) In lieu of section 9e of the basic policy, the production to count for any acreage designated for malting barley will be adjusted as follows:

a. Any mature production which is not eligible for quality adjustment under subsection (b) below will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent;

b. Any mature harvested malting barley production, or any appraised production which, due to insurable causes, has a test weight of less than 48 pounds per bushel or as determined by a licensed grain grader in accordance with the Official United States Grain Standards, contains less than 95 percent suitable malting types; less than 93 percent sound barley; more than 10 percent thin barley; or more than 2 percent black barley; or is smutty, garlicky, or ergoty shall be adjusted by:

(1) Dividing the value of such barley by the contract price; and

(2) Multiplying the results by the same number of bushels of harvested or appraised production.

(7) If a fixed contract price is not included in your contract with the company, prior to the time the acreage report is due, we will determine the contract price.

Notwithstanding the provision of section 17j of the basic policy, insurable acreage grown under the provisions of this amendment may be designated as separate unit(s).

(9) Your premium rate for malting barley will be set by the actuarial table.

(10) All provisions of the basic policy not in conflict with this amendment are applicable.

(11) The price election is $——per bushel. The coverage level election will be the election under your basic barley.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 522(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring barley under the Barley Crop Insurance Regulations (7 CFR Part 419). The information requested is necessary for the Federal Corp Insurance Corporation (FCIC) to process the option to insure malting barely, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of the option for insuring malting barley, and subsequent denial of any claim for indemnity which may be filed under such option. The failure to supply correct, complete information may substantially delay acceptance of the Malting Barley Option, and any subsequent claim for indemnity.

[1] To determine Malting Barley to count and Barley to count see subsection 9e of the basic contract.

Approved by the Board of Directors on April 26, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: June 26, 1984.

[FR Doc. 84-18177 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 449

Fresh Market Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to issue a new Part 449 in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, for the purpose of prescribing procedures for insuring fresh market sweet corn in counties where such corn is produced. The intended effect of this proposed rule is to issue regulations for such purpose, to be known as 7 CFR Part 449—Fresh Market Sweet Corn Crop Insurance Regulations, under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 10, 1984, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1989.

Merritt W Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On March 28, 1984, the Board of Directors of FCIC approved Docket No. CI-FSwC-85-1B, authorizing FCIC to offer a program of crop insurance on fresh market sweet corn in all counties where such corn is ordinarily produced, effective for the 1985 and succeeding crop years. The regulations contained in this proposed rule are to become effective for the 1985 and succeeding crop years offering protection against crop damage or loss from frost, freeze, hail, fire, tornado, hurricane, or a tropical depression that has been named by the U.S. Weather Service.

All comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 449

Crop insurance, Fresh market sweet corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as ameded (7 U.S.C. 1501 *et seq.*), The Federal Crop Insurance Corporation proposes to issue a new part in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 449 Fresh Market Sweet Corn Crop Insurance Regulations, effective for the 1985 and succeeding crop years. Part 449 is added to read as follows:

PART 449—FRESH MARKET SWEET CORN CROP INSURANCE

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.
449.1 Availability of fresh market sweet corn insurance.
449.2 Premium rates, coverage levels, and amounts of insurance.
449.3 OMB control numbers.
449.4 Creditors.
449.5 Good faith reliance on misrepresentation.
449.6 The contract.
449.7 The application and policy.
Appendix A, Counties Designated for Fresh Market Sweet Corp Crop Insurance.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 449.1 Availability of fresh market sweet corn insurance.

Insurance shall be offered under the provisions of this subpart on fresh market sweet corn in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which fresh market sweet corn insurance shall be offered.

§ 449.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for fresh market sweet corn which will be included in the actuarial table on file in the applicable service offices and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect an amount of insurance per acre and a coverage level from among those levels and amounts contained in the actuarial table for the crop year.

§ 449.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 449) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007

§ 449.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer, or similar interest shall not entitle the holder of the interest to any benefit under the contract except as provided by the policy.

§ 449.5 Good faith reliance on misrepresentation.

Notwithstanding any other provisions of the fresh market sweet corn insurance contract, whatever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a los to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

§ 449.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh market sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, the appendix, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year.

(b) The forms referred to in the contract are available at the service office.

§ 449.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the fresh market sweet corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date for the county on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing the changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a fresh market sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37-400.38, first published at 48 FR 1023, January 10, 1983) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Market Sweet Corn Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fresh Market Sweet Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Frost;

(2) Freeze;

(3) Hail;

(4) Fire;

(5) Tornado;

(6) Hurricane;

(7) Tropical depression that has been named by the U.S. Weather Service; or

(8) Failure of the irrigation water supply after planting due to an unavoidable cause;

unless those causes are expected, excluded, or limited by the actuarial table or section 9f(7).

b. We shall not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good sweet corn farming practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project;

(4) Any cause not specified in section 1a as an insured loss;

(5) The failure to carry out a good sweet corn irrigation practice; or

(6) The breakdown of irrigation equipment or facilities.

2. Crop, acreage, and share insured.

a. The crop insured shall be sweet corn which is planted for harvest as fresh market sweet corn in which you have a share as reported by you or determined by us, whichever we shall elect; which is grown on insured acreage; and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be irrigated acreage designated as insurable by the actuarial table.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured sweet corn at the time of each planting period.

d. We shall not insure any acreage of sweet corn grown by any person if:

(1) The person had not grown sweet corn for commercial sales the previous crop year; or

(2) The person had not participated in the management of the sweet corn farming operation the previous crop year.

e. We do not insure any acreage:

(1) Of sweet corn grown for direct consumer marketing;

(2) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is not irrigated;

(4) Which is destroyed and which we determine it was practical to replant to sweet corn and such acreage was not replanted;

(5) Initially planted after the final planting date contained in the actuarial table;

(6) Of volunteer sweet corn;

(7) Planted to a type or variety of sweet corn not established as adopted to the area or excluded by the actuarial table;

(8) Planted for exerimental purposes; or

(9) Planted with a crop other than sweet corn.

f. We may limit the insured acreage to any acreage limitation established under any Act

of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You shall report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted sweet corn in the county in which you have a share;

b. The practice; and

c. Your share.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any sweet corn plantings in the county. This report shall be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. We may determine all indemnities on the basis of information you have submitted on this report. It you do not submit this report by the reporting date, we may elect to determine by unit for each planting period the insured acreage, share, and practice or we may deny liability on any unit planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance shall be contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and amount of insurance before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest shall accrue at the rate of one and one-half percent (1½ %) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7 Insurance period.

Insurance attaches when the sweet corn is planted in each planting period and ends at the earliest of:

a. Total destruction of the sweet corn on the unit;

b. Discontinuance of harvest on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. Final harvest; or

e. Final adjustment of a loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sweet corn damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted shall be at least the lesser of 10 acres or 10 percent of the insured acreage sustaining a loss in excess of 25 percent of the plant stand on the unit);

(b) During the period before harvest, the sweet corn on any unit is damaged and you decide not to further care for or harvest any part of the sweet corn;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sweet corn and given written consent. We shall not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined and you are going to claim an indemnity on any unit, notice shall be given not later than 48 hours:

(a) After total destruction of the sweet corn on the unit;

(b) After discontinuance of harvest on the unit; or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

b. You may not destroy or replant any of the sweet corn on which a replanting payment shall be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the sweet corn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sweet corn on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all sweet corn on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the stage of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see section 9f);

(3) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The indemnity shall be reduced by the amount of any replanting payment.

f. The total value of production to be counted for a unit shall include all harvested and appraised production.

(1) The total value shall include any amount received for sweet corn on the unit minus the allowable cost as designated by the actuarial table.

(2) The value of appraised production to be counted shall include:

(a) The value of unharvested mature sweet corn and the value of the potential production lost due to uninsured causes and failure to follow recognized good sweet corn farming practices;

(b) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or is damaged solely by an uninsured cause; or

(c) The value of any appraised production of mature sweet corn on unharvested acreage.

(3) Unharvested sweet corn injured or with defects due to insurable causes which cannot be marketed, shall not be counted.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county for the planting period;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount and value of production of any unharvested sweet corn on the basis of field appraisals conducted after the end of the insurance period.

(6) The value of unsold harvested or appraised production shall be determined by multiplying such production by the simple average F.O.B. shipping point price per crate (minus allowable cost as shown by the actuarial table), as reported by the Federal-State Market News Service, for the seven consecutive market days commencing the earlier of:

(a) The date harvest starts; or

(b) The date harvest could have started on any acreage which will not be harvested.

The price for such sweet corn shall not be less than $4.00 per crate minus allowable cost shown by the actuarial table.

(7) When you have elected to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78-A, "Request to Exclude Hail and Fire"

(8) The value of commingled production of units shall be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured sweet corn replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage sustaining a loss in excess of 25 percent of the plant stand for the unit.

(1) No replanting payment shall be made on acreage on which a replanting payment has been made during the current crop year

(2) The replanting payment per acre shall be your actual cost per acre for replanting, but shall not exceed the product obtained by multiplying $40.00 per acre by your share.

h. If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment and the indemnity shall be reduced proportionately.

i. Any replanting payment shall be considered as an indemnity.

j. You shall not abandon any acreage to us.

k. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

l. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event shall we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

m. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

n. If you have other fire insurance and fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we shall be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our prescribed form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and access to farm.

You shall keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are July 1 for all counties.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

f. The contract shall terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you shall be deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of any changes shall be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sweet corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the sweet corn is normally grown beginning July 15 and continuing through the harvesting of the spring-planted sweet corn and shall be designated by the calendar year in which the spring-planted sweet corn is normally harvested.

d. "Direct Consumer Marketing" means sweet corn which is grown for the purpose of selling the sweet corn produced, directly to the consumer; and acreage which is not subject to an agreement between producer and packer to pack the production. (The agreement must be made before you report your acreage.)

e. "Harvest" means the final picking of marketable sweet corn on the unit.

f. "Insurable acreage" means the land classified as insurable by us an shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Marketable Sweet Corn" means the sweet corn has reached the stage of development that will withstand normal handling and shipping.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Planting Period" means the sweet corn planted within the dates specified by the actuarial table, as fall-planted, winter-planted or spring-planted.

k. "Plant Stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

l. "Replanting" means performing the cultural practices necessary to replant insured acreage to sweet corn.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Sweet corn" means a type of corn with kernel containing a high percentage of sugar and adapted for table use.

o. "Tenant" means a person who rents land from another person for a share of the sweet corn or a share of the proceeds therefrom.

p. "Unit" means all insurable acreage of sweet corn for each planting period in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units as herein defined will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with FCIC's Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

APPENDIX A—Counties Designated for Fresh Market Sweet Corn Crop Insurance

In accordance with the provisions of 7 CFR 449.1, the following counties are designated for fresh market sweet corn insurance:

Florida

Palm Beach

Approved by the Board of Directors on March 28, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: June 29, 1984.

Approved by:

Meritt W. Sprague,

Manager.

[FR Doc. 84-18172 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Proposed Amendment No. 4 to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the handling regulation, § 946.336 to set more uniform tolerances for certain potatoes. The regulation requires fresh market shipments of potatoes grown in Washington to be inspected and meet minimum grade, size, maturity and pack requirements. The regulation promotes orderly marketing of such potatoes and keeps less desirable quality and sizes from being shipped to consumers.

DATE: Comments due by July 25, 1984.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077-S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments should be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Vegetable Branch, F&V AMS, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-2681.

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act.

Information collection requirements contained in this regulation (7 CFR Part 946) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have beeen assigned OMB #0581-0070.

This proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Marketing Agreement No. 113 and Order No. 946, both as amended, regulate the handling of Irish potatoes grown in the State of Washington. This program is effective under the Agricultrural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601-674). The State of Washington Potato Committee, established under the order, is responsible for its local administration.

At its public meeting in Pasco, Washington, on June 6, 1984, the committee recommended that the handling regulation be amended to set more uniform size tolerances on certain potatoes. Long variety potatoes grown in the production area are required to be at least 2⅛ inches in diameter or 5 ounces in weight from July 15 through August 31 each season. Currently undersize tolerances for these size designations are as specified in the "U.S. Standards for Grades of Potatoes" (7 CFR 51.1540-51.1566). These standards state that at least 95 percent of the potatoes must be at least 5 ounces to be certified to be of that weight, and that at least 97 percent of the potatoes must be at least 2⅛ inches in diameter to be certified to be of that size. The committee recommended that a 3 percent undersize tolerance be set on both size designations. This would eliminate some confusion within the industry on the proper sizing and certification of such potatoes.

The committee further recommended that tolerances on 50-pound carton packs be left unchanged. This is because these packs are currently marketed within the foodservice sector of the industry and this pack is established and accepted within this market.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, potatoes, Washington State.

Section 946.336 *Handling regulation* (46 FR 39116, 47 FR 33245, 47 FR 38493, and 48 FR 31851) is hereby proposed to be amended by adding a new (a)(2)(iii) as follows:

§ 946.336 Handling regulation.

* * * * *

(a) *Minimum quality requirements.*

* * *

(2) *Size* * * *

(iii) *Tolerances*—The tolerances for size contained in the U.S. Stantards for Grades of Potatoes shall apply except that for long varieties of potatoes packaged in other than 50-pound cartons and which are packed to meet a minmum size of 5 ounces, a 3 percent tolerance for undersize shall apply.

* * * * *

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

Dated: July 5, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-18221 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 967

Celery Grown in Florida; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would establish the quantity of Florida celery to be marketed fresh during the

1984–85 season, with the objective of assuring adequate supplies and orderly marketing.

DATE: Comments due August 9, 1984.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington D.C. 20250 (202) 447–2036. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Vegetable Branch, F&V AMS, USDA, Washington D.C. 20250 (202) 447–2036.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 967) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0082.

This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a signficant economic impact on a substantial number of small entities.

Marketing Agreement No. 149 and Order No. 967 both as amended, regulate the handling of celery grown in Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674). The Florida Celery Committee, established under the order, is responsible for local administration.

This notice is based upon the unanimous recommendations made by the committee at its public meeting in Buena Vista on June 6.

The committee recommended a Marketable Quantity of approximately 6.8 million crates of fresh celery for the 1984–85 season. This recommendation is based on an appraisal of the expected supply and prospective market demand.

The recommended Marketable Quantity is about 13 percent more than the approximately six million crates expected to be marketed fresh during the current season ending July 31, 1984. Each producer registered pursuant to § 967.37(f) would have an allotment equal to 100 percent of his historical marketings. This recommendation provides the industry an opportunity to (1) produce to its fullest capacity for the benefit of the consumer, and (2) determine its actual or potential maximum production capacity.

As required by § 967.37(d)(1) a reserve of six percent of the 1983–84 total Base Quantities is authorized for new producers and for increases by existing producers. No applications for new or increased base were received.

On the basis of all considerations it is hereby determined that this proposed regulation would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 967

Marketing agreements and orders, Celery, Florida.

PART 967—[AMENDED]

§ 967.319 [Removed]

It is proposed that § 967.319 (48 FR 39213, August 30, 1983) be removed and a new § 967.320 be added as follows:

§ 967.320 Handling Regulation; Marketable Quantity; and Uniform Percentage for the 1984–85 Season beginning August 1, 1984.

(a) The Marketable Quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the Uniform Percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the Marketable Allotment of a producer who has a Base Quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1) a reserve of six percent of the total Base Quantities is hereby authorized for (1) new producers and (2) increases for existing Base Quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

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

Dated: July 5, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-18345 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345–185, REA Form 397g, Performance Specification for Line Concentrators

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–185, REA Form 397g, Performance Specification for Line Concentrators. The revised specification will reflect the rapid pace of changes in this equipment and will include new developments considered advantageous to REA borrowers and their subscribers. All manufacturers of line concentrator equipment, and eventually many REA borrowers, will be impacted in that REA's requirements will reflect state of the art technology and will thus permit the construction of the best, most cost-effective facilities possible.

DATE: Public comments must be received by REA no later than September 10, 1984.

ADDRESS: Submit written comments to Joseph M. Flanigan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Arthur H. Marthens, Chief, Central Office Equipment Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–6871. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by issuing a revised Bulletin 345–185, REA Form 397g, Performance Specification for Line Concentrators. REA will seek approval for Incorporation by Reference from the Director of the Office of the Federal Register prior to the issuance of a final rule. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major" This action does not fall within the

scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Copies of the document are available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Background

The present REA Form 397g was developed in May 1978. Since that time, developments in technology have rendered the requirements contained therein obsolescent. The concentrator is an efficient means of providing service to small clusters of subscribers in less densely populated areas. Thus use of the latest technology in concentrators will permit REA borrowers to provide the best, most cost-effective service possible to rural America.

This revised specification will set standards for electrical parameters which are important for satisfactory operation. These minimum requirements will not affect the current designs or manufacturing techniques of concentrators.

List of Subject in 7 CFR Part 1772

Loan programs—communications, Telecommunications.

Dated: June 22, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-18246 Filed 7-9-84; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to add Subpart D to Part 9 of Chapter 10 of the Code of Federal Regulations to prescribe procedures with respect to the production of documents or disclosure with respect to the production of documents or disclosure of information in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in state and Federal proceedings. The proposed rule would clarify the procedures to be followed by Commission employees in responding to demands for testimony, information or documents and would ensure that the responsibility for determining the response to the demands is placed on the appropriate Commission official.

DATE: Comment period expires August 9, 1984. Comments received after this date will be considered if practicable to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC between 8:15 a.m. and 5:00 p.m. weekdays. Examine comments received at: The NRC Public Document Room, 1717 H Street, NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Richard L. Black, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634-1493.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission's inspection and investigation functions resulting in enforcement actions against NRC licensees have increased substantially over the past several years. As a result of this activity and in the wake of many cancellations of nuclear power plants, there are now increasing demands for access to NRC records and for testimony by NRC employees by parties in litigation to which the NRC is not a party. NRC personnel have been and are expected to be subpoenaed for depositions or testimony in those private actions and called upon to produce NRC records or to disclose information relating to licensing and enforcement activities. The NRC currently has no uniform written policy for dealing with these demands. It is the purpose of the proposed amendments to prescribe a uniform policy to provide NRC personnel with clear guidance on how to respond to subpoenas or other demands for disclosure. These amendments do not apply to those administrative actions conducted pursuant to NRC rules. They are limited to those activities which involve NRC licensing, regulatory, or enforcement activities. In addition these amendments do not provide any new or additional authority to withhold information or testimony.

Following the lead of other federal agencies that have established a "clearinghouse" or centralized decisionmaking approach to subpoenas, the proposed amendments establish that all subpoenas served on NRC personnel be referred to the General Counsel. The General Counsel is to review the proposed discovery, ascertain the scope of the proposal, and decide on the approach to be followed in each case, including authorizing litigation if necessary to resolve disputes between the NRC and the party seeking the discovery. In addition, the proposed amendments set forth the procedures to be followed in the event a response to a subpoena is required before instructions from the General Counsel are received.

In deciding whether and to what extent to make documents or testimony available pursuant to a demand, the General Counsel is to consider, among other things, whether the discovery would be proper under the general provisions governing discovery set forth in Fed. R. Civ. P 26(c), and under the rules of procedure governing the case or matter in which the demand arose. The General Counsel must also consider whether disclosure is appropriate under the relevant substantive law concerning privilege; general statutes and regulations governing possession and use of government or corporate information; policy governing ongoing investigations or concerning investigative methods, and informants, and similar considerations. The General Counsel will advise the party seeking discovery of the results of the NCR's deliberations in writing as far in advance of the response date as is practicable. Commissioner Asselstine adds:

> I would particularly appreciate comments on whether the proposed rule should apply to former as well as current NRC employees.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of "Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeepng requirements, Sunshine Act.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841). Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552a; Subpart C also issued under 5 U.S.C. 552b.

2. Section 9.1 is revised to read as follows:

§ 9.1 Scope.

The regulations in this part:

(a) Implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability to the public of Nuclear Regulatory Commission records for inspection and copying. (b) implement the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to disclosure and availability of certain Nuclear Regulatory Commission records maintained on individuals; (c) implement the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, with respect to opening Commission meetings to public observation; and (d) describe procedures with respect to the production of agency records, information, or testimony in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in state and Federal proceedings.

3. Section 9.1a is revised to read as follows:

§ 9.1a Subparts.

Subpart A sets forth special rules applicable to matters pertaining to the Freedom of Information Act. Subpart B sets forth special rules applicable to matters pertaining to the Privacy Act of 1974. Subpart C sets forth special rules applicable to matters pertaining to the Government in the Sunshine Act. Subpart D sets forth procedures to be followed by all NRC personnel and contract employees who have received subpoenas or other demands by judicial or quasi-judicial authorities calling for the production of NRC agency records or the disclosure of information or testimony.

4. In § 9.12, paragraph (b) is revised to read as follows:

§ 9.12 Production or disclosure of exempt records.

* * * * *

(b) NRC personnel and NRC contractors from whom a record exempt from disclosure is sought by non-judicial means shall follow the procedure specified below. Where the record is sought by judicial or similar process, NRC personnel and contractors shall follow the procedure specified in Subpart D:

(1) If an exempt record is sought from NRC personnel by non-judicial means, the request shall promptly be forwarded to the Director, Office of Administration, who shall process the request as provided in this part or take such other action as may be appropriate.

(2) If an exempt record is sought from an NRC contractor by non-judicial means, the request shall promptly be forwarded to the NRC contracting officer administering the contract who will then follow the procedure specified in paragraph (b)(1) of this section.

5. Subpart D (§§ 9.200 thru 9.204) is added to read as follows:

Subpart D—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

Sec.
9.200 Scope of subpart.
9.201 Production or disclosure prohibited unless approved by appropriate NRC official.
9.202 Procedure in the event of a demand for production or disclosure.
9.203 Procedure where response to demand is required prior to receiving instructions.
9.204 Procedure in the event of an adverse ruling.

Subpart D—Production of Disclosure in Response to Subpoenas or Demands of Courts of Other Authorities

§ 9.200 Scope of subpart.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") of a court or other judicial or quasi-judicial authority is issued for the production of NRC agency records, involving licensing, regulation, or enforcement activities, disclosure of information or testimony regarding such records, or information which involves:

(1) Any material contained in the files of the NRC;

(2) Any information relating to material contained in the files of the NRC; or

(3) Any information or material acquired by any person while such person was an employee of the NRC as a part of the performance of that person's official duties or because of that person's official status.

(b) For purposes of this subpart, the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.2, including NRC contractors.

(c) This subpart is intended to provide instructions regarding the internal operations of the NRC and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the NRC.

§ 9.201 Production or disclosure prohibited unless approved by appropriate NRC official.

No employee or former employee of the NRC shall, in response to a demand of a court or other judicial or quasi-judicial authority, produce any material contained in the files of the NRC or disclose through testimony or other means any information relating to material contained in the files of the NRC, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the General Counsel of NRC.

§ 9.202 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the NRC for the production of material or the disclosure of information described in § 9.200, that employee shall immediately notify the General Counsel of NRC. If the demand is made upon a regional NRC employee or former employee, that employee shall immediately notify the Regional Counsel who, in turn, shall immediately request instructions from the General Counsel.

(b)(1) If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Counsel by an affidavit or, if that is not feasible, a statement by the party seeking the testimony or the party's attorney. This requirement may be waived by the General Counsel in the case of a demand by a grand jury, or other appropriate circumstances.

(2) The General Counsel may request a plan from the party seeking discovery of all demands that reasonably foreseeable, including but not limited to,

names of all NRC personnel from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate.

(c) The General Counsel will notify the employee and such other persons as circumstances may warrant of his decision on the matter.

§ 9.203 Procedure where response to demand is required prior to receiving instructions.

If a response to the demand is required before the instructions from the General Counsel are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee or former employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the courts or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

§ 9.204 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made in accordance with § 9.203 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Dated at Washington, DC, this 3d day of July, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary for the Commission.

[FR Doc. 84-18216 Filed 7-9-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 84-010]

Port Access Routes; Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: NOTICE OF STUDY.

SUMMARY: The Coast Guard is undertaking a study of the potential vessel traffic density and the need for safe access routes in the Galveston Entrance area of the Gulf of Mexico.

On March 19, 1984, the Coast Guard published a notice of study pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1223 and 1224) for certain areas of the Gulf of Mexico, 49 FR 10127 This study identified two areas for examination, an area off the Galveston Entrance and an area in the vicinity of the Louisiana Offshore Oil Port (LOOP). Based on the comments received for the Galveston Approach area portion of the study, the Coast Guard is opening a new study to examine additional areas recommended for use by the commenters. The Study Area outlined in 49 FR 10127 remains unchanged and is unaffected by this new study notice. This new area of study, however, is immediately adjacent to that of the original study. The study consequences and policies are the same as those specified in the aforementioned notice.

DATE: Comments are due by August 24, 1984.

ADDRESS: Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, La 70130.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander M. W. Brown, (504) 589-6901.

SUPPLEMENTARY INFORMATION: In the initial study, the Coast Guard proposed two alternatives off the Galveston Entrance. Alternative A called for an approximately 12 mile fairway and Alternative B called for an approximately 37 mile fairway located further south from Alternative A. Commenters have indicated that Alternative B was the preferred alternative and the Coast Guard has also recived a comment with a different alternative configuration that is similar to Alternative B. The eastern portion of Alternative B and this new alternative, however, are slightly outside the study area although the affected blocks for Alternative B were identified. As a result the Coast Guard is opening a new study to encompass these areas of interest. This new study area is triangular in shape and immediately adjacent to the original study area. This study is complementary to the study announced in the aforementioned Federal Register and the results of both studies will be announced at the same time.

Specifically, the area to be examined during the study is described as follows:

1. An area approximately 60 miles off Galveston, Texas bounded by a line connecting the following geographic positions:

Latitude	*Longitude*
28°40′ N	93°50′ W
28°30′ N	93°18′ W
28°30′ N	93°50′ W

Dated: July 5, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84-18201 Filed 7-9-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[WH-FRL-2626-1]

South Dakota: Final Authorization of State Hazardous Waste Management Program; Tentative Determination on Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of State of South Dakota for Final Authorization, Public Hearing and Public Comment Period.

SUMMARY: South Dakota has applied for final authorization to operate a State hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed South Dakota's application and found it to not currently include all the information necessary for final authorization. South Dakota has agreed to address the EPA concerns, as identified in this notice, to EPA's satisfaction prior to public hearing on the application. Thus, EPA tentatively intends to grant final authorization to South Dakota to operate its hazardous waste program in lieu of the federal program.

South Dakota's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the tentative decision. In making its final decision, EPA will consider all public comments on the tentative

decision and the measures taken by the State to address the EPA concerns.

DATES: A public hearing is scheduled for August 16, 1984. South Dakota will participate in the public hearing held by EPA on this subject. All comments on South Dakota's final authorization application must be received by the close of business on August 16, 1984.

ADDRESSES: Copies of South Dakota's final authorization application are available during regular business hours at the following addresses for inspection:

Office of Air Quality & Solid Waste, Department of Water & Natural Resources, Joe Foss Building, Pierre, South Dakota 57501, (605) 773-3329, Joel C. Smith

U.S. EPA Headquarters Library, PM 211A, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-5926

U.S. EPA Region VIII Library, 1860 Lincoln Street, Suite 103, Denver, Colorado 80295, (303) 844-2560, Dolores Eddy

Written comments should be sent to:

Henry C. Schroeder, Ph.D., Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295

EPA will hold the public hearing on August 16, 1984 at 10:00 a.m. at:

Game, Fish and Parks Conference Room, Anderson Building, 445, E. Capitol Avenue, Pierre, South Dakota

FOR FURTHER INFORMATION CONTACT: Henry C. Schroeder, Ph.D., Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844-2221.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills and land treatment facilities. By statute, all interim authorizations expire on January 26, 1985. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 622(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear to 40 CFR 217.1-271-23.

B. South Dakota

The State of South Dakota has been operating under a Cooperative Agreement with EPA since 1981. The State was denied Interim Authorization in 1982 because of an insufficient penalty structure. This has been corrected. Under the Cooperative Agreement, the State has been inspecting all hazardous waste handlers and reviewing and commenting on all closure/post closure and permit actions done by EPA in South Dakota. Enforcement actions are EPA's responsibility under the Agreement; however, the State has been taking some actions due to our encouragement and the fact that South Dakota's regulations are now in effect.

South Dakota submitted a draft application for final authorization to EPA on July 13, 1983. Following its public hearing to solicit comments on February 16, 1983, South Dakota submitted its official application for final authorization of the State hazardous waste management program on March 16, 1984.

After reviewing the State's application, EPA requested the State to provide additional information. South Dakota has satisfied all of EPA's concerns by providing written assurances. These concerns and written assurances are discussed more fully in the letter from Joel C. Smith the Henry C. Schroeder dated May 18, 1984 which is in the public record.

Thus, EPA tentatively intends to grant final authorization to South Dakota to operate its program in lieu of the federal program.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on August 16, 1984 at 10:00 a.m. in the Anderson Building, 445 E. Capitol Avenue, Pierre, South Dakota. The public may also submit written comments on EPA's tentative determination until August 16, 1984. Copies of South Dakota's application are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

In making its final decision, EPA will consider all public comments on the tentative determination and the measures taken by the State to address these EPA concerns. EPA expects to make a final decision on whether or not to approve South Dakota's program by November 14, 1984.

However, this schedule will change if amendments made to South Dakota's application are substantial. 40 CFR 271.20(b) requires the State to provide for additional public comment if the proposed State program is substantially modified after the State comment period ends. 40 CFR 271.5(c) further provides that if the State's application materially changes during EPA's review period, the statutory review period begins again upon receipt of the revised submission. The State and EPA may also extend the review period by agreement (see 40 CFR 271.5(d)). EPA will give notice of its final decision or of a change in schedule in the Federal Register by November 14, 1984. That notice will include a summary of the reasons for the final decision, if made at that time, and a response to all major comments received during the public comment period.

The State does not seek authority to administer the South Dakota Hazardous Waste Management Program over Indian lands.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

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

List of Subject in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, and, Confidential business information.

Authority: This is issued under the authority of section 2002(a), and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegations 7.

Dated: July 5, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84-18158 Filed 7-9-84; 8:45 am],

BILLING CODE 6560-50-M

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40 CFR Part 271

[WH-FRL-2625-8]

North Dakota: Final Authorization of State Hazardous Waste Management Program; Tentative Determination on Application

AGENCY: Environmental Protection Agency.

ACTION: Notice to Tentative Determination on Application of State of North Dakota for Final Authorization, Public Hearing and Public Comment Period.

SUMMARY: North Dakota has applied for final authorization to operate a State hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Dakota's application and found it to not currently include all the information necessary for final authorization. North Dakota has agreed to address the EPA concerns, as identified in this notice, to EPA's satisfaction prior to public hearing on the application. Thus, EPA tentatively intends to grant final authorization to North Dakota to operate its hazardous waste program in lieu of the federal program.

North Dakota's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the tentative decision. In making its final decision, EPA will consider all public comments on the tentative decision and the measure taken by the State to address the EPA concerns.

DATES: A public hearing is scheduled for August 14, 1984. North Dakota will participate in the public hearing held by EPA on this subject. All comments on North Dakota's final authorization application must be received by the close of business on August 14, 1984.

ADDRESSES: Copies of North Dakota's final authorization application are available during regular business hours at the following addresses for inspection:

Division of Environmental Waste, Management & Research, Department of Health, 1200 Missouri Avenue, Bismarck, North Dakota 58505, Jay Crawford, Director

U.S. EPA headquarters Library, PM 211A, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-5926

U.S. EPA Region VIII Library, 1860 Lincoln Street, Suite 103, Denver, Colorado 80295, (303) 844-2560, Dolores Eddy

Written comments should be sent to:

Henry C. Schroeder, Ph.D., Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295

EPA will hold the public hearing on August 14, 1984, at 9:00 A.M. at:

Audiovisual Room, State Department of Health Administrative Services, Section Office—Second Floor, New Judicial Wing, Capitol Building, Bismarck, North Dakota 58505

FOR FURTHER INFORMATION CONTACT: Henry C. Schroeder, Ph.D., Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844-2221.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization" is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phase approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities.

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills and land treatment facilities. By statute, all interim authorizations expire on January 26, 1985. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

B. North Dakota

The State of North Dakota received limited Phase I interim authorization on December 18, 1980; the State was not authorized to implement a manifest system nor to implement generator and transporter requirements.

North Dakota submitted a draft application for final authorization to EPA on September 30, 1983. Following its public hearing to solicit comments on November 23, 1983, North Dakota submitted its official application for final authorization of the State hazardous waste management program on March 14, 1984.

After reviewing the State's application, EPA is requesting the State to provide additional information as follows:

The State statute contains an in existence date for interim status about eight months later than EPA's; July 1, 1981 as opposed to November 19, 1980. This must be remedied by changing the date by January 26, 1985, or agreeing, in the MOA, to change regulations and permit affected facilities within one year of any new waste listings by EPA.

There are no facilities now existing in the State which qualify for interim status in North Dakota but do not qualify under the Federal system.

North Dakota has indicated that it will satisfy all of EPA's concerns by providing written assurances prior to the August 14, 1984 public hearing. Based upon the State's assurances, EPA has tentatively determined that North Dakota's program meets all the

requirements necessary to quality for final authorization. Thus, EPA intends to grant final authorization to North Dakota to operate its program in lieu of the Federal program.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on August 14, 1984 at 9:00 A.M. at: Audiovisual Room, State Department of Health Administrative Services, Section Office-Second Floor, New Judicial Wing, Capitol Building, Bismarck, North Dakota 58505.

The public may also submit written comments on EPA's tentative determination until August 14, 1984. Copies of North Dakota's application are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

In making its final decision, EPA will consider all public comments on the tentative determination and the measures taken by the State to address these EPA concerns. EPA expects to make a final decision on whether or not to approve North Dakota's program by November 12, 1984.

However, this schedule will change if amendments made to North Dakota's application are substantial. 40 CFR 271.20(b) requires the State to provide for additional public comment if the proposed State program is substantially modified after the State comment period ends. 40 CFR 271.5(c) further provides that if the State's application materially changes during EPA's review period, the statutory review period begins again upon receipt of the revised submission. The State and EPA may also extend the review period by agreement (see 40 CFR 271.5(d)). EPA will give notice of its final decision or of a change in schedule in the Federal Register by November 12, 1984. That notice will include a summary of the reasons for the final decision, if made at that time, and response to all major comments received during the public comment period.

The State does not seek authority to administer the North Dakota Hazardous Waste Management Program over Indian Lands. Thus, EPA will retain jurisdiction over Indian Lands after authorization.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

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

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, and, Confidential business information.

Authority: This notice is issued under the authority of sections 2002(a), and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegations 7.

Dated: July 5, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84-18159 Filed 7-9-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79-168; FCC 84-300]

Amendment of the Commission's Rules To Eliminate Objectionable Loudness of Commercial Announcements and Commercial Continuity Over AM, FM, and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Termination of proceeding (memorandum opinion and order).

SUMMARY: The Federal Communications Commission has been concerned for several years about the number of complaints of loud radio and television commercials. Over the years, several studies have been initiated to determine the cause of such complaints and to find remedies. The instant proceeding was initiated in 1979 as another step in that process. It now appears that new equipment is available to the broadcasters and the public that can help control loudness. However, because loudness is very subjective, that is, each listener may react to commercials by mood, experience with the product, and other "non-measurable" factors, absolute control of loudness seems unlikely. Therefore, the proceeding is terminated because new regulations are not warranted.

FOR FURTHER INFORMATION CONTACT: Ralph A. Haller, Mass Media Bureau, (202) 632-9660.

Memorandum Opinion and Order Proceeding Terminated

In the matter of amendment of Part 73 of the commission's rules and regulations to eliminate objectionable loudness of commercial announcements and commercial continuity over AM, FM and television broadcast stations. (BC Docket No. 79-168; FCC 84-300).

Adopted: June 27, 1984.

Released: July 3, 1984.

By the Commission. Commissioner Quello dissenting.

1. On July 5, 1979, the Commission, on its own motion, adopted a *Notice of Inquiry* (Inquiry) in the above entitled matter (44 FR 40532, published July 11, 1979). The purpose of the Inquiry was to gather information to assist the Commission in determining what, if any, action should be taken to control the apparent loudness of commercial announcements. The Commission was especially interested in information concerning any recent developments in the field of loudness measurement and control. (It should be noted that when considering loudness in this document, reference is being made to the apparent or perceived audio levels heard by listeners. This definition includes many factors that contribute to loudness such as audio processing, mood of the listener, listener's experience with the product being advertised, and method of presentation).

2. The Commission has received complaints of loud commercials for at least the last 30 years. In 1962, the Commission adopted a *Notice of Inquiry* to gain insight into the matter of loud commercials.[1] After three years of fact-finding, the proceeding was terminated with little new information gained. Guidance was provided to stations on how to avoid excessive contrasts between program material and commercials, but the causes of apparent loudness remained a mystery.

3. Between 1965 and 1973 the FCC conducted spot surveys to determine if stations were intentially raising audio and modulation levels during commercials. No such evidence was found. This led to the conclusion that if commercials were actually being perceived as louder than programming, the mechanisms associated with loudness must be more complex than

[1] *Notice of Inquiry*, Docket No. 14904, 27 FR 12631, published December 21, 1962.

mere modulation level control. During this same time period, CBS Laboratories conducted several studies of loudness and developed a loudness level monitor (LLM). The LLM was provided to the Commission in 1977 for evaluation. Although the FCC found general agreement between the LLM and the reactions of a small panel of listeners, few conclusions could be drawn at that time.[2]

4. Based on the 1977 results and the Commission's continuing desire to reduce the number of loud commercial complaints, the Commission released the *Inquiry* in the instant matter in 1979. The *Inquiry* requested interested parties to comment on matters relating to loudness in broadcasting and contained 19 specific questions related to loudness. The Inquiry did not point out that adoption of standards might not be the best way to proceed.

5. Over 2,000 responses were received to the *Inquiry*. Most were post cards or letters from the general public complaining about loud commercials. Most of these comments indicated that the Commission should simply require that commercials not be loud. Only those from broadcast organizations or others knowledgeable in the audio engineering field addressed the truly complex issues in the loudness question; however, even those comments failed to resolve the questions posed in the *Inquiry*.

6. For the most part, the broadcast industry was opposed to Commission involvement in this area. They argued that: (1) excessive loudness was not susceptible to objective regulatory definitions or measurements, (2) imposing regulations in this area would be at odds with the Commission's current deregulatory philosophy, (3) a number of the regulatory approaches discussed in the *Inquiry* raised serious legal considerations, and (4) there was not need for Commission regulation because broadcasters had undertaken good faith efforts to eliminate objectionable loudness.

7 Indeed, the broadcast industry, most notably through the CBS Technology Center (CTC), has been keenly aware of the loudness question. CTC continued to study the physics of loudness and eventually developed an algorithm that closely approximated the response of the human ear. The algorithm was used in the development of a loudness meter and a loudness controller. Prototypes of both units were supplied to the FCC in 1981 for evaluation at the FCC's laboratory.

8. The FCC's tests on the loudness meter and loudness controller showed the equipment to respond in a manner which corresponded to the subjective impressions of a panel of listeners. When the controller was used in the tests, fewer complaints of loud commercials were registered by the panel members. However, it was concluded that although the meter and controller might be able to respond to special audio processing that may be used in commercials by production houses to cause their messages to sound louder (for example, emphasizing audio frequencies between 2 and 4 kilohertz and audio compression), it would not account for all of the psychoacoustic reactions of the individual listeners. Commercials that seemed loud to some were not considered loud by others. But, in general, the controller holds the potential to reduce the total number of complaints of loud commercials.[3] In fact, information received from the CTC indicates that the number of complaints of loud commercials has fallen at those stations that have installed the loudness controller, indicating the relative effectiveness of the device.

9. The FCC's experience matches well the comments from industry, including those of the American Broadcasting Company (ABC), CBS, Inc. (CBS), and the National Association of Broadcasters (NAB). Most comments from the industry concluded that loudness is very subjective and varies from listener to listener. Listeners weigh the content, subject matter, style, format, presentation, video information and perhaps some less well defined stimuli when deciding whether a commercial is loud.

10. The National Citizens Committee for Broadcasting argued that the Commission should take affirmative steps to solve the problem of loud commercials. It recommended that additional studies be accomplished through contracts with independent experts or organizations with no vested economic interest in the matter.

11. Although the Commission would like to see the matter resolved, it appears that little more can be gained with additional government studies. CBS and perhaps others seem to have found the key to control of those physical or objective factors that contribute to loudness. It seems unlikely that the more subjective factors, peculiar to each listener, can be controlled by machinery. Electronics may reduce the number of complaints of loudness, but it is unlikely that the loudness question can ever be solved to everyone's satisfaction.

12. It is apparent that some commercials are intentionally made loud through audio processing techniques. This will generally occur at production houses, not necessarily at the individual local stations. This means that the local broadcaster has little control over the apparent loudness of the basic commercials; however, it is this type of "loudness" that may be controlled electronically through the use of devices such as the CBS Loudness Controller. Nothing in the record, however, convinces us that there are similar devices to control the subjective reactions of listeners. This leads to a rather obvious conclusion that although it may be possible to reduce the number of complaints of loud commercials, it is not possible to eliminate all such complaints. Further, no standards yet exist that could permit a satisfactory regulatory approach. As more is learned about loudness, it is likely that more sophisticated control devices will be developed and used by broadcasters. Such actions should begin to eliminate complaints of objectionable loudness.

13. Finally, we note that the individual listener may have some control of the loudness of programming and commercials, independent of the broadcasting stations. Some newer television receivers are incorporating level control devices. Such devices will undoubtedly become more available and "smarter" in the future. Also, many of the newer television receivers are provided with remote control mute buttons which can be activated by the listener to reduce the sound level whenever desired.

14. In view of the foregoing, we are terminating the instant *Notice of Inquiry*. Technology has advanced to help both listeners and broadcasters to control the apparent loudness of commercials, independent of regulations. The market should provide even more options in the future. Further, due to the subjective nature of many of the factors that contribute to loudness, it would be virtually impossible to craft new regulations that would be effective.

15. Accordingly, it is ordered, pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, that this proceeding is terminated.

16. For further information on this matter, contact Ralph A. Haller, Mass Media Bureau, at (202) 632-9660.

[2] "Evaluating Loud Commercials (An Experimental Approach)," William H. Hassinger, FCC/FOB 78-01.

[3] "An Update on the Technology of Loud Commercial Control," Ralph A. Haller, FFC/OST TM 83-1.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 84-18144 Filed 7-9-84; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Proposed Modification to the Pee Dee Migratory Bird Closed Area, North Carolina, and Revocation of the Lake St. Clair Migratory Waterfowl Closed Area, Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to modify the boundaries of an area closed to migratory bird hunting near the Pee Dee National Wildlife Refuge, North Carolina. This action would remove the present administrative restrictions prohibiting the taking of migratory game birds on approximately five acres of water that are located outside of the adjusted refuge acquisition boundary. The Service also proposes to rescind Presidential Proclamation No. 2593, thereby removing the Lake St. Clair Migratory Waterfowl Closed Area, Michigan, from the list of areas closed to migratory bird hunting. This action is being taken because this closed area has been subject to reductions in waterfowl usage due to habitat deterioration and increased recreational activities, and its maintenance as a closed area requires Service attention that could be used in projects more beneficial to wildlife. The effect of this rulemaking would be to remove Federal restrictions on migratory hunting in the lands and waters under consideration.

DATE: Comments must be received on or before August 9, 1984.

ADDRESSES: Comments may be addressed to the Associate Director—Wildlife Resources, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, 18th and C Streets NW, Washington, D.C. 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act and the National Wildlife Refuge System Administration Act authorize the closure of refuges and other areas to migratory bird hunting where necessary to conserve, protect, and manage migratory birds. Designation of areas as closed to hunting is generally made on the basis of their suitability as breeding habitat. Designation of closed areas was originally made by Presidential Proclamation or Executive Order; however, Executive Order 10250 (June 7, 1951; 16 FR 5385) delegated this power to the Department of the Interior.

On September 16,1967 certain lands and waters within and adjacent to Pee Dee National Wildlife Refuge, North Carolina, were designated as a closed area in and on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted (32 FR 13384). Subsequently, the acquisition boundary of the refuge was adjusted. The proposed action would remove the present administrative restrictions on approximately five acres of water northeast of Leak Island that are now located outside of the adjusted refuge boundary. Restrictions prohibiting the taking of migratory game birds would continue on the remaining 215 acres of the closed area.

Presidential Proclamation No. 2593 (Sept. 21, 1943) established the Lake St. Clair Migratory Waterfowl Closed Area, consisting of two discrete areas within Anchor Bay, Lake St. Clair, Michigan, in or on which pursuing, hunting, taking, capturing, or killing of migratory birds, or attempting to take, capture, or kill migratory birds is not permitted (8 FR 12921). Since that time, waterfowl use of these areas has decreased as the amount and duration of recreational boating and fishing have increased. Further, large areas of waterfowl habitat within these closed areas have been lost through sustained increases in Great Lakes water levels and growing pleasure boat traffic. These changes have resulted in a level of waterfowl use that does not justify continuation of the closure. In the absence of substantial waterfowl use, Service resources could be more beneficially used elsewhere. Revocation of the closed area will remove Federal restrictions on migratory bird hunting therein. This action is being taken based on the recommendation of the Michigan Department of Natural Resources for the reasons given above. The State would have the authority to establish the units as State refuges should conditions change and habitat conditions improve to the point that waterfowl begin using the area again.

Conformance With Statutory and Regulatory Authorities

This action is taken by virtue of and pursuant to sections 2 and 3 of the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755, as amended; 16 U.S.C. 703, 704). Neither the modification of the Pee Dee Closed Area nor the revocation of the Lake St. Clair Closed Area will have any appreciable effect on the distribution or abundance of migratory waterfowl. At Pee Dee National Wildlife Refuge, the action would eliminate a prohibition of hunting on certain private lands, but would not result in any additional hunting opportunities on the refuge. Accordingly, this action is proposed after having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds included in the terms of this country's migratory bird treaties with Canada, Mexico, Japan and the Soviet Union. The implementation of these changes will be consistent with all applicable laws and compatible with the principles of sound wildlife management and will otherwise be in the public interest. These determinations are based on a consideration of, among other things, the Service's "Final Environmental Impact Statement on the Operation of the National Wildlife Refuge System," published in November 1976, and environmental assessments that have been prepared for each of the proposed actions.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions.

This rule will impose no costs on small entities. While the number of small entities affected by this rule is unknown, the number is judged to be small. If the Lake St. Clair action is accomplished, the Service will not have

to spend effort and monies to maintain and enforce the closed area. Approximately $2,500 are spent annually to replace lost and stolen buoys that mark the boundaries of the closed area.

Accordingly, the Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Considerations

The "Final Environmental Impact Statement for the Operation of the National Wildlife Refuge System" (FES 76-59) was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), environmental assessments and Findings of No Significant Impact have been prepared for each of these proposed actions. These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, or by mail, addressing the Director at the address above.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the Addresses section of this preamble. All relevant comments will be considered by the Department prior to issuance of final rule.

Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

For the reasons set out in the preamble, it is proposed to amend 50 CFR 32.4 by inserting a new citation revising the boundary of the Pee Dee Migratory Bird Closed Area, in or on which the pursuing, hunting, taking, capturing, or killing of migratory birds or attempting to take, capture, or kill migratory birds is not permitted. The Pee Dee Migratory Bird Closed Area boundary description reads as follows:

"All the area of the bed of the Pee Dee River, bank to bank, submerged or exposed, including the water thereof, from the confluence of Pressley Creek and the Pee Dee River to approximately 5 miles downstream to the confluence of Brown Creek and the Pee Dee River. Included also are the waters surrounding Buzzard Island, and containing, in all, a total of 215 acres."

Further, it is also proposed to amend 50 CFR 32.4 by removing the Lake St. Clair Migratory Waterfowl Closed Area, Michigan, from the list of closed areas in 50 CFR 32.4.

PART 32—HUNTING

Accordingly, it is proposed to amend 50 CFR 32.4 as follows:

§ 32.4 [Amended]

1. For the State of North Carolina, enter the date under the column headed "Date" and enter the Federal Register Citation under the column headed "Citation" of the description of the Pee Dee National Wildlife Refuge Closed Area as published in the Federal Register in final form.

2. Remove the entry for "Michigan" in its entirety.

Authority: 16 U.S.C. 703, 704.

Dated: June 18, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-18204 Filed 7-9-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of public hearings; changes to hearing notice.

SUMMARY: In reference to a notice of mackerel hearings that was published June 11, 1984, 49 FR 24038, the Gulf of Mexico and South Atlantic Fishery Management Councils have added another public hearing and have respecified the Jacksonville location for the July 25 hearings. The St. Petersburg hearing scheduled for the same day will be held as published in that notice.

DATES: An additional hearing has been scheduled for July 11, 1984. It will convene at 9:00 a.m.

ADDRESSES: The July 11 hearing will be held at the City of Port Aransas Community Center, 710 Avenue A, Port Aransas, Texas 78373. The Jacksonville hearing will convene at 7:00 p.m. at the Sea Turtle Inn, Atlantic Beach and Oceanfront, Atlantic Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, 813-228-2815.

Dated July 5, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service

[FR Doc. 84-18219 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 133
Tuesday, July 10, 1984

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

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: July 25, 1984.

Place: U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2096 South Building, Washington, D.C. 20250.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) A subcommittee report on infestation, (2) international monitoring, (3) financial matters, (4) various grain standards, and (5) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIKS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–0219.

Dated: July 3, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–18166 Filed 7–9–84; 8:45 am]

BILLING CODE 3410–EN–M

Soil Conservation Service

Kelly-Preston Mill Creek Watershed, Alabama; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Kelly-Preston Mill Creek Watershed, Dale County, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821–8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing land voiding caused by floodwater, reducing excessive erosion on sloping cropland, and preventing rapid and serious deterioration of the resource base. The planned works of improvement include 10 grade stabilization structures, land use conversion on 27 acres of marginal cropland, and accelerated conservation land treatment on 4,618 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposed will be taken until 30 days after the State of this publication in the Federal Register. (Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects in applicable)

Dated: July 3, 1984.

William R. Thompson,

Action State Conservationist.

[FR Doc. 84–18173 Filed 7–9–84; 8:45 am]

BILLING CODE 3410–16–M

CIVIL RIGHTS COMMISSION

Maine Advisory Committee; Change of Meeting Date

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for July 10, 1984, at Augusta, Maine (FR Doc. 84–15651 on page 24154) has a new meeting date.

The meeting will held on July 17, 1984. The address and time will remain the same.

Dated at Washington, D.C., July 5, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–18222 Filed 7–9–84; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin Advisory Committee; Change of Meeting Location

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission scheduled for July 19, 1984, at Madison, Wisconsin (FR Doc. 84–17507 on page 27191) has a new meeting location.

The meeting will be held at the Madison Inn, 601 Langdon, Madison, Wisconsin 53701. The date and time will remain the same.

Dated at Washington, D.C., July 5, 1984.
John I. Binkley,
Advisory Committee Management Officer.
[FR Doc. 84-18223 Filed 7-9-84; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Survey—Finances of Insurance Trust Systems
Form numbers: Agency—F-13; OMB—0607-0022
Type of request: Extension of the expiration date of a currently approved collection
Burden: 100 respondents; 100 reporting hours
Needs and uses: This survey collects data on the receipt, payments, cash and security holdings of State insurance trust systems. This data is an integral part of the Census Bureau's annual report on State and local government annual finances. Public officials, governmental research organizations, and the Bureau of Economic Analysis rely on the data obtained from this survey.
Affected public: State or local governments
Frequency: Annually
Respondent's obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Address Listing Page
Form numbers: Agency—DB-102A; OMB—New
Type of request: New collection
Burden: 120,000 respondents; 3,000 reporting hours
Needs and uses: This test is being conducted as part of the planning for the 21st Decennial Census that will be conducted in 1990. The Census Bureau plans to conduct a test census of Jersey City, New Jersey and Tampa, Florida as part of this 1990 census planning. The use of this address listing page is intended to improve upon the address lists that are procured in advance from commercial vendors in order to improve the coverage in these areas.
Affected public: Individuals or households
Frequency: One Time
Respondent's obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217 Department of Commerce, Room 6622, 14th and Consitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 5, 1984.
Edward Michals,
Department Clearance Officer.
[FR Doc. 84-18194 Filed 7-9-84; 8:45 am]
BILLING CODE 3510-CW-M

International Trade Administration

Management-Labor Textile Advisory Committee; Open Meeting

July 5, 1984.

A meeting of the Management-Labor Textile Advisory Committee will be held Wednesday, July 25, 1984, 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande, (202) 377-3737

Ronald I. Levin,
Acting Deputy Assistant Secretary for Textiles and Apparel.
[FR Doc. 84-18195 Filed 7-9-84; 8:45 am]
BILLING CODE 3510-DR-M

[A-588-020]

Postponement of Final Antidumping Determination and Postponement of Hearing: Titanium Sponge From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce has received a request from Nippon Soda Co. and Toho Titanium Co. (respondents) that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in § 353.44(b)), of the Department of Commerce Regulations (19 CFR 353.44(b)), and that the Department will postpone its final determination as to whether titanium sponge from Japan has been sold at less than fair value until not later than September 24, 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230; Telephone (202) 377-3464.

SUPPLEMENTARY INFORMATION: On December 23, 1983, the Department of Commerce published notice in the Federal Register (48 FR 56815) that it was initiating under section 732(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 167a(b)), an antidumping investigation to determine whether titanium sponge from Japan is being, or is likely to be, sold at less than fair value. The Department published an affirmative preliminary determination on May 11, 1984 (49 FR 20042). The notice stated that if this investigation proceeded normally we would make a final determination by July 23, 1984. Pursuant to section 735(a)(2) of the Act, Nippon Soda Co. and Toho Titanium Co. requested an extension of the final determination date. These two respondents are qualified to make such a request since they account for a significant proportion of the exports of the merchandise from Japan. If an exporter properly requests an extension after an affirmative preliminarily determination, the Department is required, absent compelling reasons, to grant the request. Therefore, the Department will issue a final determination in this case not later than September 24, 1984.

The hearing originally scheduled for Jun 15, 1984, has been postponed. The new hearing date is July 15, 1984, at 10:00 a.m., in conference Room "B", Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing and have not already done so, must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's

publication. Reuqests should contain: (1) The party's name, address, and telephone number, (2) the number of participants, (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 19 copies must be submitted to the Deputy Assistant Secretary by 9:00 a.m. July 9, 1984. All written views should be filed in accordance with 10 CFR 353.46, at the above address and in at least 10 copies not later than the date established for the submission of post-hearing briefs which will be announced at the hearing. If no hearing is held, all written views should be submitted not later than August 1, 1984.

This notice is published pursuant to section 735(d) of the Act.

Dated: July 2, 1984

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18185 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-007]

Preliminary Determination of Sales at Less Than Fair Value: Certain Valves, Couplings, Nozzles, and Connections, of Brass, From Italy, Suitable for Use in Interior Fire Protection Systems

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain valves, couplings, nozzles, and connections, of brass, from Italy, suitable for use in interior fire protection systems, are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise and to require a cash deposit or the posting of a bond for each such entry in an amount equal to the estimated dumping margin, as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by September 17 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Julia E. Hathcox, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-3464.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain valves, couplings, nozzles, and connections, of brass, from Italy, suitable for use in interior fire protection systems are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We preliminarily determine the weighted-average margin of sales at less than fair value to be 1.16 percent.

Case History

On January 3, 1984, we received a petition from counsel for Badger-Powhatan, a division of Figgie International, Inc. In accordance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening materially to injure, a United States industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 13, 1984 (49 FR 6396). On March 1, 1984, the ITC found that there is a reasonable indication that imports of the subject merchandise from Italy are materially injuring a United States industry.

We presented a questionnaire to Rubinetterie A. Giacomini S.p.A. (Giacomini) on February 12, 1984. In accordance with our normal practice, we requested a response within 30 days. We instructed Giacomini to report its sales transactions in hard copy and on computer tape in the format outlined in our questionnaire. Since Giacomini claims to have made no sales of such or similar merchandise in the home market, we determined to use sales to a third country, Canada, for comparison purposes for this preliminary determination.

Scope of Investigation

The merchandise covered by this investigation is certain valves, couplings, nozzles, and connections, of brass, suitable for use in interior fire protections systems, from Italy. This merchandise consists of 1½ inch and 2½ inch brass wedge disc hose gate valves, as currently provided for in item 680.1430 of the Tariff *Schedules of the United States Annotated (TSUSA)*; pressure restricting and pressure valves of brass, currently provided for in *TSUSA* item number 680.2720; single brass, clapper and double clapper siamese fire department connections (2½ inch inlet, 4 inch outlet) currently provided for in *TSUSA* item number 680.1420; 1½ inch and 2½ inch brass fog/straight stream hose nozzles, currently provided for in *TSUSA* item number 680.1480; and 1½ inch and 2½ inch brass fire hose couplings, currently provided for in *TSUSA* item number 657.3540.

The period of this investigation is August 1, 1983, through January 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with third country prices or, where appropriate, constructed value. We used sales to Canada of such or similar merchandise as the basis for our comparisons. We may reconsider the appropriate comparisons for our final detemination and have requested further information regarding home market sales.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. We calculated the purchase price based on the F.O.B., C. & F. and C.I.F. packed price to unrelated U.S. customers.

We made deductions, where appropriate, for inland freight, insurance, and ocean freight. We disallowed an addition for a charge paid for shipping these products on less than a container load basis as we determined this charge to be part of the cost of ocean freight.

Foreign Market Value

We based foreign market value on the f.o.b. packed prices of Canadian sales made from August through November 1983.

We made comparisons of "such or similar" merchandise in Canada in accordance with section 771(16)(B) of the Act. In calculating foreign market value, we did not need to make currency conversions as all sales to Canada are shown in U.S. dollars.

We made deductions, where appropriate, for foreign inland freight. We made adjustments for physical differences in the merchandise in

accordance with section 773(a)(4)(C) of the Act. Such adjustments for differences in the merchandise were based on differences in the cost of material, direct labor, and directly related factory overhead. Since the merchandise subject to this investigation was sold in identical packed conditions in both markets, no adjustment was made for packing. We made no adjustment for credit expenses since credit terms appear to be identical in the United States and Canadian markets. We did not allow a claim for a quantity discount because, although respondent alleged cost justifications for selected models, respondent's sales listing did not demonstrate that this discount was specifically attributable to quantities involved.

Giacomini produces two models of pressure control valves which are sold neither in the home market nor to third country markets. These valvs were sold only in the U.S. market; therefore, the Department determined that constructed value is the proper basis for comparison. Where we used constructed value as a basis for foreign market value, we calculated it to include the cost of materials, fabrication, general expenses, profit and cost of packing. We found that respondent's general expenses were greater than 10 percent of materials and labor; therefore, we used respondent's general expenses. We found that respondent's profit was larger than eight percent; therefore, we used respondent's profit.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the merchandise subject to investigation as described in the "Scope of Investigation" section of this notice. This suspension of liquidation applies to all the subject merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The estimated weighted-averge margin is 1.16 percent.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of our regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on August 3, 1984, at the United States Department of Commerce, Room 3708, 14th St. and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room, 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number, (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary for Import Administration by July 27 1984. Oral presentations will be limited to issued raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18186 Filed 7-9-84; 8:45 am]
BILLING CODE 3510-DS-M

[A-469-405]

Oil Country Tubular Goods From Spain: Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether oil country tubular goods (OCTG) from Spain are being, or are likely to be, sold in the United States at less than fair value. The allegation of sales at less than fair value includes an allegation that home market and third country sales are being made at less than the cost of production. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. if this investigation proceeds normally, the ITC will make its preliminary determination on or before July 30, 1984, and we will make ours on or before November 20, 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377-2438 or 377-1278.

SUPPLEMENTARY INFORMATION:

The Petition

On June 13, 1984, we received a petition in proper form filed on behalf of Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that the imports of the subject merchandise from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports materially injure, or threaten material injury to, a United States industry. The petition also alleges that sales of the subject merchandise are being made at less than the cost of production. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the customs value for Spanish imports of the merchandise during the fourth quarter of 1983 and the first quarter of 1984, with deductions for estimated inland freight costs in Spain. Since petitioners were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for certain input cost differences in Spain. Using this comparison, there is an apparent

dumping margin ranging from 40 to 215 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on OCTG, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether OCTG from Spain are being, or are likely to be, sold in the United States at less than fair value. Although the petitioners alleged that home market and third country sales are being made at less than the cost of production of the subject merchandise in Spain, they did not provide adequate home market or third country prices on which to base their allegations. Therefore, we will not undertake to determine whether there are sales at less than the cost of production at this time. If our investigation proceeds normally, we will make our preliminary determination by November 20, 1984.

Scope of Investigation

The term *"Oil Country Tublar Goods (OCTG)"* covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (e.g., proprietary), specifications as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We sill also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 30, 1984, whether there is a reasonable indication that imports of OCTG from Spain materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: July 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18187 Filed 7-9-84; 8:45 am]
BILLING CODE 3510-DS-M

[A-351-402]

Oil Country Tubular Goods From Brazil: Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether oil country tubular goods (OCTG) from Brazil are being, or are likely to be, sold in the United States at less than fair value. The allegation of sales at less than fair value includes an allegation that home market and third country sales are being made at less than the cost of production. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 30, 1984, and we will make ours on or before November 20, 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew Debicki, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-3962.

SUPPLEMENTARY INFORMATION:

The Petition

On June 13, 1984, we received a petition in proper form filed on behalf of Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that the imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports materially injure, or threaten material injury to, a United States industry. The petition also alleges that sales of the subject merchandise are being made at less than the cost of production. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the customs value for Brazilian imports of the merchandise during the fourth quarter 1983 and first quarter 1984, with deductions for estimated inland freight costs in Brazil. Since petitioners were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for input cost differences in Brazil. Using this comparison, there is an apparent dumping margin ranging from 39 to 311 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on OCTG, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether OCTG from Brazil are being, or are likely to be, sold in the United States at less than fair value. Although the petitioners alleged that home market and third country sales are being made at less than the cost of production of the subject merchandise in Brazil, they did not provide adequate home market or third country prices on

which to base their allegations. Therefore, we will not undertake to determine whether there are sales at less than the cost of production at this time. If our investigation proceeds normally, we will make our preliminary determination by November 20, 1984.

Scope of Investigation

The term "*Oil Country Tubular Goods (OCTG)*" covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API (e.g., proprietary), specifications as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Notification to ICT

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 30, 1984, whether there is a reasonable indication that imports of OCTG from Brazil materially injure, or threaten to material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: July 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18188 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-403]

Oil Country Tubular Goods From Mexico: Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether OCTG from Mexico are being, or are likely to be, sold in the United States at less than fair value. The allegation of sales at less than fair value includes an allegation that home market and third country sales are being made at less than the cost of production. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 30, 1984, and we will make ours on or before November 20, 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-1766.

SUPPLEMENTARY INFORMATION:

The Petition

On June 13, 1984, we received a petition in proper form filed on behalf of Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that the imports of the subject merchandise from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports materially injure, or threaten material injury to, a United States industry. The petition alleges that there are insufficient sales of the subject merchandise at prices above the cost of production to determine fair value. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the customs value for Mexican imports of the merchandise during the fourth quarter of 1983 and first quarter of 1984, with deductions for estimated inland freight costs in Mexico. Since petitioners also were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for cost differences of certain production inputs in Mexico. Using this comparison, there is an apparent dumping margin ranging from 162 to 380 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on OCTG, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether OCTG from Mexico are being, or are likely to be, sold in the United States at less than fair value. Although the petitioners alleged that home market and third country sales are being made at less than the cost of production of the subject merchandise in Mexico, they did not provide adequate home market or third country prices on which to base their allegations. Therefore, we will not undertake to determine whether there are sales at less than the cost of production at this time. If our investigation proceeds normally, we will make our preliminary determination by November 20, 1984.

Scope of Investigation

The term *"Oil Country Tubular Goods (OCTG)"* covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (e.g., proprietary), specifications as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610., and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 30, 1984, whether there is a reasonable indication that imports of OCTG from Mexico materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: July 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18189 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-402]

Oil Country Tubular Goods From Argentina: Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value. The allegation of sales at less than fair value includes an allegation that home market and third country sales are being made at less than the cost of production. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 30, 1984, and we will make ours on or before November 20, 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3464.

SUPPLEMENTARY INFORMATION:

The Petition

On June 13, 1984, we received a petition in proper form filed on behalf of Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that the imports of the subject merchandise from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports materially injure, or threaten material injury to, a United States industry. The petition also alleges that sales of the subject merchandise are being made at less than the cost of production. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the customs value for Argentine imports of the merchandise during the fourth quarter 1983 and first quarter 1984, with deductions for estimated inland freight costs in Argentina. Since petitioners also were unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for cost differences in certain production inputs in Argentina. Using this comparison, there is an apparent dumping margin ranging from 111 to 229 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on OCTG, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value. Although the petitioners alleged that home market and third country sales are being made at less than the cost of production of the subject merchandise in Argentina, they did not provide adequate home market or third country prices on which to base their allegations. Therefore, we will not undertake to determine whether there are sales at less than the cost of production at this time. If our investigation proceeds normally, we will make our preliminary determination by November 20, 1984.

Scope of Investigation

The term *"Oil Country Tubular Goods (OCTG)"* covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or allay steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 710.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 30, 1984, whether there is a reasonable indication that imports of OCTG from Argentina materially injure, or threaten to material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: July 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18190 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-401]

Oil Country Tubular Goods From the Republic of Korea: Initiation of Antidumping Investigation

AGENCY: Inernational Trade Administration, Import Administration, Department of Commerce

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumpting duty investigation to determine whether oil country tubulur goods (OCTG) from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value. The allegation of sales at less than fair value includes an allegation that home market and third country sales are being made at less than the cost of production. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 30, 1984, and we will make ours on or before November 20, 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone: (202) 377-0189.

SUPPLEMENTARY INFORMATION:

The Petition

On June 13, 1984, we received a petition in proper form filed on behalf of Lone Star Steel Company and CF&I Steel Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that the imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports materially injure, or threaten material injury to, a United States industry. The petition alleges that there are insufficient sales of the subject merchandise at prices above the cost of production to determine fair value. Petitioners were unable to obtain price information for U.S. sales. Therefore, they calculated United States price based on the customs value for Korean imports of the merchandise during the fourth quarter of 1983 and the first quarter of 1984, with deductions for estimated inland freight costs in Korea. Since petitioners were also unable to secure home market or third country prices for the merchandise subject to this investigation, foreign market value was based on Lone Star Steel's costs for the merchandise adjusted for cost differences of certain production inputs in Korea. Using this comparison, the apparent dumping margin ranges from 186 to 226 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations, We have examined the petition on OCTG, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether OCTG from Korea are being, or are likely to be, sold in the United States at less than fair value. Although the petitioners alleged that home market and third country sales are being made at less than the cost of production of the subject merchandise in Korea, they did not provide adequate home market or third country prices on which to base their allegation. Therefore, we will not undertake to determine whether there are sales at less than the cost of production at this time. If our investigation proceeds normally, we will make our preliminary determination by November 20, 1984.

Scope of Investigation

The term *"Oil Country Tubular Goods (OCTG)"* covers hollow steel products of circular cross section intended for use in the drilling of oil or gas. It includes oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (e.g., proprietary), specifications as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3249, 610.3252, 610.3256, 610.3258, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4957, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Notification to ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 30, 1984, whether there is a reasonable indication that imports of OCTG from Korea materially injure, or threaten material injury to, a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: July 2, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18191 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-009]

Countervailing Duty Order: Carbon Steel Wire Rod From Spain

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In separate investigations, the United States Department of Commerce (the Department) and the United States International Trade Commission (ITC) have determined that carbon steel wire rod from Spain is receiving benefits which constitute subsidies within the meaning of the countervailing duty law and that carbon steel wire rod from Spain is materially injuring a United States industry. Additionally, although the Department found that "critical circumstances" existed with respect to carbon steel wire rod from Spain, the ITC found that

"critical circumstances" did not exist in this case. Therefore, based on these findings, all entries, or withdrawals from warehouse, for consumption, of carbon steel wire rod from Spain made on or after February 24, 1984, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the Federal Register, will be liable for the possible assessment of countervailing duties. Furthermore, a cash deposit of estimated countervailing duties must be made on all such entries, and withdrawals from warehouse, for consumption, on or after the date of publication of this order in the Federal Register.

Since the ITC made a negative finding regarding "critical circumstances" under section 705(b)(4)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(b)(4)(A)), the suspension of liquidation, previously ordered 90 days retroactively from the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the Federal Register, is no longer in effect. Therefore, Customs officials will be directed to terminate any retroactive suspension of liquidation, release any bond or other security, refund any cash deposit, and liquidate all entries, or withdrawals from warehouse, for consumption, of carbon steel wire rod from Spain made before February 24, 1984.

EFFECTIVE DATE: July 10, 1984.

FOR FURTHER INFORMATION CONTACT: John M. Davies, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–1784.

Scope of Investigation

The merchandise covered by this order consists of carbon steel wire rod. For the purpose of this order, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured; and valued over 4 cents per pound, as currently provided for in item 607.17 of the *Tariff Schedules of the United States.*

In accordance with section 703 of the Act (19 U.S.C. 1671b), on February 24, 1984, the Department published its preliminary determinations that there was reason to believe or suspect that carbon steel wire rod from Spain received benefits which constitute subsidies within the meaning of the countervailing duty law and that "critical circumstances" existed with respect to imports of carbon steel wire rod from Spain (49 FR 6962). In accordance with section 705 of the Act (19 U.S.C. 1671d), on May 8, 1984, the Department published its final determinations that these imports are being subsidized and that "critical circumstances" exist with respect to these imports (49 FR 19551).

On June 22, 1984, in accordance with section 705(d) of the Act (19 U.S.C. 1671d(d)), the ITC notified the Department that such importations are materially injuring a United States industry. The ITC made a negative determination regarding "critical circumstances."

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 706(a)(1) of the Act (19 U.S.C. 1671e(a)(1)), countervailing duties equal to the amount of the net subsidy for all entries of carbon steel wire rod from Spain. These countervailing duties will be assessed on carbon steel wire rod entered, or withdrawn from warehouse, for consumption, on or after February 24, 1984, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the Federal Register.

The Department further directs United States Customs officers to terminate any retroactive suspension of liquidation, release any bond or other security, refund any cash deposit, and liquidate all entries, or withdrawals from warehouse, for consumption, of carbon steel wire rod from Spain made before February 24, 1984.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the estimated net subsidy as listed in the table below:

Manufacturer/producer/exporter	Ad valorem rate (percent)
Empresa Nacional Siderurgica, S.A.	29.94
Nueva Montana Quijano, S.A.	17.13
Forjas Alavesas, S.A.	16.03
All other manufacturers/producers/exporters	16.95

The amounts listed are expressed as a percentage of the FOB price.

These determinations constitute a countervailing duty order with respect to carbon steel wire rod from Spain, pursuant to section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

We have deleted from the Commerce Regulations Annex 1 to 19 CFR Part 355, which listed countervailing duty findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that it is commencing an administrative review of this order on July 10, 1984. For further information regarding this review, contact Mr. Richard Moreland (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) § 355.36 of the Commerce Regulations (19 CFR 355.36).

Dated: June 29, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-18192 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council will hold a special meeting on July 24, 1984, from 9:00 a.m. to 4:00 p.m., approximately, at the Hotel Pierre, San Juan, Puerto Rico. The Council will only consider two issues in its agenda: (1) Problems associated with the implementation of the spiny lobster FMP, and (2) Discontinuation of biostatistical sampling activities in the Council area of jurisdiction.

The meeting is open to the public. For further information contact Omar Muñoz-Roure, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico, 00918–2577; telephone: (809) 753–4926.

Dated: July 3, 1984.

Roland Finch,

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

[FR Doc. 84-18127 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene, jointly, a Shrimp/Stone Crab Ad Hoc Advisory Panel public meeting with the State of Florida Shrimping and Crabbing Advisory Committee, to consider the zoning of federal waters off Hernanod, Citrus and Pasco Counties, FL. The public meeting will convene on July 6, 1984, from 9 a.m. to 4 p.m. and will take place at St. Benedict's Chruch, Route 1, Box 1000, Homosassa, FL.

FOR FURTHER INFORMATION CONTACT: The Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone (813)-228-2815.

Dated: July 3, 1984.

Roland Finch,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 84-18126 Filed 7-9-84; 8:45 am]

BILLING CODE 3510-22-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 81-1]

1980 Cable Royalty Distribution Determination

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of Final Determination.

SUMMARY: The Copyright Royalty Tribunal (Tribunal) announces the adoption of its final determination in the remand proceeding concerning the distribution of the cable television royalty fees paid by cable systems for secondary transmissions during 1980.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Washington, DC 20036. Phone (202) 653—5175.

Introduction

The Tribunal on March 7 1983 published in the Federal Register (48 FR 9552) its final determination in the proceeding for the distribution of the 1980 cable royalties. Appeals of this determination were taken by several parties in the United States Court of Appeals for the District of Columbia Circuit.

17 U.S.C. 804(e) requires the Tribunal to complete all proceedings within one year from the commencement. There is no similar limitation on the time consumed by judicial review of the Tribunal's determinations, consequently the Trubunal was required by 17 U.S.C. 804(e) to adopt its final determination in the 1980 distribution proceeding prior to the decision of the United States Court of Apeals for the District of Columbia Circuit in the several appeals of the Tribunal's 1979 cable distribution determination. The United States Court of Appeals for the District of Columbia Circuit in Christian Broadcasting Network v. Copyright Royalty Tribunal, 720 F 2d 1295 (D.C. Circuit 1983) affirmed the Tribunal's decision in nearly all respects, but remanded three issues for further Tribunal proceedings. These issues related to the allocation of the royalties for sports programming, the Tribunal's zero awards to the Devotional Claimants, and the Tribunal's treatment of the commercial radio claims and the radio portion of the award to Music. Following the Court's decision in the 1979 case, the Tribunal filed a motion with the Court requesting the remand of the 1980 determination so that the Tribunal might further consider its determination in accordance with the Court's opinion. Other motions were also filed. The Court in an order of February 9, 1984 vacated the Tribunal's decision and remanded the case to the Tribunal for proceedings consistent with the Court's opinion.

The Tribunal in an order published in the Federal Register of May 3, 1984 (49 FR 18883) directed parties to submit their procedural proposals concerning the implementation of the Court's order. In an order of May 29, 1984 the Tribunal established the procedures for the 1980 remand proceeding, and in an order of June 6, 1984 denied a request of the Settling Parties[1] to notify this order.

No additional evidence was received during the 1980 remand proceeding. The only additional proceedings provided for supplemental proposed findings of fact and conclusions of law on the issue of the Devotional claims. Replies to these findings were also received.

The Tribunal adopts as its determination in this proceeding the tribunal's opinion as published in the Federal Register of March 7 1983 (48 FR 9552-70) with the exception of the sections on the Phase I disposition of the claims relating to Joint Sports, Devotional Claimants, Commercial Radio, the radio portion of Music, and the awards order. These subjects are resolved exclusively as set for below.

Joint Sports

The Tribunal's award to Joint Sports is subject to, and in accordance with, the Tribunal's order of January 31, 1984 (49 FR 3899).

Devotional Claimants

The Tribunal in the 1980 original and remand proceedings has given particular attention to the evidence seeking to establish changed circumstances from the 1979 record. The principal witness for the Devotional Claimants testified that "the underlining principles are still basically the same and there isn't really that much change."[2]

Most claimants in the original 1980 proceeding sought to improve their presentation in areas where the Tribunal has found gaps or deficiencies. No such undertaking was made by the Devotional Claimants. There was no assertion of changed circumstances, or evidentiary showings to address our inability to find more than a negligible marketplace value based on their 1979 evidence. The factual presentation was essentially limited to a showing of the amount of time religious programs were broadcast by stations included in the Nielsen survey. Because of the motivations of broadcasters concerning the presentation of religious programming, time-based statistics are even less indicative of value for devotional programming than for other programming categories.

The Tribunal finds no basis in the 1980 record to view the case of the Devotional Claimants more favorably than our assessment of their case in the 1979 remand proceeding. The Settling Parties argue that "the 1980 evidence shows the Devotional Claimants to be in a worse position than they were in 1979." [3] They argue that the new time statistics "show a decline in devotional programming's share of time." [4] Applying the same standard as in the original 1980 proceeding, the Tribunal finds that none of the evidence presented on the Devotional issues is of such decisional significance as to alter the award we made in the 1979 remand. The Tribunal has therefore made an

[1] The Settling Parties are Motion Picture Association of America, Inc. (MPAA), American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), Joint Sports Claimants (JS), Public Broadcasting Service (PBS), SESAC, Inc., and National Public Radio (NPR).

[2] Transcript p. 3266.

[3] Settling Parties Initial Brief on the Remanded Devotional Claimants Issues, June 15, 1984, p. 12.

[4] Ibid., p. 11.

award of .35 of the entire royalty fund to the Devotional Claimants.

In the Tribunal's recent determination in the 1979 remand proceeding, we discussed our findings on the cases of the Devotional Claimants.[5] We adopt those findings in this proceeding. We limit our further discussion to certain matters raised in the 1980 record and the supplemental findings.

The Devotional Claimants attach significance to the Tribunal's decision to remove in the 1980 proceeding the devotional claims from the program syndicator category, and to create a new Phase I category for the Devotional Claimants.[6] They argue that the grouping of devotional programmers in 1980 was enlarged to include not only the programs of the three 1979 devotional claimants "but to include as well *all* of the producers of devotional programming which was carried as a distant signal in 1980." We do not find that the evidence presented by the Devotional Claimants as to various kinds of devotional programming carried by cable systems in 1980 on a distant signal basis provides a basis for a larger award than in 1979, particularly when viewed with other "new" 1980 evidence.

Devotional Claimants also argue that "factual circumstances of the Devotional Claimants' case have in fact changed between 1979 and 1980." They argue that in particular the relationship between the Devotional Claimants and the public broadcasting claimants is altered to the benefit of the devotional claimants. They maintain that as the devotional category in 1980 "consists of *all* devotional program syndicators" the Tribunal cannot continue to distinguish between these claimants on the basis that one presents a single theme program concept, while the other presents a broad range of programs. Nothing presented in the 1980 record has persuaded us to modify this distinction.

The Devotional Claimants again call our attention to distant cable carriage of the CBN-owned station KXTX-TV They ignore evidence in the record which permits the conclusion that non-devotional programming was a significant factor in cable carriages,[7] as well as the impact of the rules of the Federal Communications Commission on the carriage of specialty stations by cable systems.

The Settling Parties argue, as they did during the 1979 remand, that devotional programming does not qualify for any award under the Tribunal criteria. They string together a long list of perceived evidentiary failures in the case of the Devotional Claimants (e.g., "no evidence supports the 'specific harms' claimed"· "no evidence has even been presented that commercial stations fix their advertising rates in this manner"· "no specific instance of increased cost due to audience fragmentation was offered"· "Devotional Claimants did not show that cable systems benefit from distant carriage of their programming"· etc.). The Tribunal has found deficiences in the presentation of all claimants. Operating within the practical limitations of a distribution proceeding, and a far from ideal record, the Tribunal must attempt to apply our criteria in a uniform manner.

The Tribunal has found in previous proceedings that there may be special factors relating to the application of the criteria to the Devotional Claimants, which could justify a zero award to them. We indicated in our 1979 remand opinion that in subsequent proceedings, we would expect the parties to develop a fuller record on these special factors. Meanwhile a uniform application of the criteria, and a consistent assessment of the evidence supports some award to the Devotional Claimants.

Radio Portion of Music

Upon reviewing the 1979 record and arguments on remand, the Tribunal continued to find music justified to an award for distant cable radio carriage; however, because the value of commercial radio generally in the cable marketplace is *de minimis*, this award is a very small share of the total award to music.

The Tribunal considered only two tangible pieces of evidence in the record helpful as a basis upon which to make a judgment: (1) That commercial radio is in fact carried as a distant signal, and (2) that this carriage is overwhelmingly music. In addition, we relied on the testimony of Mr. Abrams concerning the preponderance of music on radio signals.[8] These considerations shed no light on the true worth of commercial radio programming in distant signal markets; however, they left unassailable the simple fact that the vast bulk of that programming is music; just as the vast bulk of programming on distant cable television is that of the Program Suppliers, to whom no one has denied the right to the preponderant share of those royalties, including NAB.[9]

Although we judge that such an award is justified, we are unable to quantify it and find it incalculable and extremely small. Cable operators receive some benefit in being able to offer commercial radio as a distant signal, as evidenced by the fact that it is carried, but that value is undeterminable, and to the extent that it exists is overwhelmingly attributable to music by the only measure available—time.

In employing the time criterion, as a basis for our judgment, the Tribunal rejected a proposal by the music claimants that we employ the percentage of programming costs.[10] No inferences, therefore, may be drawn, as suggested by NAB,[11] that the percentages of programming costs are the means by which we determined music's commercial radio share. To do so would be to imply a rationale that we have consistently rejected in the past: The strict application of a formula. This is inconsistent with conclusions we have drawn from the record in the past and unsupported by any comparative reading of the programming expense figures for 1978 and 1979.[12]

Commercial Radio

For the third time we have heard the evidence presented by NAB seeking to persuade us to make an award to commercial radio. We again decline to do so. As with the arguments advanced by NAB, the reasons for our denial remain unchanged. We reaffirm the findings of our previous determinations.[13]

NAB takes umbrage at our determination to include some compensation to Music for the performance of music on distant radio signals, but to deny any award to commercial radio. We hold that in a very substantial degree any value of distant commercial radio signals is attributable to music, and that the non-musical program elements of these signals are of negligible value. We likewise hold that the broadcaster s format is of no significant value independent of that attributable to music.

We hold that commercial radio has again failed to establish that it has any significant copyrightable interests on which to base a claim. We concur in the finding of National Public Radio that "disc jockey time is the least attractive

[5] 49 FR 20049-50.

[6] Reply Findings of Fact and Conclusions of Law of Devotional Claimants, p. 2.

[7] 1979 Record, Joint Sports Exhibit 10 and MPAA Exhibit H.

[8] TR. p. 2610, 1979 proceeding.

[9] National Association of Broadcasters 1979 Findings of Fact Calculation Appendix, pp. 1-7.

[10] Music 1979 Findings of Fact, pp. 16-17.

[11] National Association of Broadcasters Supplemental Findings of Fact, p. 5, 1979.

[12] MPAA Findings of Fact, p. 132; Joint Sports Findings of Fact, p. 156; TR. p. 4143, 1979.

[13] 45 FR 63040 and 49 FR 20051.

part of a commercial radio hour." [14] We find nothing in the 1980 record to alter our previous conclusions as to the massive duplication of locally available commercial radio formats by distant commercial signals. In particular, the NAB study of radio formats when subjected to examination, and the SRI study on the value of distant commercial radio signals do not require an alteration of our general assessment of the commercial radio claim.[15]

The Tribunal continues to believe that no award for the broadcaster's portion of distant signal commercial radio is justified based on the record evidence. In so judging, the Tribunal is referring only to the portion of commercial radio which is directly the creation of, and attributable to, the broadcasters. The Tribunal reviewed the record evidence and remains unable to discern any measurable marketplace value or benefit to the cable operator of the broadcasters' contribution on distant signal commercial radio, other than one so small as to be practically uncompensable. We find ourselves in agreement with the Court of Appeals, which rejected NAB's contention that its non-award in the 1979 distribution proceeding is unsupported by substantial evidence, and, on the contrary, found there is substantial evidence in the record to support the Tribunal's conclusion that commercial radio's value in the cable marketplace is sufficiently *de minimus* as not to warrant an award.[16]

In reaching such a conclusion the Tribunal relied more than customarily upon time-based consideration. Normally the Tribunal has refrained from looking to time-based considerations as a justification for our decisions because of their failure to differentiate between the conditions in local broadcast markets and distant cable markets; but in the case of commercial radio no other useful measurable standard was provided. Concerning the relative significance of commercial radio as a distant signal, we relied on the testimony of Mr. Abrams.[17] But because of his lack of familiarity with distant signal cable market itself[18] and because of the unavoidable subjectivity of his judgments concerning the contribution of broadcasters,[19] we were unable to rely on his testimony with regard to the value that should be placed upon the broadcasters' share and upon formatting. We concur in the finding of Music that the "claims for radio formatting is simply a compilation claim applied to radio,"[20] and we have consistently downgraded programming we have found duplicative.

The degree to which the broadcaster's share may also be strictly local in interest further clouds the value that may be attributable to non-music copyrighted programming.[21]

We therefore continue to conclude that although a small but undeterminable award is justifiable for music for commercial radio, no award is appropriate for commercial radio broadcasters themselves.

Adjustment of Phase I Awards

The Tribunal's award of 0.35% to the Devotional Claimants has required the Tribunal to review the entire Phase I allocation. The Settling Parties on May 6, 1983 filed with the Tribunal an "Agreement of Settlement and Compromise." The Agreement provided, in part, that any award to Devotional Claimants in the 1980 proceeding as a result of the Court's decision in the 1979 case "shall be taken proportionately from the shares of all those receiving Phase I awards in such Proceedings (except that NPR's share shall not be reduced)."

The Tribunal accepts the proposal of the Settling Parties as reasonable. As in our 1979 remand determination,[22] we are guided by a desire to preserve as best as possible our original assessment of the claims, modified to make provision for the award to the Devotional Claimants. The Tribunal's adoption of the proposal of the Settling Parties in this proceeding does not control the Tribunal's disposition of any similar issue in subsequent proceedings.[23]

It is therefore ordered that the following allocation be made to categories of Phase I claimants.

	Percent
1. Motion Picture Association of America and other program syndicators	69 7544
2. Joint Sports Claimants and NCAA	14.9473
3. Public Broadcasting Service (for all purposes)	5.2316
4. U.S. Television Broadcasters (for all copyrightable interests except program syndication)	4.4842
5. Music Performing Rights Societies	4.2351
6. Canadian Television Broadcasters (to exclude all radio claims)	.7474
7. Devotional Claimants	.35
8. National Public Radio	.25
9. Commercial Radio	.0

Commissioner Brennan has additional views.

Thomas C. Brennan,

Chairman.

July 5, 1984.

Additional Views of Commissioner Brennan

The record of the original 1980 proceeding includes my letter of February 18, 1983 explaining the basis for my vote to adopt the Tribunal's final determination in the 1980 distribution proceeding. In a multi-member body, it is necessary to achieve a consensus if any determination is to be approved. The letter recorded my reservations concerning the "rationale adopted" and indicated that my vote would not control my position in subsequent distribution proceedings. My vote now to readopt most of the 1980 opinion is subject to the reservations of my February 18th letter, and in no way alters positions asserted by this commissioner during the 1980 proceeding.

[FR Doc. 84-18206 Filed 7-9-84; 8:45 am]

BILLING CODE 1410-03-M

[14] Proposed Findings of Fact and Conclusions of Law of NPR, p. 52, 1980.

[15] Proposed Findings of Fact and Conclusions of Law of Joint Sports Claimants, pp. 160-163, 1980.

[16] TR. pp. 2567-71, testimony of Ms. Hall, Storer Cable; TR. p. 2708, testimony of Mr. Abrams, Radio Programming Expert, 1979.

[17] TR. p. 2708, 1979.

[18] TR. p. 2707, 1979.

[19] TR. p. 2611, 1979.

[20] Proposed Findings of Fact and Conclusions of Law Submitted by Music, p. 18, 1980.

[21] TR. p. 2665-67, 1979.

[22] 49 FR 20051.

[23] Following the adoption of the Tribunal's final determination in the 1979 cable royalty remand proceeding, counsel for the Program Suppliers filed on May 10, 1984 a request for reconsideration by the Tribunal of its decision to exclude certain awards from the impact of the 1979 remand award to the Devotional Claimants. Program Suppliers asserted that the "only course open is for the Tribunal to take the Devotional Claimants' award 'off the top, and then to distribute the remaining percentage among the other parties in the same proportion received in the original, affirmed decision. But in the 1980 proceeding Program Suppliers assert that the Tribunal has jurisdiction to exclude the NPR award from the adjustment required by the award to Devotional Claimants. The Tribunal in resolving the 1980 remand has not found it necessary to address the question of whether the Court's order pemits the Tribunal to conduct further proceedings on issues not directly related to the Court's opinion in the 1979 case, nor have we found it necessary to compare the Court's 1979 and 1980 orders as to the scope of the Tribunal's jurisdiction on remand. We note that counsel for the Program Suppliers, appearing for the Settling Parties, argued to the Tribunal on February 21, 1984 that the Court's 1980 order should be viewed "simply as an expedient way of trying to get both cases on track." (1979 Remand Oral Argument, Transcript p. 44).

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Water Resources Development of the Upper Cumberland River at Harlan, Baxter, Loyall, and Rio Vista, Harlan County, Kentucky

AGENCY: US Army Corps of Engineers, Nashville District, DOD.

ACTION: Notice.

I. Summary

Section 202 of the Energy and Water Development Appropriation Act of 1981 (Pub. L. 96–367) authorized and directed the Secretary of the Army, acting through the Chief of Engineers, to design and construct flood control measures at or in the vicinity of Pineville, Kentucky, and other flood-damaged localities and their environs on the Cumberland River. In response to this directive, the US Army Corps of Engineers is preparing a Draft General Design Memorandum/EIS, as required by the National Environmental Policy Act (NEPA), for flood control alternatives at Harlan, Baxter, Loyall, and Rio Vista, Kentucky. The report will identify and evaluate beneficial and adverse effects of alternatives on the resources of the study area.

A brief description of the structural alternatives being studied follows. It should be noted that all alternatives would include an analysis of associated nonstructural measures, and levels of protection being evaluated include both the 1977 flood event and the Standard Project Flood (SPF).

A. *Levees/Walls with Channel Modification*

This alternative would consist of the following components with levees or walls possibly exceeding heights of 25 feet in some areas, depending upon the level of protection provided:

1. A levee at Rio Vista, levees/floodwalls at Loyall and Harlan.

2. Realignment of approximately 1,300 feet of Clover Fork from the Main Street bridge upstream to approximately Mile 2.0.

3. A concrete channel liner between Mile 692.0 and Mile 692.3 of the Cumberland River at Loyall (1977 level of protection only). The liner would be approximately 1,500 feet long.

B. *Levees/Walls, and Diversion Channels*

This alternative would consist of the following components with levees or walls, possibly exceeding heights of 20 feet in some areas, depending upon the level of protection provided:

1. Construction of a channel cutoff through the bend in Clover Fork from Mile 0.55 to Mile 2.65. The existing Clover Fork channel between the mouth of Martins Fork and the cutoff entrance at approximately Mile 2.65 could be abandoned and backfilled to provide developable land, or could be left natural with low-flow control structures at each end, which would be closed in the event of flooding.

2. A wall on the riverside of the Highway 421 embankment from Mile 1.2 of Clover Fork to Mile 0.4 of Martins Fork.

3. A channel cutoff through the bend in the Cumberland River from Mile 691.5 to 693.0. The existing riverbed between these points would receive the same consideration as the upstream location discussed above.

4. A levee at Rio Vista, and a levee/floodwall at Loyall.

In addition, a dam at approximate Mile 4.0 of Poor Fork is under consideration, which would reduce the heights of levees and floodwalls at Harlan and vicinity and provide other water resource benefits.

II. Scoping Process

The public is invited to submit written comments within 30 days of this notice to aid in determining the issues to be covered in the DEIS. Input from concerned Federal, State, and local agencies was solicited by letter of 21 May 1984.

The Corps of Engineers has contracted a biological inventory which will provide baseline data for the DEIS. The following is a list of significant issues which will be analyzed and addressed in the DEIS:

A. Effects on water quality (including turbidity, impacts on water supply, and toxic materials).

B. Effects on recreation.

C. Social, economic impacts.

D. Effects on cultural resources.

E. Effects on aquatic habitats (including changes in substrate composition, bottom geometry, loss of associate canopy cover and sedimentation).

F. Effects on benthic and vital plankton populations.

G. Effects on management of floodplains.

H. Effects on prime and unique farmlands.

I. Effects on terrestrial habitat.

J. Effects on fish and wildlife.

K. Effects on endangered species.

L. Effects of discharge of fill material below ordinary high water munder Section 404 of the Clean Water Act of 1977

Inquiry will be made by the Corps of Engineers of the US Fish and Wildlife Service (USFWS) concerning the presence of Federally-proposed or listed as threatened or endangered species. If the presence of such species is possible, consultation procedures will be initiated in compliance with section 7 of the Endangered Species Act of 1973, as amended in 1978. Further coordination will be conducted with USFWS and the Kentucky Department of Fish and Wildlife under the Fish and Wildlife Coordination Act (48 Stat. 401 as amended; 16 U.S.C. 661 et seq.) The Soil Conservation Service will be requested to determine the presence of any prime and unique farmland within the proposed project area. Copies of the draft and final EIS will be transmitted to State and area-wide clearinghouses for comments and filed with the Environmental Protection Agency in accordance with ER 200–2–2 and 40 CFR 1500–1508.

Upon completion of the cultural resources reconnaissance, two copies of the report will be forwarded to the Chief, Archeological Services Branch, National Park service, Southeast Regional Office, with a request for review and comment. Two copies also will be furnished to the Kentucky State Historic Preservation Officer, State Archeologist, and State Historian for review and comment.

III. Scoping Meeting

No scoping meeting will be conducted unless comments indicate that one is needed to obtain adequate input from the public and from other agencies. Scoping has been undertaken by mail.

IV. Estimated Completion

The DEIS should be made available to the public August 1985.

Questions

The District point of contact for questions concerning this project DEIS is Ms. Vechere V Lampley, (615) 251–5026 or FTS 852–5026. All correspondence should be sent to the following address: U.S. Army Engineer District, Nashville, Planning Branch, Environmental Analysis Section, P.O. Box 1070, Nashville, Tennessee 37202.

Dated: July 2, 1984.

William T. Kirkpatrick,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-18179 Filed 7-9-84; 8:45 am]

BILLING CODE 3710-GF-M

DEPARTMENT OF EDUCATION

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the Subcommittee on Alternatives to UNESCO, a Subcommittee of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE: July 26, 1984.

ADDRESSES: 1750 K Street NW., James Byrnes International Center, Suite 1200, Conference Room.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Postsecondary Relations Staff, ROB-3, Room 3066, 400 Maryland Avenue SW., Washington, D.C. 20202 (202) 245-2715.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under Section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96-374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

This meeting of the Subcommittee on Alternatives to UNESCO, a Subcommittee of the National Advisory Board on International Education Programs is open to the public. The agenda includes a discussion and review of education sector programs and budget for the United Nations Educational, Scientific, and Cultural Organization (UNESCO). Recommendations will be developed for alternatives to UNESCO for presentation to the National Advisory Board during their meeting scheduled for September 10-11, 1984.

The meeting will be held from 1:00 p.m. to 4:30 p.m. the 26th of July.

Records are kept on the committee proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB-3, 7th and D Streets SW., Room 3066, Washington, D.C.

Signed at Washington, D.C. on July 5, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-18141 Filed 7-9-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Board on International Education Programs; Meetings

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the Subcommittee on Reauthorization of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE: August 10, 1984.

ADDRESSES: FOB-6, The Stewart Room, Horace Mann Learning Center, Room 1131.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Postsecondary Relations Staff, ROB-3, Room 3066, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202) 245-2715.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96-374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

This meeting of the Subcommittee on Reauthorization of the National Advisory Board on International Education Programs is open to the public. The agenda includes a discussion and review of the reauthorization of the Higher Education Act of 1965 (Pub. L. 89-329), as amended.

Recommendations will be developed for the consideration of the National Advisory Board on International Education Programs during their meeting scheduled for September 10-11, 1984.

The meeting will be held from 1:00 p.m. to 4:30 p.m., the 10th of August.

Records are kept on the committee proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB-3, 7th and D Streets, SW., Room 3066, Washington, D.C.

Signed at Washington, D.C. on July 5, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-18142 Filed 7-9-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Conduct of Employees; Waiver Pursuant to Section 207(f), Title 18, United States Code

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the Post-employment restrictions of section 207(a), title 18, United States Code, to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Government in connection with a particular matter which requires such qualifications where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that William W. Burr, Jr., former Deputy Assistant Secretary for Research of the Department's Office of Environment, has a unique combination of outstanding scientific qualifications in the fields of biochemistry and biomedical research and extensive experience in management and administration of scientific research programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as Chairman of the Oak Ridge Associated Universities' Medical and Health Sciences Division, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the planning, implementation, and funding of scientific research programs conducted by the Medical and Health Sciences Division. I am satisfied that these activities are in a scientific field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of section 207(a), title 18, United States Code (in consultation with the Director of the Office of Government Ethics), with respect to contact by Dr. Burr with employees of the Department of Energy and other Government agencies to permit him to undertake the stated activities.

Dated: June 28, 1984.
Donald Paul Hodel,
Secretary of Energy.
[FR Doc. 84-18230 Filed 7-9-84; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $292,500 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Thornton Oil Corp., a reseller-retailer of motor gasoline, with headquarters in Louisville, Kentucky.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0497.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Thornton Oil Corp., which settled possible pricing violations in the firm's sales of motor gasoline to customers during the April 1, 1979 through January 27 1981 consent order period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Thornton pursuant to the consent order. The DOE has tentatively decided that refunds should be granted to claimants who satisfactorily demonstrate that they purchased Thornton motor gasoline during the consent order period. Claimants who demonstrate that they were consumers of Thorton motor gasoline will be presumed to have absorbed the alleged overcharges and will not be required to provide further evidence of injury to qualify for a refund. With respect to resellers, claimants will be required to establish that they absorbed Thornton's alleged overcharges. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: June 15, 1984.
George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

June 15, 1984.

Name of Firm: Thornton Oil Corporation.
Date of Filing: March 20, 1984.
Case Number: HEF-0497.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of violations, or alleged violations, of DOE regulations. *See* 10 CFR Part 205, Subpart V The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received pursuant to a settlement agreement or remedial order. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons or firms who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. *See Office of Enforcement,* 9 DOE ¶ 82,553 (1982).

I. Background

Pursuant to the provisions of Subpart V, on March 20, 1984, the ERA filed a Petition for the Implementation of Special Refunds Procedures in connection with a consent order entered into with Thornton Oil Corporation (Thornton) on April 6, 1983. Thornton is a reseller-retailer of motor gasoline with 99 percent of its sales at the retail level. Thornton operates approximately 50 retail outlets throughout the Northeast, Southwest, Southeast, and Midwest. In an audit of Thornton's operations during the period April 1, 1979 through July 31, 1980 (the audit period), the ERA tentatively found that the firm had violated the DOE price regulations set forth in 10 CFR Part 212, Subpart F. Subsequently, the ERA prepared a Notice of Probable Violation (NOPV) in which it alleged that Thornton had overcharged its customers by $193,627.76 in sales of motor gasoline from its retail outlets during the audit period. However, it appears that this NOPV was never officially issued to Thornton. In order to settle all claims and disputes between Thornton and the DOE, as well as to resolve any potential liability regarding the firm's sales of motor gasoline anywhere in the United States during the period April 1, 1979 through January 27, 1981 (the consent order period), the firm entered into a consent order with the DOE, in which Thornton agreed to deposit $292,500 into an interest-bearing escrow account for later disbursement by the DOE.[1]

II. Proposed Refund Procedures

We have determined that it is appropriate to establish a special refund proceeding under Subpart V with respect to the Thornton consent order fund. Based upon our experience with Subpart V cases, we believe that the distribution of funds to persons who may have been adversely affected by any overcharges should generally take place in two stages. In the first stage of the process, payment should be made to persons and firms who file applications for refund and demonstrate that they are entitled to a portion of the funds received by the DOE in accordance with the standards set forth in the Decision and Order establishing refund procedures. After meritorious claims are paid in the first stage, the remaining funds will be distributed through a second stage refund procedure to

[1] Thornton is making timely payments to the escrow account in accordance with the consent order provisions, and as of April 30, 1984, has paid $124,006.67 to the DOE. The firm's payments are not scheduled to be completed until may 1986.

entities which will indirectly benefit persons and firms who were likely injured but who failed to file claims or do not meet the minimum refund threshold. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (*Amoco*) (refund procedures established for first stage applicants; second stage refund procedures tentatively proposed); *Standard Oil Co.,* 11 DOE ¶ 85,185 (1983) (second stage refund procedures established).

A. *First Stage Refunds.* We proposed that the Thornton consent order fund be distributed to claimants who satisfactorily demonstrate that they purchased motor gasoline from Thornton during the consent order period (April 1, 1979 through January 27 1981). As noted above, 99 percent of Thornton's sales of motor gasoline were made at the retail level. Therefore the vast majority of claimants will be consumers (end-users) who purchased motor gasoline from Thornton's retail outlets.

Customers who were end-users of Thornton motor gasoline will be presumed to have absorbed Thornton's alleged overcharges and no further evidence of injury will be necessary in order for those customers to qualify for a refund. *See Marion Corp.,* 12 DOE ¶ 85,014 (1984); *Standard Oil Co. (Indiana)/Union Camp Corp.,* 11 DOE ¶ 85,007 (1983). Therefore, in this proceeding, we propose that consumers need only document the specific quantities of Thornton motor gasoline they purchased during the consent order period. This documentation could be in the form of credit card or other receipts. If no gallonage is recorded on the receipt, a customer could extrapolate purchase volumes by estimating Thornton's per gallon prices. We recognize, however, that many customers who purchased motor gasoline at Thornton's retail outlets may not have received or saved receipts. In those cases, we propose that an applicant submit its estimate of purchases with an explanation showing how its purchase volumes were derived.

While the overwhelming majority of Thornton's sales were made to end-users from retail outlets, we recognize that there may also be some eligible reseller claimants (i.e. jobbers and retailers). These claimants generally will be required to establish that they absorbed the alleged overcharges. To make this showing, they will be required to demonstrate that, at the time they purchased motor gasoline from Thornton, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (*Ada*).[2]

We propose that refunds be calculated according to a volumetric method. Under this method, refunds are computed by multiplying an applicant's total purchase volumes by a volumetric amount which is computed by dividing the settlements amount by the total volume of covered petroleum products sold by the consent order firm during the consent order period. In this case, the volumetric amount is $0.001595 ($292,500 which will ultimately be remitted to the DOE divided by 183,333,333 gallons of motor gasoline sold by Thornton during the consent order period).[3] An eligible applicant will also receive a proportionate share of the interest accrued on the consent order fund since its deposit in the escrow account.

Generally in special refund proceedings, we attempt to identify specific customers who may have been injured by the consent order firm's pricing practices and provide those customers with notice of the refund proceeding. However, in the present case, the NOPV and ERA audit files contain no names or addresses of any of Thornton's wholesale or retail customers. As a result, we are unable at this time to identify any persons or firms who may have been injured by Thornton's pricing practices. Although theoretically some of the customers might be identified from copies of old credit card receipts, we do not believe that the time, effort, and expense of locating and searching through Thornton's old records at its various outlets would be a practical method of determining eligible refund applicants.[4] Moreover a number of Thornton's retail customers paid cash and there would be no specific record of their purchases or addresses.

Nevertheless, we intend to make additional efforts to identify those persons or firms who may have purchased relatively large volumes of motor gasoline from Thornton.[5] During

[2] However, as in many prior special refund cases, a reseller generally will not be required to demonstrate that it did not pass through the alleged overcharges if its refund claim is based on purchases at or below a threshold level. This determination is based upon several considerations. It is our experience that businesses with a relatively low level of sales do not generally maintain sophisticated recordkeeping systems. A requirement that such a firm compile five year old data could be overly burdensome. We are also concerned that the expense of preparing an application not be grossly disproportionate to the potential refund to be gained.

With these considerations in mind, we have determined to establish a threshold level of 50,000 gallons per month. Resellers whose average monthly purchases do not exceed 50,000 gallons will not be required to demonstrate that they absorbed Thornton's alleged overcharges. Resellers whose average monthly purchases during the period for which a refund is claimed exceed 50,000 gallons, but who cannot establish that they absorbed Thornton's price increases, or who limit their claims to the threshold amount, will also be eligible for a refund for purchases up to the 50,000 gallons per month threshold. *See Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396–97 (1981) *(Vickers); see also Ada* at 88,122.

We also propose that resellers who made spot purchases from Thornton not be eligible for refunds regardless of the level of their purchases. As we have previously stated, we presume that these firms incurred no injury in these transactions. *Vickers.* In order to overcome this rebuttable presumption, spot purchasers will be required to submit evidence additional to that required of resellers generally to establish that they were unable to recover the increased prices they paid to Thornton. *See Amoco* at 88,200.

[3] Although the DOE has not received the complete settlement amount in this case, the amount currently held in escrow is sufficient to permit us to consider first stage refund claims on the foregoing basis.

[4] Credit card receipts do not contain the address of the credit card holder. Thus the banks that issued the cards must be contacted to try to obtain the addresses. In addition, even if we were to obtain access to the names and addresses of past retail customers, it is likely that much of the information we would find would not be helpful. The relevant retail transactions occurred over three years ago and since one out of five Americans over the age of 20 moves each year, there is a strong likelihood that many of the addresses of the individual consumers have changed. *See* United States Bureau of the Census, *Statistical Abstract of the United States: 1984* (104th ed.) (Washington, D.C. 1983), p.17.

[5] It is likely that many of Thornton's retail customers purchased insufficient volumes of motor gasoline to qualify for a refund. Many of the affected customers were individual motorists who purchased relatively small amounts of gasoline in isolated transactions. As a result, the amount of refunds to which most individual customers will be entitled will be very small. In prior special refund cases, we have not granted refunds for less than $15.00 (the approximate cost to the government of issuing refund checks) because the cost of issuing such small refunds exceeds the restitutionary benefits which may be achieved. *See Amoco* at 88,214. We will utilize the same threshold here. Under the volumetric method for making refunds proposed in this proceeding, we calculate that an applicant must have purchased at least 9,405 gallons of Thornton motor gasoline during the 22 month consent order period in order to qualify for the minimum $15.00 refund. In contrast, according to Energy Information Administration data, the average motorist consumed approximately 1,080 gallons of motor gasoline per car during the consent order period. *Consumption Patterns of Household Vehicles, June 1979 to December 1980,* DOE/EIA-0319, at 2. Even if all of that motor gasoline were purchased from a Thornton outlet, that average motorist would qualify for a refund of only $1.72. Thus, we anticipate that although many of Thornton's retail customers may have legitimate claims, most of those claims will fall below the $15.00 threshold.

the course of evaluating numerous Applications for Exception from the Mandatory Petroleum Allocation Regulations during the period of controls, we learned that it was not unusual for local governmental entities and small businesses regularly to patronize one retail service station, often on a contractual basis. This was particularly true for governmental entities and businesses with multiple vehicles (buses, police and fire vehicles, delivery vans, taxis, etc.) which required a dependable supply of motor gasoline, but did not have bulk storage facilities of their own. It is possible that some of Thornton's retail stations had such customers during the consent order period and that those customers can be identified and located. We have therefore sought Thornton's cooperation in identifying and apprising such customers of this special refund.

B. *Second Stage Refunds.* The $15.00 threshold on refund checks (see footnote 5) may result in some customers' claims going unredressed. To ensure that an appropriate portion of the consent order fund should benefit these persons indirectly, second stage procedures are available to distribute the settlement funds that remain after refunds are made to first stage claimants.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Thornton Oil Corporation pursuant to the Consent Order executed on April 6, 1983, will be distributed in accordance with the foregoing Decision.

[FR Doc. 84-18231 Filed 7-9-84; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $160,000 (plus accrued interest) obtained as the result of a settlement agreement which the DOE entered into with New York Petroleum, Inc. (NYP).

DATE AND ADDRESS: Applications for refund of a portion of the NYP settlement agreement funds must be postmarked within 90 days of publication of this notice in the Federal Register and should be addressed to: New York Petroleum, Inc. Settlement Agreement Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0023.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a settlement agreement entered into by NYP which settled possible pricing violations in the firm's sales of crude oil during the period September 1, 1973, through November 1, 1982. Under the terms of the settlement agreement, $160,000 has been remitted by NYP and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the NYP settlement agreement funds. The Proposed Decision and Order was issued on December 19, 1983. 49 FR 1130 (Jan. 9, 1984).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the decision indicates, applications for refund from the settlement agreement funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an application for refund is set forth in the Decision.

Dated: June 29, 1984.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

June 29, 1984.

Name of Case: New York Petroleum, Inc.
Date of Filing: August 1, 1983.
Case No.. HEF-0023.

This proceeding concerns a Petition for the Implementation of Special Refund Procedures submitted to the Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V by the Office of Special Counsel (OSC) of the economic Regulatory Administration (ERA). In the petition, the OSC requested that the Office of Hearings and Appeals (OHA) establish procedures for the disposition of $160,000, plus interest, being held in escrow by the Department of Energy (DOE) pursuant to a judicially-sanctioned settlement entered into by the DOE and New York Petroleum, Inc. (NYP).

On December 19, 1983, the Office of Hearings and Appeals issued a Proposed Decision and Order in which we proposed to grant the OSC's petition and tentatively established a two-stage refund process for the disposition of the escrowed settlement funds. *New York Petroleum, Inc.*, No. HEF-0023 (December 19, 1983) (proposed decision); 49 FR 1130 (January 9, 1984) (hereinafter cited as Proposed Decision). We stated that in the first stage we would consider Applications for refund filed by parties who could demonstrate injury arising from the alleged violations covered by the settlement agreement. In addition, we suggested second-stage mechanisms which could be used for the distribution of any residual funds not paid out to first-stage claimants. The Proposed Decision solicited comments from interested parties and the public at large concerning these proposed procedures.

The primary purpose of this Decision and Order is to establish procedures for the filing and processing of claims in the first stage of the refund process. In establishing these procedures we have considered the comments filed in response to the Proposed Decision and we will discuss those comments in this Decision. We will not, however, determine procedures for the second stage of the refund process. As we observed in the Proposed Decision, a determination concerning the final disposition of any residual funds depends in part on the amount of those funds. It would therefore be premature for us to address in this Decision the issues raised by commenters concerning the proposed disposition of any funds remaining after all meritorious first-stage claims have been paid.

I. Background

During the period October 1973 through December 1975, NYP was the operator of crude oil producing properties located in Adams County, Mississippi and Point Coupee Parish, Louisiana. NYP was therefore a "producer" of crude oil as that term was defined in 10 CFR 212.31 of the DOE Mandatory Petroleum Price Regulations and was subject to the provisions of 10 CFR Part 212, Subpart D, which

governed the first sale of domestic crude oil.[1]

On July 29, 1977 the Federal Energy Administration (FEA), a predecessor of the DOE, issued a Remedial Order to NYP in which it concluded that, during the period October 1973 through December 1975, NYP had violated the crude oil producer price regulations at 10 CFR Part 212, Subpart D. Specifically, the FEA found that NYP had miscertified crude oil that it sold to Ashland Oil, Inc. (Ashland) and Koch Oil Company (Koch) and as a result overcharged those two firms by a total of $283,130.43 in sales of crude oil.[2]

The NYP Remedial Order was substantially affirmed by the Office of Hearings and Appeals in a Decision and Order issued on January 19, 1979. *New York Petroleum Corp.*, 3 DOE ¶ 80,111 (1979).[3] Shortly thereafter, NYP filed suit against the DOE, Ashland, and Koch in the United States District court for the Southern District of Mississippi seeking to overturn the Remedial Order. *New York Petroleum, Inc. v. DOE*, Civil Action No. W79-0019(B) (S.D. Miss.). Prior to any action by the court on the merits of the suit, the DOE and NYP negotiated a proposed consent agreement in which NYP agreed to remit the sum of $160,000 to the DOE in settlement of the violations alleged in the Remedial Order. The proposed settlement also relieved NYP of any potential liability for any and all violations of the DOE regulations in connection with the production and sale of crude oil from the Mississippi and Louisiana properties specified in the Remedial Order during the period September 1, 1973 through November 1, 1982 (the settlement agreement period). On December 9, 1982, a federal magistrate dismissed the DOE as a party in the district court proceeding after finding that the proposed settlement was in the best interests of all the parties and in the public interest. The Order of Dismissal issued by the magistrate required NYP to remit to the DOE the sum of $160,000, to be held in escrow for ultimate disposition by the DOE.[4] Payment of the $160,000 was made to the Controller of the DOE for deposit in an escrow account in January 1983.[5]

On August 1, 1983 the OSC filed its petition with this Office to establish a Subpart V proceeding. The OSC asserted in its petition that, although Ashland and Koch were originally contemplated as recipients of the refunds under the Remedial Order, this remedy would be inappropriate in light of the decontrol of crude oil and refined petroleum products on January 28, 1981. The OSC further asserted that, as refiners, Ashland and Koch received benefits under the DOE Crude Oil Entitlements Program [6] that mitigated the effects of any crude oil overcharges, and that in any case Ashland and Koch were in a position to pass through to their customers any increased costs they incurred. Thus, according to the OSC, because the parties actually injured and the amount of their injury could not be readily determined, a Subpart V petition requesting the Office of Hearings and Appeals to implement special refund proceedings was appropriate.

II. Jurisdiction

Subpart V authorizes the Office of Hearings and Appeals, upon request by the appropriate enforcement official, to fashion special procedures to distribute moneys obtained as a result of a Remedial Order or settlement agreement. 10 CFR 205.281, 205.282. The special refund process was established as part of an overall regulatory program intended to implement several different statutes. Congress provided for mandatory allocation and price regulations for crude oil, residual fuel oil, and refined petroleum products in the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* (1976). The authority to enforce regulations issued under EPAA was granted by section 5 of the EPAA, which

[1] Prior to February 1, 1976, the provisions of 10 CFR Part 212, Subpart D generally required crude oil producers to determine the first sale price of domestic crude oil from a particular property in accordance with the base production control level (BPCL) for that property, i.e., the total number of barrels of crude oil produced and sold from the property in the same month of 1972. Crude oil production from a property which did not exceed the BPCL (referred to as "old" oil) was generally subject to the ceiling price rule set forth in 10 CFR 212.73, whereas crude oil production which exceeded the sum of the BPCL and any deficiency which had accumulated was deemed "new" oil which could be sold without regard to the ceiling price rule. In addition, if new oil was sold from a property in a particular month, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable ceiling price level. The term "property" for the purpose of computing the BPCL was defined in 10 CFR 212.72 as the "right to produce crude oil which arises from a lease or a fee interest."

Furthermore, during the period November 16, 1973 to January 31, 1976, the first sale of domestic crude oil produced from a stripper well property was exempt from the ceiling price rule. Under the applicable regulatory provisions, a "stripper well lease" was defined as "a 'property' whose average daily production of crude petroleum and petroleum condensates, including natural gas liquids, per well did not exceed 10 barrels per day during the preceding calendar year." *See* 6 CFR 150.54(s)(2) and 10 CFR 210.32.

[2] In the Remedial Order issued to NYP, the FEA determined that during the period from October 1973 through December 1975, NYP erroneously classified four crude oil producing wells located in the H.B. Drane area of Mississippi as four separate properties. As a result of that erroneous classification, FEA determined that NYP sold crude oil to Ashland from the H.B. Drane property as either stripper well crude oil or "new" and "released" crude oil when in fact that crude oil was subject to the ceiling price rule. The FEA also found that during 1974 and 1975 NYP sold crude oil produced from the Adam and J.C. Bergeron properties to Koch at market prices, notwithstanding the fact that during those years those properties did not qualify as stripper well properties and their production did not qualify as "new" oil. Finally, FEA found that, during certain portions of the period between December 1973 and February 1975, NYP sold crude oil from the Wilson Estate, D.D. Angelloz and Stella Bertoniere properties as "new" and "released" crude oil without regard to the cumulative deficiencies which existed for those properties.

[3] In that Decision, we found that beginning in 1974 the J.C. Bergeron property qualified as a stripper well lease and that the amount of the violation found in the Remedial Order should be reduced accordingly by $16,367.43. *New York Petroleum Corp.*, 3 DOE at 80,568-69. In all other respects, the NYP Appeal was denied.

[4] In February 1983, Ashland and Koch filed a motion with the court asserting a counterclaim against NYP. In addition, they brought a separate suit against the DOE seeking payment of the settlement funds to them. The firms' motion was subsequently denied on the grounds of untimeliness and the suit against the DOE was dismissed on the grounds that the two refiners had not exhausted their administrative remedies. *New York Petroleum, Inc. v. Ashland Oil, Inc.*, 3 Fed. Energy Guidelines ¶ 26,441 (S.D. Miss. 1983).

[5] Since the moneys remitted by NYP were received by the DOE Controller for deposit in the Deposit Fund Escrow Account subsequent to December 17, 1982, distribution of the funds is not subject to Section 155, Further Continuing Appropriations Act, 1983, Pub. Law No. 97-377, 96 Stat. 1919 (the "Warner Amendment"), which pertained only to those funds held in trust accounts administered by DOE on that date. *See* OSC's Petition at 2-3.

[6] The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. Subsequent to the imposition of petroleum price controls, there developed a price disparity between foreign crude and uncontrolled domestic crude oil, and price-controlled "old" oil, which had an unequal effect on refiners because some refiners had greater access to the inexpensive old oil than others. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent refiners, with little or no access to price-controlled domestic reserves, suffered crude oil acquisition costs so high relative to the industry as a whole that those costs threatened to put them out of business. To remedy these imbalances, the DOE established the Entitlements Program effective November 29, 1974. 39 FR 42246 (Dec. 4, 1974); *see also* Notices of Proposed Rulemaking at 39 FR 31650 (Aug. 30, 1974); and 39 FR 39740 (Nov. 11, 1974). The Entitlements Program required refiners with proportionately greater access to old oil to make cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefit associated with access to the lower-priced domestic crude oil.

incorporated enforcement authority established in the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1970); EPAA § 5(a), 15 U.S.C. 754(a). The statutory authority to enforce the regulations governing the allocation and pricing of petroleum products was delegated to the Administrator of the Federal Energy Administration, and subsequently to the Secretary of Energy. Federal Energy Administration Act (FEAA) § 5, 15 U.S.C. 765 (1974); Department of Energy Organization Act (DOE Act) § 301(a), 42 U.S.C. 7151(a) (1979). To carry out these statutory mandates, the regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, and the DOE provided throughout the existence of the price control program for the issuance of remedial orders "requiring a person to cease a violation or to eliminate or compensate for the effects of a violation, or both." 6 CFR 155.81(b) (1973); 10 CFR 205.2 (1974) (defining "remedial order").[7]

As we have noted in previous Subpart V Decisions, restitution is designed to accomplish two purposes: disgorgement of the fruits of a regulatory violation from the wrongdoer and distribution of refunds to persons injured by the regulatory violation. *See generally Office of Endorcement,* 8 DOE ¶ 82,597 (1981); *see also Sauder v. DOE,* 648 F.2d 1341 (Temp. Emer. Ct. App. 1981). The latter objective—the distribution of refunds to injured persons—furthers the specific EPAA goal of providing for the "equitable distribution of * * * refined petroleum products at equitable prices * * * among all users." 15 U.S.C. §§ 753(b)(1)(F).

As we stated in the Proposed Decision in this proceeding, the Subpart V process may be used in situations where the DOE is unable readily to identify those persons who may have been injured by alleged or adjudicated violations or to ascertain readily the degree of injury sustained. 49 FR at 1132, citing *Office of Enforcement,* 8 DOE ¶ 82,515 (1981); *Office of Special Counsel,* 8 DOE ¶ 82,538 (1982); 10 CFR 205.280. After reviewing the administrative and judicial record developed in the NYP proceedings, and considering the comments filed in response to our Proposed Decision, we have decided to grant the OSC's petition and accept jurisdiction over the NYP settlement funds.

In reaching this conclusion, we have considered comments submitted jointly by Ashland and Koch in response to the Proposed Decision. In those comments, Ashland and Koch object to the implementation of a Subpart V proceeding in this case on the grounds that, since they were named as the sole purchasers of NYP crude oil in the Remedial Order issued to NYP, they are readily identifiable parties and that they are entitled to receive the full settlement fund amount. We reject the position advanced by Ashland and Koch. As we explained in the Proposed Decision, although Ashland and Koch were the sole first purchasers identified in the Remedial Order, the DOE's Crude Oil Entitlements Program would have distributed the effects of any crude oil overcharges which occurred to all domestic refiners. 49 FR at 1132.[8] Ashland and Koch have not disputed this finding. Moreover, the firms have previously stated that the extent of their alleged injury as a result of NYP overcharges was less than the amount of the NYP settlement fund, namely, $79,381 (Ashland) and $2,500 (Koch). *See New York Petroleum, Inc.* v. *Ashland Oil, Inc.,* 3 Fed. Energy Guidelines ¶ 26,441 at 29,273 (S.D. Miss. 1983). According to the firms' joint submission in that case, during the period prior to the implementation of the Entitlements Program (September 1973 through October 1974), they were unable to pass through NYP's overcharges, but after that time overcharges were passed through and borne by other refiners under provisions of the Entitlements Program. Thus a Subpart V proceeding would be justified in this case even if we ultimately agree with Ashland and Koch as to the refunds to which they are entitled as restitution for injuries incurred prior to the implementation of the Entitlements Program. It should also be emphasized that, while the Remedial Order covered only the period October 1973 through December 1975, the settlement agreement subsequently entered into by NYP and the DOE covers the period September 1973 through November 1, 1982. Even if it were true, therefore, that Ashland and Koch were the only injured parties during the entire period covered by the Remedial Order, which by their own admission they were not, it does not follow that there are not other parties, not identified in the Remedial Order, who incurred injury subsequent to December 1975. We therefore conclude that the claim by Ashland and Koch that a Subpart V proceeding is not appropriate in this case is without merit. *See National Helium Corp./Farmland Industries, Inc.,* 11 DOE ¶ 85,257 (1984).

Furthermore, as we pointed out in the Proposed Decision, until January 28, 1981, crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to adversely affected purchasers through price rollbacks. However, on that date the President exempted crude oil and refined petroleum products from the DOE regulatory program. Exec. Order No. 12287, 46 FR 9909 (Jan. 30, 1981). As a result of decontrol, price rollbacks can no longer be used to refund moneys to purchasers who were overcharged in the past. Therefore, to refund money to those parties who were affected adversely by violations of the regulations, a determination must generally be made regarding the extent to which the first purchasers absorbed any overcharges or passed the higher costs through to their customers by raising their own sales prices. Under these circumstances, Subpart V provides the most useful mechanism to refund money to persons who were likely to have been injured by any pricing violations by NYP, and we have therefore decided to exercise jurisdiction over the funds which were the subject of the OSC's Petition for Implementation of Special Refund Procedures.

III. Application for Refund Procedures

In view of the objectives expressed in the statutes and regulations discussed above, the procedures to be implemented in this case should, to the maximum extent practicable, provide for the distribution of the settlement funds to parties who were adversely affected by any regulatory violations that may have occurred. In evaluating claims for refunds that are based upon purchases of crude oil from NYP we believe it appropriate to adopt a two-stage special refund procedure of the type implemented with respect to the 24 crude oil settlement funds in the *Alkek*

[7] A settlement agreement of the type entered into by the OSC and NYP and approved by the magistrate in his Order of Dismissal is like a consent order in that there is no finding of liability for regulatory violations. *See* 10 CFR 205.199J.

[8] We have made similar findings in earlier Subpart V proceedings involving settlements of alleged crude oil violations. In *Office of Enforcement,* 9 DOE ¶ 82,521 (1982) (hereinafter cited as *Alkek*), we observed that the effects of regulatory violations involving the miscertification of crude oil were spread equally among all domestic refiners and arguably to consumers nationwide due to the operation of the DOE's Crude Oil Entitlements Program, 10 CFR 211.67. *See Alkek,* 9 DOE at 85,133. As we observed in the Proposed Decision, in the present case this would be true whether Koch and Ashland had refined the allegedly miscertified crude oil themselves or sold it to other refiners. In either event, the ultimate refiner would have reported in its monthly reports to the DOE the improperly certified crude oil, and that incorrect figure would then have been used to calculate the domestic old oil supply ratio ("DOSR") and the reporting refiner's entitlements position. *See generally* 10 CFR 211.67.

proceeding and the 33 crude oil settlement funds in a related proceeding. *Office of Enforcement,* 9 DOE ¶ 82,553 (1982) (hereinafter cited as *Adams*). Under the two-stage refund procedure, the settlement funds will first be distributed among applicants who successfully establish in their Applications for Refund that they suffered a particularized injury that was not redressed by the regulatory system. For example, a firm which purchased and refined NYP crude oil prior to November 1, 1974, the first month of the Entitlements Program, could be a first-stage claimant. *See Alkek,* 9 DOE at 85,137 A firm which purchased and refined NYP crude oil subsequent to November 1, 1974 could also file a first-stage claim, but would have to demonstrate, among other things, why and to what extent the Entitlements Program did not operate to negate the effect of any overcharges. *See Alkek,* 9 DOE at 85,137 A successful applicant would have to demonstrate actual injury—i.e., that the effects of the alleged regulatory infraction, were not simply passed through to its customers in the form of higher prices for its refined products. *See Tenneco Oil Co./ Plateau, Inc.,* 10 DOE ¶ 85,015 (1982) (demonstration of injury required to qualify for refund above threshold level).

In connection with the above discussion, we note that the Air Transport Association of America (ATA), in a comment submitted in response to the Proposed Decision, suggests that the refund procedures adopted in the *Alkek* and *Adams* Decisions are not appropriate models for the disposition of crude oil settlement funds in the present case. The ATA states instead that any disbursement of crude oil settlement funds should be delayed until the court has issued a final decision in *The Department of Energy Stripper Well Exemption Litigation,* No. MDL 378 (D. Kan).[9] We disagree. We see no reason to delay the distribution of funds to meritorious claimants in the first stage of the NYP proceeding. However, to the extent that any presumptions or findings of injury developed in the course of the *Stripper Well Exemption* case are found to be generally applicable to all miscertifications of crude oil, we will take them into consideration in evaluating refund applications filed in connection with the NYP settlement fund.

As we suggested in the Proposed Decision in this proceeding, we also are establishing a rebuttable presumption that spot purchasers of crude oil from NYP were not injured by NYP's pricing practices. *See Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,200 (1982) (hereinafter cited as *Amoco*). In the *Amoco* Decision, we observed that spot purchasers tend to have considerable discretion in making purchases and are therefore not likely to make spot market purchases at higher prices were they not able to pass through those higher prices to their own customers. We believe that the same rationale is applicable to this proceeding, and we therefore will require spot purchasers to submit additional evidence sufficient to establish that they were unable to recover the prices they paid to NYP

We now turn to the question of what documentation a first-stage claimant must provide in order to establish eligibility for a portion of the NYP settlement funds. As in the *Alkek* and *Adams* Decisions, we will not establish specific rules for the submission of refund applications in this proceeding, but instead will give some examples of the kinds of documentation certain classes of applicants should provide. Applicants should bear in mind that the following examples are not intended to be comprehensive; applicants may find it appropriate to file additional or substitute information in support of their claims. All applicants must provide sufficient information to prove that the violations covered by the NYP settlement had a direct, measurable impact on them and that this impact caused an injury that they were unable to minimize or eliminate by passing onto subsequent purchasers. The type of documentation a claimant must submit will vary depending on whether its injury was caused or affected by the Entitlements Program. A claimant's injury would not have been caused or affected by the Entitlements Program, for example, if it was casued by violations which occurred prior to the inception of the Entitlements Program on November 1, 1974, or if the claimant were a party that consumed the crude oil it purchased from NYP A claimant in either of these categories should first proof establishing that it obtained crude oil from NYP during the settlement agreement period (September 1, 1973 through November 1, 1982).[10] That proof should include the volume of crude oil obtained, the price for which it was obtained, and the time when it was obtained. The claimant should also present a detailed description of the nature of its alleged injury. In addition, we will require a showing that claimants (other than end-users of the NYP crude oil) did not pass through to their own customers price increases caused by the alleged violations. Thus, a claimant in this group should submit data showing increased product costs for each calendar quarter for which it claims a refund, and market data and other relevant information which tends to show that the market would not permit it to recover the price increases involved by increasing its own sales prices. If a claimant used its banked costs to increase its selling price at a later date, its refund might be apppropriately reduced.

On the other hand, a claimant's injury would have been caused or affected by the Entitlements Program if its claim resulted from a certification violation occurring after November 1, 1974, and if the claimant were either a refiner who refined the crude oil or a subsequent purchaser. We expect that claimants in this category will make two general types of claims. The first type would be made by a refiner which obtained crude oil originally sold by NYP or a subsequent purchaser of products produced by that refiner. Such a claimant must be able to demonstrate that the product was originally produced on sold by NYP Moreover, this type of claimant must satisfactorily demonstrate why and to what extent the Entitlements Program did not operate to negate the effect of the violations. The second type of claim would be based on the fact that the violations alleged in the NYP settlement agreement could conceivably have caused all refiners to incur injury through the operation of the Entitlements Program. Thus, a refiner in this category which is able to quantify its individual injury and can show, through the existence of banks and the submission of market data or other relevant information, that it did not pass on those increased costs to subsequent purchasers may be eligible for a refund. We are unable to specify what type of factual information could be used to document such an injury. We must reiterate, however, that the burden of proving eligibility for a refund is on the refiner, not the DOE. Thus it is the

[9] On September 13, 1983, District Judge Frank G. Theis referred the remedy stage of the stripper well exemption case to the Office of Hearings and Appeals for fact finding. *See In Re DOE Stripper Well Litigation,* 578 F. Supp. 586 (D. Kan. 1983); *see also* Notice of Implementation of Special Refund Procedures and Solicitation of Comments (Case No. HEF-0025), 48 FR 57608 (Dec. 30, 1983), 6 Fed. Energy Guidelines ¶ 90,501.

[10] As noted elsewhere in this Decision, crude oil was decontrolled on January 28, 1981. As a matter of law, therefore, we cannot entertain Applications for Refund in connection with purchases of NYP crude oil made within the settlement agreement period but subsequent to decontrol.

refiner that must provide information showing how and to what extent it was injured by the violations alleged in the NYP settlement agreement. This cannot be done through the use of generalized, unsupported allegations, and the submission of material establishing simply that sizable product cost banks were maintained during the relevant period of time is not sufficient.

Accordingly, the OHA will accept first-stage Applications for Refund from the NYP settlement fund, pursuant to 10 CFR 205.283, beginning immediately. Applications must be filed no later than 90 days after the publication of this Decision and Order in the Federal Register. An application must be in writing, signed by the applicant, and specify that it pertains to the Matter of New York Petroleum, Inc., Case No. HEF-0023. Any Application for Refund must be filed in duplicate, and a copy of that application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in this proceeding or the underlying enforcement proceedings. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

With respect to the second stage of the refund process, to the extent that any funds remain in the refund pool after all successful applicants have been issued refunds in the first stage, various distribution mechanisms could be utilized. However, as in the cases involved in other crude oil consent order refund proceedings, we are unable to determine conclusively what should be done with any residual funds, since the amount remaining after the first stage will affect the appropriateness of any particular second-stage distribution scheme.[11] *See Alkek*, 9 DOE at 85,138.

It is therefore ordered that:

(1) Applications for Refunds from the funds remitted to the Department of Energy by New York Petroleum, Inc. pursuant to the settlement agreement executed on Decemeber 9, 1982 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: June 29, 1984.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

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BILLING CODE 6450-01-M

[11] Several comments in response to the Proposed Decision were submitted by or on behalf of states. All expressed the view that the states were appropriate recipients of second-stage funds in this proceeding. We will not address these comments at this time, but will retain them on file for consideration at or near the conclusion of the first stage of the NYP special refund proceeding.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $25,475.06 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc. These affiliated firms were reseller-retailers of refined petroleum products with their main office located in Springfield, Missouri.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0195.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 252-2034.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by the Webster Oil Company, Inc. which settled possible pricing violations in the sales of propane, motor gasoline, and Nos. 1 and 2 fuel oils by Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Comapny, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc. to their customers during the period November 1, 1973 (October 1, 1973 for propane) through May 20, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Webster pursuant to the consent order. The DOE has tenatively established procedures under which purchasers of the products covered by the consent order may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C 20585.

Dated: June 15, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

June 15, 1984.

Name of Firm: Webster Oil Company, Inc.

Date of Filing: October 13, 1983

Case Number: HEF-0195

This proceeding addresses a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and

Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations or violations of Department of Energy (DOE) regulations. ERA filed the Petition in this case in connection with a consent order that it entered into with Webster Oil Company, Inc. Webster Oil Company, Inc. and its affiliated companies were marketers of petroleum products to resellers and end-users during the period of federal price controls, and were therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. Their main office was in Springfield, Missouri.

A DOE audit of Webster's records revealed possible violations of DOE price regulations with respect to sales of propane, motor gasoline, and Nos. 1 and 2 fuel oils by Webster Oil Company, Inc., Webster Oil and Gas Company, Inc., Webster Hydro Gas Company, Inc., Sac-Osage Oil and Gas Company, Inc., and Tri-Lakes Oil and Gas Company, Inc. during the period commencing November 1, 1973 (October 1, 1973 for propane) and ending for each product on May 20, 1974 (hereinafter referred to as the audit period). These five corporate entities (hereinafter referred to as the Webster companies) were each under the common control of Ernest Jack Webster, Jr. In order to settle all claims and disputes between the Webster companies and DOE regarding the firms' sales of propane, motor gasoline and fuel oils during the audit period, Webster Oil Company, Inc. and DOE entered into a consent order on January 19, 1981. Under the terms of the consent order Webster Oil Company, Inc. agreed to remit $110,304 plus accrued interest to DOE in five installments. To date, Webster Oil Company, Inc. has paid only $20,000 of the $110,304 which it agreed to pay to DOE, and is in arrears in its payments. The $20,000, together with $566.30 in late payment fees which Webster Oil Company, Inc. has paid DOE, is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of April 30, 1984, the Webster escrow account had earned $4,908.76 in interest. This Proposed Decision discusses the establishment of procedures for distribution of the $20,566.30 which was deposited into the escrow account, plus the accrued interest.[1]

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Webster consent order fund. The Subpart V regulations set forth guidelines by which OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V [2] The Subpart V process may be used in situations where DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,553 at 85,284 (1982). The ERA indicated in its Petition that those circumstances exist in this case, and there is nothing in the record to indicate that ERA is incorrect. We will therefore grant ERA's Petition and assume jurisdiction over the distribution of the Webster consent order funds.

II. Proposed Refund Procedures

Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. In the first stage, we will attempt to refund money to identifiable purchasers of propane, motor gasoline, and Nos. 1 and 2 fuel oils who may have been injured by the Webster companies' pricing practices during the period November 1, 1973 (October 1, 1973 for propane) through May 20, 1974. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary if funds remain. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

A. *Refunds to Identifiable Purchasers.* We propose that the Webster consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by the Webster companies' alleged pricing practices. The information available to us at this time regarding Webster operations during the audit period does not provide names and addresses of the firms' customers. However, our experience with Subpart V proceedings indicates that the claimants in this proceeding will in all likelihood fall into the following categories: (1) Resellers (including retailers), and (2) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from the Webster companies or from other firms in a chain of distribution leading back to the Webster companies.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of the Webster companies' propane, motor gasoline, and Nos. 1 and 2 fuel oils for the period November 1, 1973 (October 1, 1973 for propane) through May 20, 1974. If the product was not purchased directly from a Webster company, the claimant must include a statement setting forth its reasons for believing the product originated with one of the Webster companies. In addition, a reseller or retailer that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, a reseller or retailer claimant will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased the product from a Webster company, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

As in many prior special refund cases, we will presume that small purchasers were injured to some extent by the pricing practices which led to the issuance of the consent order. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82541 (1982). A reseller or retailer claimant will not be required to submit any further proof of injury if its refund claim is based on a monthly purchase level below a threshold level. In this case, we propose that that level be 200,000 gallons.[3] The adoption of a threshold level below which a claimant does not have to submit any additional evidence of injury is based upon a balancing of several

[1] If DOE receives additional funds from Webster Oil Company, successful refund applicants in this proceeding will receive a pro rata increase in the amount of their refund. *But see* note 4, *infra.*

[2] In previous cases, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g.,* In re The Charter Company, 47 FR 16396 (April 16, 1982) (proposed decision); Office of Enforcement, 9 DOE ¶ 82,539 (1982).

[3] Resellers whos monthly purchases during the period for which a refund is claimed exceed 200,000 gallons, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the 200,000 gallons per month threshold amount without being required to submit evidence of injury. *See* Vickers at 85,390; *see also* Ada at 88,122.

factors. First, the cost of compiling information sufficient to show injury should be considered. Obviously, difficulties in compiling information are considerably greater for events that occurred at the beginning of the price control period—1973 and 1974—than for events dealing with the end of the period—1979 and 1980. Second, the per gallon refund amount must be considered in conjunction with the length of the audit period. The larger the per gallon refund and the longer the audit period (and the larger total refund for a particular threshold level), the greater the justification for requiring more detailed information from the applicant to demonstrate that it was injured. Third, the nature of the potential refund applicants' business operations should be considered. As we have stated in previous refund cases, our experience indicates that small businesses, such as single outlet retailers, generally maintain a less sophisticated recordkeeping system than larger firms. The threshold level should be set to minimize unnecessary burdens on small businesses who, without a threshold level, might well be precluded from receiving refunds to redress their injuries.

In the present case, the foregoing considerations lead us to establish a threshold level of purchases of 200,000 gallons per month. In previous refund proceedings involving motor gasoline, we have established threshold levels of 50,000 gallons per month. That purchase level was chosen in those cases by balancing all of the factors stated above, and a determination was made that in view of the amount each successful claimant would be entitled to receive if it made qualifying purchases during each month of the audit period, no additional proof of injury would be required. Under the facts in this case, however, establishment of a 50,000 gallon per month threshold level would not appear appropriate. The audit which led to the consent order was for a short, seven-month period. All of the alleged violations occurred at the beginning of the price controls period—October 1973 through May 1974. The entities which purchased motor gasoline from Webster are likely to be small retailers or end users. Under these circumstances, the threshold level should be raised to 200,000 gallons per month. As noted subsequently in this determination, a successful claimant who purchased 200,000 gallons of Webster motor gasoline during each of the seven months of the audit period will receive a refund of only $1,810. This level represents an equitable balancing of the factors set forth above.

If a reseller or retailer made only spot purchases from Webster, however, we propose that, absence evidence to the contrary, it should not receive a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass thrugh the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for the Webster companies' petroleum products. *See Amoco* at 88,200.

With respect to customers who were consumers of the Webster companies' products, a showing of injury will not be required in order to qualify for a refund. *See Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Co. (Indiana)/Elgin, Joliet, and Eastern Railway*, 11 DOE ¶ 85,105 (1983) (end-users of various refined petroleum products granted refunds solely on the basis of documented purchase volumes). Therefore, in this proceeding a consumer need only document the specific quantities of Webster petroleum products it purchased during the audit period.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by ERA's estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.0010493 per gallon ($20,566.30 received from Webster Oil Company, Inc., divided by 19,000,000 gallons, which is ERA's estimate of the volume of petroleum products sold by the Webster companies during the audit period). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. As of March 31, 1984, accrued interest will increase the per gallon refund amount to $.0012925. Consequently, a successful claimant who purchased 200,000 gallons of Webster motor gasoline during each of the seven months of the audit period will receive a refund on $1,810.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the Federal Register, notice will be provided to the National LP-Gas Association, the Independent Gasoline Marketers Council, the National Oil Jobbers Council, the Service Station Dealers of America, the National Association of Convenience Stores, the National Association of Truck Stop Operators, and the Society of Independent Gasoline Marketers of America. These organizations should be helpful in advising potential claimants of this proceeding. In addition, we are continuing our efforts to obtain a list of the names and addresses of first purchasers of Webster petroleum products.

B. *Distribution of the Remainder of the Consent Order Funds.* In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution plans:

It is therefore ordered that:

The refund amount remitted to the Department of Energy by the Webster Oil Company, Inc. pursuant to the consent order executed on January 19, 1981 will be distributed in accordance with the foregoing Decision.

[FR Doc. 84-18233 Filed 7-9-84; 8:45 am]
BILLING CODE 6450-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate adjustment for Georgia-Alabama System of Projects, notice of public forum and opportunity for review and comment.

SUMMARY: Southeastern proposes to revise existing schedules of rates and charges applicable to the sale of power from the Georgia-Alabama System of Projects effective for a one-year period, October 1, 1984, through September 30, 1985.

Opportunities will be available for iterested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before August 31, 1984. A public information and comment forum will be held in East Point, Georgia, on August 16, 1984. Persons desiring to speak at the forum should notify Southeastern at least 3 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum for the Georgia-Alabama System of Projects will begin at 10 a.m. on August 16, 1984, in the Hartsfield Conference Room at the Holiday Inn, North Atlanta Airport, 1380 Virgina Avenue, East Point, Georgia 30344.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-3261.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by order issued February 29, 1984, in Docket No. EF83-3011, confirmed and approved Wholesale Power Rate Schedules GAMF-1-C, GAMF-2-C, ALA-1-C, MISS-1-C, SC-1-C, SC-2-C, CAR-1-D, and CAR-2-C applicable to Georgia-Alabama System of Projects' power for a period ending September 30, 1984.

Additional time is needed to fully implement the written power marketing policy for the Georgia-Alabama System of Projects issued October 1, 1980, 45 FR 65140. Therefore, Southeastern is proposing to establish short-term rates to allow time to negotiate contracts and permit development of appropriate rates applicable to the policy.

Discussion: Existing rate schedules are predicated upon a June 1983 repayment study and other supporting data all of which are contained in FERC Docket No. EF83-3011.

The current repayment study prepared in June of 1984 shows that existing rates are not adequate to recover all cost required by present repayment criteria.

A revised repayment study with a $8,739,000 revenue increase in each future year over the current repayment study demonstrates that all costs are paid within their repayment life. Therefore, Southeastern is proposing to revise exisitng rates so as to recover that additional $8,739,000. The increase is primarily due to escalated costs at the generating projects and the inclusion of the first two units of the Richard B. Russell Project in the study. The overall increase amounts to a 19 percent increase in rates, and Southeastern is proposing to increase all applicable rates in the system uniformly by 18 percent and pass additional wheeling directly to affected customers. It is proposed that revised rate schedules applicable to Customers purchasing power from the Georgia-Alabama System of Projects contain the following unit rates:

PROPOSED UNIT RATES

Dependable capacity/mo-except preference customers Duke area	$1.410
Dependable capacity/mo-preference customers Duke area	$3.100
Delivered energy/kwh (mills)	5.060
Energy at projects/kwh (mills)	4.160
Dump and excess energy/kwh (mills)	3.110
Standby capacity/kw/mo	$0.390
Use charge/day	$0.048
Additional Wheeling charge to preference customers served by Georgia, Alabama, Mississippi, Gulf Power Companies/kw/mo	$0.160

The referenced June 1984 current repayment study along with a revised repayment study dated June 1984 and previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules GAMF-1-D, GAMF-2-D, ALA-1-D, MISS-1-D, SC-1-D, SC-2-D, CAR-1-E, and CAR-2-D, are also available.

Issued at Elberton, Georgia, June 29, 1984

Harry C. Geisinger,

Administrator.

[FR Doc. 84-18235 Filed 7-9-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59158B; FRL-2625-2]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-55. The test marketing conditions are described below.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Joe B. Boyd, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-202, 401 M Street SW., Washington, DC 20460, (202-382-3739).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substance for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-55. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, numbers of workers exposed to the new chemical, and the level and duration of exposure must not exceed those specified in the application. All other conditions and restrictions described in

the application and this notice must be met.

TME 84-55

Date of Receipt: May 17 1984.
Notice of Receipt: May 25, 1984 (49 FR 22132).
Applicant: Confidential.
Chemical: (G) Alkylaromatic.
Use: (G) Non-volatile high-flash point oil or grease.
Production Volume: Confidential.
Number of Customers: 20.
Worker Exposure: Manufacturer: dermal, a total of 6 workers for up to 2 hours/day for 2 days/yr. Processing and Use: dermal, a total of 60 workers for up to 1 hour/day for 1 day/yr.
Test Marketing Period: 6 months.
Commencing on: (June 29, 1984.)
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.
The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 29, 1984.
Don R. Clay,
Director, Office of Toxic Substances.
[FR Doc. 84-18161 Filed 7-9-84; 8:45 am]
BILLING CODE 6560-50-M

[OAR-FRL-2625-3]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Hawaiian Independent Refinery, Inc. (EPA Project No. HI 83-01), Honolulu, Hawaii

AGENCY: Environmental Protection Agency (EPA), Region 9.
ACTION: Notice.

SUMMARY: Notice is hereby given that on September 15, 1983 the Environmental Protection Agency issued a PSD permit to the applicant named above granting approval to construct an oil-fired gas turbine cogeneration facility to be located in the Campbell Industrial Park, Island of Oahu, Hawaii. This permit has been issued under EPA's PSD regulations (40 CFR 52.21) and is subject to certain conditions, including an allowable emission rate as follows: SO_2 at 58.3 lbs/hr, NO_x at 35 lbs/hr when gas is burned and 66.8 lbs/hr when oil is burned, and CO at 50.3 lbs/hr.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Rhonda Rothschild, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, 8-454-8153 or (415) 974-8153.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of low sulfur fuel and water injection. Air Quality Impact modeling was required for SO_2, NO_x and CO. Continuous monitoring is required and the source is not subject to New Source Performance Standards.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by September 10, 1984.

Dated: June 25, 1984.
Carl C. Kohnert,
Deputy Director.
[FR Doc. 84-18163 Filed 7-9-84; 8:45 am]
BILLING CODE 6560-50-M

[A-5-FRL 2625-7]

Regulation of Fuels and Fuel Additives; Public Hearing and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the scheduling of a public hearing for EPA's proposed revocation of the waiver granted under section 211(f) of the Clean Air Act to American Methyl Corporation (American Methyl) for a proprietary fuel known as "Petrocoal," and an extension of the comment period for that proposed revocation. The reconsideration and proposed revocation of the Petrocoal waiver were announced in the Federal Register on March 28, 1984, 49 FR 11879.

DATES: The public hearing will be held on Tuesday, July 31, 1984. The date for comments is extended to August 30, 1984.

ADDRESSES: The public hearing will be held in Room M3906, Environmental Protection Agency (EPA), 401 M Street SW., Washington, D.C., 9:00 a.m. to 4:30 p.m. Requests to testify should be sent to the Director, Field Operations and Support Division, (EN-397F), EPA, 401 M Street SW., Washington, D.C. 20460, by July 13, 1984.

Materials relating to the original waiver request, the subsequent submissions, and EPA's proposal to revoke the waiver are contained in public docket EN-81-8, which is available for inspection at the Central Docket Section (Le-131), EPA Gallery 1, West Tower, 401 M Street SW., Washington, D.C. 20460, (202) 382-7548, from 8:00 a.m. to 4:00 p.m., weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying materials in the docket.

Any comments should be addressed to this docket, with a copy of each sent to the Director, Field Operations and Support Division (EN-397F), EPA, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Chief, Fuels Section, Field Operations and Support Division (EN-397F), EPA, 401 M Street SW., Washington, D.C. 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION: On Wednesday, March 28, 1984, EPA published a notice in the Federal Register announcing the reconsideration of, and proposing to revoke, a waiver under section 211(f) of the Clean Air Act which had been granted to American Methyl for a proprietary fuel known as "Petrocoal." 49 FR 11879. That notice contains a description of the waiver and the subsequent actions leading to the proposed revocation.

In the notice of reconsideration and proposed revocation, EPA set a deadline of April 27 1984 for any interested party to request a hearing, and a deadline of May 29, 1984, or thirty days after a hearing, for submitting comments. A number of hearing requests have been made, in response to which a hearing has been scheduled as described above. The deadline for comments has been extended to allow parties time to respond to information presented at the hearing.

One commenter, American Methyl, requested a formal, adjudicatory hearing with cross-examination of witnesses and other trial-type procedures. EPA has determined that an adjudicatory hearing does not seem to be necessary or appropriate at this time. Accordingly, the hearing to be held on July 31 will be an informal public hearing without adversary parties, cross-examination, or discovery procedures. Any interested person will have the opportunity to present data, views, arguments, or other pertinent information concerning the proposed revocation.

In addition to requesting a formal hearing, American Methyl has submitted documents challenging EPA's legal authority to revoke the Petrocoal

waiver. EPA has informed American Methyl that EPA continues to believe it has implicit authority to reconsider and, if appropriate, to revoke fuel additive waivers. The correspondence between EPA and American Methyl has been placed in the docket.

In any event, EPA intends to complete this reconsideration proceeding in accordance with an order of the U.S. Court of Appeals for the District of Columbia Circuit in a lawsuit challenging the original granting of the waiver.[1] That court, at the request of all of the parties to the lawsuit, including American Methyl, remanded the record in that case to EPA for the purpose of allowing EPA to complete the administrative proceeding announced in the March 28 notice of reconsideration and proposed revocation. EPA intends to comply with the court's order.

Dated: July 2, 1984.

Sheldon Meyers,

Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 84-18162 Filed 7-9-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 84-415; File Nos. BR-811201VZ and BRH-811201D4]

Applications for Renewal of License; Albany Radio, Inc.

Memorandum Opinion and Order and Notice of Apparent Liability

In the matter of applications of Albany Radio, Inc., for renewal of license of stations WALG and WKAK(FM), Albany, Georgia; MM Docket No. 84-415, File Nos. BR-811201VZ and BRH-811201D4.

Adopted: April 26, 1984.

Released: May 16, 1984.

By the Commission.

1. the Commission has before it: (i) The above-captioned license renewal applications for Stations WALG and WKAK(FM), Albany, Georgia, filed December 1, 1981, by Albany Radio, Inc. (ARI or licensee);.[1] (ii) an informal objection to the applications filed March 1, 1982, by the National Black Media Coalition (NBMC); [2] (iii) an opposition thereto filed April 15, 1982, by the licensee; (iv) NBMC's reply filed June 21, 1982; (v) a letter dated June 10, 1983 from the Chief, EEO Branch, Enforcement Division, Mass Media Bureau to the licensee; and (vi) the licensee's response filed August 9, 1983. For the reasons which follow, we find an evidentiary hearing is needed to resolve substantial and material questions of fact concerning the candor [3] or gross lack of care [4] displayed by the licensee in the EEO progress reports submitted during the most recent license term. In addition, as a consequence of the foregoing, we find that a substantial and material question of fact exists with respect to the licensee's implementation of its EEO program.

2. By way of background, the stations were subject to EEO reporting conditions during the most recent license term (April 1, 1979 to April 1, 1982).[5] These conditions had been imposed to correct perceived deficiencies, namely: With a 32.3% Black available labor force the stations' 1978 EEO profile revealed an absence of Blacks on a full-time staff of eighteen, the EEO program suggested that Blacks were hired only for part-time work in low-level positions, and the program contained no proposals for increasing the stations' pool of minority job applicants for upper-level positions. Thus, throughout the most recent license term, the licensee was on notice that the stations' EEO performance would be carefully scrutinized and that it was obligated to keep accurate records to reflect reasonable, good faith efforts to attract minority job applicants for each position filled.

3. Initial review of the stations' two progress reports indicated that some steps had been taken to employ minorities in positions of responsibility. However, in responding to NBMC's challenge, the licensee conceded that minority employment at the stations was not as high as originally reported because a Black female listed as a professional was mistakenly included in the stations' profile. Further, and without any explanation whatever, the licensee provided information which showed that a greater number of hires had occurred than was reported in the stations' EEO program. Moreover, the events reported by the licensee in its opposition were not consistent with the information in the stations' 1980, 1981 and 1982 Annual Employment Reports. To develop a complete record, the licensee was asked to provide information about license term hires, recruitment efforts, terminations and promotions.[6] Essentially, the inquiry asked for the identical information that should have been provided in the progress reports pursuant to the Commission's Order.

4. Review of the licensee's response, filed August 9, 1983, discloses additional unexplained inconsistencies among the licensee's several submissions. Moreover, the licensee's latest response indicates that the number of hiring opportunities which the stations had was substantially greater than the number originally reported. Finally, although the new data suggests that the stations' minority hiring percentage is approximately equal to that originally reported, it shows that the nature of the jobs held by Blacks was not as significant as originally reported. Given that the licensee was specifically obligated to implement an aggressive EEO program and to report its efforts accurately, its apparent disregard leads up to conclude that an extension of reporting conditions is inappropriate. Indeed, as we shall explain in greater detail, we believe that the nature and extent of the licensee's apparent shortcomings mandate that its qualifications be explored in a hearing.[7]

I. Recruitment and Job Hires

5. The licensee's first progress report, filed September 11, 1980, reveals that the stations maintained contact with thirteen organizations or entities and with "Black individuals" in order to increase its pool of minority job applicants. The report further shows that as a consequence of these efforts, four persons, including two Blacks, were hired for full-time positions. The Black

[1] *Motor Vehicle Manufacturers Association of the United States v. EPA*, Nos. 81-2276 and 81-2279 (order dated April 3, 1984).

[1] In addition to the stations' renewal applications, we have before us the EEO progress reports filed by the stations on September 11, 1980 and December 1, 1981. These reports were required pursuant to a Commission "By Direction" letter dated October 18, 1979.

[2] Although NBMC styled its pleading a petition to deny, we have already determined that it is not a part in interest. *Renewals of Alabama and Georgia Broadcast Stations*, FCC 83-413, released September 19, 1983. Hence, NBMC's pleading is being considered as an informal objection.

[3] *See Metroplex Communications of Florida, Inc. [WHYI(FM)]*, FCC 84-71, released March 9, 1984.

[4] *Cf. Northern Television, Incorporated*, FCC 83-504, released November 1, 1983.

[5] *Supra* note 1. Because of the conditions the licensee was required to submit a list of all employees as of August 1, 1980 and November 1, 1981, ranked from the highest paid to the lowest paid; a list of persons hired from the date of the "By Direction" letter to August 1, 1980 and from August 1, 1980 to November 1, 1981; and details concerning the stations' efforts to recruit for each position filled during the reporting periods.

[6] The EEO program filed with the applications for renewal of license essentially constituted the second EEO progress report.

Although our review of the stations' performance is a direct consequence of NBMC's informal objection (Section 0.283(b)(1)(iii) of the Commission's Rules), we do not believe it appropriate to make NBMC a party to the hearing. In this regard, we note that NBMC refers only to the information submitted by the licensee in the stations' EEO program and that it failed to establish party in interest status as a petitioner. *See supra* note 2.

hires were for announcer positions. No hires for part-time work were reported.

6. In the licenesee's second progress report, filed with the stations' renewal applications' EEO program, recruitment contacts are shown with two local organizations (no referrals), three employment services (eight referrals), and Albany State College (no referrals), However, the report shows that none of the stations' six hires, all for full-time work, were minorities. Thus, during the period covered by the licensee's reports (October 10, 1979 to November 1, 1981), there were ten new hires, two of whom were Black and all of whom were for full-time work.

7 This hiring information was different from that reflected in the licensee's opposition to NBMC's informal objection and was inconsistent with data appearing inthe stations' license term employment profiles.[8] The licensee's opposition relates the hiring of fourteen (not ten) persons, including four who were hired for part-time work. One of the four part-time hires is a Black previously shown as having been hired for full-time work, and two of the persons previously listed as hires in the stations' progress reports are not named. Moreover, a comparison of this data with the stations' profiles reveals at least three additional hires, two white males hired in October 1979 to fill professional positions and a white male hired between August 1, 1980 and March 1981 to fill a technician position. Thus, the licensee's submissions reflect the hiring of at least nineteen persons during the period of the reports, not ten as originally reported, nor fourteen as named in the licensee's opposition pleading.

8. The licensee was advised of the noted discrepancies and was asked to submit a list of hires and terminations for the 1979–1982 license term.The stations' list of hires indicates that eighteen positions were filled during the period covered by the licensee's reports. However, a comparative analysis with the list of terminations indicates that five unreported white persons were hired during the same time. Further, although the licensee's new data reflects many more hires than reflected in its opposition pleading, the licensee insists that the pleading's description of its recruitment efforts is substantially complete and accurate.

9. In our view, the recruitment and hiring information ultimately reported by the licensee is substantially at odds with the information originally submitted. As noted, the stations now appear to have hired twenty-three persons during the period of the reports, not ten. Further, the licensee has offered no explanation as to why its original reports did not list all of the persons hired. Given these circumstances, we find that a hearing is necessary to determine the extent of the licensee's hiring and the reasons for its apparently inaccurate progress reports.

II. Employment Profiles

10. As originally submitted, the stations' employment profiles appear as follows:

	Overall			Top four jobs		
	Total	Blacks	Hispanics	Total	Blacks	Hispanics
1982	25	1 (4.0 percent)	1 (4.0 percent)	20	0	1 (5.0 percent)
Ren. App.	23	3 (13.0 percent)	0	19	2 (10.5 percent)	0
1981	24	1 (4.2 percent)	1	18	0	0
Aug. 1980	22	3 (13.6 percent)	0	18	1 (5.6 percent)	0
1980	22	2 (9.1 percent)	0	18	0	0

32.3 percent available Black labor force.

As the data reflect, the highest percentages for Black employment coincide with the dates used for the stations' two progress reports.

11. In its opposition to NBMC's informal objection, the licensee admits that a Black female appearing in its renewal applications' profile was listed by mistake. Moreover, after it was brought to the licensee's attention that its lists of hires did not include any Hispanics, the licensee submitted a revised license renewal application profile. According to the licensee's latest data, the stations' renewal profile is as follows:

	Overall		Top four jobs	
	Total	Blacks	Total	Blacks
Ren. App.	25	2 (8.0 percent)	21	1 (4.8 percent)

Thus, the revised renewal application profile not ony shows one less Black but also two more full-time employees.[9]

12. In addition to its apparently erroneous listing of an employee as a Hispanic, we note that the licensee claims that its renewal application listing of a black female in a professional position was an inadvertent error. Given the size of the stations' workforce, the near absence of Blacks from that workforce, the fact that the employee in question had left the stations' staff in September 1980 (more than one year earlier), and considering the critical difference here inclusion makes in the initial statistical analysis of the stations' EEO program and performance, we find this explanation inadequate. Accordingly, in light of the foregoing, we believe it necessary to explore the truthfulness of the licensee's representations.

III. EEO Implementation

13. With regard to the implementation and effectiveness of the stations' EEO program, we note that the Albany, Georgia SMSA (now MSA) labor force includes 33.0 percent minorities (32.3 percent) Blacks. The stations' license term profiles, as gleaned from the stations' Annual Employment Reports and September 11, 1980 and December 1, 1981 employment reports as corrected, reveal the following.

	Overall		Top four jobs	
	Total	Minorities	Total	Minorities
April 1982	25	2 (3.0 percent)	20	1 (5.0 percent)
November 1981	25	2 (3.0 percent)	21	1 (4.8 percent)
1981	24	2 (3.3 percent)	18	0
August 1980	22	3 (13.6 percent)	18	1 (5.6 percent)
1980	22	2 (9.1 percent)	18	0
50 percent and 50 percent of	SMSA parity	16.5		16.5

None of these figures are within our processing guidelines.[10] During the license term (April 1, 1979 to April 1, 1982), the stations' most recent lists of job hires and terminations show that at least thirty-one persons were hired, including six (19.4%) Blacks, and that twenty-six persons were hired for

[8] The profiles are derived from the stations' Annual Employment Reports and the two lists of employees submitted with the stations' progress reports.

[9] The revised list also includes four part-time employees; the original list shows no part-time employees.

[10] Labor force figures for Albany were obtained from the Georgia Department of Labor's "Labor Resource Information for Affirmative Action Programs (1981)."

positions in the upper-four job categories, including five (19.2%) Blacks, all for professional positions. However, with respect to full-time positions, only two of seventeen (11.8%) jobs overall were filled by Blacks and only one of thirteen (7.7%) full-time upper-level jobs was filled by a Black. Further, the issues raised by the inaccuracies in the licensee's renewal applications hearing should also include an examination of the station's compliance with our EEO rule, and we shall therefore specify an EEO issue.

14. Accordingly, it is ordered, that the petition to deny filed by the National Black Media Coalition IS DISMISSED and when considered as an informal objection is granted to the extent indicated herein and is denied in all other respects.

15. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the license renewal applications for Stations WALG and WKAK(FM) are designated for hearing at a time and place to be specified in a subsequent Order upon the following issues:

(1) To determine whether the licensee of Stations WALG and WKAK(FM) made misrepresentations of fact or was lacking in candor or violated §1.65 or 73.3514 of the Commission's Rules with regard to the stations, 1982 renewal applications' EEO program and documents submitted in support thereof;

(2) To determine whether the licensee of Stations WALG and WKAK(FM) violated §73.2080 of the Commission's Rules with regard to its employment of Blacks;

(3) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal applications would serve the public interest, convenience, and necessity.

16. It is further ordered, that if it is determined that the hearing record does not warrant an Order denying the captioned applications, it shall also be determined whether the applicant has willfully or repeatedly violated §§1.65 (keeping a pending application accurate), 73.2080 (EEO), and 73.3514 (filing accurate information in an application) of the Commission's Rules.

17 It is further ordered, that this document constitutes a Notice of Apparent Liability for Forfeiture for violation of §§ 1.65, 73.2080, and 73.3514 of the Commission's Rules. In so doing, we have determined that in every case designated for hearing involving revocation or denial of assignment, transfer or renewal of license for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, we now will, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

18. It is further ordered, that in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence upon issues (1) and (2) and the burden of proof with respect to all issues shall be upon the applicant, Albany Radio, Inc.

19. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein, pursuant to §1.221 of the Commission's Rules, in person or by attorney, shall file with the Commission, within twenty (20) days of the mailing of this Order, a written appearance in triplicate, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

20. It is further ordered, that Albany Radio, Inc. shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in that rule, and shall advise the Commission of the publication of such notice as required by §73.3594(g) of the Rules.

21. It is further ordered, that the licensee may transfer freely its other broadcast station licenses, unless and until it is otherwise directed.

22. It is further ordered, that the Secretary send by Certified Mail—Return Receipt Requested—one copy of this Order to the applicant and to the National Black Media Coalition.

Federal Communications Commission.

Willian J. Tricarico,

Secretary.

[FR Doc. 84-18146 Filed 7-9-84; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group Separations and Costing Subcommittee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group Separations and Costing Subcommittee scheduled to meet on Tuesday, July 17 1984 and Wednesday, July 18, 1984. The meeting will be held at the office of USTA, 1801 K Street, NW., Washington, D.C., 12th Floor, Conference Room 1201 and will be open to the public. The meeting time for the first day of the meeting is 10:00 a.m.

The agenda is as follows:

I. Review Minutes of Previous Meeting
II. General Administrative Matters
III. Enhancements
IV Other Business
V Presentation of Oral Statements
VI. Adjournment

With prior approval of Eric Leighton, Chairman, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of the Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Leighton, (518) 462-2030, at least five days prior to the meeting.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-18147 Filed 7-9-84; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 81-893; FCC 84-239]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)

AGENCY: Federal Communications Commission.

ACTION: Order delaying effective date.

SUMMARY: The Order delays the effective date for the application of requirements established by the Commission regarding the provision of customer premises equipment (CPE) to certain CPE used in association with national security and emergency preparedness (NSEP) communications systems. The Order is necessary because (1) the Commission has not completed the development of permanent rules which will govern the manner in which CPE may be provided by carriers to federal agencies for use in NSEP communications systems; and (2) waivers of the Commission's generally applicable rules governing the provision of CPE must remain in effect for an interim period, during which permanent rules specifically governing NSEP communications systems will be established, in order to prevent any potential disruption of the provision of CPE for these systems. The intended effect of the Order is to provide the Commission with sufficient time to complete the development of permanent rules regarding CPE used in NSEP

communications systems and to ensure that there are no service disruptions with regard to these systems during the interim period before establishment of permanent rules.

EFFECTIVE DATE: The effective date of the Order is May 25, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John Cimko, Jr. (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Order

In the matter of procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry); CC Docket No. 81-893.

Adopted: May 24, 1984.

Released: June 12, 1984.

By the Commission.

1. The principal purpose of this Order is to modify an effective date we established in another proceeding in this docket [1] for the application of *Second Computer Inquiry* [2] rules [3] to customer premises equipment (CPE) used in association with certain national security and emergency preparedness (NSEP) communications systems and circuits.

2. In the *CPE Detariffing Order* we provided that all embedded CPE furnished by the American Telephone and Telegraph Company (AT&T) for use in association with NSEP communications systems would have to be provided in accordance with the Computer II Rules. This ruling specifically applied to NSEP systems and circuits identified by Federal Executive Agencies (FEA) as especially critical to the government's NSEP communications needs.[4] FEA had requested that these systems and circuits remain under tariff and not be transferred to AT&T Information Systems (AT&T-IS) at the time of the divestiture of the Bell System along with other CPE required to be transferred by the *CPE Detariffing Order*. We provided, however, that the effective date of these requirements would be delayed to June 1, 1984, "thus affording interested parties an opportunity to petition the Commission for a waiver of the application of the requirements * * * to the special systems and circuits identified by FEA in its pleadings." *CPE Detariffing Order* at para. 172 (footnote omitted). We also indicated that NSEP-related embedded CPE received by AT&T from the Bell Operating Companies on January 1, 1984, pursuant to the divestiture should "be placed in regulated service by AT&T and tariffed at the federal level." *Id.* at para. 172 n. 148.

3. In mid-December of last year AT&T submitted a waiver request seeking permission to transfer all embedded CPE associated with the designated NSEP systems to AT&T-IS on January 1.[5] The Common Carrier Bureau granted this waiver request [6] but also made clear that its action was of an interim nature and that it intended to recommend that we issue a notice of proposed rulemaking to propose permanent mechanisms for accommodating the NSEP communications needs of federal agencies.[7] We since have adopted such a notice. [8] The effect of the *Bureau Waiver Order* was to permit all embedded CPE relating to the systems identified by FEA, and all embedded CPE associated with emergency communications systems, to be detariffed and transferred to AT&T-IS as of January 1, 1984. Under the Bureau action, title to new and embedded CPE covered by the waiver could reside in AT&T-IS, AT&T Communications (AT&T-C), or the federal agency involved, and AT&T-C retains end-to-end responsiblity for maintenance of the CPE.

4. The current situation, then, is that waivers permitting AT&T-C to supply new and embedded CPE for the special NSEP systems designated by FEA remain in effect; that these waivers are due to expire as of June 1, 1984, on which date the Computer II Rules will apply to any further provision of this CPE pursuant to our decision in the *CPE Detariffing Order*; and that we have just begun a further rulemaking in this docket to effect permanent arrangements for the provision of this equipment. It is evident, in these circumstances, that the June 1 deadline must be modified to give parties sufficient time to comment on our proposed rulemaking and to permit us to take action in that rulemaking proceeding.

5. We have concluded that the best means for minimizing disruptions in the servicing of these critical NSEP systems pending our taking such action is to continue further the *status quo* during this interim period. We therefore shall extend the effective date of the requirements established in the *CPE Detariffing Order* from June 1 to January 1, 1985. Also, we shall extend the termination date of the waivers established in the *Bureau Waiver Order* to December 31, 1984. Both of these dates are subject to further order in this docket. These extensions will preserve the *status quo* until we have completed further proceedings in this docket. We anticipate, however, that we shall be able to complete our final action with regard to the proposed rulemaking well before the end of this year. We note that this extension applies only to the critical NSEP systems identified by FEA, as well as the provision of CPE in emergency situations.[9]

6. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), and 416(b), of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), and 416(b), the effective date established in paragraph 224 of the *CPE Detariffing Order* is modified to provide that the requirements of Part XI.B. of such *Order*, relating to CPE associated with NSEP communications systems, shall take effect on January 1, 1985.

7. It is further ordered, that the termination date established in paragraph 21 of the *Bureau Waiver Order* is modified to provide that the waivers established in such *Order* shall remain in effect until December 31, 1984.

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[1] The effective date involved was established in CC Docket No. 81-893, Report and Order, FCC 83-551, 48 FR 57168 (released Dec. 15, 1983), *reconsideration petitions pending*, Public Notice No. 1445, 49 FR 5672 (Released Feb. 6, 1984) (hereinafter CPE Detariffing Order).

[2] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *Aff'd sub nom. Computer & Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom. Louisiana Pub. Serv. Comm'n v. FCC*, 103 S. Ct. 2109 (1983).

[3] Section 64.702 of the Commission's Rules and Regulations, 47 CFR 64.702 (hereinafter Computer II Rules).

[4] For a listing of these systems and circuits, see CPE Detariffing Order at para. 171 n. 146.

[5] AT&T Petition, NF 83-13 (filed Dec. 14, 1983).

[6] CC Docket No. 81-893, Order, Mimeo No. 1705 (released Jan. 10, 1984) (hereinafter Bureau Waiver Order). The following waivers resulted from the action taken in the Bureau Waiver Order: (1) Embedded CPE associated with the systems and circuits designated by FEA was permitted to be transferred to AT&T-IS as of January 1, 1984. (2) AT&T Communications (AT&T-C) was permitted to be responsible for maintenance of this embedded CPE as part of its end-to-end service responsibilities. (3) AT&T-C was given authority to obtain and service new CPE for use in connection with the designated systems and circuits. (4) AT&T-C was authorized to continue serving as a single point of contact for the provision of emergency communications service, including the provision of associated CPE. These waivers were scheduled to expire on May 31, 1984. *See* Bureau Waiver Order at para. 21.

[7] *See id.* at para. 1 n.4.

[8] CC Docket No. 81-893, Second Further Notice of Proposed Rulemaking, FCC 84-238 (adopted May 24, 1984).

[9] For a description of the covered emergency situations, see ENF 83-13, Memorandum Opinion and Order, FCC 83-143 (released Apr. 12, 1983) at para. 16.

8. It is further ordered, that the provisions of this Order shall take effect on the date following the date of the adopting of this Order. Because this Order is procedural in nature and grants an exemption from the date requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(d), 553(d)(1). Further, since the actions taken in this Order are procedural in nature, the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b)(A). In addition, since these actions merely stay the effective date of certain requirements under the Computer II Rules for a temporary period and are unlikely to engender any controversy, we find good cause for the conclusion that affording prior notice and opportunity for comment is not necessary. *See* 5 U.S.C. 553(b)(B).

9. It is further ordered, that the Secretary of the Commission shall cause a copy of this Order to be published in the Federal Register.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-18145 Filed 7-9-84; 8:45 am]

BILLING CODE 6712-01-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, D.C. 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, D.C. 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. 202-002846-055.

Title: West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference.

Parties: Atlantrafik Express Service, Constellation Line, Costa Line, Egyptian National Line, Farrell Lines, Inc., Hellenic Lines, Ltd., Italian Line, Jugolinija, Nedlloyd, Sea-Land Service, Inc., Zim Israel Navigation Co., Ltd.

Synopsis: Authorizes parties to agree on the establishment of charges and other tariff matters relating to the movement, handling and storage of empty containers and other intermodal equipment.

Agreement No. 212-009847-010.

Title: U.S. Atlantic Coast—Brazil Pooling Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar S/A, United States Lines (S.A.) Inc.

Synopsis: The proposed amendment restates the agreement, extends its terms indefinitely and makes certain technical, non-substantive changes.

Agreement No. 212-010027-013.

Title: Brazil—U.S. Atlantic Coast Pooling Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar S/A, United States Lines (S.A.) Inc., A/S Ivarans Rederi, Empresa Lineas Maritimas Argentinas S.A., A. Bottachi S.A. de Navegacion, C.F.I.I., Van Nievlet Goudriaan & Company BV Cylanco S.A.

Synopsis: The proposed amendment restates the agreement, extends its term indefinitely and makes certain technical, non-substantive changes.

Agreement No. 212-010386-005.

Title: Argentina—U.S. Atlantic Coast Pooling Agreement.

Parties: Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., United States Lines (S.A.) Inc., Companhia de Navegacao Lloyd Brasileiro, A/S Ivarans Rederi, Van Nievelt, Goudriaan and Co., Cylanco S.A., Reefer Express Lines Pty., Ltd.

Synopsis: The proposed amendment extends the agreement indefinitely; amends the provisions relating to the notification of government authorities of agreement changes; amends those provisions dealing with the functions of the "Pool Committee" and restates the agreement. A/S Ivarans Rederi did not execute the amendment.

Agreement No. 212-010388-003.

Title: U.S. Atlantic Coast—Argentina Pooling Agreement.

Parties: United States Lines (S.A.) Empresa Lineas Maritimas Argentinas S.A. A. Bottacchi S.A. De Navegacion, C.F.I.I.

Synoposis: The proposed amendment extends the term the agreement indefinitely, restates it and makes certain technical, non-substantive changes.

Agreement No. 224-010608.

Title: Jacksonville Marine Terminal Agreement.

Parties: Jacksonville Port Authority (Authority) Jaxport Refrigerated Warehouse, Ltd. (Jaxport).

Synopsis: Agreement No. T-4183 provides that the Authority will lease to Jaxport 40,000 sq. ft. in Warehouse No. 1 at Talleyrand Docks and Terminals, Jacksonville, Florida. The premises will be used for storing transient imported/exported reefer cargoes. Jaxport will become a participating terminal operator at the Port Terminals of the Authority. All wharfage and dockage charges shall be for the account of the Authority. The term of the agreement will be for 6 years commencing on the first day of the sixth month after the month the agreement becomes effective. There will be two 6-year option periods and one succeeding 2-year period.

By Order of the Federal Maritime Commission.

Dated: July 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-18183 Filed 7-9-84; 8:45 am]

BILLING CODE 6730-01-M

Agreement Filed; Erratum

Agreement No. 202-007680-049.

Title: American West African Freight Conference.

Parties: America-Africa Line, Barber West Africa Line, Cameroons Shipping Line, Companhia Nacional de Navegacao, Delta Steamship Lines, Inc., Farrell Lines, Inc., MedAfrica Line, Nigeria America Line, Ltd., Societe Ivoirienne de Transport Maritime, Torm West Africa Line, Westwind Africa Line.

Synopsis: Previously reported as reducing the independent action notice period from fourteen to ten days, the notice is corrected to state that the proposed amendment reduces the member notice required for the publication of conference tariff changes from fourteen to ten days and the minimum period for the effectiveness of such changes from twenty-one to ten days.

By Order of the Federal Maritime Commission.

Dated: July 5, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-18182 Filed 7-9-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

National Commerce Bancorporation, et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) 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 (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1984.

A. Federal Reserve Bank of St. Louis (Delmar P Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *National Commerce Bancorporation*, Memphis, Tennessee; to engage through its subsidiary Commerce Capital Management, Inc., Memphis, Tennessee in providing investment or financial advice.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alaska Mutual Bancorporation*, Anchorage, Alaska; to engage through its subsidiary AMB Leasing, Inc., Anchorage, Alaska in engaging *de novo* in leasing activities. These activities would be conducted in the states of Alaska, Arizona, California, Nevada, Oregan and Washington.

Board of Governors of the Federal Reserve System, July 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16150 Filed 7-9-84; 8:45 am]

BILLING CODE 6210-01-M

Stewart County Bancorp, 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 (49 FR 794) 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 August 2, 1984.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Stewart County Bancorp, Inc.*, Dover, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Dover-Peoples Bank & Trust Company, Dover, Tennessee.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Town Financial Corporation*, Hartford City, Indiana; to acquire 12.6 percent of the voting shares of The Bank of Montpelier, Montpelier, Indiana.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Midland Bank, PLC*, London, England; to retain the newly acquired 20,125 shares of common stock of European American Bancorp, New York, New York, thereby indirectly retaining European American Bank and Trust Company, New York, New York.

Board of Governors of the Federal Reserve System, July 3, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-16151 Filed 7-9-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0217]

Availability of Presurgical Chest X-Ray Referral Criteria Draft Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft report, "Presurgical Chest X-Ray Referral Criteria Panel Draft Report." The report, developed by a panel of physicians, discusses the utility of routine presurgical chest x-ray screening examinations.

DATE: Comments by October 9, 1984.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857; a copy of the draft report is available for public review at the Dockets Management Branch. Requests for single copies of the draft report should be made in writing to the Center for Devices and Radiological Health (HFZ-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jay A. Rachlin, Center for Devices and Radiological Health (HFZ-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health (CDRH), FDA conducts and supports research and training to minimize unproductive radiation

exposure from diagnostic radiological examinations (including nuclear medicine procedures). One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To reduce the use of ineffective examinations, referring physicians need up-to-date information as to when a given radiological study is likely to provide needed diagnostic data. This information, which can take the form of decision guides based on patient signs, symptoms, or history, is termed here "referral criteria."

To assist in making this type of information available, FDA has established a program to facilitate the development, testing, and use of referral criteria for diagnostic radiological procedures. The agency believes that such information about the utility of radiological procedures can assist physicians in using limited health care and diagnostic radiological resources more effectively and also will help minimize unnecessary radiation exposure to the population.

In its role as a facilitator, FDA has provided logistical support to panels of physicians to review the effectiveness of routine chest x-ray screening examinations and to develop referral criteria to help minimize unproductive chest x-ray examinations.

In September 1983, FDA published five referral criteria statements developed by the Chest X-Ray Referral Criteria Panel (see the Federal Register of April 5, 1984; 49 FR 13588). These five statements addressed mandated routine chest x-ray examinations, prenatal chest x-ray examinations, hospital admission chest x-ray examinations, chest x-ray examinations for tuberculosis detection and control, and routine examinations for occupational medicine (Ref. 1). That panel, however, believed that it lacked the necessary professional expertise to make recommendations on the effectiveness of presurgical chest x-ray examinations and recommended that a presurgical chest x-ray panel be formed. In response to this recommendation, FDA provided support for the convening of the Presurgical Chest X-Ray Panel, whose first meeting took place on October 25–26, 1983. The panel included representatives of the American College of Surgeons, the American Society of Anesthesiologists, the American College of Radiology, the American Society of Internal Medicine, and the American Academy of Pediatrics. This panel has reviewed the medical literature and developed a draft statement on the utility of presurgical chest x-ray screening, citing the lack of clinically significant yield from preoperative chest radiography. The panel has submitted its draft report to 12 professional organizations for review and comment. The review by professional organizations is being coordinated through the American College of Radiology. (See the Federal Register of June 9, 1981 (46 FR 30568) for a full discussion of the development of referral criteria and the process adopted for review of such criteria.)

The agency invites and encourages interested members of the public to submit additional data and comment on the draft report. The report is entitled, "Presurgical Chest X-Ray Referral Criteria Panel Draft Report." Single copies are available from CDRH at the address set forth for that purpose in the summary at the beginning of this document.

Interested persons may, on or before October 9, 1984, submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857 Two copies of any comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. FDA will refer all comments to the Presurgical Chest X-Ray Panel for consideration in developing a final report. The draft report and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

"The Selection of Patients for X-Ray Examinations: Chest X-Ray Screening Examination." U.S. Department of Health and Human Services, 1983. U.S. Government Printing Office, Washington, DC, GPO No. 017–105–00210–1, $4.50.

Dated: July 2, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–18125 Filed 7–9–84; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (FR, Vol. 48, No. 198, pp. 46434–46448, dated Wednesday, October 12, 1983) is amended to reflect the organizational changes described below:

• Office of the Associate Administrator for Operations.

—Abolish the Executive Operations Staff in the Bureau of Quality Control in its entirety.

• Office of the Associate Administrator for Policy.

—Abolish the functional statement for the Office of the Executive Officer, Bureau of Eligibility, Reimbursement and Coverage and establish a new updated functional statement and organizational title.

The Specific Changes to Part F Are Detailed Below

• Section FP.20. The Office of the Associate Administrator for Operations (FP) (Functions) is amended by the following action:

—Delete the functional statement for Section FP.20.B.1., Executive Operations Staff (FPC–1) in its entirety.

• Section FQ.20. The Office of the Associate Administrator for Policy (FQ) (Functions) is amended by the following action:

—Delete the functional statement for Section FQ.20.A.2., The Office of the Executive Officer (FQA8) and replace it with the following functional statement.

2. Office of Program Support (FQA–4)

Directs the internal assignment, tracking, and coordination of all work assigned to or generated within the Bureau with the exception of Federal regulations. Evaluates the impact of Bureau policy development and issuance processes on regional operations and determines whether policies and instructions are being adequately and consistently carried out by the regional offices. Directs the components which answers all Medicare and Medicaid public inquiries addressed to or referred to the Bureau. Directs all Bureau work planning activities, as well as Freedom of Information operations, and the processing of State Medicaid waiver requests. Serves as principal advisor to the Director as well as the executive staff of the Bureau of Eligibility, Reimbursement and Coverage on the full range of management and related administrative issues. Responsible for handling highly sensitive and complex assignments requiring the Director's and Deputy Director's personal attention often involving inter-Bureau and office coordination and direction.

Dated: March 24, 1984.

Carolyne K. Davis, Ph.D.,

Administrator, Health Care Financing Administration.

[FR Doc. 84-18132 Filed 7-9-84; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

[Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (FR, Vol. 48, No. 198, pp. 46443-46444, dated Wednesday, October 12, 1983), is amended to reflect the organizational changes in the Office of the Associate Administrator for Operations, Bureau of Quality Control, Office of Operational Reviews. The specific change is described below:

—Abolish the Division of Issue Analysis in the Office of Operational Reviews and streamline the functions of the two remaining divisions,

The Specific Changes to Part F. Are Detailed Below

—Section FP.20. The Office of the Associate Administrator for Operations (FP) (Functions) is amended by the following actions:

1. Delete the functional statement for Section FP.20.B.4.a., Division of Issue Analysis (FPC61) in its entirety.

2. Delete the functional statement for Section FP.20.B.4.b., Division of Program Effectiveness Reviews (FPC62) and replace it with the following functional statement.

a. Division of Program Effectiveness Reviews (FPC62)

Undertakes in-depth assessment of selected programmatic areas to determine whether established policy and operational criteria are effectively met to thoroughly evaluate the appropriateness and cost effectiveness of selected HCFA-wide operational procedures and systems and to supplement available data with additional documentation and understanding of priority problems. Coordinates with policymaking officials in designing reviews, developing protocols, and conducting reviews. Conducts and/or directs regional office participation in reviews. Recommend specific policy or operational modifications directed to parties responsible for effectuating change. Consults with HCFA policy and operational components and prepares specific recommendations for regulatory and legislative initiatives to enhance cost-effective program management. Develops and conducts studies to evaluate the potential impact resulting from implementation of proposed law, regulation, and/or policy and determines the need for improved policy or operational controls to assure fiscal accountability and effective program management. Conducts special surveys in critical areas by identifying problems and barriers to problem resolution and developing and recommending alternative solutions. Develops, conducts, and/or directs regional office participation in surveys or pilot reviews of selected areas to determine the potential benefit of conducting comprehensive analyses of selected program problem areas. Determines data analysis needs and develops specifications for use in conduct of pilot studies and national effectiveness reviews. Recommends program-wide policies, regulations, procedures, guidelines, and studies dealing with program effectiveness, oversight, and improvement.

3. Delete the functional statement for Section FP.20.B.4.c., Division of Performance Analysis (FPB63) and replace it with the following functional statement.

b. Division of Performance Analysis (FPC63)

Develops, implements, and conducts a program for comprehensive performance evaluation of Medicare contractors, Medicaid State agencies, and fiscal agents. Develops, implements, and maintain the Contractor Performance Evaluation Program (CPEP) and the State Assessment Program for the evaluation of Medicare contractors, State agencies, and fiscal agents against established performance standards. Provides technical direction and guidance to regional offices in their overall evaluation of the performance of contractors, State agencies, and fiscal agents. Analyzes CPEP and State assessment results, in conjunction with relevant operational and cost data, to determine the operational effectiveness of individual contractors, State agencies, or fiscal agents. Prepares composite evaluation reports and comparative rankings of individual contractor and State agency performance. Performs ongoing analyses of performance data to identify and to focus existing or potential performance issues in individual contractors or States at regional or national levels. Provides analyses results to the Bureau Director and Regional Administrators for their use in planning and prioritizing regional review activities. Coordinates the review of regional office evaluations of contractor and State agency conformance with central office policies and procedures. Identifies significant operational problems and/or issues of national concern with respect to contractors and State agencies and makes recommendations for corrective action to appropriate Office of the Associate Administrator for Operations components. Identifies pervasive problems and surfaces areas needing further evaluation by other bureau components.

Dated: May 18, 1984.

Carolyne K. Davis, Ph.D.,

Administrator, Health Care Financing Administration.

[FR Doc. 84-18133 Filed 7-9-84; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (FR, Vol. 46, No. 223, pp. 56911-56934, dated Thursday, November 19, 1981, FR, Vol. 48, No. 3, pp. 512-518, dated Wednesday, January 5, 1983, and FR, Vol. 48, No. 198, pp. 46434-46448, dated Wednesday, October 12, 1983) is amended to reflect the Administrator of HCFA's approval of the following:

• Amending the functional statements of the Office of Health Program Systems and one of the subordinate divisions, the Division of Operations, to reflect the transfer of the correspondence functions from the Social Security Administration to HCFA.

The Specific Changes to the HCFA Functional Statements Are as Follows

1. Section FH.20.B.5. Office of Health Program System (FHB5) is deleted in its entirety and replaced by the new functional statement as follows:

5. Office of Health Program System (FHB5)

Designs, develops, implements and maintains ADP systems/software, data files/formats, and manual processes required to support the Agency's programmatic mission(s). Establishes and maintains a national file of eligible Medicare beneficiaries. Establishes and maintains a history of Medicare benefit utilization. Integrates entitlement information from other programs (e.g. Medicaid, Veterans Administration). Receives and responds to queries regarding beneficiary entitlement,

benefit and deductible status from a nationwide array of Medicare fiscal agents. Provides program data or information to other authorized requestors. Maintains systems that support certification of providers of service in the Medicare/Medicaid programs. Determines fiscal accountability for group health organizations. Provides a clerical data handling capability to support the agency's programmatic mission(s). Analyzes, corrects and reenters data rejected from the ADP systems. Receives and processes Medicare premium remittances and correspondence from third party payors and beneficiaries. Maintains and provides information from a variety of microfilm files. Provides a hard copy data entry service to HCFA components. Consults with central and regional office components and other Government agencies to define programmatic ADP system performance requirements. Negotiate compromises and reviews/approves systems designs. Consults with bureau components to define ADP/TP resource requirements and provides input to budget planning and procurement processes. Insures awareness of and compliance with government-wide and local security and privacy requirements within the Office.

2. Section FH.20.B.5.b. Division of Operations (FHB52) is deleted in its entirety and replaced by the new functional statement as follows:

b. Division of Operations (FHB52)

Provides a clerical data entry and data handling capability for the Office of Health Program Systems to control and process a variety of bill, query, enrollment and premium billing correspondence and transactions. Receives and resolves data errors from the ADP processes and prepares corrective data for reentry into the automated systems. Maintains microfilm files for search and microprint services. Provides technical services to the Office programing personnel. Releases Office prepared computer programs and procedures. Provides an office focus and liaison for budget and ADP planning activities as well as matters relating to systems security, resource accounting, systems documentation and responding to requests for data from offsite components, and provides an operations analysis capability within the Office.

Dated: April 18, 1984.

Carolyne K. Davis, Ph.D.,
Administrator.

[FR Doc. 84-18134 Filed 7-9-84; 8:45 am]
BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) FR, Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981, FR, Vol. 48, No. 3, pp. 512–518, dated Wednesday, January 5, 1983, FR, 48, No. 198, pp. 46434–46448, dated Wednesday, October 12, 1983) is amended to reflect the Administrator of HCFA's approval of the following:

- Establishing a new division, the Division of Provider Audit, in the Office of Financial Operations, Bureau of Program Operations.
- Amending the functional statements of the Office of Financial Operations and two of the offices' subordinate divisions, the Division of Contractor Financial Management and the Division of the Provider Overpayment, to reflect the transfer of contractor audit functions from these divisions to the new Division of Provider Audit.

The Specific Changes to the HCFA Functional Statements Are as Follows

1. Section FP.A.4. Office of Financial Operation (FPA7) is amended by adding the following four sentences to the end of the section.

The new sentences will start after the last two words of the section, "Medicaid programs" The four new sentences are, "Establishes procedures and guidelines to target the audit activities of Medicare contractors. Directs the resolution of the Office of Direct Reimbursement, cost reimbursement and appeals activities. Assures that audit funds are utilized to provide a high rate of return in program savings. Directs special audit projects."

2. Section FP.A.4.a. Division of Contractor Financial Management (FPA71) is amended by deleting the last two sentences of the section. The two sentences to be deleted are, "Interprets cost reimbursement principles and policies for contractors related to operational accounting issues. Determines compliance with accepted accounting principles and procedures."

3. Section FP.A.4.c. Division of Provider Overpayment (FPA73) is amended by deleting the first sentence in the section and replacing that sentence with a new sentence. The new sentence is, "Analyzes capabilities of the Medicare and Medicaid intermediaries, carriers, fiscal agents, and State agencies to ascertain the most efficient and effective methodologies for prevention and collection of overpayments."

4. Section FP.A.4. Office of Financial Operations (FPA7) is amended by adding a new subsection. The new section will immediately follow the last sentence of section FP.A.4.e., Division of Group Health Plans Operations (FPA75) and will become section FP.A.4.f. The new organizational title, administrative code, and functional statement are as follows:

f. Division of Provider Audits (FPA76)

Establishes audit protocol, priorities, and procedures for all intermediaries to follow in utilizing their audit resources. Formulates specific audit guidelines for intermediaries. Prepares fiscal intermediaries audit budget and return ratio requirements for provider audits to assure maximum return on expenditures. Analyzes health industry trends and develops audit profiles to address changing reimbursement issues. Determines the effects of the Prospective Payment System on applicable providers and the effects of the Tax Equity and Fiscal Responsibility Act on providers not affected by prospective payment. Establishes a strategy for future planning of audit activities. Plans, monitors, and reports on special audit projects (e.g., end stage renal disease, waiver State audits, skilled nursing facility prospective payment). Directs the resolution of the Office of Direct Reimbursement provider appeals. Directs the Blue Cross and Blue Shield Association in their home office audit activities. Analyzes reimbursement and financial audit reports prepared by components both within and outside HCFA. Provides direction and maintains liaison with the Bureau of Quality Control and the Bureau of Eligibility, Reimbursement and Coverage on proposed provider reimbursement policy revisions, regulations, legislation and other program improvements.

Dated: April 3, 1984.

Carolyne K. Davis, Ph.D.,
Administrator, Health Care Financing Administration.

[FR Doc. 84-18135 Filed 7-9-84; 8:45 am]
BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), FR, Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981, and FR, Vol. 48, No.

198, pp. 46434–46448, dated Wednesday, October 12, 1983) is amended to reflect the organizational changes described below:

• Abolish the Division of Program Review (DPR) in the Office of Financial Management Services (OFMS), Office of Management and Budget (OMB), Office of the Associate Administrator for Management and Support Services (OAAMSS). The functions formerly assigned to DPR are transferred to the Division of Budget, also in OFMS. The functional statement for the Division of Budget is amended to reflect the transfer.

• Abolish the Management Staff in the Bureau of Support Services (BSS), OAAMSS. A new branch-level staff, the Systems Resources and Coordination Staff, will be established to replace this component.

• Amend the functional statement for the Office of Computer Operations (OCO), BSS to reflect changes in functional assignments and to better describe the current activities of OCO. In addition, the 3 division/11 branch substructure of OCO is being streamlined to 3 divisions and no branches.

• Amend the functional statement for the Executive Office in the Bureau of Program Operations (BPO), Office of the Associate Administrator for Operations (OAAO), to include the program compliance and child health and prevention activities. The functional statements of the Office of Program Administration, BPO, and its Division of Contracts and Division of Operational initiatives; the Division of Systems Planning and Development in the Office of Program Operations Procedures, BPO; and the Office of Financial Operations, BPO, are also amended to reflect the transfer of functions to the Executive Office.

• Abolish the Division of Technical Policy and Litigation in the Office of Eligibility Policy (OEP), Bureau of Eligibility, Reimbursement and Coverage (BERC), Office of the Associate Administrator for Policy (OAAP). The technical policy functions are being reassigned within OEP The litigation activities have been assumed by the Office of the General Counsel.

• Amend the functional statements for the Office of Demonstrations and Evaluations (ODE) in the Office of Research and Demonstrations (ORD), OAAP, and its subordinate divisions to more accurately reflect the current responsibilities of those components.

• Abolish the Division of Economic Analysis in the Office of Research (OR), ORD, and transfer the functions to the Division of Reimbursement Studies (DRS), also in OR. The functional statement and organization title of the DRS are amended to reflect the additional functions. The new title is the Division of Reimbursement and Economic Studies. Amend the functional statement for the Division of Beneficiary Studies, OR, to reflect its current functional responsibilities. Establish a new Division of Program Studies, OR, in order to consolidate the Medicare/Medicaid statistical activities related to experiments and demonstration projects in one division-level component.

The Specific Amendments to the HCFA Functional Statements Are as Follows

• Section FH.20.A.1.a Division of Budget (FHA11) Is Amended To Read

a. Division of Budget (FHA11)

Consolidates, prepares, and executes HCFA's budget and operates HCFA's budget system. Serves as the central information point for all budgetary matters including interagency agreements impacting HCFA funding and transfer of funds to and from other agencies. Reviews proposed and existing legislation and coordinates the development of materials detailing budgetary impact for consistency with HCFA fiscal budgets and plans. Provides advice on reporting of program and financial data necessary for presentation and defense of budget requests. Provides advice, guidance and assistance to HCFA components in the development of budget justification material and analysis, including mission budgeting, current services budgeting and other budgetary principles required by the Office of the Secretary, HHS; the Office of Management and Budget (Executive Office of the President), and the Congress. Provides technical direction to HCFA regional components on all budgetary matters. Develops budget control systems necessary to ensure that appropriate measures are in place to prevent violations of the Anti-Deficiency Act. Maintains and monitors an allotment and allowance system sufficient to pinpoint responsibility and accountability for Federal funds. Provides staff expertise in the review and analysis of budgetary, operational, legislative, or regulatory proposals by HCFA operating components. Reviews these proposals to determine fiscal impact on and consistency with HCFA and Departmental management and programmatic objectives. Develops financial management policy as it relates to HCFA's programmatic objectives. Directs allocation of staff power among components, issues staff power employment ceilings, and directs HCFA staff power management system. Assures the validity of cost allocation data and monitors adherence to financial management policies among HCFA components. Operates a system for reporting cost savings to the Department.

• Section FH.20.A.1.d. Division of Program Review (FHA14) is deleted in its entirety.

• Section FH.20.B.1. Management Staff (FHB–1) is deleted in its entirety. Renumber all subsequent organizational subsections in FH.20.B.1. accordingly.

• Section FH.20.B.4. The office functional statement of the Office of Computer Operations (FHB4) and the divisional organizational titles and functional statements of its subordinate divisions are deleted in their entirety and replaced by a new office functional statement and new divisional organizational titles and functional statements. The new statements read:

4. Office of Computer Operations (FHB4)

Directs the management, operation, and maintenance of workload planning and controls for HCFA's Automated Data Processing (ADP) and Data Communications (DC) facilities and equipment. Implements and administers comprehensive ADP/DC systems for the Agency. Provides technical assistance and consultation to all HCFA components regarding solutions to ADP/DC equipment and support software problems, including system design, selection, procurement, technical evaluation, security, utilization, and operations. Responsible for ADP/DC resource control, including cost estimates, planning and scheduling of expenditures, inventory, purchase, lease and maintenance of ADP/DC hardware, software and services. Provides technical review and approval for purchase, lease, and maintenance for all ADP/DC requisitions. Responsible for the physical security of all ADP/DC equipment and systems throughout HCFA. Develops budget estimates and spending plans for activities managed by the Office of Computer Operations (OCO), including those with Agencywide scope. Provides technical evaluation and liaison related to ADP/DC procurement actions. Provides analyses, installation, modification and maintenance of the operating systems and data communication systems software for all HCFA components in the regions and central office. Manages systems software and software products, including Data Base Management Systems, graphics, program generators and statistical analysis packages. Monitors ADP/DC

equipment utilization, capacity and performance and makes available the necessary reports for all levels of management. Prepares long-term technical and operational plans for solutions to HCFA ADP/DC mission needs and requirements. Advises the Bureau and HCFA executive staff on ADP/DC issues and concerns and represents HCFA in dealings with Federal and non-Federal agencies and organizations on the full Agencywide range of OCO functions, including hardware systems plans and ADP/DC acquisition and utilization.

a. Computer Services Division (FHB44)

Manages, operates and maintains HCFA's Computer Center. Establishes workload planning and controls and schedules all work to be processed. Coordinates resolution of identified problems (hardware and software) with appropriate vendors. Informs ADP users on standards, changes, problem reporting and resolution via a user Action Desk facility. Responsible for the notification, review, approval, scheduling, implementation and coordination of system changes. Devises and maintains problem resolution logs to rapidly identify the extent of problems within the systems. Monitors operational performance and informs appropriate technical staff of system abnormalities and failures. Recommends and implements changes to improve resource availability and performance. Provides the necessary operational data to advise the Office Director and other HCFA officials concerning ADP operations. Provides liaison with other HCFA components, other Federal agencies and private organizations concerning HCFA Computer Center operations. Serves as the interface between the user and the HCFA Computer Center for all questions and activities relating to computer operations, equipment performance, application processing and available software/equipment services. Analyzes and evaluates state-of-the-art computer equipment and concepts for ADP operations planning and development. Serves as the project office for any Computer Center contracts. Develops, analyzes, evaluates and controls simulation and benchmark studies to determine impact of new equipment and software on operating systems or applications. Evaluates computer performance and provides resource utilization and management to ensure effective and efficient ADP systems. Ensures the security of operating systems software. Performs analyses to accurately determine the present and future ADP capacity requirements and supports related procurement actions. Provides comprehensive statistics on ADP hardware performance and data base utilization. Performs studies of Computer Center Systems operations activities and reviews utilization cost accounting data and maintains cost and performance records and provides these data to management in a series of management information reports.

b. Communications Services Division (FHB45)

Directs, manages, operates and maintains workload planning and control for HCFA's data communication (DC) facilities. Serves as the project office for DC contracts. Provides direct interface with vendors and communication carriers for ordering and installation of DC facilities, including network processors, terminals, lines, modems and services. Plans and prepares the DC spending plans and cost estimates and is responsible for its presentation to higher management. Certifies vendors invoices for equipment and services. Conducts studies and analyses to determine communications network user requirements. Provides technical advice and consultation to the user community concerning the interface with and use of HCFA's nationwide DC network. Assists in the specification of user requirements. Develops performance standards for DC facilities. Monitors and evaluates total DC performance and recommends design improvements for enhanced DC efficiency. Implements and provides operational support for the control software. Plans and coordinates all installations, removals and relocations of DC equipment. Provides the necessary operational data to advise management officials on matters concerning DC. Provides liaison with other HCFA components, Federal agencies and private organizations on DC functions. Develops and assists with the development of justifications for procurements and generates the necessary technical specifications to obtain DC equipment. Provides technical expertise for resolution of DC problems and the design of new interfaces and techniques related to DC. Analyzes and evaluates state-of-the-art equipment, software and concepts for DC planning and development.

c. Software and User Support Division (FHB46)

Analyzes, evaluates, implements, modifies, as necessary, and maintains Date Base Management Systems (DBMS), data dictionaries and other specialized software products such as program generators and statistical analysis packages for HCFA-wide use. Implements data base management software configuration changes based on changing workloads, equipment procurements and new systems development activity. Tests and evaluates state-of-the-art systems and DBMS software for planning and development. Develops and assists with the development of justifications for procurements and generates the necessary technical specifications for acquisitions of DBMS and other software products. Installs and maintains vendor-supplied software products. Designs programs and implements enhancements to vendor software to tailor to HCFA's specific needs. Plans and directs the design, implementation and operational support for specialized hardware/software for graphics and Computer Output Microforms (COM). Provides an effective user interface in defining requirements and developing plans for utilization of OCO facilities and services. Provides expert technical advice and consultation to HCFA components concerning the use of software products and OCO services.

• Section FP.20.A.1. Executive Office (EPA–1) Is Amended To Read

1. Executive Office (FPA–1)

Coordinates, for the bureau director, matters of bureau policy. Provides bureau-wide guidance and technical assistance on correspondence tracking and control procedures and standards of content for correspondence and memoranda. Serves as the primary focal point for the bureau on operational as well as administrative inquiries. Coordinates bureau replies on action items and to controlled correspondence with HCFA Executive Secretariat, the Congressional Liaison Office, the Office of the General Counsel, and with other HCFA components, Federal departments and agencies, etc. Develops, coordinates and implements a bureau-wide management program including operational analysis, organizational analysis and planning and management information systems planning; an internal bureau financial management program, including formulation and execution of the bureau's salaries and expense budget; and a bureau-wide manpower utilization program, including personnel administration. Develops and implements all bureau program and administrative delegations of authority. Plans and monitors execution of major bureau program initiatives through the administration of the bureau's workplanning and performance

monitoring program. Coordinates and monitors the development of regulations and related implementing instructions involving the bureau. Directs HCFA's Medicaid compliance program, oversees the negotiation of compliance matters with State officials and coordinates all program compliance matters with officials of the Office of the Secretary and individual Members of Congress. Serves as the focal point of HCFA operational responsibility for child health and prevention services. Administers Medicaid's Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, including evaluation, planning, development and interpretation of operational policies, standards and procedures.

• Section FP.20.A.2 Office of Program Administration (FPA3) Is Amended To Read

2. Office of Program Administration (FPA3)

Administers contracts with private organizations to perform Medicare program operations. Develops, negotiates, maintains and modifies all primary contracts and agreements with intermediaries, carriers and other organizations, such as Health Maintenance Organizations (HMOs), required under Titles XVIII and XIX of the Social Security Act. Provides direction and guidance to Central Office and Regional Office staff on program contracts and contracting activities. Develops, directs and implements program contract procurement including design, development and evaluation of related experiments. Establishes and prioritizes expenditure levels for Medicare contractors and for Medicare experiments and procurements. Develops, implements and administers national policies, standards and administrative procedures for the Medigap program. Establishes policies and procedures to be used by all HCFA contractors and States in procurement of equipment, facilities management, Medicaid Management Information System (MMIS), software and other services. Investigates operating problems which are national in scope and recommends corrective action. Initiates and implements operational experiments. Assesses operational impact of program experiments proposed by HCFA's research and demonstration staff. Establishes quantitative standards and qualitative requirements for contractors, State agencies (other than State survey agencies) and fiscal agents participating in the Medicare and Medicaid programs or in experimental arrangements. Coordinates responses to interested organizations prior to formal issuance of new standards and requirements.

• Section FP.20.A.2.b. Division of Contracts (FPA32) Is Amended To Read

b. Division of Contracts (FPA32)

Develops, maintains, negotiates and modifies all primary contracts and agreements with intermediaries, carriers and State agencies (except State survey agencies), and other organizations as provided under Titles XVIII and XIX of the Social Security Act, including those awarded on an experimental basis. Develops procedures for award, nonrenewal, termination, extension and amendments of contracts. Approves program contracts and proposals to contract by State agencies under Title XIX of the Act. Serves as the Bureau of Program Operations' representative in adjudicating contractor claims because of changes in work statements or other disputes involving the selection or nonselection of contractors. Directs program contract-related surveys requested by either the Executive or Legislative Branches of the Federal Government. Provides direction and guidance to Central Office and Regional Office staff on program contracts and contract procurement and maintains an oversight role on regional activity in the area of Titles XVIII and XIX contracting. Reviews States' Memoranda of Understanding with PSROs in support of the Health Standards and Quality Bureau. Administers a prior consultation program to obtain comments from Medicare contractors and providers on proposed HCFA operating policies and instructions. Coordinates Fiscal Intermediary Group (FIG) and Carrier Representative Group (CRG) activities. Responsible for designation of intermediaries for chain organization issues, other policies relating to intermediary availability, and provider nominations.

Section FP.20.A.2.c. Division of Operational Initiatives (FPA33) Is Amended To Read

c. Division of Operational Initiatives (FPA33)

Serves as focal point in the Bureau for legislative matters affecting program operations. Recommends and develops legislative proposals and regulations for contractor and State program operations. Develops and implements operational experiments other than contract experiments and serves as liaison with the Office of Research and Demonstrations and other HCFA components involved in program initiatives impacting on operations. Investigates operating problems which are national in scope and develops corrective action programs. Evaluates all operating experiments, including contract experimentation and prepares reports for Congress and others. Coordinates the Bureau's regulation review activities. Directs the planning, development and execution of HCFA's strategy to improve its Third Party Liability (TPL) recovery programs. Develops, implements and administers national policies, standards and administrative procedures for the Medigap program. Coordinates the Bureau's replies to reports received from the General Accounting Office and the Office of the Inspector General (e.g., service delivery assessment reports, etc.). Determines the need for operational instructions to implement new program policies and legislation and coordinates the development of such instructions within BPO. Serves as the focal point in HCFA for the operational aspects of special programs or projects (e.g., Rural Health, Home and Community Based Waivers, etc.) and for interprogram matters (e.g., coordination of Medicare and Medicaid with the Indian Health Service programs) that require interagency/interprogram coordination.

Section FP.20.A.3.b. Division of Systems Planning and Development (FPA42) Is Amended To Read

b. Division of Systems Planning and Development (FPA42)

Develops, directs and coordinates systems plans and studies for the effective integration of all Medicare and Medicaid automated and nonautomated processing systems at the State agency or contractor level. Designs and conducts studies, demonstrations and surveys to improve Medicare and Medicaid operational systems, methods and procedures. Designs and tests new automated information systems and model systems. Conducts, reviews and performs analyses for future development of model systems functions in such areas as data management, data base systems analysis and design, distributed processing, terminal operations, minicomputers and operational security. Coordinates systems demonstration projects and participates in the review and evaluation of systems-related projects. Plans, develops and monitors systems requirements for Titles XVIII and XIX and coordinates systems requirements for related programs.

• Section FP.20.A.4. Office of Financial Operations (FPA7) Is Amended To Read

4. Office of Financial Operations (FPA7)

Sets policies and procedures by which State agencies (except State survey agencies), contractors and Regional Offices prepare and submit periodic budget estimates. In consultation with other HCFA and Bureau of Program Operations (BPO) components, develops and negotiates the national budget for Medicare contractors, including workload and funds estimates. Controls and manages the Medicare cash flow and related banking activities. Compiles estimates of benefit payments and administrative costs for the State Medicaid program. Issues and administers the Medicaid grant awards. Reviews all State claims for Federal reimbursement under Title XIX. Reviews periodic contractor and State agency expenditure reports to evaluate budget execution and determine the allowability of costs. Provides definitive HCFA interpretation of Medicaid administration and training cost reimbursement policy. Issues clarifications to Regional Offices regarding operational Federal Financial Participation (FFP) issues. Prepares analyses of Medicare and Medicaid expenditure trends and patterns. Determines allowability of State Medicaid reimbursement claims, serves as focal point in Central Office for defense of disallowances before the Departmental Grant Appeals Board (GAB) and interprets and disseminates GAB decisions to pertinent HCFA staff. Ensures implementation of GAB decisions. Directs and coordinates the fiscal aspects of Title XIX program activities. Reviews contractor, State agency and State fiscal agent performance in determining the correct amount of provider, physician and supplier overpayments and assists contractors, State agencies and fiscal agents in negotiations related to the acceptability of the technique for determining the amount of overpayment and the methods of recovery. Prepares cases when compromises are not appropriate and overpayments are uncollectable and assists the Claims Collection Officer in preparing such cases for disposition. Prepares manual instructions concerning the procedures for recovery of provider cost report overpayments. Designs, implements and maintains a Medicare/Medicaid overpayment tracking system. Directs the processing of all Medicare (Part A) beneficiary overpayments and appeals. Plans, directs and coordinates the processing of claims submitted for reconsideration and hearings. Develops, plans and conducts a comprehensive program to incorporate Group Health Plans Operations into Medicare and Medicaid programs.

• Section FQ.20.A.6.d. Division of Technical Policy and Litigation (FQA64) is deleted in its entirety.

• Section FQ.20.B.1. Office of Demonstrations and Evaluations (FQBA), Including the Division-Level Substructure, Is Amended To Read

1. Office of Demonstrations and Evaluations (FQBA)

Plans and directs the development, implementation, monitoring and evaluation of demonstration projects designed to test the costs and effectiveness of alternative payment methods, delivery systems, benefit packages, or provider status in the Medical and Medicaid programs. Develops and reviews innovative approaches to the delivery of HCFA health care programs; coordinates with State and local governments, providers, beneficiaries, researchers and program staff in the implementation of projects; and assesses and synthesizes the results of projects to determine their impact on the programs and participants. Recommends modifications to existing program policy and legislation. Provides technical advice and consultation to other Federal and external organizations on potential experimental projects and publishes results and analyses of experimental findings.

a. Division of Long-Term Care Experimentation (FOBA1)

Directs and manages the development, implementation and monitoring of demonstrations and experiments which test innovative long-term care financing arrangements, delivery systems and combinations of services provided to Medicare beneficiaries and Medicaid recipients. Conducts demonstrations involving social health maintenance organizations, prospective payment for home health agencies, competitive bidding for home health agencies and capitation experiments. Conducts demonstrations which test alternative delivery systems and determines whether the coordination and management of an appropriate mix of health and social services directed at individual client needs will reduce institutionalization and costs without sacrificing quality of care. Provides technical support and advice to HCFA and Departmental components in regard to long-term care issues. Makes research findings available to assist in policy formulation and program initiatives and publishes results and analyses of demonstrations findings.

b. Division of Hospital Experimentation (FOBA2)

Directs and manages the development, implemention and monitoring of intramural and extramural hospital financing and reimbursement studies and experiments such as prospective and incentive payment experimentation for hospitals. Directs and manages the study, development and testing of hospital alternative payment systems and units, such as refinement in diagnosis specific payment and capitated payment rates. Conducts studies and demonstrations on entire facilities or specific ares such as outpatient departments and hospital capital investment. Directs studies and demonstrations which focus on hospital-based and hospital-related activities, including physican, home health skilled nursing, independent laboratories, and other services that result in greater cost effectiveness.

c. Division of Health Systems Studies (FOBA3)

Directs and manages the development, implementation and monitoring of intramural and extramural financing, reimbursement, organizational and operational studies related to health care delivery systems. Directs the development and testing of cost effective alternatives to existing institutional and ambulatory care patterns. Directs the development of crosscutting special studies in such areas as the combining of long-term care and acute care financing, provision of durable medical equipment, management of end stage renal disease and minimization of fraud and abuse.

• Section FQ.20.B.2.a. Division of Reimbursement Studies (FQBB1) Is Given a New Organizational Title and a New Functional Statement. This Section is Amended To Read as Follows

a. Division of Reimbursement and Economic Studies (FQBB4)

Conducts social science research to determine the influences which current and alternative reimbursement methods have on the economic, financial and behavioral characteristics of providers (e.g., the effects on physician productivity under alternative methods of reimbursement). Conducts research directed toward the development and application of new, improved methods, quantitative models and other technical tools for determining the costs and benefits to providers, patients and financing programs associated with

alternative reimbursement schemes. Participates in monitoring grants and the grants award process in those areas related to hospital costs and physician reimbursement. Provides technical assistance and makes findings from research available to assist in policy formulation, recommendations and program initiatives. Conducts research on factors which affect the demand for and supply of services including supplies of manpower and the structure and future of the health care delivery systems. Undertakes research to further the understanding of the organization of the health industry, including the drug industry, the insurance industry and the equipment producers. Assesses the likely implications of trends in these industries as they affect health care coverage either in benefits or beneficiary population. Examines the role of capital in the expansion and replacement of plant and equipment in the heatlh care sector and the effects of alternative sources and costs of capital in this regard. Provides analysis of reimbursement alternatives for major provider groups and makes recommendations for policy changes in reimbursement activities. Assists in the implementation of reimbursement changes.

• Section FQ.20.B.2.b. The Functional Statement for the Division of Beneficiary Studies (FQBB2) Is Amended To Read as Follows

b. Division of Beneficiary Studies (FQBB2)

Designs and conducts intramural and extramural research studies and surveys to test hypotheses relating to beneficiary utilization and to determine factors underlying patterns and trends in utilization of HCFA programs. Develops and conducts evaluations of HCFA programs to enable the Administrator, the Department and Congress to determine how well HCFA policies and actions affect the attainment of HCFA's goals to ensure that quality medical care is delivered to its beneficiary population in the most cost effective manner. Assesses the impact of HCFA programs on health care costs, programs expenditures, HCFA beneficiaries, providers of services and the total health care system. Designs and directs the development of special data bases and tabulations to support research and policy activities. Provides analyses on complex beneficiary data sets for the Medicaid program, health care planners and other users external to HCFA.

• Section FQ.20.B.2.c. Division of Economic Analysis (FQBB3) Is Deleted in Its Entirety. Functions Formerly Assigned to This Division Are Transferred to the Renamed Division of Reimbursement and Economic Studies (FQBB4) (Section FQ.20.B.2.a.). A New Division, the Division of Program Studies (FQBB5) Is Added. Section FQ.20.B.2.c. Now Reads as Follows

c. Division of Program Studies (FQBB5)

Directs the design and development of the Medicare and Medicaid statistical systems to provide ongoing data for the research and evaluation program. Consults with and provides technical direction to professional staff and management in the development of research data bases as a by-product of the administrative record system. Designs and develops the production of periodic statistical tabulations to assess the characteristics of the beneficiaries and the utilization and costs of program benefits. Designs and writes periodic analytical reports to disseminate data and to describe patterns and trends for program evaluation and policy direction.

Date: March 15, 1984.

Carolyne K. Davis, Ph.D.,

Administrator.

[FR Doc. 84-18130 Filed 7-9-84; 8:45 am]

BILLING CODE 4120-03-M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (FR, Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981, FR, Vol. 48, No. 3, pp. 512–518, dated Wednesday, January 5, 1983, FR, 48, No. 198, pp. 46434–46448, dated Wednesday, Octomber 12, 1983), is amended to reflect the organizational changes in the Office of the Associate Administrator for Policy, Bureau of Eligibility, Reimbursement and Coverage, Office of Coverage Policy and Office of Reimbursement Policy. The specific changes are described below:

1. Transfer the End-Stage Renal Disease (ESRD) function from the immediate office of the Director, Office of Coverage Policy (OCP) to the Division of Medical Services Coverage Policy (DMSCP), OCP which has direct responsibility for this function. The functional statements for OCP and DMSCP are amended to reflect the transfer of the ESRD function.

2. Abolish the Division of Health Care Care Cost Containment and the Division of Institutional Services Reimbursement, both in the Office of Reimbursement Policy (ORP), streamline the functions of the two remaining divisions, and establish four new divisions in the ORP The functional statements for the Division of Medical Services Reimbursement and the Division of Alternative Reimbursement Systems have been amended to reflect current functional assignments and functional statements for the four new divisions have been established.

The Specific Changes to Part F. Are Detailed Below

• Section FQ.20. The Office of the Associate Administrator for Policy (FQ) (Functions) is amended by the following actions:

1. Delete the functional statements for Section FQ.20.A.3., Office of Coverage Policy (FQA7), and Section FQ.20.A.3.b., Division of Medical Services Coverage Policy (FQA72), and replace them with the following functional statements. The administrative codes remain the same.

3. Office of Coverage Policy (FQA7)

Develops, evaluates, and reviews national policies and standards concerning the coverage and utilization effectiveness of items and services under the HCFA programs provided by hospitals, long-term care facilities, hospices, End-Stage Renal Disease facilities, home health agencies, alternative health care organizations, comprehensive outpatient rehabilitation facilities, physicians, health practitioners, clincs, laboratories, and other health care providers and suppliers. Serves as the principal organization within HCFA for evaluating the medical aspects of Medicare and Medicaid coverage issues and for health quality and safety standards. Develops, evaluates, and reviews national coverage issues concerning the amount, duration, scope, reasonableness, and necessity for medical and related services. Develops, evaluates, and reviews health and safety standards for providers and suppliers of health services under Medicare, Medicaid, and other Federal programs. Conducts reviews of coverage aspects of State plans under the Medicaid program. Analyzes and recommends approval or disapproval of State requests for waivers to provide home or community-based services under Medicaid. Develops, evaluates, and reviews national policies concerning the coverage of new and unusual items and services and those

medical items and services which are excluded from coverage. Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors, State agencies, and the health care field. Identifies, studies, and makes recommendations for modifying HCFA program coverage policies and health and safety standards to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system. Conducts ongoing analyses of innovative treatment patterns, referral patterns, and activities that improve health care outcomes. Analyzes and recommends legislative or other remedies to improve coverage, health and safety standards, and utilization effectiveness. Coordinates with other organizations, including the Public Health Service, which share responsibilities for health quality and standards. Maintains ongoing liaison with professional groups, standards setting organizations, and members of the general public on issues relative to coverage policy.

b. Division of Medical Services Coverage Policy (FOA72)

Develops, evaluates, and reviews national policies and standards concerning the coverage of items and services which are provided by physicians (including hospital-based and teaching physician services and resident and intern services), nonphysician practitioners, ambulatory surgical centers, health maintenance organizations, comprehensive medical plans, rural health clinics, comphehensive outpatent rehabilitation facilities, and other alternative health care organizations. Develops, evaluates, and reviews national policies concerning the coverage of medical and other health services including supplies, drugs, eyeglasses, laboratory services, ambulance and other transportation services, second opinions, new and unusual items and services, dialysis and transplant services for Medicare beneficiaries with End-Stage Renal disease, and those medical items and services which are excluded from coverage. Develops, evaluates, and reviews national coverage issues concerning the amount, duration, scope, reasonableness, and necessity for services. Develops, evaluates, and reviews regulations, guidelines, and instructions required for the dissemination of program policies to program contractors, State agencies, and the health care field. Identifies, studies, and makes recommendations for modifying HCFA program coverage policies to reflect changes in beneficiary health care needs, program objectives, and the health care delivery system. Analyzes and recommends legislative or other remedies to improve coverage and utilization effectiveness. Coordinates with other components responsible for health quality standards, program operations, quality control, and other parties and individuals, as appropriate.

2. Delete all of the functional statements in Section FQ.20.A.4., to include the folowing components: 4. Office of Reimbursement Policy (FQA5), a. Pharmaceutical Reimbursement Board Chairman (FQA5-1), b. Division of Health Care Cost Containment (FZA52), c. Division of Institutional Services Reimbursement (FQA53), d. Division of Medical Services Reimbursement (FQA54), and e. Division of Alternative Reimbursement Systems (FQA55), and replace them with the following functional statements. Wherever possible, current adminisitrative codes have been retained.

4. Office of Reimbursement Policy (FQA5)

Establishes national program policy on all issues of Medicare or Medicaid reimbursement including provider reimbursement policy, provider accounting and audit policy, and physician and medical services reimbursement policy. Develops, evaluates, and maintains regulations, policies, and standards for payments to hospitals for inpatient services under the prospective payment system. Coordinates with and reviews recommendations from the Prospective Payment Assessment Commission. Develops reimbursement policy for alternative forms of health care delivery such as health maintenance organizations, rural health clinics, hospices, prepaid health plans, comprehensive health centers, ambulatory surgery centers, and kidney dialysis centers. Establishes reimbursement policies as they apply to the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) and the End-Stage Renal Disease (ESRD) Programs. Develops cost analysis systems policies for the ESRD Program, conducts ongoing analyses of cost reimbursement data, and provides input of a reimbursement nature to the Annual Report to Congress on the ESRD Program. Reviews requests for exceptions to reimbursement limitations and recommends approval or disapproval. Establishes policy for implementing reimbursement controls and cost containment programs. Establishes policy pertaining to the Federal Financial Participation in State Medicaid administrative costs and third-party liability collection procedures. Maintains liaison with interested professional groups, States, intermediaries, and Departmental components on issues related to reimbursement. Participates in the development and evaluation of proposed legislation in the area of health care reimbursement. Develops policies related to the maximum allowable cost program for multiple source drugs and the development of reasonable charges for physician and medical services reimbursement.

a. Division of Medical Services Reimbursement (FQA54)

Formulates and evaluates national policies and standards for Medicare and Medicaid reimbursement and fiscal standards for physician services, practitioner services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, and other medical services. Develops policies related to the maximum allowable cost program for multiple source drugs and the development of reasonable charges for physician and medical services reimbursement. Drafts program regulations, manuals, guidelines, and other general instructions related to medical services reimbursement. Coordinates with other HCFA bureaus, divisions, and offices, the Social Security Administration, and other Department of Health and Human Services (DHHS) components in the development of reimbursement policies for medical services. Participates in the development and evaluation of proposed legislation in the area of medical services reimbursement and recommends alternatives to current methods of reimbursement. Provides interpretations of established policies and technical assistance to DHHS and HCFA components, regional offices, State agencies, and carriers.

b. Division of Alternative Reimbursement Systems (FQA55)

Assumes the primary responsibility within HCFA in formulating and evaluating policies for the reimbursement of alternative methods of health service delivery requiring special methods of cost finding and apportionment. Establishes policies and principles for reimbursing services furnished in ambulatory care settings such as health care prepayment plans, health maintenance organizations, prepaid health plans, nonprovider-based comprehensive health centers, hospices, and rural health clinics. Analyzes and approves waivers for Medicare inpatient

hospital services reimbursement under State reimbursement control systems. Formulates and evaluates policies and procedures related to hospitals and long-term care activities including approval and verification of methodologies used by the States to determine reimbursement to hospitals, skilled nursing facilities, and intermediate care facilities under medical assistance plans. Serves as the focal point in the Bureau of Eligibility, Reimbursement and Coverage for the coordination of alternative reimbursement and long-term care issues. Develops policies and procedures on Federal Financial Participation in State administrative costs relating to alternative reimbursement or comprehensive health planning activities. Prepares regulations, manuals, program guidelines, and other general instructions related to these policies. Reviews policies developed by other components for their impact on alternative delivery systems and alternative reimbursement for hospitals and long-term care. Conducts studies on the impact of alternative modes of health care delivery on health care reimbursement. Provides interpretations of established policies to regional offices, State agencies, fiscal intermediaries, suppliers of services, congressional staffs, and other Department of Health and Human Services offices. Provides technical assistance to regional offices, States, and intermediaries. Participates in the development and evaluation of proposed legislation pertaining to alternative delivery or reimbursement systems and long-term care services. Reviews Medicaid State plan waivers requested under Section 1915 of the Social Security Act.

c. Division of Hospital Payment Policy (FQA56)

Develops, evaluates, and maintains regulations, policies, and standards for payments to hospitals for inpatient services under the prospective payment system (PPS). Develops, evaluates, and maintains policies pertaining to the determination of appropriate amounts of prospective payments to hospitals for services furnished to inpatients. Works with the Prospective Payment Assessment Commission on PPS and reviews the Commission's recommendations on and basis for rates of payments. Develops, evaluates, and maintains policies pertaining to the appropriate methods for determining the amount of payments for cost items associated with inpatient hospital services but not yet within the prospective payment rates and develops policies for bringing such expected cost items under PPS. Develops, evaluates, and maintains policies for determining and applying rates of increase and limitations to the costs of hospitals for services furnished to inpatients. Develops, evaluates, and maintains methods for classifying hospitals and hospital services to inpatients, including sole community hospitals, for the purpose of applying rates of increase and limitations on hospitals' costs and for determining prospective payments to hospitals. Develops, evaluates, and maintains criteria for exceptions to the established rates of increase and limitations on hospitals' costs for inpatient services and reviews fiscal intermediaries' recommendations on hospitals' requests for exceptions. Prepares regulations, program guidelines, and instructions related to PPS and those excepted items or adjustments to the system that are paid on a cost-reimbursement basis to hospitals for inpatient services. Works with other offices in the Bureau of Eligibility, Reimbursement and Coverage, HCFA, the Department of Health and Human Services (DHHS), and the Prospective Payment Assessment Commission to improve hospital efficiency and reduce Medicare expenditures. Reviews policies and operational guidelines and instructions developed by other components for their impact on the policies governing PPS and limitations on reimbursement for hospital services to inpatients. Participates in the development and evaluation of proposed legislation pertaining to PPS and cost containment for hospital services to inpatients. Provides interpretations of established policies and other policy and technical assistance to regional offices, State agencies, Medicare contractors, hospitals, hospital associations, congressional staffs, DHHS offices, and others on policy issues relating to PPS and cost containment policies for hospital inpatient services. Assists in the Administration's professional relations and public information activities to foster understanding and acceptance of the PPS.

d. Division of Provider Payment Policy (FQA57)

Formulates and evaluates national policies governing reimbursement of skilled nursing facilities (SNFs), home health agencies (HHAs), hospital outpatient departments, outpatient physical therapy facilities, comprehensive outpatient rehabilitation facilities, and ambulatory surgical centers under the health insurance program and the medical assistance plans. Develops policies pertaining to determining the reasonable costs and charges, where appropriate, for the services of these providers and facilities. Prepares and evaluates regulations, program guidelines, and instructions for providers, Medicare contractors, and State agencies related to reimbursement for the services of these providers and facilities. Formulates the basic principles and policies for developing and applying limitations to the costs of health care. Develops methods for classifying SNFs and HHAs and their services for the purpose of developing effective limitations. Develops and evaluates the criteria for exceptions to the limitations and reviews fiscal intermediaries' recommendations on providers' requests for exceptions. Analyzes cost data, develops actual limitations which will be applied to health care costs, promulgates required notices of limitations, and issues companion instructions and policies needed to implement the limitations. Works with other offices of the Department of Health and Human Services (DHHS) in developing changes in the cost reimbursement system which are designed to improve provider efficiency through the use of financial incentives or penalties. Reviews policies and operational guidelines and instructions developed by other components for their impact on reimbursement and cost containment policies for these providers and facilities. Provides interpretations of established policies and technical assistance on the application of reimbursement and cost limits policies to regional offices, State agencies, Medicare contractors, providers of services and health care facilities, congressional staffs, and other DHHS offices. Maintains continuing liaison with provider associations and others. Participates in the development and evaluation of proposed legislation pertaining to reimbursement and cost containment for these providers and facilities. Provides centralized data extraction, maintenance, and analysis services for the Office of Reimbursement Policy. Provides data and/or analysis to other HCFA components on request.

e. Division of Audit and Payment Policy (FQA58)

Develops and evaluates national policies, regulations, and standards for reimbursement of the costs incurred by providers of services including hospitals not under the prospective payment system (PPS) and other classes of providers under both the health

insurance and medical assistance programs. Collaborates in and coordinates the development of overall payment policies involving prospective payment and cost reimbursement. Ensures that interrelated policies are consistent. Directs the planning and analysis of Medicare reimbursement initiatives including studies and recommendations for solutions to program related problems. Evaluates the effectiveness of general payment policies in meeting the goals and objectives of HCFA. Evaluates and interprets policy issues and initiatives that cross Division lines, such as PPS under Medicare and State cost control systems. Provides technical and advisory services to HCFA, the Department of Health and Human Services (DHHS), officials at the policymaking level, and to officials with similar authority within the executive branch, congressional committees, individual congressmen, and private organizations interested in HCFA's reimbursement policies. Initiates and collaborates in the development and review of legislative proposals on general Medicare and Medicaid payment policies, interprets law (considering intent), and develop policy directives and basic payment policy decision statements which derive from such applicable law and which are reflective of the minimum requirements of such law (i.e., the broad parameters). Develops detailed reimbursement specifications which constitute the basis for regulations promulgating reimbursement policies and pertinent public notices. Reviews and evaluates written regulations to be certain they are technically complete and accurately reflect specifications as developed. Develops and issues implementing instructions consistent with overall payment policy, directives, and specifications applicable to Medicare. Reviews alternative reimbursement and rate-setting systems for potential adaptation to the health insurance and medical assistance programs. Compiles materials, reports, and decisional memoranda and makes recommendations for action by principal administrative policymakers and congressional staffs on federal health care programs. Establishes policies, principles, and guideline related to circumstances requiring a typical reimbursement practices. Plans, develops, and maintains a continuing program of surveillance and evaluation of HCFA auditing, accounting practices, general payment policy, and billing procedures at central office, regional, intermediary, and carrier levels which impact on Office of Reimbursement Policy (ORP) functions in order to identify emerging problems and to develop and promulgate corrective policies and procedures. Collaborates with other components in maintaining consistency among the various payment activities conducted within ORP Formulates and evaluates national policies for all Medicare and Medicaid program provider financial filing and reporting requirements. Develops policies pertaining to the use of all reporting forms, schedules, and related instructions necessary for reimbursing health care institutions. Receives and analyzes all reported expense data from providers and health care facilities and serves as a source of information on payment data for HCFA and DHHS. Develops policies pertaining to the validity of accounting and audit policies and procedures. Develops and maintains a system of internal controls for the validation of policy decisions. Provides interpretations of overall cost and charge reimbursement policies to regional offices, State agencies, Medicare contractors, providers of services, other health care facilities, congressional staffs, other DHHS offices, and others. Identifies problem areas and develops solutions to such problems, as appropriate. Maintains continuing liaison with Medicare contractors' advisory groups, provider associations, the American Institue of Certified Public Accountants, and others. Chairs the Technical Advisory Group. Develops policies related to accounting and auditing of provider costs and policies for assisting States in implementing programs for auditing institutions participating in medical assistance programs. Provides technical assistance to regional offices, Medicare contractors, and State agencies on the application of cost-based data reporting requirements and policies and procedures for cost accounting and audit.

f. Division of Dialysis and Transplant Payment Policy (FQA59)

Formulates and evaluates policies for reimbursing services under the End-Stage Renal Disease (ESRD) program. Establishes policies and procedures for reimbursing ESRD services, transplantation, physician reimbursement, kidney acquisition including payments, organ procurement, histocompatability services, home and self-dialysis training, and other medical items and services related to the ESRD program. Serves as the focal point in HCFA for coordinating ESRD policies that frequently cross Bureau lines. Prepares regulations, manuals, program guidelines, and other general instructions in these policy areas. Formulates and evaluates accounting policy for payments through ESRD delivery systems. Establishes policies, procedures, and criteria for reimbursing payment exceptions for ESRD facilities. Processes such requests and determines which ESRD facilities should be granted exceptions to national payment rates. Analyzes reimbursement data, develops payment rates for ESRD services, and updates rates. Develops and performs professional evaluation of reimbursement data for rate setting, exceptions processing, and program evaluation. Provides technical assistance in the development of cost reporting and audit programs for ESRD facilities. Provides liaison with the Veterans Administration and other insurers of dialysis and transplant services. Conducts special studies and reviews of ESRD reimbursement as necessary for rate setting and program evaluation purposes.

Maintains continuing liaison with ESRD provider groups, industry associations, patient organizations, medical associations, and related parties. Reviews policies developed by other components for their impact on the ESRD program. Provides interpretations of established policies to regional offices, State agencies, fiscal intermediaries, suppliers of services, congressional staff, and other Department of Health and Human Services offices. Provides technical assistance to regional offices, States, and intermediaries. Participates in the development and evaluation of proposed legislation pertaining to the ESRD program and organ transplant issues.

Dated: April 10, 1984.

Carolyne K. Davis, Ph.D.,

Administrator, Health Care Financing Administration.

[FR Doc. 84-18129 Filed 7-9-84; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee, Division of Research Resources (DRR), July 20, 1984, Conference Room 8 Building 31, National Institutes of Health, Bethesda, Maryland 20205.

This meeting will be open to the public July 20 from 9:00 a.m. to approximately 12:00 noon during which time there will be comments by the Deputy Director, DRR, an update on the Biotechnology Resources Program, and discussion of research opportunities in clinical research. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 1:00 p.m. to approximately 5:00 p.m. to July 20 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, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, MD 20205, telephone area code 301 496-5545, will provide summaries of meetings and rosters of committee members.

Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B-41, National Institutes of Health, Bethesda, MD 20205, telephone area code 301-496-5411, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health)

Dated: June 29, 1984.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 84-18407 Filed 7-9-84; 11:20 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-8591]

Alaska Native Claims Selection

In accordance with departmental regulation 43, Code of Federal Regulations (CFR) 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(h)(5) and 14(h)(7) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(5), 1613(h)(7) (1976) (ANCSA), will be issued to Kelly Simeonoff, Sr., for approximately 81 acres. The lands involved are within T. 28 S., R. 26 W., Seward Meridian, Alaska:

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the Kodiak Mirror upon issuance of the decision. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in 43 CFR Part 4, Subpart E, as revised.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt, and parties who received a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 9, 1984 to file an appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of Conveyance Management.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Kelly Simeonoff, Sr., Box 2621, Kodiak, Alaska 99615

Koniag, Inc., Regional Native Corporation, P.O. Box 746, Kodiak, Alaska 99615

U.S. Fish and Wildlife Service, Area Director, 1011 East Tudor Road, Anchorage, Alaska 99503.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-18143 Filed 7-9-84; 8:45 am]

BILLING CODE 4310-JA-M

[A-18991]

Conveyance of Public Land; Arizona

July 21, 1984.

Notice is hereby given that pursuant to section 203 of the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1713), the town of Clifton, has purchased by noncompetitive sale at the fair market value of $58,800.00, public land in Greenlee County, Arizona described as:

Gila and Salt River Meridian, Arizona

T. 5 S., R. 30 E.,
Sec. 5, SW¼NE¼, SE¼NW¼, NE¼SW¼.
Containing 120.00 acres.

The purpose of this notice is to inform the public and interested State and local government officials of the issuance of the patent to the town of Clifton.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-18171 Filed 7-9-84; 8:45 am]

BILLING CODE 4310-32-M

Postponement of Field Test of Sodium Concessionary Leasing; Wyoming

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has postponed field test of a sodium concessionary leasing process, scheduled for mid-FY 1984 in the Rock Springs District, Sweetwater County, Wyoming. For a detailed explanation of the proposed concessionary leasing process, see 48 FR 35175 dated August 3, 1983. The field test is being postponed due to lack of industry interest in large-scale trona leasing due to currently unstable market conditions. It is anticipated that the field test will be rescheduled for FY 1985, however, no specific date has been determined. BLM still intends to conduct a competitive lease offering in FY 1984 for selected unleased Federal mineral sections occurring within current

development areas which have been nominated for lease by application. The specific sale date and lease tract configuration for the competitive lease offering will be announced at a later date.

Several comments were received from industry regarding the configuration of the four concessionary lease areas proposed at the public meeting held November 2, 1984, in Rock Springs, Wyoming. Since the field test has been postponed, the BLM Rock Springs District is reevaluating the concession area configurations based on all comments received. To a lesser degree, comments reflected disagreement with the concept of sodium concessionary leasing in general. It is BLM's intent to continually work with industry to identify those situations where the concessionary leasing process would be applicable. Comments were only received from the sodium (trona) development industry. The theory of the concessionary leasing process is to provide a method to offer acreage where minimal exploration has occurred. The inclusion of isolated Federal sections, which will probably be developed as an extension of an existing operation, are not generally considered suitable for concessionary leasing and will not be included. Such sections will be leased by conventional competitive means.

FOR FURTHER INFORMATION CONTACT: Robert A. Bennett, Bureau of Land Management (924), P.O. Box 1828, Cheyenne, Wyoming 82003-1828, (307) 772-2570 or FTS 328-2570.

Hillary A. Oden,
State Director.

[FR Doc. 84-18174 Filed 7-9-84; 8:45 am]
BILLING CODE 4310-84-M

Notice of Filing of Plats of Survey, Arizona

July 2, 1984.

1. The plat of survey of the following described lands was officially filed in the Arizona State Office, Phoenix, Arizona, on the date indicated:

A plat, representing a dependent resurvey of a portion of the First Standard Parallel South and portions of the subdivisional lines and the San Carlos Indian Reservation Boundary in T. 6 S., R. 17 E., Gila and Salt River Meridian, Arizona, was accepted May 1, 1984, and was officially filed May 4, 1984.

This survey was executed at the request of the Phoenix District, Arizona State Office, Bureau of Land Management and the Arizona State Land Department.

2. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,
Chief, Branch of Cadastral Survey.

[FR Doc. 84-18170 Filed 7-9-84; 8:45 am]
BILLING CODE 4310-32-M

Nevada: Proposed Modification and Continuation of Withdrawals

June 28, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Defense proposes that four withdrawals aggregating 6,637.45 acres for the Nellis Air Force Base be modified to change jurisdiction from the U.S. Army to the U.S. Air Force and to continue the withdrawals for an additional 20 years. The lands will remain closed to the public land laws, including the mining and mineral leasing laws.

DATE: Comments should be received by October 9, 1984.

ADDRESS: Comments should be sent to: State Director (NV-943.2), Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-784-5481.

The Department of Defense proposes that the existing land withdrawals made by Public Land Orders 1638 of May 26, 1958, 841 of June 25, 1952 and 877 of December 15, 1952 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 19 S., R. 62 E.,
Sec. 25, S½;
Sec. 36, All.
T. 20 S., R. 62 E.,
Sec. 1, Lots 1 through 4, S½NE¼.
T. 19 S., R. 63 E.,
Sec. 27, SW¼;
Sec. 28, SE¼, W½SW¼, SW¼SW¼ excepting the north 425 feet;
Sec. 29, SW¼, W½SE¼, SE¼SE¼ excepintg the north 425 feet;
Sec. 30, Lots 3, 4, E½SW¼, SE¼;
Sec. 31, Lots 1 through 4, E½, E½W½;
Sec. 32, 33, All;
Sec. 34, W½, SE¼.
T. 20 S., R. 63 E. (unsurveyed),
Sec. 3, N½, SW¼;
Sec. 4, All;
Sec. 5, NE¼, N½NW¼, NE¼SW¼, N½NW¼SW¼NW¼, SE¼NW¼SW¼NW¼, NE¼SW¼NW¼, SE¼SW¼NW¼, N½NE¼SW¼, NE¼SW¼NE¼SW¼, N½SE¼NE¼SW¼, N½NE¼NW¼SW¼, N½SE¼, N½NE¼SW¼SE¼, SE¼SE¼;
Sec. 6, N½ excepting that portion lying south of the following described line:

Commencing at the Northwest corner of section 6; thence South 053'36" West along the West Section line of the said section 6 a distance of 1400.54 feet to the TRUE POINT OF BEGINNING; thence North 8937'36" East a distance of 3,943.63 feet; thence South 022'24" West a distance of 398.31 feet; thence North 8937'36" East a distance of 660.13 feet to a point in the East Section line of the said section 6 being the Point of Ending.

Sec. 8, E½NE¼, N½NE¼SE¼;
Sec. 9, N½, N½N½S½.

The purpose of the withdrawal is to protect the Nellis Air Force Base. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws and the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director, Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, The President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Wm. J. Malencik,
Deputy State Director, Operations.

[FR Doc. 84-18160 Filed 7-9-84; 8:45am]
BILLING CODE 4310-HC-M

[C-35468 and C-36846]

Realty Action; Noncompetitive Sale of Public Lands in Chaffee County, Colorado

Correction

In FR Doc. 84-17120 beginning on page 26312 in the issue of Wednesday, June 27 1984, make the following corrections:

1. On page 26312, third column, in the table, in the entry for "Acreage" second line, "20.00" should have read "40.00"

2. On page 26313, first column, third line, "not" should have read "nor"

BILLING CODE 1505-01-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 29, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 24, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Coffee County

Elba vicinity, *Pea River Power Company Hydroelectric Facility*, S of Elba

ALASKA

Fairbanks Division

Fairbanks, *Alaska House*, 1003 Cushman St.

CALIFORNIA

Los Angeles County

Los Angeles, *Title Guarantee and Trust Company Building*, 401-411 W. Fifth St.

Sacramento County

Sacramento, *Alkali Flat Central Historic District*, Roughly E and F Sts. between 9th and 12th Sts.

Sacramento, *Alkali Flat West Historic District*, E, F, and 8th Sts.

Ventura County

Santa Paula, *Glen Tavern Hotel*, 134 N. Mill St.

DISTRICT OF COLUMBIA

Washington, *Wardman Row*, 1416-1440 R St., N.W.

FLORIDA

Hillsborough County

Plant City, *Hillsboro State Bank Building*, 121 No. Collins St.

Lee County

Fort Myers, *Murphy-Burroughs House*, 2505 First St.

Palm Beach County

Palm Beach, *Warden, William Gray, House*, 112 Seminole Ave.

Pinellas County

St. Petersburg, *Central High School*, 2301 Fifth Ave. N.

GEORGIA

Barrow County

Winder, *Broad Street Commercial Historic District*, Broad and Athens Sts.

Winder, *Jackson Street Commercial Historic District*, Roughly Jackson, Athens, Candler, and Broad Sts.

Winder, *North Broad Street Residential Historic District*, Roughly Woodlawn Ave., Center, Broad, and Stephens Sts.

Habersham County

Cornelia, *Irvin General Merchandise Store*, Irvin St.

KENTUCKY

Boyd County

Ashland, *Henry Clay Hotel (Ashland M R A)*, 1736 Winchester Ave.

Fayette County

Lexington, *Southeast Lexington Residential and Commercial District*, Roughly bounded by High St., Rose Lane, Lexington and Woodland Aves.

Knox County

Barbourville, *Mitchell Building-First State Bank Building*, 222 Knox St.

Barbourville, *Soldiers and Sailors Memorial Gymnasium, Union College campus*

Mercer County

Harrodsburg vicinity, *Burrus, Nathaniel, House*, 955 Vanarsdall Rd.

Harrodsburg vicinity, *Fairview*, 2403 Lexington Rd.

Warren County

Bowling Green, *St. James Apartments (Warren County M R A)*, 1133 Chestnut St.

LOUISIANA

Lafayette Parish

Lafayette, *Sterling Grove Historic District*, Roughly bounded by Evangeline Thwy., E. Simcoe, Chopin, and N. Sterling Sts.

MAINE

York County

York, *York Cliffs Historic District*, Agamenticus Ave.

MONTANA

Lake County

Swan Lake vicinity, *Swan Lake Rock House Historic District*, Off MT 83

Lewis and Clark County

Helena, *Murphy, John T., House*, 418 N. Benton Ave.

OREGON

Benton County

Corvallis, *Burnap-Rickard House*, 518 SW Third St.

Coos County

Bandon, *Coquille River Life Boat Station*, 390 SW First St.

Douglas County

Canyonville vicinity, *Weaver-Worthington Farmstead*, E of Canyonville

Sutherlin, *Sutherlin Bank Building*, 101 W. Central Ave.

Linn County

Albany, *First Evangelical Church of Albany*, 1120 SW 12th Ave.

Malheur County

Vale, *Vale Hotel and Grand Opera House*, 123 S. Main St.

Marion County

Gervais vicinity, *Beers, Oliver, House (Methodist Mission Hospital Site)*, 10602 Wheatland Rd.

Gervasi vicinity, *Willamette Station Site, Methodist Mission in Oregon*, Willamette Mission State Park

St. Paul vicinity, *Champoeg State Park Historic Archeological District*, NE of St. Paul

Multnomah County

Portland, *Taylor, Peter, House and Haehlen, Gothlieb, House*, 2806 and 2816 SW First Ave.

Washington County

Hillsboro, *Linklater, Zula, House*, 230 NE Second Ave.

PENNSYLVANIA

Bucks County

Lumberville, *Lumberville Historic District*, Fleecy Dale, Carversville, River, and Green Hill Rds.

Chester County

Strafford, *Strafford Railroad Station*, Old Eagle School Rd.

Lancaster County

Blainsport vicinity, *Walter, Henry, House*, Greenville Rd.

SOUTH CAROLINA

Dillon County

Floydale vicinity, *Meekins Barn (Flue-Cured Tobacco Production Properties TR)*, Off SC 9

Floydale vicinity, *Smith Barn (Flue-Cured Tobacco Production Properties TR)*, E of Floydale

Marion County

Mullins, *Brick Warehouse (Flue-Cured Tobacco Production Properties TR)*, Main and Wine Sts.

Mullins, *Buchan, A.H., Company Building (Flue-Cured Tobacco Production Properties TR)*, Laurel St.
Mullins, *Imperial Tobacco Company Building (Flue-Cured Tobacco Production Properties TR)*, 416 N. Mullins St.
Mullins, *Liberty Warehouse (Flue-Cured Tobacco Production Properties TR)*, Park St.
Mullins, *Neal and Dixon's Warehouse (Flue-Cured Tobacco Production Properties TR)*, S. Main St.
Zion vicinity, *Dew Barn (Flue-Cured Tobacco Production Properties TR)*, NW of Zion

SOUTH DAKOTA

Bon Homme County

Cihak Farmstead (German-Russian Folk Architecture TR),
Scotland, *Koobs House*, 431 Fourth St.

Brown County

Aberdeen *Dakota Farmer Building*, 1216 S. Main St.
Aberdeen, *Simmons House*, 1408 S. Main St.

Butte County

Vale, *Vale School*, Off SD 79

Custer County

Hot Springs vicinity, *Beaver Creek Bridge*, SD 87, Wind Cave National Park

Edmunds County

Eisenbeis, John, House (German-Russian Folk Architecture TR),
Strouckel, John, House (German-Russian Folk Architecture TR),
Roscoe, *Roscoe Community Hall*, 202 Mitchell St.

Grant County

Stockholm vicinity, *Brown Earth Presbyterian Church*, NE of Stockholm

Hanson County

Site 39HS7 (James River Basin Woodland Sites)

Hutchinson County

Deckert, Ludwig, House (German-Russian Folk Architecture TR),
Grosz, Martin and Wilhelmina, House-Barn (German-Russian Folk Architecture TR),
Hofer, Enoch, House-Barn (German-Russian Folk Architecture TR),
Hofer, Michael, House (German-Russian Folk Architecture TR),
Holzworth-Lang House (German-Russian Folk Architecture TR),
Schatz, Jacob, House (German-Russian Folk Architecture TR),
Stern, Gottlieb, House (German-Russian Folk Architecture TR),
Vetter, George, House (German-Russian Folk Architecture TR),
Wollman, Joseph, House (German-Russian Folk Architecture TR),
Ziegler, Wilhelm, House-Barn (German-Russian Folk Architecture TR),

Lincoln County

Canton, *Isakson, John, House*, 504 E. Third St.
Lennox, *Harney Hospital*, 305 S. Main St.

Marshall County

Site 39ML32 (James River Basin Woodland Sites),

McPherson County

Wittmayer, Peter, House-Barn (German-Russian Folk Architecture TR),

Meade County

Sturgis, *Erskine School*, Sherman St.

Minnehaha County

Sioux Falls, *Queen Bee Mill*, N. Weber Ave., Falls Park

Pennington County

Rapid City, *Rapid City Garage*, 827–829 Main St.

Sanborn County

Site 39SB47 (James River Basin Woodland Sites),

Turner County

Weins, Jacob, House-Barn (German-Russian Folk Architecture TR),

Walworth County

Moser, Wilhelm, House-Barn (German-Russian Folk Architecture TR),
Ochszner, Jacob Sr., House (German-Russian Folk Architecture TR),

Yankton County

Site 39YK2, 39YK3 (James River Basin Woodland Sites),

TEXAS

El Paso County

El Paso, *Martin Building*, 215 N. Stanton St.

McLennan County

Waco, *Praetorian Building*, 601 Franklin Ave.

[FR Doc. 84-18210 Filed 7-9-84; 8:45 am]
BILLING CODE 4310-70-M

Alaska Region; Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be undertaken:

1. Election of a permanent Chairman and establishment of operating procedures.
2. Establishing an outline of the initial program recommendations to the Secretary.
3. Setting a schedule of meetings for the next year.
4. A review of the State of Alaska's fish and game management programs and procedures as they relate to the Commission's functions.
5. Taking of public testimony to identify pertinent park subsistence issues.

Written comments and recommendations reviewed prior to July 15, 1984, will be considered at the meeting.

All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707

DATES: The meeting will begin at 9:00 a.m. on July 31–August 1, 1984, at the Community Hall in Anaktuvuk Pass.

FOR FURTHER INFORMATION CONTACT: Richard Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808 of the Alaska National Interest Lands Conservation Act Pub. L. 96–487

Robert Peterson,
Regional Director, Alaska Region.

[FR Doc. 84-18211 Filed 7-9-84; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-31 (Sub-19)]

Grand Trunk Western Railroad Co.—Abandonment in Oakland County, MI; Findings

The Commission has found that the public convenience and necessity permit Grand Trunk Western Railroad Company to abandon its 12.3 mile rail line between milepost 38.4 near Mal Junction and milepost 50.7 near Wixom in Oakland County, MI. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) a financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 84-18152 Filed 7-9-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-94)]

Seaboard System Railroad, Inc.—Abandonment in Boone, Carroll, Clinton, Hamilton, and Marion Counties, IN; Findings

June 25, 1984.

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision dated June 25, 1984, a finding, which is administratively final, was made by the Administrative Law Judge stating that the public convenience and necessity permit the abandonment by Seaboard System Railroad, Inc. a portion of its rail line known as the Indianapolis Branch, extending from railroad milepost B-112.00 near Delphi, IN to railroad milepost B-180.45 at Indianapolis, IN, a distance of 68.45 miles in Boone, Carroll, Clinton, Hamilton and at Marion Counties, IN. Abandonment is subject to the conditions for the protection of employees in *Oregon Short Line Railroad Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979) and subject to the condition that applicant keep intact all the track and all the right-of-way underlying the track, including bridges and culverts, for a period of 120 days from the effective date of this decision to enable any state or local government agency or other interested person to negotiate the acquisition for public use. Offers of financial assistance must be made within 10 days of the publication of this notice. Any person who made an offer of financial assistance prior to the publication of the notice must inform the carrier and the Commission of its continued interest or the offer may be considered to have lapsed. A certificate of abandonment will be issued to the Seaboard System Railroad, Inc. based on the above finding, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Deputy Director, Section of Finance, Room 5417, Interstate Commerce Comission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) It is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such a line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offeror may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of any offer, and no request is made of the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after notice is published. Upon notification to the Commission of execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 CFR Part 1121 as revised by Ex parte No. 274 (Sub-No. 6), *Abandonment of Railroad Lines and Discontinuance of Service*, 365 I.C.C. 249 (1981), as published at 46 FR 45342 (Sept. 11, 1981). All interested persons are advised to follow the instructions contained therein as well as the instructions in the above-referenced decision.

James H. Bayne,

Secretary.

[FR Doc. 84-18151 Filed 7-9-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-No. 78X)]

Washington County Railroad Co. and the Baltimore & Ohio Railroad Co.—Abandonment and Discontinuance of Service in Washington County, MD

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the proposals by Washington County Railroad Company (WC) and The Baltimore and Ohio Railroad Company (B&O) to abandon and discontinue service, respectively, over WC's 0.24-mile line of railroad between Valuation Stations 52+95 and 65+71 near Hagerstown, in Washington County, MD, subject to the employee protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

DATES: This action will be effective on August 9, 1984. Petitions to stay the effective date must be filed by July 20, 1984. Petitions for reconsideration are due on July 30, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-19 (Sub-No. 78X) to:

1. Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
2. Applicants' representative: Rene J. Gunning, 100 North Charles St., Suite 2204, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: June 29, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-18153 Filed 7-9-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30365]

Willamina & Grand Ronde Railroad Co.—Abandonment Exemption in Polk County, OR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Willamina & Grand Ronde Railroad Company of 2.8 miles of its line in Polk County, OR, subject to standard employee protective conditions.

DATES: This exemption shall be effective on July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington,

DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

Decided: June 29, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

[FR Doc. 84-18150 Filed 7-9-84; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 346 (Sub-8)]

Exemption From Regulation; Boxcar Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to establish new service list.

SUMMARY: The Commission intends to establish a new service list and list of parties of record, comprised only of those persons who desire to continue to receive copies of Commission issuance and those who have a continuing need to receive all documents filed, regarding the exemption from regulation of boxcar traffic, respectively.

Final rules in this proceeding (48 FR 20412, May 6, 1983), exempted transportation by boxcar of all commodities except nonferrous recyclable materials from regulation under authority of 49 U.S.C. 10505(a).

DATE: Responses to this notice are due by August 9, 1984.

ADDRESS: Please send responses referring to Ex Parte No. 346 (Sub-No. 8) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: This proceeding was initiated more than three years ago. At present, there are approximately 800 persons on the service list and 237 parties of record. The government incurs a substantial cost in serving all decisions and notices to everyone on the service list. Further, NRUC Corporation advises that mailing a one-page letter to all parties of record costs approximately $70 for postage and copying, and that reproduction and service of a ten-page document costs approximately $365. If the service list and list of parties of record have become outdated, much of this expense may be unnecessary.

Parties having a genuine need to receive all future service and/or filings in this proceeding shall notify the Commission within 30 days. Anyone failing to notify the Commission will be removed from the list. A new service list will be prepared and served after the 30-day period.

Issued: July 3, 1984.

James H. Bayne,

Secretary.

[FR Doc. 84-18154 Filed 7-9-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public. LIST OF FORMS UNDER REVIEW: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment Standards Administration
Study of the Direct and Indirect Costs of Hiring the Handicapped One Time
Businesses or other for profit; Small businesses or organization 6,840 responses; 3,450 hours; 1 survey

The costs to Federal contractors of hiring the handicapped under affirmative action regulations is being studied. A survey will be conducted of personnel managers, supervisors and employees. The data will be analyzed to estimate differences in cost and job performance between handicapped and nonhandicapped workers.

Signed at Washington, D.C. this 3rd day of July 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-18207 Filed 7-9-84; 8:45 am]

BILLING CODE 4510-27-M

Wage and Hour Division

Certificate Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949 53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firm listed in this notice has been issued a special certificate authorizing the employment of learners at hourly wage rates lower than the minimum wage rate otherwise applicable under section 6 of the Act. The effective and expiration dates, number of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the caption below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended).

Flushing Shirt Mfg. Co., Inc., Waynesburg, PA; 04-18-84 to 04-17-85; 10 learners for normal labor turnover purposes. (Work Shirts)

The learners certificte has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of this certificate may seek a review or reconsideration thereof on or before July 24, 1984.

Signed at Washington, DC, this 2nd day of July 1983.

Arthur H. Korn,

Authorized Representative of the Administrator.

[FR Doc. 84-18208 Filed 7-9-84; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-70-OLR; ASLBP No. 83-481-01 OLR]

General Electric Co. (GETR Vallecitos); Prehearing Conference

July 31 1984.

Please take notice that a prehearing conference in this proceeding will take place on August 9, 1984, from 9:30 AM to 5:00 PM, at the U.S. District Court, Federal Building, 19th Floor, Courtroom No. 7 450 Golden Gate Avenue, San Francisco, California 94102. The purpose of the conference is to hear argument on Mr. Jack Turk's proposed contentions and the California Public Interest Group's request to be readmitted to this proceeding as well as its proposed contentions.

Oral limited appearance statements from the public will not be entertained at this conference but will be scheduled for a later time in the event a hearing is ordered. Written limited appearance statements may be made at any time.

It is so ordered.

For the Atomic Safety and Licensing Board.

John H. Frye, III,

Chairman, Administrative Judge.

Bethesda, Maryland.

[FR Doc. 84-18218 Filed 7-9-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Diablo Canyon Nuclear Power Plant, Units 1 and 2, Meeting

The ACRS Subcommittee on Diablo Canyon Nuclear Power Plant, Units 1 & 2 will hold a meeting on July 11, 1984, in Room 1130, at 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Wednesday, July 11, 1984—8:30 a.m., until the conclusion of business.*

The Subcommittee will discuss matters relating to the issuance of an operating license amendment to permit operation at power levels above 5% of rated power up to full power.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John C. McKinley (telephone 202/634-1413) between 8:15 a.m., and 5:00 p.m. edt.

Dated: July 3, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-18214 Filed 7-9-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Notice of Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on July 12-14, 1984, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the Federal Register on June 28, 1984.

The agenda for the subject meeting has been revised as noted below:

Thursday, July 12, 1984

8:30 a.m.-8:45 a.m.. Chairman's Report (Open)—The ACRS Chairman will report to the Committee regarding items of current interest.

8:45 am.-10:15 a.m.. Engineering Expertise On-Shift (Open)—The members will consider a proposed NRC policy statement regarding an alternate arrangement for meeting the staffing requirements of 10 CFR Part 50.54(m)(2).

10:15 a.m.-12:30 p.m. and 1:30 p.m.-3:30 p.m.. River Bend Nuclear Power Station (Open)—The members will consider the request for an operating license for this nuclear station.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project and information related to the security arrangements for this station.

3:30 p.m.-5:30 p.m.. NRC Severe Accident Policy Statement (Open)—The members will discuss the proposed NRC policy statement regarding consideration of severe accidents in the regulation of nuclear power plants.

5:30 p.m.-6:00 p.m.. Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS activities and proposed items for full Committee consideration.

Friday, July 13, 1984

8:30 a.m.-11:30 a.m.. Diablo Canyon Nuclear Power Station (Open)—The Committee will consider matters related to the request for full power operation of this nuclear power plant. Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this project.

11:30 a.m.-12:30 p.m.. Review of Westinghouse APWR (Open)—The Committee will hear presentations and discuss a proposed modular review process for the Westinghouse Advanced PWR.

1:30 p.m.-5:30 p.m.. NRC Severe Accident Policy Statement (Open)—The members will continue discussion of the proposed NRC policy statement regarding consideration of severe

accidents in the regulation of nuclear power plants.

Saturday, July 14, 1984

8:30 a.m.–11:30 a.m.. Preparation of ACRS reports to NRC (Open)—The members will discuss proposed reports to the Nuclear Regulatory Commission regarding items considered during this meeting.

Portions of this session will be closed to discuss Proprietary Information related to the matters being considered and information related to the security arrangements of the River Bend Nuclear Station. Portions will also be closed to discuss matters that will be involved in adjudicatory proceedings.

11:30 a.m.–12:30 p.m. and 1:30 p.m.–4:00 p.m.. Consideration of Severe Accidents (Open)—The members will complete their consideration of the proposed NRC policy statement regarding consideration of severe accidents and will discuss a proposed report to the NRC regarding this matter.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 28, 1983 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], information specifically exempted from disclosure by statute [5 U.S.C. 552b(c)(3)], and information involved in an adjudicatory proceeding [5 U.S.C. 552b(c)(10)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m. EDT.

Dated: July 5, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–18215 Filed 7–9–84; 8:45 am]

BILLING CODE 7590–01–M

Final Decision Related To U.S. Department of Energy's General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Nuclear Regulatory Commission.

ACTION: Concurrence in U.S. Department of Energy's general guidelines for the recommendation of sites for nuclear waste repositories.

SUMMARY: The Nuclear Waste Policy Act of 1982 directs the U.S. Department of Energy (DOE) to issue general guidelines for the recommendation of sites for repositories. In carrying out this responsibility, DOE is required to obtain the concurrence of the U.S. Nuclear Regulatory Commission (NRC or Commission). On November 22, 1983, DOE submitted proposed general guidelines to the NRC and requested that the Commission concur in them. On March 14, 1984, the Commission published a preliminary decision (49 FR 9650) which set forth seven conditions for granting its concurrence. On May 14, 1984, DOE submitted revised proposed general guidelines that considered the Commission's concurrence conditions.

This final decision by the Commission addresses the extent to which DOE has complied with the seven conditions. It also considers public comments that were received by the Commission on its preliminary decision.

The Commission has concluded in this final decision that (1) DOE has satisfactorily resolved the seven conditions set forth in the Commission's preliminary decision, (2) on the basis of a review of the public comments, the conditions set forth in the preliminary decision need not be modified nor is there a need to add new conditions, and (3) the Commission should grant its concurrence in the revised guidelines submitted to it by the DOE on May 14, 1984 and as modified by the DOE during the June 22, 1984 Commission meeting.

FOR FURTHER INFORMATION CONTACT: Regis Boyle, Section Leader, Regulatory and Environmental Section, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 427–4799.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final decision is the U.S. Nuclear Regulatory Commission's (Commission or NRC) concurrence in the General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories (siting guidelines or guidelines) proposed by the U.S. Department of Energy (DOE).

Section 112(a) of the Nuclear Waste Policy Act of 1982 (NWPA or Waste Act), 42 U.S.C. 10312(a), directed DOE to issue general guidelines for the recommendation of sites for repositories. In carrying out this responsibility, DOE is required by the NWPA to consult with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of the Geological Survey, and interested Governors and to obtain the concurrence of the Commission.

On November 22, 1983, DOE submitted proposed general guidelines to the Commission and requested that the Commission concur in them. On December 15, 1983, the Commission described its decisionmaking process and set forth the procedural format for a public meeting on the proposed siting guidelines (48 FR 55789). The Commission scheduled the public meeting for January 11, 1984 to hear oral presentations on the siting guidelines and requested that any written comments on the siting guidelines be submitted to the Commission by January 9, 1984. At the public meeting on January 11, the period for receiving written comments on the guidelines was extended to February 1, 1984.

In its notice for the January 11 meeting (48 FR 55789), the Commission posed five questions which it believed to be relevant to the Commission's concurrence in DOE's siting guidelines.

Question 1

Do the guidelines omit any relevant technical criteria established in 10 CFR Part 60?

Question 2

Could any guidelines not related to 10 CFR Part 60 result in selecting a site that

would not be a reasonable candidate for license application?

Question 3

The guidelines and 10 CFR Part 60 sometimes employ different wording to define terms and to describe certain technical criteria. Could these differences result in selecting a site tha would not be a reasonable candidate for a license application?

Question 4

Would the selection of sites in accordance with the guidelines be a reasonable means to identify alternative sites for the purposes of the National Environmental Policy Act (NEPA)?

Question 5

Are the guidelines sufficient to assure the selection of sites that would be reasonable candidates for a license application?

On March 14, 1984, after considering both the oral and written comments from the public, the Commission published a preliminary decision (49 FR 9650). The Commission established a twenty-one (21) day public comment on the preliminary decision which closed on April 4, 1984. Thirty-five (35) comment letters on the preliminary decision were received by the Commission through May 14, 1984. Comment letters were received from ten (10) states, one (1) Indian tribe, two (2) federal agencies, one (1) industrial group, seven (7) public interest groups, and (5) private individuals. Some parties commented more than once. All of the comment letters received through may 14, 1984 were considered in developing this final decision.

In the preliminary decision, the Commission applied the following criteria for concurrence: (1) The siting guidelines must not be in conflict with 10 CFR Part 60; (2) the siting guidelines must not contain provisions that might lead DOE to select sites that would not be reasonable alternatives for an Environmental Impact Statement (EIS); and (3) the siting guidelines should not contain provisions that are in conflict with NRC responsibilities as embodied in the NWPA.

On the basis of these criteria, the Commission indicated that it would concur in the proposed siting guidelines provided that DOE satisfied seven conditions.[1] These conditions called upon DOE to:

(1) Amend the siting guidelines to recognize NRC's jurisdiction for resolution of differences between the guidelines and 10 CFR Part 60;

(2) Commit to obtain NRC's currence on revisions to the siting guidelines that relate to NRC jurisdiction;

(3) Revise the siting guidelines so that:

(a) DOE modifies its use of high effective porosity to limit its use to those situations that could be considered as a favorable siting condition;

(b) DOE commits to revise its siting guidelines on the unsaturated zone so that they are consistent with the final NRC amendments on the unsaturated zone;

(c) DOE should relocate the favorable condition relating to total dissolved solid concentrations in the groundwater, presently contained in § 960.4-2-1(b)(7) of the guidelines, to § 960.4-2-8-1 where effects on natural resources are considered. As an alternative, DOE could delete this provision;

(d) DOE should not frame its guidelines such that a 1,000 year groundwater travel time (10 CFR 60.113) would be adjusted, particularly in the early stages of site selection;

(e) DOE should delet the word "permanently" from its definition of "disturbed zone;"

(f) DOE should clarify its meaning of "short-term" extreme erosion and revise the guidelines as appropriate;

(g) DOE should delete the word "significant" from § 960.4-2-8-1(c)(2) of the siting guidelines where reference is made to "Evidence of *significant* subsurface mining" (emphasis added).

(h) DOE should modify the guidelines so that they are consistent with the Commission's definition of "anticipated processes and events" and "unanticipated process and events."

(i) DOE should modify the guidelines so that potentially adverse conditions (e.g., dissolutioning) be considered if they affect isolation within the controlled area even though the condition may occur outside the controlled area.

(4) Modify the siting guidelines to make clear that engineered barriers cannot constitute a compensating measure for deficiencies in the geologic media during site screening;

(5) Specify in greater detail how the guidelines will be applied at each siting stage including site nomination and characterization (for example, DOE should specify in the implementation guidelines which guidelines would be applied at each stage of site screening);

(6) Supplement the guidelines to indicate the kinds of information necessary for DOE to make decisions on the nomination of at least five repository sites and subsequently recommending three sites to the President for characterization (examples of the kinds of information which the Commission has in mind can be found in NRC Regulatory Guide 4.17); and

(7) Add additional disqualifying conditions to the guidelines with sufficient specificity to ensure that unacceptable sites are eliminated as early as practicable. Disqualifying conditions should be provided for those factors specified in section 112(a) of NWPA including seismic activity, atomic energy defense activities, proximity to water supplies, the effect upon the rights of users of water, the location of valuable natural resources, hydrology, geophysics, proximity to populations, and proximity to components of the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, the National Wilderness Preservation System, and National Forest Lands.

Subsequent to the preliminary decision, the Commission's staff met with DOE in six public meetings, beginning on March 14, 1984 and ending on May 3, 1984, in order to assist DOE in resolving the Commission's conditions for concurrence. Members of the public were provided the opportunity to observe these meetings and to offer their comments and observations at the conclusion of each of these meetings.

On May 14, 1984, the DOE submitted revised proposed siting guidelines for the Commission's consideration.[2] At a meeting with the Commission on June 22, 1984, DOE agreed to make certain additional changes. DOE believes that the revised guidelines fully satisfy the concerns of the Commission as expressed in its preliminary concurrence decision.

II. Resolution of NRC Conditions for Concurrence

In this section, the Commission (1) restates its conditions for concurrence that were set forth in the Commission's preliminary decision (49 FR 9650); (2) summarizes DOE's response to each condition; and (3) discusses the adequacy of DOE's response, considers public comments on each condition and concludes whether the conditions have been satisfied. Public comments that do

[1] In the Commission's preliminary decision, Commissioner Roberts presented separate views on the Commission's concurrence conditions in which he stated that he believes that Conditions 5 and 6 go beyond what the Commission is required to do by section 112(a) of the Waste Act.

[2] On May 29, 1984, and June 19, 1984, DOE submitted letters to the Commission which identified editorial oversights in the May 14 submittal that were discovered after DOE had submitted the revised guidelines to the Commission. When the revised siting guidelines dated May 14, 1984 are referred to in this decision, the editorial corrections, as presented in the May 29, 1984 and June 19, 1984 letters, are also considered.

not directly address the Commission's conditions for concurrence are considered in the section, "Other Commission Considerations Resulting From Public Comment."

In general, the States, public interest groups, and other commenters supported the seven conditions set forth in the Commission's preliminary decision. For the most part, the commenters believe that if DOE satisfactorily responds to the seven conditions, then objective and acceptable guidelines will be established. However, a few commenters believed that the conditions did not go far enough while others believed that some of the conditions were unreasonable and beyond the scope of NRC's jurisdiction. These latter comments, along with other comments that address specific conditions, are considered in the analysis that follows.

NRC Condition 1

DOE should amend the siting guidelines to recognize NRC's jurisdiction for resolution of differences between the guidelines and 10 CFR Part 60.

DOE Response

DOE has revised § 960.1 of the guidelines to state that "The DOE recognizes NRC jurisdiction for the resolution of differences between the guidelines and 10 CFR Part 60."

Discussion and Conclusions

The November 18, 1983 draft of the guidelines stated that DOE, in applying its guidelines, " will resolve any inconsistencies between the guidelines and the above documents [NWPA, 40 CFR Part 191 and 10 CFR Part 60] in a manner determined by the DOE to most closely agree with the intent of the Act." In its preliminary decision, the Commission pointed out that the Commission's interpretation of 10 CFR Part 60 is binding on DOE. In its revised guidelines, DOE has deleted the language quoted above and replaced it with the words from Condition 1.

The commenters generally supported this condition. Minnesota suggested that DOE delete the language in § 960.1 that authorize DOE to resolve inconsistencies between the guidelines and 10 CFR Part 60. Likewise, the Natural Resources Defense Council (NRDC) found that "In order to ensure selection of a licensable site, DOE should submit apparent inconsistencies to the Commission for resolution according to the *Commission's* interpretation of 10 CFR Part 60, rather than according to DOE's interpretation "

The current guidelines recognize NRC jurisdiction and no longer state that DOE would resolve differences between the guidelines and 10 CFR Part 60. The Commission concludes that the revisions to § 960.1 of the guidelines satisfy Condition 1.

NRC Condition 2

DOE should commit to obtain NRC's concurrence on revisions to the siting guidelines that relate to NRC jurisdiction.

DOE Response

DOE has revised § 960.1 of the guidelines to state that "The DOE will submit any such revisions relating to NRC jurisdiction to the NRC and obtain their concurrence prior to issuance." At the June 22, 1984 Commission meeting, DOE agreed to change the above sentence to state, "The DOE will submit revisions to the NRC and obtain their concurrence prior to issuance."

Discussion and Conclusions

Several commenters stated that NRC should concur in all revisions to the guidelines regardless of whether the revision falls within NRC jurisdiction. Nevada stated that "under the NWPA, there are simply no guidelines, original or amendatory, which do not require the Commission's concurrence because the Congress has said so." Likewise, Utah stated that "The NWPA does not provide that NRC concurrence to [sic] be limited only to those guidelines that relate to the Commission's licensing authority."

In its preliminary decision, the Commission explained that it would have jurisdiction to review the guidelines insofar as they might bear upon the exercise of NRC responsibilities under the Atomic Energy Act, the Energy Reorganization Act, the National Environmental Policy Act, and the Nuclear Waste Policy Act. Because of the broad scope of these responsibilities, as well as the express wording of NWPA, the Commission considers that DOE should seek NRC concurrence on all revisions to the guidelines.[3] DOE has now agreed to do so. The Commission concludes that the modifications that DOE agreed to at the June 22, 1984 Commission meeting comply with NRC Condition 2.

[3] In particular, the Commission would expect DOE to submit for NRC concurrence such revisions as may be needed to have the guidelines conform to U.S. Environmental Protection Agency standards and the technical requirements and criteria promulgated by the Commission to implement such standards pursuant to NWPA.

NRC Condition 3(a)

DOE should modify its use of high effective porosity to limit its use to those situations that could be considered as a favorable siting condition.

DOE Response

DOE has revised § 960.4-2-1(b)(4)(iv) of the guidelines to state that "High effective porosity *together with low hydraulic conductivity* in rock units along paths of likely radionuclide travel between the host rock and accessible environment" (emphasis added) is a favorable siting condition for waste disposal in the saturated zone.

Discussion and Conclusions

The November 18, 1983 draft of the guidelines stated that a favorable condition for reducing the release of radionuclides in groundwater would be "a high effective porosity along paths of likely radionuclide travel between the host rock and the accessible environment." According to Darcy's law, effective porosity is inversely related to the velocity of the groundwater flow (groundwater flow velocity equals the product of hydraulic gradient and hydraulic conductivity divided by effective porosity). Thus, for certain conditions, a high effective porosity could indicate a low groundwater velocity and, therefore, a long groundwater travel time of radionuclides to the accessible environment.

However, before a high effective porosity could be considered favorable, it must be assumed that the product of the hydraulic gradient and conductivity remains constant. The Commission noted that in some circumstances this product is not constant because porisity and hydraulic conductivity can be positively correlated. If this positive correlation occurred at a particular site, then a high effective porosity would be an adverse, rather than favorable, condition.

The States of Utah and Minnesota recognized that, without considering the other components in Darcy's law, a high effective porosity could be favorable or adverse. Utah stated, "This guideline should either be changed to reflect the dynamic nature of the relationships defined by the travel time formula [Darcy's law] or should be converted to a 'potentially adverse condition' which accurately considers those dynamic factors."

The revised guidelines now state that DOE will consider a high effective porosity together with low hydraulic conductivity. This new wording reflects the inverse relationship between

porosity and conductivity which satisfies the Commission's concern and should also satisfy Utah's concern that the guidelines "reflect the dynamic nature of the relationships defined by the travel time formula."

Minnesota criticized DOE's new wording and stated "DOE's proposed wording is inappropriate because the condition of high effective porosity, even coupled with hydraulic conductivity, may under some circumstances be adverse—especially when considering crystalline rock." The Commission is not aware of any such circumstance. For Darcian flow at any given scale, the Commission considers that the combination of high effective porosity and low hydraulic conductivity is a favorable condition with respect to groundwater travel time and advective transport of radionuclides.

The Commission concludes that DOE's revision to the favorable condition at § 960.4-2-1(b)(4)(iv) satisfies Condition 3(a).

NRC Condition 3(b)

DOE should commit to revise its siting guidelines on the unsaturated zone so that they are consistent with the final NRC amendments on the unsaturated zone.

DOE Response

DOE has added a note to § 960.4-2-1(b)(5) that reads, "The DOE commits, in accordance with the general principles set forth in Section 960.1 of these regulations, to revise the guidelines, as necessary to ensure consistency with the final NRC regulations on the unsaturated zone, which were published as a proposed rule on February 16, 1984 in 49 FR 5934."

Discussion and Conclusions

The Commission requested a commitment from DOE to revise their guidelines if they are inconsistent with the final NRC amendments to 10 CFR Part 60 related to the unsaturated zone. The guidelines contain five provisions [§§ 960.4-2-1(b)(6) (i) through (v)] that deal with the unsaturated zone. The proposed amendments to 10 CFR Part 60 contain similar, though not identical, provisions. In its preliminary decision, the Commission concluded that the guidelines are not in conflict with the proposed amendments to 10 CFR Part 60. Although the final NRC amendments may change after the Commission considers public comment, DOE's commitment to revise their guidelines will ensure that they remain consistent with 10 CFR Part 60.

A few commenters thought that in exchange for DOE's commitment to revise their guidelines, the Commission would not engage in a formal concurrence process on the guideline revisions. Minnesota stated that DOE should seek NRC concurrence in guidelines so that the guidelines will be consistent with the amendment to 10 CFR Part 60 on the unsaturated zone.

As indicated in the discussion of Condition 2, the Commission would occur in any guideline revision that falls within its jurisdiction, and revisons to guidelines dealing with the unsaturated zone would be within the Commission's jurisdiction. If the guidelines submitted on May 14, 1984 should prove to be inconsistent with the final NRC amendments on the unsaturated zone, then DOE on its own initiative, or in response to an NRC request, would revise the guidelines and submit the needed changes for concurrence. DOE's commitment to assure consistency satisfies the Commission that this will be accomplished.

The Commission concludes that DOE's commitment to revise the guidelines in § 960.4-2-1(b)(5) satisfies Condition 3(b).

NRC Condition 3(c)

DOE should relocate the favorable condition relating to total dissolved solids concentrations in the groundwater, presently contained in § 960.4-2-1(b)(7) of the guidelines, to § 960.4-2-8-1 where effects on natural resources are considered. As an alternative, DOE could delete this provision.

DOE Response

DOE relocated its provision from the section on Geohydrology (§ 960.4-2-1(b)(7)) to the section on Natural Resources (§ 960-4-8-1(b)(2)). DOE also changed the wording of the provision to read, " along any path of likely radionuclide travel *from the host rock* to the accessible environment" (emphasis added).

Discussion and Conclusion

The Commission gave DOE two options as a means of resolving Condition 3(c). DOE could either transfer the provision to § 960.4-2-8-1 where effects on natural resources are considered, or DOE could delete the provision. The first option would clarify DOE's intent to avoid sites that contain domestic or agricultural sources of groundwater. Since groundwater protection is more directly related to natural resources (§ 960.3-2-8-1) than radionuclide releases (§ 960.4-2-1), the Commission reasoned that DOE could better clarify its intent by transferring the provision to § 960.4-2-8-1.

The second option of deleting the provision would satisfy the Commission's concern that "* * * groundwater containing a high concentration of dissolved solids may have an adverse effect on the performance of the engineered barrier system" (49 FR 9653). The Commission felt that a high concentration of dissolved solids in groundwater could complicate the design of the waste canister and could perhaps hamper DOE's efforts to satisfy the containment and releases rate requirements in 10 CFR Part 60.

The commenters held mixed views on whether DOE should delete or retain the provision that would favor sites where the groundwater contains a high concentration of total solids (TDS). Rhode Island would prefer that DOE delete the provision. Rhode Island believes that "if good quality water may be obtained by filtering, chlorinating, or treating the groundwater with flocculants, we would argue that such groundwater should not be exposed to radionuclides, regardless of its dissolved solids content." [4] Minnesota also favored deleting the provision but for a different reason. Minnesota stated, "It would not be prudent to locate a repository in an area where the danger of canister corrosion would be high [due to a high concentration of TDS]."

Utah criticized the high TDS provision but made no recommendation on how it should read or whether the provision should be deleted. Utah stated that " the possibility of human intrusion for the use of such water [containing a high TDS] is likely to be heavily dependent upon other unrelated but predictable developments, and not appropriately assessed by this guideline."

Washington supported the provision for a high TDS in groundwater and stated that "We are not too concerned about which subsection of the guidelines contains this philosophy [of favoring sites where the groundwater contains a high TDS concentration], but we don't want it deleted."

DOE has retained and modified the provision for high TDS concentration in groundwater and will favor sites where the TDS concentration in groundwater exceeds 10,000 parts per million (ppm). Rhode Island's objection to this provision stems from its concern that DOE may use the 10,000 ppm of TDS as

[4] The Commission notes that the processes identified would not remove dissolved solids from the water. However, processes such as evaporation, reverse osmosis, or ion-exchange could reduce or eliminate dissolved solids from the water as well as any radioactive contamination.

a threshold for poor quality groundwater, and with advances in water treatment technology, this "poor quality groundwater" could become an acceptable water source to future generations. The Commission agrees that advanced water treatment could make poor-quality groundwater acceptable to future generations, but this scenario assumes that better quality water would not be available. If future generations must rely upon groundwater with a high dissolved solids content as a source of water, then the potentially adverse condition: "Potential for foreseeable human activities—such as groundwater withdrawal, extensive irrigation " [§ 960.4-2-8-1(c)(5)] would discourage DOE from selecting a site where even poor quality groundwater could be a viable source.

The Commission shares Minnesota's concern that a high TDS concentration in groundwater could accelerate the corrosion of the waste canister. However, the favorable condition applies only to groundwater that flows from the host rock to the accessible environment and not to the water that may be in contact with the waste canister. The Commission concludes that DOE has satisfied Condition 3(c) by making appropriate changes to § 960.4-2-1(b)(7) and § 960.4-2-8-1(b)(2) of the guidelines.

NRC Condition 3(d)

DOE should not frame its guidelines such that a 1000 year groundwater travel time (10 CFR 60.113) would be adjusted, particularly in the early stages of site selection.

DOE Response

DOE has deleted from § 960.4-2-1(d) the provision that would allow DOE to select sites where the groundwater travel time is less than 1000 years. DOE has also changed the wording of § 960.4-2-1(d) to state: "A site shall be disqualified if the pre-waste-emplacement groundwater travel time from the disturbed zone to the accessible environment is expected to be less than 1000 years along any pathway of likely *and significant* radionuclide travel" (emphasis added).

Discussion and Conclusions

The November 18, 1983 draft of the guidelines allowed DOE to select sites for characterization where groundwater travel time is less than 1,000 years. Although 10 CFR 60.113 allows adjustments to a 1,000 year groundwater travel time, these adjustments must be approved or specified by the Commission. Consequently, Condition 3(d) originated from the Commission's objection that DOE may assume an adjustment to groundwater travel time that the Commission would not approve.

No commenters disagreed with the Commission that the criterion for a 1000 year groundwater travel time should not be adjusted when selecting sites for characterization.

The revised guidelines are written so that DOE can no longer adjust groundwater travel times, but the Commission notes that DOE has made other changes. DOE will now consider groundwater pathways of likely *and significant* radionuclide travel, which differs from the NRC performance objective at 10 CFR 60.113. According to 10 CFR 60.113, the Commission will consider " groundwater travel time along the fastest path of likely radionuclide travel. "

DOE has argued that the words "and significant" must be included because DOE will not know, until after site characterization, the pathways, rates, and amounts of groundwater travel in sufficient detail to know precisely whether the site meets the NRC's performance objective of a 1,000-year groundwater travel time. Therefore, DOE stated that in order to avoid disqualifying an adequate site because early predictions (before site characterization and before the extent of the disturbed zone or the location of the accessible environment is accurately known) indicated that small amounts of water incapable of carrying significant amounts of radionuclides might reach the accessible environment in less than 1,000 years, DOE has retained the words "and significant" in this disqualifier.

In the absence of a substantive concern, the Commission would not object to DOE phrasing its guideline provision for groundwater travel time in a manner different from its counterpart in 10 CFR Part 60. The issue prompting this condition for concurrence was not the discrepancy in wording, but rather that DOE has assumed the Commission's prerogative to adjust groundwater travel time.

The Commission stated in its Preliminary Decision that the guidelines and 10 CFR Part 60 need not be identical because they serve different purposes. "The siting guidelines are to be used to select sites for repository development while 10 CFR Part 60 will be used to evaluate a site after it has been selected for licensing following an extensive site characterization program" (49 FR 9655). The data acquired during site screening cannot support as rigorous a finding as the data acquired during site characterization. In the absence of information from site characterization as depth, the Commission expects that there will be large uncertainties in estimates of groundwater travel times. The Commission does not believe sites shoud be prematurely disqualifed on the basis of speculation about pathways whose existence can only be verified by a site characterization program. Therefore, the criterion for groundwater travel time in the guidelines may be phrased differently than the criterion in 10 CFR Part 60.

If the language added by DOE would have conflicted with 10 CFR Part 60, then the Commission would not concur. In this case, the Commission views the phrase "and significant" to be redundant and not in conflict with these regulations. For the Commission expects, notwithstanding DOE's submission, that the fastest path of likely radionuclide travel will be significant, unless DOE can make the clearest and most compelling showing to the contrary in a particular case to the Commission pursuant to 10 CFR 60.113(b). The Commission would expect DOE to interpret the guidelines in this way. The Commission continues to believe that DOE should not anticipate relying on an adjustment to 10 CFR 60.113 in the early stages of site selection.

The Commission concludes that DOE's revision to the disqualifying condition at § 960.4-2-1(d) satisfies Condition 3(d) and is not in conflict with the NRC performance objective at 10 CFR 60.113.

NRC CONDITION 3(e)

DOE should delete the word "permanently" from its definition of "disturbed zone."

DOE Response

DOE deleted the word "permanently" from its definition of disturbed zone at § 960.2. The provision now reads, "Disturbed zone means that portion of the controlled area, excluding shafts, whose physical or chemical properties are projected to change as a result of underground facility construction or heat generated by the emplaced radioactive waste such that the resultant change of properties could have a significant effect on the performance of the geologic repository.

Discussion and Conclusion

In the November 18, 1983 draft of the guidelines, "disturbed zone" was defined as an area that is "projected to change permanently" as a result of repository construction or operation. The definition of "disturbed zone" in 10 CFR 60.2 is not limited to areas that have changed "permanently"

Consequently, the Commission was concerned that DOE might neglect transient changes that could have a significant effect on repository performace, or that DOE might make siting decisions on the basis of a disturbed zone that is different from the one specified in 10 CFR Part 60.

Most commenters did not comment on this condition. Those who did, supported it. Therefore, the Commission concludes that the deletion of the word "permanently" at § 960.2 of the guidelines satisfies Condition 3(e).

NRC CONDITION 3(f)

Doe should clarify its meaning of "short term" extreme erosion and revise the guidelines as appropriate.

DOE Response

DOE deleted the word "sustained" from § 960.4-2-5(c)(1). The provision now reads, "A geologic setting that shows evidence of extreme erosion during the Quaternary Period."

Discussion and Conclusions

The term "short term" extreme erosion was used by DOE in one of its support documents on the guidelines in explaining why the guidelines used the term "sustained" extreme erosion. DOE explained that short term erosion would not affect waste isolation. Therefore, DOE used the term "sustained" extreme erosion in the guidelines so that it would not have to consider short term erosion.

In its preliminary decision, the Commission questioned the duration of "short term" and in response, DOE deleted the word "sustained" from § 960.4-2-5(c)(1). All who commented on this issue agreed that DOE should make this deletion.

The Commission finds that DOE's deletion of the word "sustained" at § 960.4-2-5(c)(1) satisfies Condition 3(f).

NRC Condition 3(g)

DOE should delete the word "significant" from § 960.4-2-8-1(c)(2) of the siting guidelines where reference is made "Evidence of *significant* subsurface mining" (emphasis added).

DOE Response

DOE deleted the word "significant" from § 960.4-2-8-1(c)(2). The provision now reads, "Evidence of subsurface mining or extraction for resources within the site if it could affect waste containment or isolation."

Discussion and conclusions

In the November 18, 1983 draft of the guidelines, DOE qualified subsurface mining as "significant" which differs from a similar provision at 10 CFR 60.122(c)(18). The Commission requested that DOE delete the word "significant" because all evidence of subsurface mining (as opposed to surface mining) should be considered adverse until the evidence has been thoroughly evaluated. Those who commented on this condition supported it.

The Commission concludes that DOE's deletion of the word "significant" satisfies Condition 3(g).

NRC Condition 3(h)

DOE should modify the guidelines so that they are consistent with the Commission's definition of "anticipated processes and events" and "unanticipated processes and events."

DOE Response

DOE deleted the terms "characteristics and processes affecting expected repository performance" and "potentially disruptive processes and events" from the guidelines.

Discussion and Conclusions

The November 18, 1983 draft of the guidelines were divided into postclosure guidelines and preclosure guidelines. The postclosure guidelines, in turn, were divided into two groups: "characteristics and processes affecting expected repository performance" and "potentially disruptive processes and events." These divisions of the guidelines established a ranking system whereby the postclosure guidelines would take precedence over preclosure guidelines. Within the postclosure guidelines, "characteristics and processes affecting expected repository performance" would take precedence over "potentially disruptive processes and events."

In this preliminary decision, the Commission found that the DOE terms: "characteristics and processes affecting expected repository performance" and "potentially disruptive processes and events" were inconsistent with related NRC terms: "anticipated processes and events" and "unanticipated processes and events." As a result, the Commission stated in the preliminary decision that DOE may overlook "in the site selection process some site characteristics that are important to repository performance and considers that the guidelines should be revised." DOE responded by deleting its terms, but as a consequence of the deletion, the postclosure guidelines are no longer ranked.

Several commenters were aware that DOE planned to satisfy this condition by deleting its terms from the guidelines. Minnesota stated, "By eliminating the distinction in terms, the NRC will undo what has been considered by the states as a significant step by DOE at setting some hierarchy of variable importance." Likewise, the Yakima Indian Nation noted that DOE's revision is a set-back for the Yakima Indian Nation and states who argued for a qualitative ranking of the guidelines. Without this ranking, the Yakimas believe that their review of the environmental assessments, prepared for each nominated site, will be weakened.

The Commission's position on whether or not the guidelines should be ranked is stated in its preliminary decision. The Commission stated, " the Commission sees no explicit requirement for this or any other ranking in the NWPA" and " . since DOE must comply with all applicable NRC regulations, the issue of ranking or ordering the guidelines will not materially affect NRC in carrying out its statutory responsibilities" (49 FR 9659). Furthermore, in evaluating respository performance, the potentially disruptive events are often found to be limiting in determinations of whether the proposed repository site and design adequately protect public health and safety. Therefore, the Commission considers all of the postclosure guidelines to be important to public health and safety and it would not be logical to rank one group of postclosure guidelines above another.

Some commenters would prefer that DOE resolve Condition 3(h) without eliminating the ranking of postclosure guidelines. Some commenters suggested that DOE revise its postclosure guidelines and then group them according to the NRC definitions of anticipated and unanticipated processes and events. As stated above, the Commission questions whether this is necessary, or even desirable. In addition, there is not a clear consensus among the commenters on how the guidelines should be ranked. Opinions range from giving preclosure, rather than postclosure, guidelines a higher ranking (Minnesota, Utah) to not ranking the guidelines at all (Wisconsin, Rhode Island). After reviewing comment letters sent to both DOE and NRC, the Commission considers that the arguments for guideline ranking were primarily motivated by a need for some assurance that DOE's site-selection process will proceed in a logical and verifiable fashion. The Commission believes that DOE's response to Condition 5 (DOE should specify how the guidelines will be applied) should give these commenters that assurance.

The Commission concludes that DOE has adequately resolved Condition 3(h)

by deleting from the guidelines the terms "characteristics and processes affecting expected repository performance" and "potentially disruptive processes and events."

Condition 3(i)

DOE should modify the guidelines so that potentially adverse conditions (e.g., dissolutioning) be considered if they affect isolation within the controlled area even though the condition may occur outside the controlled area.

DOE Response

DOE has added the following sentence to § 960.4–2: "Potentially adverse conditions will be considered if they affect waste isolation within the controlled area even though such conditions may occur outside the controlled area."

DOE has also revised the potentially adverse condition at § 960.4–2–6(c) to read, "Evidence of dissolution within the geologic setting such as breccia pipes, dissolution cavities, significant volumetric reduction of the host rock or surrounding strata, or any structural collapse—such that a hydraulic interconnection leading to a loss of waste isolation could occur."

Discussion and Conclusions

The Commission objected to the November 18, 1983 draft of this provision because it was not consistent with a similar provision at 10 CFR 60.122(c)(10). The November draft referred to "significant dissolution within the site" while 10 CFR 60.122(c)(10) would consider dissolution without reference to its significance or where it occurs. In its revised guidelines, DOE has deleted the word "significant" from this provision and now refers to dissolution "within the geologic setting" instead of "within the site."

The Commission was also generally concerned that DOE may investigate only adverse conditions that occured within the controlled area.[5] But, any adverse condition, even one outside of the controlled area, should be considered if it affects waste isolation. [See 10 CFR 60.122(c).] Minnesota and the Yakima Indian Nation agreed and noted that the adverse conditions for natural resources (§ 960.4–2–8–1(c) (1), (2) and (3)) should be revised in the same manner as the adverse condition of dissolutioning. The Commission believes that the general provision at § 960.4–2, that states that potentially adverse conditions will be considered if they affect waste isolation even though such conditions may occur outside of the controlled area, addresses this concern.

The Commission concludes that DOE has satisfied Condition 3(i) by its revisions to § 960.4–2 and § 960.4–2–6(c).

NRC Condition 4

DOE should modify the siting guidelines to make clear that engineered barriers cannot constitute a compensating measure for deficiencies in the geologic media during site screening.

DOE Response

DOE added the following paragraphs to § 960.3–1–5 of the guildelines:

"Comparative site evaluations shall place primary importance on the natural barriers of the site. In such evaluations for the postclosure guidelines of Subpart C, engineered barriers shall be considered only to the extent necessary to obtain realistic source terms for site evaluations."

and

" engineered barriers shall not be used to (1) compensate for an inadequate site; (2) mask the innate deficiencies of a site; (3) disguise the strengths and weaknesses of a site and the overall system; and (4) mask differences between sites when they are compared."

Discussion and Conclusions

Many commenters supported this condition but some felt that the Comission did not go far enough. Minnesota argued that engineered barriers should not be used to influence the site selection process. The Natural Resource Defense Council (NRDC) recommended that if engineered barriers are used, DOE should specify, in the guidelines, the exact contribution it would assume from engineered barriers when nominating and recommending sites for characterization. The Yakima Indian Nation contended that " equal engineered barrier contributions could mask very significant differences in isolation potential among candidate sites if the engineered barriers contribution were large relative to the natural barrier contribution."

The Commission finds that the revisions made to §960.3–1–5 clearly show that DOE will not select sites where engineered barriers must be used to compensate for deficiencies in the geologic media. The Yakima Indian Nation's argument that engineered barriers "could mask very significant differences in isolation potential among candidates sites" is satisfied by the guideline provision " engineered barriers shall not be relied upon to mask differences between sites when they are compared," together with the other provisions which describe the information that will be considered.

During the January 11, 1984 public meeting, the U.S. Environmental Protection Agency (EPA) testified that DOE should not take full credit for the performance of waste packages and waste forms (i.e., engineered barriers) required by 10 CFR Part 60 when making comparative performance assessments of potential sites for repository development. Instead, EPA suggested that DOE should assume that waste packages and waste forms perform at least an order of magnitude less effectively than that required by 10 CFR Part 60 in order to compare the differences in isolation capabilities among the sites.

Most states, public interest groups and the Yakima Indian Nation supported EPA's proposal. In the revised guidelines, DOE added the following to §960.3–1–5:

"For a better understanding of the potential effects of engineered barriers on the overall performance of the repository system, these comparative evaluations shall consider a range of levels in the performance of the engineered barriers. That range of performance levels shall vary by at least a factor of 10 above and below the engineered-barrier performance requirements set forth in 10 CFR 60.113, and the range considered shall be identical for all sites compared. The comparisons shall assume equivalent engineered-barrier performance for all sites compared and shall be structured so that engineered barriers are not relied upon to compensate for deficiencies in the geologic media."

The Commission also believes that the above revision responds, in part, to the NRDC suggestion that DOE specify the exact contribution it would assume from engineered barriers.

Serious Texans Against Nuclear Dumps (STAND) questioned the Commission's statement in the Preliminary Decision that:

"Section 112(a) [of the NWPA] establishes detailed geologic considerations as the primary criteria for site selection, but not the only criteria for site selection. Thus, the guidelines are not required to rely solely on geologic criteria" (49 FR 9657).

According to STAND, section 112(a) does not permit DOE to place any reliance on engineered barriers in its guidelines when assessing sites for nomination and characterization. STAND believes that section 112(a) explicitly identifies the only non-geologic factors which may be

[5] As used in 10 CFR Part 60, site means the location of the controlled area.

considered in the guidelines and these factors do not include engineered barriers.

Section 112(a) of the NWPA does not explicitly mention engineered barriers with other non-geologic factors to be considered in the guidelines. However, to satisfy the intent of the guidelines, the Commission believes that it must include relevant non-geologic factors. For example, realistic radiological source terms can only be calculated by considering engineered barriers. Accordingly, the Commission does not agree that engineered barriers should not be considered at all. The limited consideration of engineered barriers, which DOE now proposes, is a reasonable approach; it accommodates the Commission's concern about not compensating for deficiencies in the geologic media. Furthermore, the Commission believes that Congress intended section 112(a) of the NWPA to set minimum, not exhaustive, factors for consideration in the guidelines. Hence, the guidelines may consider engineered barriers as well as other non-geologic factors that are not explicitly mentioned in section 112(a) of the NWPA. Such consideration of non-geologic factors will also enhance DOE's ability to select reasonable alternatives for NEPA purposes.

During the June 22, 1984, Commission meeting, it was discussed that the use of the term "realistic source terms" in § 960.3-1-5 of the guidelines was not clear. For clarification, DOE agreed to revise the sentence where this term appears in the following way:

"In such evaluation for the postclosure guidelines of Subpart C, engineered barriers shall be considered only to the extent necessary to obtain realistic source terms for *comparative* site evaluations *based on the sensitivity of the natural barriers to such realistic engineered barriers.*"

The Commission concludes that DOE has satisfied Condition 4 with the revisions added to § 960.3-1-5 of the guidelines.

NRC Condition 5

DOE should specify in greater detail how the guidelines will be applied at each siting stage including site nomination and characterization (for example, DOE should specify in the implementation guidelines which guidelines would be applied at each stage of site screening).

DOE Response

In response to NRC Condition 5, the DOE added a new appendix (Appendix III) to the siting guidelines and revised the implementation guidelines (§ 960.3) to describe in more detail how the guidelines will be applied.

Appendix III specifies how the guidelines will be applied at the principal decision points (i.e., potentially acceptable, nomination and recommendation, and repository site selection stages) of the siting process. The Appendix also defines the type of finding that will be made for each guideline at each of these stages. It further identifies which disqualifying conditions will be applied at various stages of site selection and the type of finding that will be made when the disqualifying condition is applied.

Discussion and Conclusions

The Commission finds that the revised guidelines submitted by the DOE on May 14, 1984 specify in greater detail how the guidelines will be applied at each siting stage. However, in its comment letter of April 6, 1984, the DOE stated that it believes that Condition 5 (as well as Conditions 6 and 7) goes substantially beyond what is required by the Waste Act. The Edison Electric Institute (EEI) expressed similar views. On the other hand, several commenters (e.g., Nevada, Texas, and the Yakima Indian Nation) indicated their belief that satisfactory compliance with Condition 5 (along with Conditions 6 and 7) would help to ensure that objective siting guidelines will be established. DOE's revised guidelines address all of the conditions specified in the preliminary decision, including Conditions 5, 6 and 7. With regard to the objections raised by DOE and EEI with respect to the Commission's jurisdiction, the Commission continues to believe that the several statutes cited in the Commission's preliminary decision to its broad jurisdiction over matters regarding protection of the public health and safety from exposures to radiation and over environmental impacts arising from NRC licensed facilities. This authority provides an ample basis for inclusion of Conditions 5, 6 and 7.

In commenting on the Commission's preliminary decision, the commenters generally supported Condition 5. Nevada stated that DOE's compliance with Condition 5 will provide guidelines which will ensure that the selection of sites at the various decision stages will be based on sound technical findings. The State of Rhode Island indicated that the issue raised by Condition 5 is what caused the states to propose that DOE outline specific methodologies in the guidelines for implementing each of the stages of the siting process. Rhode Island noted that even though the NRC rejected the states' proposal for a specific implementation methodology [6] NRC Condition 5 (and 6) appears to be "the next best thing." The State of Minnesota indicated that it would like the siting guidelines to specify the exact guidelines that will be used during each phase of the site selection process.

The Commission finds that the modifications and additions that DOE has made to the November 18, 1983 version of the siting guidelines, as reflected in its May 14, 1984 submittal, satisfy the requirements of Condition 5 and many of the public's concerns with regard to this issue. In particular, the revised guidelines describe an implementation process which provides confidence that alternative sites will be selected in a manner that meets the requirements of the National Environmental Policy Act (NEPA). Appendix III of the revised guidelines identifies when and how the siting guidelines will be applied at each of the principal decision points in the site selection process. Appendix III also specifies two levels of findings that DOE will make for qualifying and disqualifying conditions at the various site selection stages.

At the first stage of site selection (i.e., the "potentially acceptable site" stage), the siting guidelines indicate that ten (10) disqualifying conditions will be applied and that DOE will make a "level 1" finding [7] for each of these disqualifying conditions. At the second stage of site selection (i.e., the site nomination and recommendation stage), the siting guidelines indicate that *all* of the qualifying and disqualifying guidelines will be applied and that DOE will make "level 1" or "level 3" findings for all of the guidelines. Appendix III indicates that a higher level finding (i.e., "Level 2") will made at this stage of site selection on the disqualifying conditions if the evidence is sufficient to support such a finding. At the third and final stage of site selection (i.e., repository site selection), the revised siting guidelines indicate that *all* of the qualifying and disqualifying conditions will be applied and that DOE will make more rigorous findings (i.e., level 2 or level 4) on all of the conditions.

Based on the revised siting guidelines, the Commission concludes that DOE has specified in greater detail how the guidelines will be applied at each siting stage, and which guidelines will be applied at each stage of the site

[6] For a description of the states' proposed implementation methodology and the Commission's response, see the Commission's preliminary decision (49 FR 9660, paragraph e).

[7] See Appendix III of the siting guidelines for the definitions of the various levels of findings.

selection process. Therefore, DOE has satisfied the requirements set forth in Condition 5.

NRC CONDITION 6

DOE should supplement the guidelines to indicate the kinds of information necessary for DOE to make decisions on the nomination of at least five repository sites and subsequently recommending three sites to the President for characterization (examples of the kinds of information which the Commission has in mind can be found in NRC Regulatory Guide 4.17).

DOE Response

In response to NRC Condition 6, the DOE added a new appendix (Appendix IV) and a new section (§ 960.3-1-4—evidence for Siting Devisions) to Subpart B of the siting guidelines. Appendix IV identifies the types of information that will be included in the evidence used for evaluations and applications of the guidelines at the nomination stage of the siting process. The appendix contains a description of the type of information that will be used to evaluate each condition under each principal category of guidelines (i.e., geohydrology, geochemistry, rock characteristics, etc.)

The new section entitled, "Evidence for Siting Decisions" includes a description of the kinds of information and data (and their sources) for each of the principal steps in the site selection process.

Discussion and Conclusions

Several of the commenters (e.g., Nevada, Rhode Island, South Carolina, and Minnesota) on the Commission's preliminary decision supported Condition 6 and indicated that DOE should specify the types of information which will be required at each stage of the site selection process. DOE has now made changes to the siting guidelines as a result of Condition 6 that specify in greater detail the kinds of information that will be used to make such siting decisions. Thus, DOE has complied with Condition 6.

However, the State of Utah (with the endorsement of NRDC, STAND, and the State of Washington) argued that all reliance on "available information" be deleted from the siting guidelines. The Environmental Policy Institute (EPI) expressed similar views.

In its March 9, 1984 letter to the Commission, the State of Utah offered a proposal to rectify the matter relating to DOE's use of "available information" in the November 18, 1983 version of the siting guidelines. The State of Utah recommended "that all Guideline provisions which implement that standard [the use of "available data"] be deleted or expressly made applicable only to post-nomination decisions." The Commission has examined the proposal suggested by Utah and compared it to the revised guidelines that were submitted to the Commission by the DOE on May 14, 1984. The revised siting guidelines no longer refer to "available information" and do not use information that is "available" as a threshold for making siting decision. Rather, DOE has now specified in Appendix IV the types of information that will be used for evaluations and applications of the guidelines at the nomination stage of the site selection process. Additionally, § 960.3-1-4 of the revised guidelines specifies the kinds of information (and their sources) that will be required to support decisions at the various stages of site selection. At the site nomination stage, the revised guidelines indicate that the sources of information shall include: (1) The literature, (2) exploratory boreholes, (3) surface investigations, (4) in-situ or laboratory testing, (5) natural and man-made analogs, and (6) extrapolations of regional data. The Commission finds that these modifications to the siting guidelines are, for the most part, responsive to the concerns of the State of Utah.

The level of information provided in Appendix IV and § 960.3-1-4 of the revised guidelines is all that can be reasonably expected for a generic rule. The Commission expects that DOE's environmental assessments will provide more detailed information such as the number, kinds, and types of tests, along with a full description of the data that supports the findings being made.

The Commission finds that the information contained in Appendix IV of the revised siting guidelines, along with the addition of § 960.3-1-4 ("Evidence for Siting Decisions"), provides an adequate explanation of the kinds of information that DOE will use to make decisions at the various stages of the site selection process. Furthermore, the information contained in Appendix IV is comparable to that contained in NRC Regulatory Guide 4.17 which the Commission used as an example of the kinds of information it expected to see in the siting guidelines. Therefore, the Commission concludes that DOE has adequately responded to Condition 6 and made the appropriate modifications to the siting guidelines to comply with Condition 6.

NRC Condition 7

DOE should add additional disqualifying conditions to the guidelines with sufficient specificity to ensure that unacceptable sites are eliminated as early as practicable. Disqualifying conditions should be provided for those factors specified in section 112(a) of the NWPA including seismic activity, atomic energy defense activities, proximity to water supplies, the effect upon the rights of users of water, the location of valuable natural resources, hydrology, geophysics, proximity to populations, and proximity to components of the National Park System, the National Wildlife Refuge System, the National wild and Scenic Rivers System, the National Wilderness Preservation System, and National Forest Lands.

DOE Response

In response to NRC Condition 7 DOE revised the siting guidelines by adding six (6) new disqualifying conditions and revised three (3) disqualifying conditions. The revised siting quidelines contain a total of 17 disqualifying conditions, including a disqualifying condition for each of the factors specified in section 112(a) of NWPA.

Discussion and Conclusion

The intent of NRC Condition 7 was two-fold. First, the Commission believed that, at a minimum, the NWPA required a disqualifying condition for each of the factors specified in section 112(a) of NWPA. Secondly, in view of its NEPA responsibilities, the Commission wanted some of these disqualifying conditions to be applied early in the site selection process to ensure that unacceptable sites will be eliminated as early as practicable. Many public commenters on the Commission's preliminary decision agreed with NRC Condition 7 (e.g., Washington, Utah, STAND, Rhode Island, Nevada, and South Carolina). However, other commenters on the Commission's preliminary decision, while agreeing with NRC Condition 7, felt that addiitonal disqualifying conditions should not be limited to those factors specified in section 112(a) of the NWPA (e.g., Mississippi, Washington, Wisconsin, and the Department of Interior). In some instances, these commenters recommended specific additional disqualifying conditions.

The Commission notes that the revised guidelines contain disqualifying conditions that cover all of the factors specified in section 112(a) of NWPA, thereby complying with that part of Commission's condition that required disqualifying conditions for those factors. Furthermore, the Commission finds that Appendix III provides assurance of an early application of

certain disqualifying conditions. In particular, DOE has identified ten (10) disqualifying conditions in Appendix III that will be applied at the first stage of the site selection process (i.e., the potentially acceptable site stage).

The Commission has reviewed all of the additional disqualifying factors proposed by commenters and considers that while there may be differences in wording, the concerns raised by such proposed additional factors are effectively addressed by the disqualifiers contained in the revised guidelines.

In light of these considerations, the Commission concludes that DOE has made appropriate modifications to the siting guidelines specified in NRC Condition 7 and has therefore satisfied that condition.

III. Other Commission Considerations Resulting From Public Comment

In this section, the Commission considers other issues that were raised by commenters on the preliminary decision. These issues are relevant to the Commission's concurrence decision but were not addressed in Section II of this decision.

NRC Concurrence Criteria

In its preliminary decision, the Commission applied the following concurrence criteria: (1) The siting guidelines must not be in conflict with 10 CFR Part 60; (2) the siting guidelines must not contain provisions that might lead DOE to select sites that would not be reasonable alternatives for an Environmental Impact Statement (EIS); and (3) the siting guidelines should not contain provisions that are in conflict with NRC responsibilities as embodied in the NWPA 949 FR 9651).

Only one commenter, the State of Utah, disagreed with the Commission's concurrence criteria. Utah views the NRC concurrence criteria as being too limiting and confining and stated that "These self-imposed limitations on the Commission's role are both statutorily unwarranted and unreasonable in light of the broad authority granted by the NWPA." On the other hand, the Yakima Indian Nation stated that it "interprets these criteria to be coextensive with the Commission's jurisdiction, and agrees that they are the proper criteria for the Commission's decision." The State of Nevada indicated that it was satisfied with the breadth of the Commission's preliminary decision on the siting guidelines. Based on the comments received on its concurrence criteria (and also the lack of comment on this particular matter), the Commission has no reason to modify its concurrence criteria.

NRC Concurrence Process

Many commenters (e.g., the Yakima Indian Nation, U.S. Department of Interior, Nevada, STAND, EPI, Yale Environmental Litigation Program, Abbey Johnson, Utah, Wisconsin, Maine, Minnesota, Nevada, and Donald Finn) urged that there be additional opportunities for public comment on the final guidelines, either before the Commission concurs in them or before they become effective.

Whether DOE needs to obtain further public comment on its guidelines is a matter for DOE to decide. The Commission has consistently stated that concurrence is not rulemaking under the APA. Therefore, the Commission sees no legal requirement for additional public comment on this matter. Furthermore, the Commission afforded the public several opportunities to comment on the guidelines and its concurrence process. The Commission requested written comments on the November 18, 1983 guidelines. This comment period was initially scheduled to end on January 9, 1984 but the Commission, at the request of members of the public including several states, extended the comment period to February 1, 1984. The Commission also held a public meeting on January 11, 1984 to solicit the views of the public on the siting guidelines. On March 14, 1984, the Commission published in the Federal Register a preliminary decision for public comment. The comment period on this decision ended on April 4, 1984 but the Commission continued to consider written comments received up to May 14, 1984. Representatives of States and Indian tribes were afforded a further opportunity to present their views at the meeting on June 22, 1984. The Commission considers that the opportunities that it has provided for public comment have been adequate to assure the Commission that it is acquainted with the issues that bear on its concurrence decision.

Preliminary Determination

Section 114(f) of the NWPA states, in part: "For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 1321 [sic] et seq.) and this section, the Secretary shall consider as alternate sites for the first repository to be developed under this subtitle 3 candidate sites with respect to which (1) site characterization has been completed under section 113; and (2) *the Secretary has made a preliminary determination, that such sites are suitable for development as repositories consistent with the guidelines promulgated under section 112(a).*" (emphasis added)

Some commenters (e.g., STAND and EPI) requested that NRC clarify its interpretation of § 114(f) of the NWPA in its concurrence decision. STAND stated that the Commission must insist that the final siting guidelines specify that three suitable sites must be characterized, and that the sites must also be determined to be suitable after characterization. EPI's comments were directed more at the timing of DOE's preliminary determination.

The revised guidelines state that when DOE recommends sites for characterization, the recommendation will include " a preliminary determination by the Secretary, referred to in section 114(f) of the Act, that such sites are suitable for the development of repositories under the guidelines of Subparts C and D" (§ 960.3-2-3). EPI argued that the preliminary determination should be made after site characterization, not before characterization as DOE proposes.

At the June 22, 1984 Commission meeting, the Commission and DOE agreed that the preliminary determination required by section 114(f) of the NWPA should be made after the completion of site characterization and not at the time of site nomination and recommendation. The Commission and DOE therefore agree that the last sentence of the first full paragraph in § 960.3-2-3 of Subpart B should be deleted.

Performance Assessments Before Site Characterization

Minnesota and the Yakima Indian Nation objected to the guidelines' reliance on performance assessments before site characterization. Minnesota argued that since the data needed for performance assessments are highly site specific and generally would not be available until after detailed site characterization, any performance assessment completed before site characterization would not be valid. Likewise, the Yakima Indian Nation believes that DOE should not be allowed to use system performance assessments before it has the data to support these assessments.

The Commission agrees that a premature reliance on system performance assessments could lead to erroneous conclusions. Performance assessments are reliable only when the uncertainties in the data and modeling method have been defined within reasonable bounds. The Commission

notes that DOE has acknowledged, in the guidelines, the uncertainties surrounding its use of performance assessments. For example, the definition of "performance assessment" in § 960.2 now includes the sentence: "Performance assessments will include estimates of the effects of uncertainties in data and modeling." Also, in Appendix IV of the guidelines DOE states, "The information specified below will be supplemented with conceptual models, as appropriate, and analyses of uncertainties in the data."

The Commission can find no reason to object to DOE's employing performance assessments since DOE will acknowledge the uncertainties that are associated with those performance assessments. This is not to say, however, that the NRC will not criticize these assessments as they are developed for different sites.

Medium Specific Guidelines

The States of Minnesota, Wisconsin, Rhode Island, and the NRDC presented arguments for medium-specific guidelines. The concern expressed is that general guidelines are not able to focus on different parameters which are important in each separate rock type. However, the Commission finds no legal requirement in NWPA for medium-specific guidelines. Furthermore, medium-specific guidelines are not needed for NRC to meet any of its legal responsibilities because, as previously noted, the Commission anticipates that selection of sites in accordance with the revised guidelines will satisfy the provisions of NEPA.

Site Screening for First Repository

Some commenters repeated prior objections to DOE's not using its guidelines to select potentially acceptable sites for the first repository. No new reasons were advanced in support of their requests for the Commission to reconsider its position that DOE is not required to repeat or re-evaluate the site screening efforts that were completed prior to the enactment of the NWPA. Accordingly, the Commission adheres to the view on this point stated in its preliminary decision.

IV Commission Findings

In its preliminary decision, the Commission indicated its intention to grant its concurrence in the guidelines if DOE satisfactorily resolved seven conditions. The Commission requested public comment on its preliminary decision. Based on a review of the public comments on the preliminary decision received by the Commission as of May 14, 1984, the Commission finds no basis for modifying any of the seven conditions or adding to them. On May 14, 1984, DOE submitted revised guidelines to the Commission for its consideration. DOE believes that the revised guidelines fully satisfy the concerns of the Commission as expressed in its preliminary concurrence decision. For the reasons expressed in this final decision, the Commission finds that DOE has satisfactorily resolved the seven conditions and that the Commission should concur in the revised siting guidelines.

V. Commission Decision

The Commission concurs in the siting guidelines submitted to it by the DOE on May 14, 1984 as modified by its May 29, 1984 submittal. This concurrence is limited to the revised guidelines and does not extend to any supplementary information which DOE may publish at a later date. Moreover, the Commission expects that, to the extent that the Secretary of Energy promulgates revisions to or interpretations of the guidelines, they will be submitted to NRC for its review and concurrence.

Dated at Washington, D.C., this 3rd day of July, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-18217 Filed 7-9-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Attachment to OMB Circular A-125, Prompt Payment

AGENCY: Office of Management and Budget.

ACTION: Final issuance of attachment to OMB Circular A-125, Prompt Payment.

SUMMARY: This notice revises OMB Circular A-125, "Prompt Payment," by adding an Attachment to the basic Circular. The Attachment provides additional guidance to Federal agencies on the proper timing of payments to contractors.

Following enactment of the Prompt Payment Act (Pub. L. 97-177), OMB issued Circular A-125, "Prompt Payment." The Circular provides that payments will be made when due, generally 30 days after receipt of goods and services. Questions were raised, however, regarding the applicability of the Circular to progress payments and other types of contract financing that are provided before receipt of goods and services.

This Attachment to the basic Circular provides guidance on the use of contract financing. The Attachment outlines circumstances under which contract financing may be provided, cautions against the use of contract financing for commercial-type items, and calls for consideration to be received by the Government in some cases where contract financing is provided. It also requires contractors to remit contract debts to the Treasury via electronic fund transfer methods.

Consistent with the basic Circular, contracts awarded after the effective date of the Attachment should include specific provisions governing the timing of progress payments. Agencies will comply with the payment terms of existing contracts.

EFFECTIVE DATE: The attachment to the basic Circular is effective July 10, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Lordan, Deputy Associate Director for Financial Management, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395-6823.

SUPPLEMENTARY INFORMATION: A proposed revision was published for comment in the Federal Register on September 8, 1983 (48 FR 40582). In response to the publication, OMB received about 80 comments from Federal agencies, contractors, associations, and educational institutions. Many commentators pointed out that the proposed revision would unduly complicate the procurement process and result in higher contract prices.

The proposed amendment has been substantially revised, taking into account the views of Government and private sector commentators.

There follows a summary of the major comments grouped by subject, and a response to each, including a description of changes made as a result of the comments. Other changes have been made to increase clarity, precision, and readability, and to reduce the burden of compliance as much as possible.

General

Comment: Several commentators advised that the original proposal would require the development of costly duplicate proposals, increase paperwork, reduce competition, and delay the procurement process.

Response: The original proposal has been revised substantially. As issued the Attachment no longer requires consideration of the time value of money in all cases where progress

payments are provided. It no longer states that the Government will offer contract financing on an optional basis. Nor does it call for a comparison of proposed prices adjusted to consider the time value of money for offers requesting contract financing. The related documentation requirements have also been deleted from the Attachment.

Contract Finance Office Requirements

Comment: Commentators within the Government opposed the proposal that departments and agencies with major procurement activities should designate Contract Finance Offices to provide for procurement financing oversight.

Response: The requirement for the establishment of Contract Finance Offices has been deleted from the Attachment.

Threshold for Progress Payments

Comment: Several commentators representing the defense industry took issue with the original proposal to increase to $10,000,000 the threshold at which progress payments may be provided. They argued that this change would adversely affect smaller firms doing business with the Government.

Response: The proposed change in the progress payment threshold has been deleted from the Attachment.

Timing of Progress Payments

Comment: Several commentators questioned when progress payments would actually be made under the proposed revision.

Response: As issued, the Attachment requires progress payments to be made after receipt of a progress payment request, just as payments for delivered items are made after receipt of a proper invoice. The exact timing of these payments will be governed by specific terms included in the contract, as provided for in paragraph 7 "Determining Due Dates," of the basic Circular.

Applicability to Educational Institutions

Comment: Colleges and universities commenting on the original proposal asked how the proposed Attachment would apply to funds advanced to these institutions through letters-of-credit.

Response: Under the letter-of-credit method used to finance most grants and contracts with colleges and universities, Federal agencies are directed to limit cash advances to the minimum amounts required. Directions for establishing these financial arrangements are set forth in Treasury Fiscal Requirements Manual 6-1000, Appendix No. 1, "Regulations Governing Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs." The letter-of-credit financing method would not be affected by the payment provisions of Circular A-125.

Dated: July 2, 1984.

Candice C. Bryant,

Deputy Associated Director for Administration.

Attachment to Circular No. A-125

To the Heads of Executive Departments and Establishments

Subject: Payment Terms

1. This Attachment establishes standards for assuring that appropriate payment terms are included in all Government contracts. It supplements the guidance provided in paragraph 6, "Payment Standards," of the basic Circular.

2. Generally, payments for goods and services acquired by the Federal Government are made after receipt, inspection, and acceptance of the goods and services, or through reimbursements on cost-type contracts.

3. In other cases, payment may be made before receipt of goods or services. These payments, or contract financing, are referred to as progress payments, advances, or prepayments.

a. Criteria for Contract Financing

(1) Contract financing will not be provided when the contract items are the same as, or similar to, items for which progress payments are not customary commercial practice.

(2) Agencies shall use partial payments in lieu of contract financing to recognize the completion of contract milestones and partial deliveries of required goods and services.

(3) Contract financing will be offered under the following circumstances:

(a) When the reliability of the contractor and the adequacy of the contractor's accounting systems have been established by the contracting officer, and

(b) When the contractor will not be able to bill for the first delivery of products or other performance milestones after work begins for a period of four months for small business concerns and six months for others, and

(c) When the value of the contract or groups of contracts the contractor will perform exceeds $100,000 for small business concerns and $1,000,000 for others.

(4) If a procuring activity determines that contract financing should be considered in a procurement of the type covered by Section 3.a.(1) above, the contracting officer shall certify to that effect, and such certification shall specify the reasons therefor and that the cost of such financing has been considered in making such determination.

b. Consideration for Contract Financing

Agencies will require consideration for contract financing when:

—Contract financing is added to a contract after award.
—Progress payments are authorized at intervals more frequently than monthly.
—Progress payments are authorized at rates higher than normally avilable under the agency's policy.

4. The receipt of a progress payment request shall be considered receipt of an invoice as defined in paragraph 4 of the basic Circular.

5. Contractors shall be required to remit contract debts in excess of $10,000 via electronic funds transfer in accordance with Treasury Department regulations.

6. Guidelines and instructions for implementing the provisions of this Attachment will be set forth in applicable acquisition regulations within 90 days from date of its issuance.

David A. Stockman,

Director.

[FR Doc. 84-18223 Filed 7-9-84; 8:45 am]

BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Withholding Certificate for Railroad Retirement Monthly Annuity Payments
(2) Form(s) submitted: W-4P(RRB)
(3) Type of request: New collection
(4) Frequency of use: On occasion
(5) Respondents: Individuals or households
(6) Annual responses: 100,000
(7) Annual reporting hours: 1
(8) Collection description: Under Pub. L. 98-76, railroad retirement beneficiaries' Tier 2, dual vested and supplemental benefits are subject to income tax under private pension rates. The collection obtains the

information needed by the Board to implement the income tax withholding provisions.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Robert Fishman (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 84-18178 Filed 7-9-84; 8:45 am]

BILLING CODE 7905-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0170]

Asset Management Capital Co., Surrender of License

Notice is hereby given that Asset Management Capital Company, 1417 Edgewood Drive, Palo Alto, California 94301, incorporated under the laws of the State of California has surrendered its License No. 09/09-0170, issued by the Small Business Administration on July 24, 1974.

Asset Management Capital Corporation has complied with all the conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the Regulations promulgated thereunder, the surrender of the license of Asset Management Capital Company is hereby accepted and it is no longer licensed to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 5, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-18244 Filed 7-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 08/08-0043]

Enervest, Inc., Surrender of License

Notice is hereby given that Enervest, Inc., 5613 DTC Parkway, Englewood, Colorado 80111, incorporated under the laws of the State of Colorado, has surrendered its License No. 08/08-0043, issued by the Small Business Administration on January 11, 1978.

Enervest, Inc. has complied with all the conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the Regulations promulgated thereunder, the surrender of the license of Enervest, Inc. is hereby accepted and it is no longer licensed to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 5, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-18243 Filed 7-9-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2153; Amdt. 1]

Missouri

The above numbered declaration (49 FR *26332*) is amended in accordance with the President's declaration of June 21, 1984, to include Holt County in the State of Missouri as a result of damage from severe storms, high winds, and flooding beginning on or about June 6, 1984. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on August 20, 1984, and for economic injury until the close of business on March 21, 1985.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: July 3, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-18240 Filed 7-9-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0229]

Southwest Capital Investments, Inc., Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Southwest Capital Investments, Inc., 3500-E Comanche Road NE., Albuquerque, New Mexico 87107, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of a conflict of interest transaction.

Southwest Capital Investments, Inc., (SCI) proposes to sell an office building, an ineligible holding for an SBIC, to its parent, Southwest Capital Corporation (SCC). The terms of the sale include cash and a second mortgage issued by SCC to SCI. The sale of the office building to SCC falls within the purview of § 107.904(a) of the SBA Regulations, and the second trust note issued by SCC and SCI causes the transaction to fall under § 107.903(b)(1) of the SBA Regulations, and requires SBA prior written approval.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in the Albuquerque, New Mexico area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: July 5, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-18242 Filed 7-9-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 84-9]

Advisory Commission on the Reorganization of the Metropolitan Washington Airports; Meeting

Notice is hereby given of the first meeting of the Advisory Commission on the Reorganization of the Metropolitan Washington Airports, an advisory committee reporting to the Secretary of Transportation. The Commission is charged with developing a plan for the transfer of the Metropolitan Washington Airports, Washington National and Dulles International, from the federal government to an appropriate state, local, or interstate governmental body. Its charter was published in the Federal Register of June 18, 1984 (49 FR 24967).

The Commission will meet July 25 at 10 a.m. in room 2230 of the Department of Transportation headquaters building (Nassif Building), 400 Seventh Street, SW., Washington, D.C., to organize and

discuss the scope of and approach to its work.

Agenda

Introduction
Discussion of Committee's Purpose
Statements of Individual Members
Schedule of work and further meetings

The meeting will be open to the public. Press will be asked to register at the door.

Additional information may be obtained from the Office of Public Information at:

Room 10413,
U.S. Department of Transportation,
400 Seventh Street, SW.,
Washington, D.C. 20590
or by calling 202-426-4321.

Issued at Washington, D.C., on July 6, 1984.

A. Linwood Holton, Jr.,

Chairman, Advisory Commission on the Reorganization of the Metropolitan Washington Airports.

[FR Doc. 84-18366 Filed 7-6-84; 10:25 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; East Wenatchee, Douglas County, Washington

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 Douglas County, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. P. C. Gregson, Division Administrator, Federal Highway Administration, Suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, Washington 98501, Telephone (206) 753-9413.

Mr. Clyde L. Slemmer, P.E., Project Development Engineer, Washington State Department of Transportation, Transportation Administration Building, Olympia, Washington 98504, Telephone (206) 753-6135.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal for the reconstruction or realignment of State Route 2 and State Route 28 from Rocky Reach Dam south to either 9th Street in East Wenatchee or to a point near the town of Rock Island. The proposed improvement is necessary to reduce traffic congestion and improve safety on the existing facility.

Alternatives under consideration include (1) constructing a new two-lane highway from Rocky Reach Dam to 9th Street in East Wenatchee along the Columbia River on Right of Way previously acquired (8.8 miles), (2) reconstruct the existing highway from Rocky Reach Dam to 37th Street as a two-lane forty foot section, and from 37th Street to 9th Street widen to four lanes (8.8 miles); (3) construct a one-way couplet with two lanes northbound on existing alignment and two lanes southbound along an existing county road (8.8 miles); (4) reconstruct the existing two-lane highway for 4.5 miles south from Rocky Reach Dam, then on new alignment southwesterly to intercept the alternate 1 alignment near 37th Street and proceed south to 9th Street (8.8 miles); (5) reconstruct the existing two-lane highway from Rocky Reach Dam south to near 37th Street, then proceeding southeasterly on new alignment ascending a bench east of East Wenatchee, to a junction with State Route 28 west of the town of Rock Island (13.8 miles); (6) similar to (5) only traversing a higher bench farther east and merging with State Route 28 east of the town ot Rock Island (17.0 miles); and (7) taking no action. Letters describing the proposed action and soliciting comments were sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal.

Various public meetings and hearings have been held starting in September 1967 An agency scoping meeting was held February 16, 1984. A public open house was held on June 12, 1984.

A public hearing will be held during the public review period for the draft EIS. Public notice will be given as to the time and place of the public hearing. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local review of Federal and Federally assisted programs and projects apply to this program)

Issued on: June 28, 1984.

Richard Schumelfenyg,

Area Engineer, Olympia, Washington.

[FR Doc. 84-18175 Filed 7-9-84; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments, FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before August 30, 1984, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 5101, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Meridian and Bigbee Railroad Company

(Waiver Petition Docket Number RSGM-83-46)

The Meridian and Bigbee Railroad Company (MBRR) seeks a waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223). The MBRR seeks a permanent waiver of compliance with sections

223.11 and 223.13 for five locomotives (No. 101–105) and two cabooses, Nos. 206 and 207 which operate between Meridian, Mississippi, and Myrtlewood, Alabama, a distance of about 51 miles. They operate through a rural area and the MBRR indicates they have not encountered any problems with glass breakage from vandalism or other causes in the past.

Basic Refractories Company

(Waiver Petition Docket Number RSGM–83–47)

The Basic Refractories Company (C–E Basic) seeks a waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223). C–E Basic seeks a permanent waiver of compliance with section 223.11 for two yard locomotives. The locomotives are operated infrequently in a totally rural area and the petitioner indicates there have not been any incidents of locomotive windows being broken or employee injuries due to flying objects or broken glass within the past 15 years.

Kentucky and Tennessee Railway Company

(Waiver Petition Docket Number RSGM–83–48)

The Kentucky and Tennessee Railway Company (KT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and one caboose. The equipment operates through a sparsely populated area, primarily woodland. The carrier has not had any acts of vandalism or accidents involving broken glass. The locomotive is used part time as power for a scenic rail service. The caboose is used only for scenic rail service.

Transkentucky Transportation Railroad Company

(Waiver Petition Docket Number RSGM–83–49)

The Transkentucky Transportation Railroad Company (TTIS) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for eight locomotives, three cabooses and one passenger car. The equipment is operated from Paris, Kentucky, to Maysville, Kentucky, a distance of approximately 50 miles. The majority of the operation is located in remote areas and the carrier has not had any injuries or incidents involving broken glass or flying objects.

Texas North Western Railway Company

(Waiver Petition Docket Number RSGM–83–50)

The Texas North Western Railway Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives operating between Etter, Texas, and Liberal, Kansas, a distance of about 120 miles. They operate in a rural area and there have been no acts of vandalism reported since operations began on November 22, 1982.

Peninsula Terminal Company

(Waiver Petition Docket Number RSGM–83–51)

The Peninsula Terminal Company (PT) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two switcher locomotives operating on 1.33 miles of track. One-half of the railroad runs near a light industrial area and the other half is not accessible to the public. They have not had any incidents of vandalism.

Missouri Pacific Railroad Company

(Waiver Petition Docket Number RSGM–83–52)

The Missouri Pacific Railroad Company (MP) seeks either a permanent waiver of compliance or an extension in the compliance date for certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 269 cabooses. The carrier indicates that an extension of the compliance date for an unspecified period is needed to allow implementation of the caboose-off agreement so that the number of required cabooses could be defined. The carrier owns 558 cabooses, of which 289 have been equipped with FRA certified glazing. They indicate the estimated cost to equip all their remaining cabooses with certified glazing is in excess of $500,000 and that current circumstances dictate this expenditure be directed to other equipment improvements.

Blue Mountain and Reading Railroad Company

(Waiver Petition Docket Number RSGM–83–53)

The Blue Mountain and Reading Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive operating between Temple, Pennsylvania, and Hamburg, Pennsylvania, a distance of about 12.5 miles. The locomotive is operated through mainly a rural area at speeds of 10 mph. They have not had any incidents of vandalism.

New Jersey Transit Rail Operations, Inc.

(Waiver Petition Docket Number RSGM–83–54)

New Jersey Transit Rail Operations, Incorporated, seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 226 Ex-Erie Lackawanna multiple unit (MU) commuter cars, 147 Comet I passenger cars and 20 rail diesel cars until December 31, 1984. Delays in the carrier's reelectrification program have postponed retirement of the 226 commuter cars. Also, delays in development time and necessary funding have caused delays in upgrading the 147 Comet I passenger cars and the 20 rail diesel cars.

Chicago and North Western Transportation Company

(Waiver Petition Docket Number RSGM–83–55)

The Chicago and North Western Transportation Company (CNW) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) until December 31, 1984, for 16 passenger cars out of their fleet of 305. This additional time to complete their retrofitting program is needed due to material not being available, long lead time for material and quality problems with some material on hand.

Providence and Worcester Railroad Company

(Waiver Petition Docket Number RSGM–83–57)

The Providence and Worcester Railroad Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for nine locomotives, seven passenger cars and four cabooses. The locomotives are equipped with forward and rear facing certified glazing only. The passenger cars are used on weekend passenger train rides. The carrier cites the continuing poor economic situation of the rail industry as the reason for this waiver request.

Maine Central Railroad Company

(Waiver Petition Docket Number RSGM–83–58)

The Maine Central Railroad Company (MEC) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 44 locomotives and 32

cabooses. The MEC has an ongoing reglazing program for both their fleet of 77 locomotives and 44 cabooses. They are requesting a one year extension for completing their locomotives and a two year extension for completing their cabooses due to their very poor economic situation.

Northwestern Oklahoma Railroad

(Waiver Petition Docket Number RSGM-83-59)

The Northwestern Oklahoma Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates on an 8.8 mile switching line and the carrier indicates there have not been any incidents of shots being fired or objects propelled at their locomotive during the past 12 years.

Boston and Maine Corporation

(Waiver Petition Docket Number RSGM-83-60)

The Boston and Maine Corporation (BM) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) until December 31, 1986, for 49 cabooses. The BM has equipped 15 of their 64 cabooses with FRA approved glazing, and is requesting the two year extension to complete the remaining cabooses in an effort to reduce expenses during the current poor economic climate.

Grand Trunk Rail System

(Waiver Petition Docket Number RSGM-83-61)

The Grand Trunk Rail System seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) until December 31, 1986, for 141 cabooses. The petitioner has equipped 19 cabooses with approved glazing and due to the present economic conditions, is requesing additional time to complete the remaining units.

Tulsa-Sapulpa Union Railway Company

(Waiver Petition Docket Number RSGM-83-63)

The Tulsa-Sapulpa Union Railway Company (TSU) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate in a rural area between Tulsa, Oklahoma, and Sapulpa, Oklahoma, a distance of ten miles. The TSU indicates that they have not experienced any problems with glass breakage from vandalism or other causes in the past.

Hollis and Eastern Railroad Company

(Waiver Petition Docket Number RSGM-83-64)

The Hollis and Eastern Railroad Company (HE) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates over a 14 mile span of track in a rural area. The HE has no record of incidents involving glass breakage due to gunshots, stoning or vandalism during the past 25 years.

North Central Oklahoma Railway

(Waiver Petition Docket Number RSGM-83-68)

The North Central Oklahoma Railway (NCOK) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The NCOK indicates their locomotives operate mainly on track that is not part of the general railroad system of transportation.

Indiana Hi-Rail and OHI-Rail Corporation

(Waiver Petition Docket Number RSGM-83-69)

The Indiana Hi-Rail and OHI-Rail Corporation (IHRC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. The locomotives are over 20 years old and have not experienced any incidents of vandalism or accidents involving broken windows other than occasional brush hitting the locomotive windows.

Consolidated Rail Corporation

(Waiver Petition Docket Number SA-84-8)

The Consolidated Rail Corporation (CR) seeks a waiver of compliance with certain provisions of the Safety Appliance Standards (49 CFR Part 231). CR seeks a waiver of compliance with section 231.2(d)(2) for approximately 1,300 hopper cars for a period of two years. These cars were converted from covered hopper cars to open hopper cars. However, at time of coversion the side and end ladders were not brought into compliance and the top ladder tread is located more than four inches from the top of the car. CR currently uses these cars to transport ballast and they are constantly in service from March through November of each calendar year. CR asserts that removal of all of these cars from service at this time would make it impossible to continue their track maintenance and improvement program. CR contends that the direction of the waiver being sought would provide two off season periods, which would be adequate time to bring these cars into compliance with Federal Regulations. CR points out that these cars have been in service for an extended period of time in their present condition, without any reported safety problems.

Issued in Washington, D.C., on June 28, 1984.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 84-18122 Filed 7-9-84; 8:45 am]
BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on July 31, and August 1, 1984, of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Security Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on July 31 and the preparation of a written report to the Secretary of the Treasury on August 1, 1984.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at

meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an adivsory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee hearings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: July 5, 1984.

Thomas J. Healey,

Assistant Secretary (Domestic Finance).

[FR Doc. 84-18128 Filed 7-9-84; 8:45 am]

BILLING CODE 4810-28-M

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or coopertion with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954] The list is the same as the prior quarterly list published in the Federal Register.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

John E. Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 84-17997 Filed 7-9-84; 8:45 am]

BILLING CODE 4810-40-M

Status of Tax Treaty Negotiations

The Treasury Department announced the status of active U.S. tax treaty negotiations.

On June 28, 1984, the Senate approved a revised income tax treaty and accompanying protocols with Canada, a protocol to the income tax treaty with France, and an estate and gift tax treaty with Sweden. They must be approved by the other governments concerned and instruments of ratification exchanged before they enter into force.

Income and estate and gift tax treaties with Denmark have been reported out by the Foregin Relations Committee, but not yet voted upon by the Senate. Income tax treaties with Cyprus, Italy, and the People's Republic of China have been signed and are being transmitted to the Senate for its advice and consent to ratification. The treaty with Cyprus was signed on March 19, 1984. The treaty with Italy was signed on April 17 1984. The treaty with China was signed on April 30, 1984.

Income Tax Treaties

Negotiations of income tax treaties are underway with the following countries. The indication that a next meeting is not needed means that it is expected that remaining differences can be resolved through correspondence.

Country	Date of last meeting	Next meeting
Austria	February 1981	Not needed.
Barbados	May 1984	Not scheduled.
Belgium	June 1983	Do.
Finland	March 1983	Not needed.
Germany	November 1983	Not scheduled.
Indonesia	May 1984	Do.
Ireland	May 1983	Not needed.
The Netherlands	May 1984	Not scheduled.
The Netherlands Antilles.	February 1984	Do.
Sri Lanka	July 1984	Not needed.
Sweden	March 1983	Not scheduled.
Switzerland	November 1983	Do.
Thailand	February 1984	December 1984.
Trinidad and Tobago.	October 1981	September 1984.
Tunisia	April 1984	Not needed.

Income tax treaties with Argentina, Bangladesh, and Israel were approved by the U.S. Senate in November, 1981, subject to certain reservations and understandings, but have not been approved by the other governments.

Estate and Gift Tax Treaties

A second round of negotiations of an estate tax treaty with Italy is also planned, but not yet scheduled. A draft treaty with Finland is under review. An estate tax treaty with Germany has been ratified by both countries, but Germany is continuing to review the instruments of ratification. Once Germany approves those instruments, they will be exchanged, bringing the treaty into force.

Exchange of Information Agreements

An exchange of information agreement with the Dominican Republic under the Caribbean Basin Initiative has been agreed to in principle and preparations are underway for its signature. Discussions with some other CBI countries are expected to take place shortly.

The negotiations referred to above include only those which are currently underway or anticipated. Negotiations with other countries could be resumed or initiated later this year or, more likely, in early 1985. A press release inviting comments is typically issued prior to the start of treaty negotiations. Public comments on ongoing treaty negotiations are also welcome. They should be addressed to: Steven R. Lainoff, International Tax Counsel, Room 3064, U.S. Treasury Department, Washington, DC 20220.

Dated: July 3, 1984.

John E. Chapoton,

Assistant Secretary, (Tax Policy).

[FR Doc. 84-18160 Filed 7-9-84; 8:45 am]

BILLING CODE 4810-25-M

Comptroller of the Currency

[Delegation Order 84-14; Docket No. 84-22]

Delegation of Authority To Act Upon Tort Claims

By virtue of the authority granted to the Comptroller of the Currency under 12 U.S.C. 4 and 4a it is ordered as follows:

A. Pursuant to the Federal Tort Claims Act, 28 U.S.C. 2672, the Chief Counsel (or Acting Chief Counsel) of the Office of the Comptroller of the Currency may consider, ascertain, adjust, determine, compromise, and settle claims for money damages filed against the United States for injury, loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Office of the Comptroller of the Currency.

B. Procedures and requirements for filing and handling claims pursuant to this Order shall be in accordance with the regulations issued by the Office of the Secretary of the Treasury, at 31 CFR Part 3, as amended, and by the Department of Justice, at 28 CFR Part 14, as amended.

C. Subdelegation of the authority delegated herein is prohibited.

D. The Comptroller of the Currency reserves the right to act upon any matter delegated herein.

Dated: June 29, 1984.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 84-18193 Filed 7-9-84; 8:45 am]

BILLING CODE 4810-33-M

Fiscal Service

[Dept. Circ. 570, 1983 Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds; CIGNA Insurance Company, Change of Name

INA Underwriters Insurance Company, a Pennsylvania corporation, has formally changed its name to CIGNA Insurance Company, effective December 31, 1983. The company was last listed as an acceptable surety on Federal bonds in 48 FR 30534, July 1, 1983.

A certificate of authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to CIGNA Insurance Company, Philadelphia, Pennsylvania. This new certificate replaces the certificate of authority issued to the company under its former name, INA Underwriters Insurance company. The underwriting limitation of $11,147,000 established for the company as of July 1, 1983 remains unchanged until the July 1, 1984 revision is published.

Certificates of authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1983 Revision at page 30534 to reflect this change. Copies of the circular, when issued, may be obtained from Banking & Cash Management, Operations Staff (Surety), Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: June 26, 1984.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 84-18205 Filed 7-9-84; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service Panel

As Chief Counsel of the Internal Revenue Service, under the authority delegated to me by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 3), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Vernon Jean Owens, Acting Deputy Chief Counsel;
2. Margery Waxman, Deputy General Counsel;
3. Charles M. Morgan, Associate Chief Counsel (Technical);
4. Benjamin C. Sanchez, Regional Counsel, Western Region;
5. Joseph H. Hairston, Director, Operations Division;
6. Robert B. Dugan, District Counsel, Boston.

This publication is required by section 4314(c)(4) of title 5 United States Code.

Fred T. Goldberg, Jr.,

Chief Counsel.

[FR Doc. 84-18238 Filed 7-9-84; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

President's International Youth Exchange Initiative

The United States Information Agency (USIA) announces a program of selective assistance through limited grant support to private not-for-profit organizations for programs in support of the President's International Youth Exchange Initiative.

The purpose of the program is to promote youth exchanges between the United States and the other six participants in the annual Economic Summit: Federal Republic of Germany, France, Italy, Japan, the United Kingdom, and Canada. Proposals for exchanges with other countries will not be accepted at this time.

This is the third and final year of the President's Initiative. Proposals should be designed to achieve their objectives within a one-year period, without expectation of follow-on funding. It is anticipated that exchanges proposed will be initiated no earlier than the spring of 1985.

The objective of this program is to strengthen the institutional capabilities of organizations in order to promote increased international youth exchanges. Organizations applying for grant support must demonstrate that funding will result in a direct increase in the number of exchange visitors. Proposals should describe the present level of exchange being conducted and the additional exchanges that will be achieved as a result of grant funding.

Eligibility

Academic, cultural, not-for-profit youth exchange and youth-serving organizations are eligible to apply. General guidelines for the Bureau of Educational and Cultural Affairs require that an organization be able to demonstrate a proven track record (four years) of work in youth exchange to qualify for grants in excess of $60,000. Organizations must be capable of meeting the "Criteria for Teen-ager Exchange Visitor Programs" or "Criteria for Practical Trainees" which may be obtained by writing to the USIA address listed at the end of this announcement.

Program Content

There are two major categories of program that are the subject of this competition and two special projects:

I. General Exchange Programs—Single or multi-country projects for partial grant support. Priority will be given to projects that conform to the following models:

A. Long-Term Academic Homestay. Generally one academic year or semester programs for 15–19 year-old secondary school students or recent graduates. Program includes: homestay for the duration of the experience, attendance at a secondary school, community activities, orientation, and language study as necessary.

B. School-to-School Exchanges. Generally 3–4 week programs for 15–18 year-old secondary school students. This is primarily a school linkage model in which a group of students from the same school or classroom, accompanies by a teacher, participate in an exchange with a partnered school abroad. Program features include study of the partner country before departure,

homestays, study and community activities during the exchange.

C. Thematic Exchanges. Generally 4–8 week programs for students aged 15–25. Program features include: study of a country or set of relevant issues prior to the exchange; periodic meetings during the exchange involving host nationals to discuss the issues, under guidance of a group leader/chaperone; some touring; homestays for most or all of the visit; and orientations.

D. Work Projects. Programs for students and young professionals aged 15–25 for minimum 4-week duration but preferably 6–12 weeks. Program features include: experimental learning activities, including camp counseling, historical preservaton or restoration, public works, conservation, and volunteer community services; may be done as a group, involving interaction with a similar-aged group of host country nationals, or as individual projects; campstays as appropriate, but homestays where possible are preferred; and pre-departure orientations and post-return debriefings.

E. Non-Academic Homestays. Programs of students, young workers, farm youth, et al., aged 15–25, of a minimum 4-weeks duration, but preferably 6–12 weeks. Program features include: Homestay for the full period of the visit; community activities; group activities, such as scouting, recreation, service projects; individual activities, such as volunteer farm work; pre-departure orientations and post-return debriefings.

F Internships. Programs of 6 weeks to 1 year for students, young professionals and young workers, aged 15–25. Program features include: individual homestays for the duration of the program; work in a private enterprise or public agency, usually in the area of one's career choice or vocation; may be coupled with study; community activities; orientations. Grant funding is usually restricted to partial travel and partial administrative costs; tuitions and stipends are not funded. Certain types of programs may require use of the J-1 "trainee" visa, for which prior authorization is a prerequisite.

II. Bilateral Programs—Exchanges jointly supported by the United States and a single partner government. No multi-country programs will be accepted under this category.

Specific short-term exchange projects have been developed with Germany, Italy, France and the United Kingdom only. The partner government will identify interested organizations in that country to receive government funds and implement the exchange. Proposals submitted by US organizations to implement the US portion of the exchange will be reviewed in USIA. Those receiving favorable recommendations will be referred to a joint steering committee in the partner country for approval and matching with a foreign organization. Please write to the Youth Exchange Staff (address given below) for a copy of the project list for the country of your choice.

USIA support will generally be limited to: domestic and international travel for US participants from point of origin to city of destination and return; costs of hosting foreign participants; administrative costs of the US program including orientation; and health and accident insurance.

III. Special Projects—A. USIA is seeking a single organization to administer a fund of $50,000 for small-grant ($2,000–3,000) support to "community coalitions." The President's Initiative has sought to develop cooperation at the local level among exchange organizations, educational and government authorities, schools, civic groups, and concerned citizens. These networks serve a useful purpose in stimulating local interest in and support for youth exchanges, promoting a more favorable climate for exchanges, and organizing activities to benefit the general community of interests. USIA will develop guidelines with the administering organization to distribute to the community coalitions, which may request these mini-grants over the course of the grant year (January 1–December 31, 1985). Organization may request a reasonable administrative fee to manage the grant fund.

B. Support for exchanges of disabled youth. USIA will administer a fund of $50,000 to make exchange programs accessible to young people aged 15–25 with disabilities. These are not scholarship funds; rather organizations may apply for assistance to cover partial costs of providing special services for hosting disabled participants in their ongoing programs or projects proposed for this competition.

Grant Guidelines

USIA considers the following to be positive features of a project. Proposals will be judged on the basis of these criteria:

—The activity should contribute to the sustained, long-term development of youth exchanges.

—Networking—Certain projects involve matching the organizational experience and capability of an exchange group with the resources of a youth-serving organization or network with facilities, youth memberships, community access, etc. These proposals will be judged on their potential for forging these relationships and generating viable exchange activities.

—Joint funding—financial support from counterpart organizations and government agencies in the partner country.

—Cost-sharing—financial and in-kind support from participating organizations, schools, community funding sources and parents in the U.S.

—Challenge grants—This involves the use of a block grant to an organization, which in turn makes small grants available to its constituent member groups, with the proviso that matching funds be raised. Such proposals will be judged on the quality of the exchange activities and other criteria listed herein.

—Reciprocity—The exchanges should be two-way and as balanced (inbound/outbound) as possible.

—Cost-effectivess—greatest return for each federal dollar invested; reasonable per capita cost in comparison with other proposals submitted.

—Quality—The project should contribute to the mutual education of American and foreign participants.

—Self-management—The organization should demonstrate the ability to administer the project without extensive subcontracting to other non-profit or profit-making organizations. Where such arrangements exist please provide a copy of the service agreement.

The following are project elements or types which are considered inappropriate for purposes of this competition:

—Sports exchanges.

—Full scholarship support.

—Research studies.

—Study for post-secondary academic credit or degree programs.

—Campus-to-campus exchanges of university students or teachers.

—Travel/observation tours.

—Hotel-hopping delegations.

—Conferences.

—School tuitions.

—Stipends to host families.

—Support for exchange activities already being carried out.

—Performing tours.

—Any project which is designed to lobby elected officials or promote politically partisan views, or whose aim is to promote religious activities.

Proposal Format

Interested organizations should write or call the Youth Exchange Staff for guidelines which specify what should be included in the narrative portion of the proposal, how budgets should be designed, and what attachments are required.

Review Process

Proposals (original and 10 copies) should be received in USIA no later than September 30, 1985. USIA will begin reviewing proposals in early September and organizations are encouraged to submit proposals as early as possible. Initial review for eligibility and completeness will conclude October 15. A USIA panel will review the proposals and final decisions will be made by November 30. Funding will be available by January 1.

For further information on this program contact the International Youth Exchange Staff, Bureau of Educational and Cultural Affairs (E/YX), U.S. Information Agency, Washington, D.C. 20547 or call (202) 485-7299.

Dated: July 5, 1984.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 84-18203 Filed 7-9-84; 8:45 am]

BILLING CODE 8230-01-M

Delegation Order 84-7 to the General Counsel and Congressional Liaison

Pursuant to the authority vested in me as Director of this Agency by Reorganization Plan No. 2 of 1977 by section 2903 of Title 5 of the United States Code, and by Executive Order 12048 of March 27 1978, there is hereby delegated to the General Counsel and Congressional Liaison the following described authority:

1. The authority to administer oaths of office or any other oath required by law in connection with employment in the executive branch.

2. In the absence of the General Counsel, oaths may be administered by the Acting General Counsel.

This delegation is effective immediately.

Dated: July 5, 1984.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 84-18239 Filed 7-9-84; 8:45 am]

BILLING CODE 8230-01-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 contains a reinstatement and an extension and 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) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: July 2, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Reinstatement

1. Department of Veterans Benefits
2. Request for Determination of Eligibility and Available Loan Guaranty Entitlement
3. VA Form 26-1880
4. On occasion
5. Individuals or households
6. 630,000 responses
7 157,500 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Request for Estate Information
3. VA Form Letter 27-439
4. On occasion
5. Individuals or households; State or local governments; Federal agencies or employees
6. 24,000 responses
7. 4,000 hours
8. Not applicable

[FR Doc. 18120 Filed 7-9-84; 8:45 am]

BILLING CODE 8320-01-M

Voluntary Service National Advisory Committee; Meeting

The Veterans Administration gives notice that the annual meeting of the Veterans Administration Voluntary Service National Advisory Committee, comprised of 47 national voluntary organizations, will be held at the Holiday Inn Eastgate Conference Center, 4501 Eastgate Boulevard, Cincinnati, Ohio, October 26 through October 28, 1984.

Registration of the conference and orientation of new committee members will be held beginning at 12:20 p.m. on October 26. The committee will officially convene with the Opening Session at 9 a.m., October 27, in the Venice Room of the hotel and will conclude at 12 noon on October 28.

The purposes of the meeting are to instruct committee members and organization officials of the obligations they have accepted for volunteer recruitment, communications and program interpretation, and to seek the advice of the committee in further developing volunteer participation in the care and treatment of veteran patients throughout the agency's nationwide medical program.

Dated: July 2, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-18129 Filed 7-9-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 133
Tuesday, July 10, 1984

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).

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1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 3, 1984.

TIME AND DATE: 10:00 a.m., Wednesday, July 11, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Lonnie Jones v. D&R Contractors, Docket No. KENT 83-257-D(A); Petition for Interlocutory Review. (Issues include whether the administrative law judge properly joined D&R as a respondent in this case.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 84-18286 Filed 7-6-84; 10:46 am]
BILLING CODE 6735-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 13, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed extension and revision of the Notification of Proposed Stock Redemption (FR 4008).
2. Requests for exemptions from the prohibitions of the Depository Institutions Management Interlocks Act and Regulation L (Management Official Interlocks):
(a) Palmer National Bancorp, Inc., Washington, D.C.,
(b) Texas Bank of Plano, Plano, Texas; and
(c) Midwest Financial Group, Inc., Kankakee, Illinois.

Discussion Agenda

3. Publication for comment of proposals regarding inter-territory crediting procedures to improve float recovery.
4. Proposed extension and revision of the Monthly Bankers Acceptances Survey (FR 2006).
5. Proposed 1985 budget objective for the Federal Reserve System.
6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 6, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-18276 Filed 7-6-84; 10:10 am]
BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:30 p.m., Friday, July 13, 1984, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washingon, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Issues related to payments mechanism services.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 6, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-18277 Filed 7-6-84; 10:10 am]
BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, July 16, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchased of telephone equipment within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 6, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-18335 Filed 7-6-84; 3:46 pm]
BILLING CODE 6210-01-M

5

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 9:00 a.m., Tuesday, July 17 1984.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Ave. NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Ex Parte No. 438, Acquisition of Motor Carriers by Railroads.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,
Secretary.

[FR Doc. 84-18228 Filed 7-6-84; 9:14 am]
BILLING CODE 7035-01-M

6

LEGAL SERVICES CORPORATION

Board of Directors Meetings

PREVIOUSLY ISSUED: June 28, 1984 (published July 2, 1984).

PREVIOUSLY ANNOUNCED TIME AND DATE: It will commence at 9:30 a.m. and continue until all official business is completed; Monday, July 9, 1984.

CHANGE IN NOTICE: Deletion under "MATTERS TO BE CONSIDERED:"

Report from the Office of Field Services —Budget and Reorganization

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Bernstein, Office of the President, (202) 272-4040.

DATE ISSUED: July 6, 1984.

Donald P. Bogard,
President.

[FR Doc. 84-18323 Filed 7-6-84; 8:45 am]

BILLING CODE 6820-35-M

Federal Register

Tuesday
July 10, 1984

Part II

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls (PCBs); Final Rules and Notice of Request for Additional Comments on Certain Individual and Class Petitions for Exemption

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66008A; TSH-FRL-2585-4]

Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Individual and Class Petitions for Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule addresses 109 individual and class petitions for exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. In this rule, EPA is granting 58 exemption petitions; granting in part and denying in part one exemption petition; denying 49 exemption petitions; and dismissing one exemption petition.

DATES: This rule shall be promulgated for purposes of judicial review under section 19 of the Toxic Substances Control Act (TSCA) at 1:00 p.m. Eastern Daylight Time on July 24, 1984. This rule shall become effective on August 23, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800-424-9065), in Washington, D.C. (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0021.

I. Introduction

The proposed PCB Exemptions Rule published in the Federal Register of November 1, 1983 (48 FR 50486) addressed 172 pending individual and class exemption petitions. During the comment period on the proposed rule, 17 of the 172 exemption petitions were withdrawn or dismissed, and four new exemption petitions were accepted for consideration. Thus, 159 exemption petitions remain to be resolved. EPA is taking action on 109 exemption petitions in this final rule and deferring action on 50 exemption petitions. The 50 exemption petitions on which action is being deferred are addressed in a proposed rule related notice published elsewhere in this issue of the Federal Register.

II. Background

A. Statutory Authority

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than one year.

EPA's Interim Procedural Rules for PCB Manufacturing Exemptions describe the required content of manufacturing exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the Federal Register of November 1, 1978 (43 FR 50905) and are codified at 40 CFR 750.10-750.21.

EPA's Interim Procedural Rules for PCB Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the Federal Register of May 31, 1979 (44 FR 31558) and are codified at 40 CFR 750.30-750.41.

B. History of PCB Rulemaking

The history of PCB rulemaking is described in detail in the proposed PCB Exemptions Rule published in the Federal Register of November 1, 1983 (48 FR 50486). Since that proposed rule was published, EPA has issued two final rules that affect EPA's disposition of the pending exemption petitions.

Elsewhere in this issue of the Federal Register, the EPA issued a final rule which authorizes the following uses of PCBs indefinitely: (1) Use of small quantities of PCBs in research and development; (2) use as a mounting medium in microscopy; (3) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (4) use of small quantities of PCBs as an optical liquid. The new use authorizations are codified at 40 CFR 761.30 (j), (k), (n), and (o), respectively. In that rule EPA rejected a request by one commentator to authorize the use of PCBs as a precision calibration standard.

Second, EPA is issuing a rule published elsewhere in this issue of the Federal Register, which addresses the manufacture, processing, distribution in commerce, and use of certain inadvertently generated and recycled PCBs in low level concentrations. Among other things, that rule (the Uncontrolled PCB Rule) does the following: (1) Amends the PCB rule published in the Federal Register of October 21, 1982 (47 FR 46980) (the Closed and Controlled Waste Manufacturing Processes Rule) by excluding additional processes from regulation; and (2) defers action on 49 petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs pending the submission of additional information by petitioners.

C. Effect of This Rule on Previous Policy Statements

In the Federal Register of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the Federal Register of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as the activities were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce).

Each petitioner who is granted an exemption in this rule will be allowed to engage in the activities for which exemption is granted for one year from the effective date of this rule. After the one-year exemption expires, the petitioner will not be allowed to engage in such activities, even if it renews its exemption request, until EPA acts on that request. This limitation does not apply to a petitioner who is being granted an exemption to manufacture, process, distribute in commerce, or export small quantities of PCBs for research and development, for the reasons described in Units V.E. and V.I.1 of this preamble.

Each petitioner who is denied an exemption in this rule must, on the effective date of this rule, cease all

activities for which exemption is denied. Of course, petitioners may file renewed exemption petitions that provide the necessary information indicated in this preamble to enable the Agency to find that the conditions of sections 6(e)(3)(B)(i) and 6(e)(3)(B)(ii) of TSCA are met. (For a discussion of these sections of TSCA, see Units III and IV of this preamble.)

EPA intends to continue its policy of requiring petitioners who file late exemption petitions to show good cause why EPA should accept the petition for consideration, as described in the notice published in the Federal Register of March 5, 1980 (45 FR 14247).

III. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. In this rule EPA is granting some exemption petitions to manufacture, process, and distribute in commerce PCBs and is denying others. EPA's unreasonable risk findings for each exemption petition are discussed in later units of this preamble.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically, EPA considers the following factors:

1. The effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denial.

These are the same factors that EPA must consider in deciding whether a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under sections 6(a) and 6(e) of TSCA.

A. Effects on Human and the Environment Health

In deciding whether to grant an exemption, EPA considered the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that are part of the rulemaking record for the PCB Ban Rule published in the Federal Register of May 31, 1979 (44 FR 31514). Before the proposed PCB Exemptions Rule was published, EPA evaluated this information, plus new information submitted to the Agency and other recent literature. The results are presented in EPA's "Response to Comments on Health Effects of PCBs" (August 19, 1982). During the comment period on the proposed PCB Exemptions Rule, General Electric Co. and Westinghouse Electric Corp. presented additional information about the adverse health effects of PCBs. EPA evaluated this information, as well as other recent literature, and has determined that none of the information submitted changes EPA's conclusions about the health effects of PCBs. The results are presented in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984). All of these documents are included in the rulemaking record and are summarized below. Copies of these documents are available from EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT").

1. Health Effects

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree of which would depend on exposure. Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have been demonstrated on immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases, chloracne may occur in humans exposed to PCBs. Seven cases of chloracne are painful, disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. Environmental Effects

Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are released into the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

3. Risks

Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA has taken exposure into consideration when evaluating each exemption petition, and this is discussed in later units of this preamble.

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the activity for which exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA has taken the benefits and costs into consideration when evaluating each exemption petition. Because of the range of activities for which exemptions are requested, the specific benefits and costs are discussed in later units of this preamble.

IV. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to

develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considered the kind of exemption the petitioner is requesting, whether substitutes exist and are readily available, and whether the petitioner expended time and money to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-PCBs for PCBs or to show why it did not seek to substitute non-PCBs for PCBs. EPA's evaluation of each petitioner's attempt to make good faith efforts is discussed in later units of this preamble.

V Disposition of Exemption Petitions

A. Distribution in Commerce of PCB Small Capacitors for Purposes of Repair and Distribution in Commerce of PCB Equipment Containing PCB Small Capacitors

EPA received 20 petitions for exemption to distribute in commerce existing inventories of PCB small capacitors for purposes of repairing equipment such as air conditioners, microwave ovens, and office machines. EPA also received 21 petitions for exemption to distribute in commerce existing inventories of PCB equipment containing PCB small capacitors, including fluorescent light ballasts, light fixtures, small electric motors, computer assemblies, air conditioners, and office machines. During the comment period on the proposed rule, three of these 41 exemption petitions were withdrawn. EPA is acting on the 38 remaining exemption petitions. In 40 CFR 761.3(d)(1), EPA defines "PCB small capacitor" as "a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid." PCB small capacitors commonly contain between 0.1 and 0.6 lbs. of PCBs. In 40 CFR 761.30(1), EPA authorizes the use of PCB small capacitors indefinitely.

1. Petitions Granted

EPA is granting each of the 31 exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. PCBs are rarely released when PCB small capacitors and PCB equipment containing PCB small capacitors are distributed in commerce and used, because individual capacitors contain small quantities of PCB dielectric fluid; contain significant amounts of absorbent material such as paper; and are airtight. EPA concluded that the petitioners, their customers, and the ultimate users are not likely to be exposed to the PCBs contained in the capacitors and equipment, nor is release of PCBs to the environment likely.

One commentor on the proposed rule, SCA Chemical Services, Inc., stated that EPA should not grant an exemption to these petitioners because it would result in the unregulated disposal of a large quantity of PCBs, which would otherwise have to be disposed of in EPA-approved incinerators, resulting in potential harm to the environment. Although granting an exemption would allow approximately 720,000 lbs. of PCBs to be distributed in commerce, EPA believes that it will not result in an unreasonable risk of injury to health or the environment for the reasons described above. Furthermore, 40 CFR 761.60(b)(2) (ii) and (iv) permit a person to dispose of PCB small capacitors as municipal solid waste, unless that person manufactures or at any time manufactured PCB capacitors or PCB equipment and acquired the PCB capacitors in the course of such manufacturing. Many of the persons represented by these petitioners never manufactured PCB capacitors or PCB equipment. Accordingly, they would not be required to comply with any special disposal requirements if an exemption were denied and could simply dispose of the PCB small capacitors as municipal solid waste. EPA believes that the public health and environment are better protected by granting an exemption to distribute PCB small capacitors and PCB equipment as replacement parts, which will eventually be randomly disposed of by individual users in small amounts over time, than by denying the exemption petitions, which might concentrate PCBs in certain locations if one or more petitioners disposed of their PCB small capacitors and PCB equipment at once.

In addition, EPA estimated the total costs of denying all 38 of these exemption petitions to be at least $7.52 million. This estimate includes: (1) $4.61 million to replace all PCB small capacitors sold for purposes of repair; and (2) at least $2.91 million to dispose of ballasts, fluorescent light fixtures, and PCB small capacitors removed from other PCB equipment, and to replace such equipment with non-PCB equipment. The estimated costs would be even greater if the additional costs of identifying and removing PCB small capacitors that have already been processed into existing PCB equipment were included.

Finally, granting these exemptions will benefit society by allowing useable articles and equipment to be distributed in commerce and used.

b. Good faith efforts finding. EPA concluded that each of these petitioners made good faith efforts to substitute non-PCB capacitors for PCB small capacitors. Some petitioners began substituting non-PCB capacitors as early as 1977 and all petitioners stopped purchasing PCB small capacitors by July 1979 and now restock only with non-PCB capacitors. Each of these petitioners submitted information to show that it reduced the number of PCB items and the volume of PCBs in its inventory. Each of these petitioners who requested an exemption to distribute existing inventories of PCB equipment has redesigned and modified equipment to accommodate the non-PCB capacitors it now processes into equipment.

Therefore, EPA grants the following petitioners an exemption for one year to distribute in commerce PCB small capacitors for purposes of repair:

Advance Transformer Co., Chicago, IL 60618 (PDE-4).
Air Conditioning Contractors of America, Washington, DC 20036 (PDE-7).
Association of Home Appliance Manufacturers, Chicago, IL 60606 (PDE-26.2)
B & B Motor & Control Corp., New York, NY 10012 (PDE-30).
Complete-Reading Electric Co., Hillside, IL 60162 (PDE-48).
Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).
Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).
Harry Alter Co., Chicago, IL 60609 (PDE-111).
Minnesota Mining and Manufacturing Co., St., Paul, MN 55133 (PDE-157.1).
Motors & Armatures, Inc., Hauppauge, NY 11788 (PDE-161).
National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).
National Capacitor Corp., Garden Grove, CA 92641 (PDE-165).
Service Supply Co., Phoenix, AZ 85013 (PDE-237).
Wedzeb Enterprises, Inc., Lebanon, IN 46052 (PDE-297).
Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

In addition, EPA grants the following petitioners an exemption for one year to distribute in commerce PCB equipment containing PCB small capacitors:

Advance Transformer Co., Chicago, IL 60618 (PDE-4).
Coleman Co., Inc., Wichita, KS 67201 (PDE-45.1).
Donn Corp., Westlake, OH 44145 (PDE-63).
Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).
Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).
Friedrich Air Conditioning & Refrigeration Co., San Antonio, TX 78295 (PDE-93).
Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE-103).
GTE Products Corp., Danvers, MA 01923 (PDE-105).
King-Seeley Thermos Co., Queen Products Division, Albert Lea, MN 56007 (PDE-139).
L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).
Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.3).
National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).
Royalite Co., Flint, MI 48502 (PDE-231).
Sola Electric, Unit of General Signal, Elk Grove Village, IL 60007 (PDE-246).
Transco, Inc., West Columbia, SC 29169 (PDE-276.1).
Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

EPA reminds petitioners who manufacture or at any time manufactured PCB capacitors or PCB equipment that 40 CFR 761.60(b)(2)(iv)(A) requires them to dispose of PCB small capacitors in an EPA-approved incinerator when they dispose of PCB small capacitors or PCB equipment containing such capacitors.

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to eliminate their remaining inventories of PCBs before the exemption expires. Most of the petitioners have had since July 1979 to distribute their inventories of PCBs and providing an additinal year will make it possible for them to eliminate any PCBs that remain in stock. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. Petitions Denied

EPA is denying each of the seven exemption petitions listed below. EPA specifically solicited the information described below in the proposed rule mailed to each petitioner. Since none of the petitioners responded, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs.

Aireco Supply, Inc., Arlington, VA 22202 (PDE-8), did not submit information describing the specific activities for which it seeks exemption, including a description of the PCB articles or equipment to be distributed in commerce; the length of time requested for exemption; the number of PCB articles or equipment to be distributed; the amount of PCBs to be distributed (by pound and/or volume); its basis for contending that granting an exemption would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made good faith efforts to substitute non-PCBs for PCBs; and the reasonably ascertainable economic consequences of denial.

Carrier Corp., Syracuse, NY 13221 (PDE-39, PDE-39.1, and PDE-39.2), did not submit information about the number of PCB small capacitors and pieces of PCB equipment to be distributed; the amount of PCBs to be distributed (by pound and/or volume) in the capacitors and equipment; and the reasonably ascertainable economic consequences of denial.

RIP Inc., Fort Worth, TX 76112 (PDE-227), did not submit information about the number of PCB small capacitors to be distributed; the amount of PCBs to be distributed (by pound and/or volume); and the reasonably ascertainable economic consequences of denial.

Traco Industrial Corp., New York, NY 10027 (PDE-276), did not submit information to describe the size of capacitors it wants to distribute in commerce; the amount of PCBs to be distributed (by pound and/or volume); its basis for contending that granting an exemption would not result in an unreasonable risk of injury to health or the environment; its basis for contending that it made good faith efforts to substituté non-PCB capacitors for PCB small capacitors; and the reasonably ascertainable economic consequences of denial.

Trans-State Corp., Houston, TX 77036 (PDE-281), did not submit information about the amount of PCBs to be distributed in PCB small capacitors (by pound and/or volume); and the reasonably ascertainable economic consequences of denial.

3. Petitions Withdrawn

During the comment period on the proposed rule, EPA received notices withdrawing three exemption petitions to distribute in commerce PCB equipment containing PCB small capacitors from General Electric Co., Fairfield, CT 06431 (PDE-99), and from Raytheon Co., Lexington, MA 02173 (PDE-208 and PDE-209).

B. Processing PCB Articles and PCB Equipment Into Other Equipment and Distributing That Equipment in Commerce

EPA received 16 petitions for exemption to process existing inventories of PCB articles and PCB equipment into other equipment and to distribute that equipment in commerce. During the comment period on the proposed rule, 11 of these 16 exemption petitions were withdrawn. The five remaining exemption petitions are to process PCB small capacitors into ballasts, ballasts into fluorescent light fixtures, and small electric motors into equipment, and to distribute in commerce the finished PCB equipment.

1. Petitions Granted

EPA is granting each of the five exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. PCBs are rarely released when PCB small capacitors and PCB equipment containing PCB small capacitors are processed, distributed in commerce, and used, because individual capacitors contain small quantities of PCB dielectric fluid; contain significant amounts of absorbent material such as paper; and are airtight. EPA concluded that the petitioners, their customers, and the ultimate users are not likely to be exposed to the PCBs in the capacitors or equipment, nor is release of PCBs to the environment likely.

One commentor on the proposed rule, SCA Chemical Services, Inc., stated that EPA should not grant an exemption to these petitioners, because it would result in the unregulated disposal or a large quantity of PCBs, which would otherwise have to be disposed of in EPA-approved incinerators, resulting in potential harm to the environment. Although granting an exemption would allow approximately 191,000 lbs. of PCBs in small capacitors to be processed and distributed in commerce, EPA believes that such activities will not result in an unreasonable risk of injury to health or the environment because the petitioners, their customers, and the ultimate users are not likely to be exposed to PCBs, nor is release of PCBs to the environment likely.

In addition, EPA estimated the total costs of denying all five of these petitions to be at least $1.63 million. This estimate includes: (1) $214,000 to dispose of existing inventories of PCB small capacitors held for processing; and (2) 1.42 million to replace existing inventories of PCB small capacitors and other equipment containing PCB small capacitors. The estimated costs would be even greater if the costs of identifying and removing PCB small capacitors that have already been processed into existing PCB equipment were included.

Finally, granting an exemption will benefit society by allowing useable articles and equipment to be processed, distributed in commerce, and used.

b. Good faith efforts finding. EPA concluded that each of these petitioners made good faith efforts to develop PCB substitutes. Each of these petitioners submitted information to show that it reduced the number of PCB items and the volume of PCBs in its inventory. Furthermore, each of these petitioners submitted information to show that it has redesigned and modified equipment to accommodate non-PCB items.

Therefore, EPA grants the following petitioners an exemption for one year to process PCB small capacitors and PCB equipment containing PCB small capacitors into other equipment and to distribute in commerce that equipment:

Advance Transformer Co., Chicago, IL 60618 (PDE-4).
Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE-103).
GTE Products Corp., Danvers, MA 01923 (PDE-105).
L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).
Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

EPA reminds petitioners who manufacture or at any time manufactured PCB capacitors or PCB equipment that 40 CFR 761.60(b)(2)(iv)(A) requires them to dispose of PCB small capacitors in an EPA-approved incinerator when they dispose of PCB small capacitors or PCB equipment containing such capacitors. In addition, EPA reminds petitioners that since January 1, 1979, EPA has required all PCB equipment containing a PCB small capacitor to be marked at the time of manufacture with the statement "This equipment contains PCB Capacitors" (40 CFR 761.40(d)).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to eliminate their inventories of PCBs before the exemption expires. Most of the petitioners have had since July 1979 to process and distribute their inventories of PCBs and providing an additional year will make it possible for them to eliminate any PCBs that remain in stock. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. Petitions Withdrawn

During the comment period on the proposed rule, Raytheon Co., Lexington, MA 02173 (PDE-193, PDE-194, PDE-195, PDE-196, PDE-201, PDE-208, PDE-209, PDE-211, PDE-212, PDE-214, and PDE-215), withdrew all 11 of its petitions for exemption to process PCB articles and PCB equipment into other equipment and to distribute in commerce the finished PCB equipment.

C. Processing and Distributing in Commerce PCBs for Purposes of Servicing Customers' Transformers

EPA received 34 petitions for exemption to process and distribute in commerce PCBs for purposes of servicing customers' PCB transformers and PCB-contaminated transformers. During the comment period on the proposed rule, one of these 34 exemption petitions was withdrawn. Twenty-nine of the exemption petitions are renewed petitions for activities that were underway before July 1, 1979, and four of the exemption petitions are new petitions for activities that were not underway before that date. The 29 petitioners whose activities were underway before that date have been allowed to continue the activities for which they requested exemption pending this final rule, in accordance with the EPA policy described in Unit II.C of this preamble.

EPA defines a "PCB Transformer" in 40 CFR 761.3(y) as "any transformer that contains 500 ppm PCB or greater." EPA defines a "PCB-Contaminated Transformer" in 40 CFR 761.3(z) as "any transformer that contains 50 ppm or greater PCB but less than 500 ppm PCB." Some petitioners requested an exemption to introduce their own PCB fluid (i.e., fluid containing 500 ppm PCB or greater) into a customer's PCB transformer. Some petitioners requested an exemption to introduce their own PCB-contaminated fluid (i.e., fluid containing 50 ppm or greater PCB but less than 500 ppm PCB) into a customer's PCB transformer or PCB-contaminated transformer. Each of these petitioners needs an exemption to engage in such activities, because the activities constitute processing of PCBs, as defined in section 3(10) of TSCA and 40 CFR 761.3(bb), and distribution in commerce of PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3(i).

In the proposed rule, EPA described certain transformer servicing activities that do not require an exemption. A person does not need an exemption to remove PCB fluid or PCB-contaminated fluid from a customer's transformer and later return that fluid to the same transformer. Nor does a person need an exemption to introduce PCB fluid he already owns into his own PCB transformer or to introduce PCB-contaminated fluid he already owns into his own PCB transformer or PCB-contaminated transformer. In the PCB Electrical Equipment Rule, published in the Federal Register of August 25, 1982 (47 FR 37342), EPA authorized these activities to continue without the need for an exemption, because there is no processing or distribution in commerce of PCBs. Finally, a person does not need an exemption to introduce non-PCB fluid (i.e., fluid containing less than 50 ppm PCB) to any transformer in servicing that transformer, and EPA strongly encourages that use of non-PCB fluid as a substitute for PCB fluid and PCB-contaminated fluid. The authorization to use and service PCB transformers and PCB-contaminated transformers is codified at 40 CFR 761.30(a).

During the comment period on the proposed rule, the Electrical Apparatus Service Association (EASA) asked whether an exemption is needed to service a customer's PCB-contaminated transformers by removing the fluid from one PCB-contaminated transformer and then returning that fluid to another PCB-contaminated transformer owned by the same customer. EASA stated that servicing companies sometimes remove PCB-contaminated fluid from several transformers owned by a customer, place that fluid in a batch storage tank, and then use that fluid to top off the customer's transformers after repairs have been made. EASA contended that no exemption should be required, even though the PCBs are not returned to the same transformer from which they were taken, since there would be no change of ownership of the PCBs and thus no distribution in commerce of PCBs. EPA agrees with this conclusion and will allow this activity to continue without the need for an exemption. EPA believes that this activity will not result in an unreasonable risk of injury to health or the environment and that it is consistent with previous explanations of when an exemption is needed. EPA advises servicing companies to take all

precautions necessary to ensure that PCB-contaminated fluid removed from a customer's PCB-contaminated transformer is returned only to a PCB-contaminated transformer owned by the same customer. Removing PCB-contaminated fluid from a customer's PCB-contaminated transformer and then returning that fluid to a transformer owned by another customer still requires an exemption.

EPA originally proposed to deny all 34 of these exemption petitions, because the petitioners did not submit adequate information to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA concluded that the added risk of exposure to PCBs and the small costs of denial outweighed the relatively small benefits to society of granting an exemption. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs, due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs. In addition, based on the limited information submitted, EPA determined that the total costs of denial would be small (approximately $20,000 to $35,000) and that the costs of denial for each of the 334 companies represented by petitioners would be less than $90 per company for denying petitions to process and distribute in commerce PCB fluid and less than $20 per company for denying petitions to process and distribute in commerce PCB-contaminated fluid.

Since the petitioners did not submit enough information to meet the first statutory requirement for obtaining an exemption, EPA did not need to consider whether petitioners made good faith efforts to substitute non-PCBs for PCBs, as required by section 6(e)(3)(B)(ii) of TSCA.

During the comment period on the proposed rule, EPA received comments from the following petitioners:

The Electrical Apparatus Service Association (EASA), representing 265 small companies, commented that EPA should grant its members an exemption to process and distribute in commerce PCB-contaminated fluid in servicing customers' transformers for the following reasons: (1) EASA members would be able to service many small utilities' transformers, thereby helping to provide efficient and reliable electrical service throughout the United States; (2) denying an exemption would cost EASA members some portion of an estimated $9.9 million to $19.9 million (an average of $37,500 to $75,000 per company) to dispose of and replace the 2.8 million to 5.7 million gallons of PCB-contaminated fluid handled in servicing 432,000 PCB-contaminated transformers each year; (3) the amount of PCBs involved (1,127 lbs. of PCBs) is a tiny percentage of the total amount of PCBs in circulation in PCB-contaminated transformers (262,000 lbs. of PCBs); and (4) granting a one year exemption would give EASA members the time they need to phase out their PCB-related activities that require exemption.

General Electric Co. (GE) commented that EPA should grant it an exemption to process and distribute in commerce both PCB fluid and PCB-contaminated fluid in servicing customers' transformers for the following reasons: (1) The health and environmental risks of PCBs are less than EPA originally concluded; (2) the additional risk of exposure to PCBs is small due to the small quantities of PCBs available for servicing transformers; and (3) GE had reduced its inventory of PCB fluid to be processed and distributed in commerce in servicing customers' PCB transformers from 4,000 gallons to 2,517 gallons and uses non-PCB fluid for topping off PCB transformers whenever feasible.

Westinghouse Electric Corp. commented that EPA should grant it an exemption to process and distribute in commerce PCB-contaminated fluid in servicing customers' transformers for the following reasons: (1) The health and environmental risks of PCBs are less than EPA originally concluded; (2) granting an exemption would allow Westinghouse to use bulk storage tanks instead of drums in handling PCBs, thereby reducing the likelihood of exposure to PCBs; and (3) denying an exemption would cost it approximately $1.1 million to $2.3 million to dispose of and replace the 500,000 gallons of PCB-contaminated fluid it handles in servicing 1,500 PCB-contaminated transformers each year.

As a result of the comments received on the proposed rule, EPA has updated its estimated costs of denial. EPA estimates the costs of denying all of these petitions to process and distribute in commerce both PCB fluid and PCB-contaminated fluid to be slightly more than $12.5 million, including $9.9 million for EASA and $2.6 million for other petitioners. Most of this cost results from denying the petitions to service customers' PCB-contaminated transformers using PCB-contaminated fluid ($12,517,000); the costs of denying the petitions to service customers' PCB transformers using PCB fluid is estimated to be only $17,400 to $29,000.

1. Petitions Granted

EPA is granting an exemption to the members of the Electrical Apparatus Service Association (EASA, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc., for the following reasons:

a. Unreasonable risk finding. EPA concluded that EASA has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA agrees that the amount of PCBs to be processed and distributed in commerce in servicing customers' transformers is a relatively small percentage of the PCBs now in circulation in PCB-contaminated transformers. Furthermore, since EASA members must service customers' transformers in accordance with the requirements of 40 CFR 761.30(a)(2), there will be no unreasonable risk of injury to health or the environment. EPA also determined that granting an exemption will avoid costs of $9.9 million ($37,500 per company). Finally, granting an exemption will benefit society by helping small utilities continue to provide efficient and reliable electrical service throughout the United States.

b. Good faith efforts finding. EPA concluded that EASA made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EASA has attempted, through mailings and seminars, to inform its members of the changes they must make in their operations to comply with the PCB regulations. Although EASA has tried to keep its members well informed, EASA's comments on the proposed rule showed that EPA needed to provide further clarification about when an exemption is required. Granting a one-year exemption will give EASA the time it needs to inform its members of what they must do to comply with the PCB regulations and will allow EASA members time to phase out their PCB-related activities that require exemption.

Therefore, EPA grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid for purposes of servicing customers' transformers:

Electrical Apparatus Service Association (EASA), St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

Ohio Transformer Corp., Louisville, OH 44641 (PDE-173) (a member of EASA that also petitioned individually).

T & R Electric Supply Co., Inc., Colman, SD 57017 (PDE-265) (a member of EASA that also petitioned individually).

Temco, Inc., Corpus Christi, TX 78410 (PDE-268) (a member of EASA that also petitioned individually).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to eliminate their remaining inventories of PCBs before the exemption expires. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. Petitions Denied

EPA is denying the exemption petition of General Electric Co., Fairfield, CT 06431 (PDE-99), because it did not meet the statutory requirements of section 6(e)(3)(B) of TSCA. First, GE did not show that granting an exemption to process or distribute in commerce PCBs in servicing customers' transformers would not result in an unreasonable risk of injury to health or the environment. GE's submission of information about the health effects of PCBs has not changed EPA's conclusion that PCBs have adverse health effects, as discussed in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984). EPA specifically solicited information about the issues of unreasonable risk of injury to health or the environment and good faith efforts to substitute non-PCBs for PCBs in the proposed rule mailed to GE. GE did not estimate the volume of PCB fluid or PCB-contaminated fluid that it would process or distribute in commerce during a one-year exemption. GE's estimated inventory of 2,517 gallons of PCB fluid is a misleading figure, since it does not reflect how many gallons GE would process and distribute in commerce in servicing customers' transformers during the course of a year. In fact, the quantity may be quite large, since an exemption would allow GE to reuse all PCB fluid and PCB-contaminated fluid that it reclaimed in its servicing operations. In addition, GE did not estimate the reasonably ascertainable economic consequences of denial. In sum, EPA could not balance the costs and benefits of granting an exemption and could not conclude that granting an exemption would not result in an unreasonable risk of injury.

Second, GE did not show that it made good faith efforts to substitute non-PCBs for PCBs, at least with respect to its petition for exemption to process and distribute in commerce PCB-contaminated fluid in servicing customers' PCB-contaminated transformers. The information GE submitted about reducing its inventory of PCB fluid and using non-PCB fluid in servicing customers' PCB transformers may show that it made good faith efforts with respect to servicing customers' PCB transformers. However, such information does not show that it made good faith efforts to substitute non-PCBs for PCB-contaminated fluid in servicing customers' PCB-contaminated transformers. Accordingly, EPA is denying GE's exemption petition to process and distribute in commerce PCB fluid and PCB-contaminated fluid in servicing customers' transformers.

EPA is denying the exemption petition of Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298), because it did not meet the statutory requirements of section 6(e)(3)(B) of TSCA. Westinghouse submitted adequate information about the volume of PCB-contaminated fluid to be processed and distributed in commerce and the estimated costs of denial for EPA to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment, as required by section 6(e)(3)(B)(i) of TSCA. However, Westinghouse submitted no information to show that it made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid, as required by section 6(e)(3)(B)(ii) of TSCA. In the absence of such information, EPA cannot conclude that Westinghouse made good faith efforts to substitute non-PCBs for PCBs. Accordingly, EPA is denying Westinghouse's exemption petition to process and distribute in commerce PCB-contaminated fluid in servicing customers' transformers.

EPA is denying each of the 28 exemption petitions listed below. EPA specifically solicited information about the issues of unreasonable risk of injury to health and the environment and good faith efforts to substitute non-PCBs for PCBs in the proposed rule mailed to each petitioner. Since none of the petitioners responded, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs. Therefore, EPA denies the following 28 petitions for exemption to process and distribute in commerce PCB fluid and PCB-contaminated fluid for purposes of servicing customers' transformers:

Ace Transformer Service Co., Inc., Livonia, MI 48154 (PDE-3).
American Electric Corp., Jacksonville, FL 32205 (PDE-18).
American Environmental Energy Corp., Jacksonville, FL 32202 (PDE-18.1).
American Environmental Protection Corp., Jacksonville, FL 32205 (PDE-18.2).
Davis and Associates, Corpus Christi, TX 78413 (PDE-59).
Eastern Electric Corp., Jacksonville, FL 32205 (PDE-73).
Electrical Installation & Service Corp., Rio Piedres, PR 00928 (PDE-166.3).
Electro Test, Inc., San Ramon, CA 94583 (PDE-166.2).
Environmental Cleaning Specialists, Inc., Kingston, PA 18704 (PDE-84.1).
High Voltage Maintenance Corp., Mentor, OH 44060 (PDE-115).
Interstate Transformer, Inc., Ellwood City, PA 16117 (PDE-128).
Jerry's Electric, Inc., Colman, SD 57017 (PDE-133).
Niagara Transformer Corp., Buffalo, NY 14225 (PDE-169.1).
National Electrical Testing Association, Inc., Dayton, OH 45429 (PDE-166).
Northeast Electrical Testing, Inc., Wallingford, CT 06492 (PDE-166.1).
Northern Electrical Testing, Inc., Troy, MI 48098 (PDE-170.1).
Recovery Specialists, Inc., Saline, MI 48176 (PDE-221).
Solomon Electric Supply, Inc., Solomon, KS 67480 (PDE-247).
Sunohio, Canton, OH 44707 (PDE-264).
Texas Power & Light Co., Dallas, TX 75266 (PDE-271).
Three-C Electric Testing Co., Ashland, MA 01721 (PDE-275).
Transformer Inspection Retrofill Corp., Royal Oak, MI 48073 (PDE-278).
Transformer Sales and Service, Inc., Smithfield, NC 27577 (PDE-108).
Transformer Service, Inc., Concord, NH 03301 (PDE-280.1).
Transformer Service, Inc., Akron, OH 44039 (PDE-280).
U.S. Transformer Co., Jordan, MN 55352 (PDE-289).

3. Petition Withdrawn

During the comment period on the proposed rule, Transformer Consultants, Division of S.D. Myers, Inc., Akron, OH 44310 (PDE-277), withdrew its petition for an exemption to process and distribute in commerce PCBs for purposes of servicing customers' transformers.

4. Petition Dismissed

EPA is dismissing the exemption petition of Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE-294), to process and distribute in commerce only non-PCB fluid for purposes of servicing customers' transformers. Ward Transformer does not need an exemption to engage in this activity.

During the comment period, Ward Transformer also requested an exemption to "detoxify PCB-contaminated mineral oil by use of an EPA approved treatment method." EPA is not addressing the request in this rulemaking, since the request should be considered and decided by the appropriate EPA Regional Office, in accordance with 40 CFR 761.60(e). In fact, Ward Transformer stated that it plans to submit a request to EPA's Region IV for a permit to engage in such an activity. In this rulemaking, EPA expresses no views on the merits of this request. During the comment period, Ward Transformer also requested an exemption to "service PCB railroad transformers consistent with 40 CFR 761.30(b)(2)." EPA hereby notifies Ward Transformer that it is permitted to service PCB railroad transformers without the need for an exemption, as long as it complies with all the requirements of 40 CFR 761.30(b)(2).

D. Processing and Distributing in Commerce PCBs in Buying and Selling Used Transformers

EPA received 12 petitions for exemption to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers. All 12 exemption petitions are renewed petitions for activities that were underway before July 1, 1979. The petitioners have been allowed to continue the activities for which they requested exemption pending this final rule, in accordance with the EPA policy described in Unit II.C of this preamble.

The petitioners are engaged in one or more of the following activities for which an exemption is required: (1) Buying and selling used PCB transformers or PCB-contaminated transformers without introducing PCBs into these transformers; (2) buying used PCB transformers or PCB-contaminated transformers, introducing non-PCB fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v); and (3) buying used PCB transformers or PCB-contaminated transformers, introducing PCB fluid or PCB-contaminated fluid into these transformers (including fluid originally removed from and returned to the same transformer), and then selling them. The petitioners who introduce PCBs into these transformers need an exemption, because they are processing PCBs, as defined in section 3(10) of TSCA and 40 CFR 761.3(bb). The petitioners who sell these transformers need an exemption, because they are distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3(i).

In the proposed rule, EPA described certain activities that do not require an exemption. Section 6(e)(3)(C) of TSCA and 40 CFR 761.20(c)(1) allow a person to distribute in commerce used PCB transformers and PCB-contaminated transformers without the need for an exemption, provided that the following conditions are met: (1) The transformer was originally distributed in commerce before July 1, 1979, for purposes other than resale; (2) the transformer is totally enclosed (i.e., intact and nonleaking) when it is distributed in commerce; (3) no PCBs are introduced into the transformer (including PCB fluid or PCB-contaminated fluid originally removed from and returned to the same transformer); and (4) the transformer is distributed in commerce only within the United States. Unless each of the four conditions described above is met, a person must petition for and obtain an exemption from EPA before processing or distributing in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers.

EPA originally proposed to deny all 12 of these exemption petitions, because the petitioners did not show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs, due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs. In addition, EPA determined that the costs of denying these petitions would be small. Based on the limited information submitted by the petitioners, EPA estimated the incremental costs of denial to be $90 to $240 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer, assuming all the transformer fluid had to be replaced and disposed of in both cases. EPA recognized that the additional costs resulting from denial might render a portion of petitioners' buying and selling activity unprofitable, but concluded that the added risk of exposure to PCBs and the small costs of denial outweighed the relatively small benefits to society of granting an exemption.

Since the petitioners did not submit enough information to meet the first statutory requirement for obtaining an exemption, EPA did not need to consider whether petitioners made good faith efforts to substitute non-PCBs for PCBs, as required by section 6(e)(3)(B)(ii) of TSCA.

During the comment period on the proposed rule, EPA received comments from the following petitioners:

The Electrical Apparatus Service Association (EASA), representing 265 small companies, commented that EPA should grant its members an exemption to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers for the following reasons: (1) EASA members would be able to replace a customer's burned-out transformer in days instead of months, thereby helping small utilities and industrial companies provide efficient and reliable electrical service throughout the United States; (2) denying and exemption would cost EASA members some portion of an estimated $9.9 million to $19.9 million (an average of $37,500 to $75,000 per company) to dispose of and replace PCB-contaminated fluid that could otherwise be reused in buying and selling transformers; (3) the amount of PCBs involved (1,127 lbs. of PCBs) is a tiny percentage of the total amount of PCBs in circulation in PCB-contaminated transformers (262,000 lbs. of PCBs); and (4) granting a one year exemption would give EASA members the time they need to phase out their PCB-related activities that require exemption During the public hearing on the proposed rule, EPA asked EASA why a company does not reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them. In its reply comment, EASA explained that it is not technically feasible for companies to reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them, because it does not have the facilities to energize and place "in service" for 90 days transformers having many different sizes and voltages. In addition, Ward Transformer stated that it would be prohibitively expensive to do so (an estimated $100,000 per transformer in electricity costs alone).

As a result of the comments received on the proposed rule, EPA has updated its estimated costs of denial. EPA now estimates the incremental costs of denial to be at most $160 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer, assuming all of the transformer fluid had to be replaced and disposed of in both cases. Given that the costs of replacing the similar sized PCB-contaminated transformer is

approximately $1,600, and the costs of replacing a similar sized PCB transformer is approximately $13,000, the incremental costs amount to about 10 to 30 percent of replacement costs. Therefore, depending on the purchase price and resale value of used transformers, the additional costs resulting from denial might render a portion of this buying and selling activity unprofitable.

1. Petitions Granted

EPA is granting an exemption to the members of the Electrical Apparatus Service Association (EASA), St. Louis, MO 63132 (PDE-78), except for Ward Transformer Co., Inc., for the following reasons:

a. Unreasonable risk finding. EPA concluded that EASA has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA agrees that the amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers is a relatively small percentage of the PCBs now in circulation in PCB-contaminated transformers. Furthermore, since EASA members must service transformers in accordance with the requirements of 40 CFR 761.30(a)(2), there will be no unreasonable risk of injury to health or the environment. EPA also determined that granting an exemption will avoid some costs to petitioners, although those costs have not been quantified. Finally, granting an exemption will benefit society by allowing small utilities and industrial companies to replace burned-out transformers quickly, which will help provide efficient and reliable electrical service throughout the United States.

b. Good faith efforts finding. EPA concluded that EASA made good faith efforts to substitute non-PCBs for PCBs. EPA understands the technical and economic difficulties associated with reclassifying PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v). Moreover, EASA has described its attempts, through mailings and seminars, to inform its members of the changes they must make in their operations to comply with the PCB regulations. Although EASA has tried to keep its members well informed, EASA's comments on the proposed rule showed that EPA needed to provide further clarification about when an exemption is required. Granting a one-year exemption will give EASA the time it needs to inform its members of what they must do to comply with the PCB regulations and will allow EASA members time to phase out their PCB-related activities that require exemption.

Therefore, EPA grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluids in buying and selling PCB-contaminated transformers:

Electrical Apparatus Service Association (EASA), St. Louis, MO 63132 (PDE-78), except for Ward Transformer, Co., Inc.

Ohio Transformer Corp., Louisville, OH 44641 (PDE-173) (a member of EASA that also petitioned individually).

Temco, Inc., Corpus Christi, TX 78410 (PDE-268) (a member of EASA that also petitioned individually).

The overall goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. Although EPA is granting an exemption to the above-named petitioners, it strongly urges them to eliminate their remaining inventories of PCBs before the exemption expires. Any petitioner who requests a further exemption after its one-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs.

2. *Petitions Denied*

EPA is denying each of the eight exemption petitions listed below. EPA specifically solicited information about the issues of unreasonable risk of injury to health and the environment and good faith efforts to substitute non-PCBs for PCBs in the proposed rule mailed to each petitioner. Since none of the petitioners responded, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs. Therefore, EPA denies the following eight petitions for exemption to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers;

Davis and Associates, Corpus Christi, TX 78413 (PDE-59).

Electro Test, Inc., San Ramon, CA 94583 (PDE-166.2).

G&S Motor Equipment Co., Kearny, NJ 07032 (PDE-94).

Interstate Transformer, Inc., Ellwood City, PA 16117 (PDE-128).

Jerry's Electric, Inc., Colman, SD 57017 (PDE-133).

Solomon Electric Supply, Inc., Solomon, KS 67480 (PDE-247).

Transformer Sales and Service, Inc., Smithfield, NC 27577 (PDE-108).

U.S. Transformer, Inc., Jordan, MN 55352 (PDE-289).

3. *Petition Deferred*

EPA is deferring final action on the exemption petition of Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE-294), to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers, in order to gather more information on the issue of unreasonable risk of injury. The reasons for that decision are discussed in a new proposed PCB Exemptions Rule published elsewhere in this issue of the Federal Register.

E. Research and Development

EPA received four exemption petitions to manufacture small quantities of PCBs for research and development and seven exemption petitions to process and distribute in commerce small quantities of PCBs for research and development. During the comment period on the proposed rule, one of these 11 exemption petitions was withdrawn. Four other petitions for exemption to export PCBs for research and development are discussed separately in Unit V.I of this preamble.

In 40 CFR 761.3(ee), EPA defines "Small Quantities for Research and Development" as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product." The petitioners intend to manufacture, process, and distribute in commerce PCBs for use in health and environmental research, including research in the following areas: to analyze and monitor PCBs in the air, soil, rivers, and sediments; to conduct bioassay and toxicology studies; and to produce reference standards for identifying PCBs using gas chromatography.

Elsewhere in this issue of the Federal Register, the EPA issued a final rule which allows the use of small quantities of PCBs for research and development indefinitely. This new use authorization is codified at 40 CFR 761.30(j). EPA concluded that authorizing this use of PCBs indefinitely does not present an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

1. Petitions Granted

EPA is granting each of the eight exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. Most of these petitioners want to manufacture, process, or distribute in commerce less than one kilogram (kg) of PCBs, and only one petitioner requested an exemption to distribute in commerce as much as five kg of PCBs. The PCBs are manufactured and processed using laboratory practices that are designed to minimize human and environmental exposure to hazardous substances. The PCBs are packaged and distributed in commerce in hermetically sealed containers no larger than 5.0 milliliters (ml), which minimizes human and environmental exposure to PCBs during storage and shipment. Once these petitioners have distributed the PCBs, the risk of exposure to humans and the environment is minimized by the small quantities of PCBs used in most applications, by the viscosity of the PCBs, by the careful handling procedures typical of laboratory work, and by the fact that containers must bear the PCB warning label. In addition, granting an exemption will avoid some costs to petitioners. Finally, granting an exemption will benefit society by allowing important health, environmental, and analytical research to continue.

b. Good faith efforts finding. EPA concluded that the good faith efforts finding is not relevant here, because there are no substitutes for pure PCBs for health and environmental research. Pure PCBs are needed for this research, because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

Therefore, EPA grants the following petitioners an exemption for one year to manufacture small quantities of PCBs for research and development:

California Bionuclear Corp., Sun Valley, CA 91352 (ME-13).

Foxboro Co., North Haven, CT 06473 (ME-6).

ULTRA Scientific, Inc., Hope, RI 02831 (ME-99.1).

In addition, EPA grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for research and development:

California Bionuclear Corp., Sun Valley, CA 91352 (PDE-38.1).

Chem Service, Inc., West Chester, PA 19380 (PDE-41).

Foxboro Co., North Haven, CT 06473 (PDE-21.1).

PolyScience Corp., Niles, IL 60648 (PDE-178).

ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

In this rulemaking and in the recent rulemaking to authorize the use of small quantities of PCBs for research and development indefinitely, EPA determined that there are no substitutes for PCBs for the continuation of important health, environmental, and analytical research, and that substitutes for PCBs in such applications will not be developed in the future. In this regard, there is a unique need for an exemption to manufacture, process, and distribute in commerce small quantities of PCBs for research and development. Furthermore, EPA determined that the manufacture, processing, distribution in commerce, and use of small quantities of PCBs for research and development will not present an unreasonable risk of injury to health or the environment, because of the small quantities involved and the procedures used to minimize human and environmental exposure to PCBs.

In general, the goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to these petitioners, who will manufacture, process, and distribute in commerce small quantities of PCBs for research and development, since there are no substitutes for PCBs for the continuation of important research activities. In fact, PCBs will always be needed to ensure that the goal of section 6(e) of TSCA is being met. When the one-year exemption granted to these petitioners in this rule expires, EPA will automatically renew the exemption unless a petitioner notifies EPA of any increase in the amount of PCBs to be manufactured, processed, or distributed in commerce or any change in the manner of manufacture, processing, or distribution in commerce of PCBs. Any change in those factors might affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue in the activities for which it requests exemption.

2. Petitions denied

EPA is denying the exemption petitions of Pathfinder Laboratories, Inc., St. Louis, MO 63141 (ME-76 and PDE-174.1). EPA proposed to deny Pathfinder's petitions, because the petitioner did not submit information about the amount of PCBs to be manufactured, processed, and distributed in commerce (by pound and/or volume); the size of the containers in which the PCBs are packaged for distribution in commerce; how the containers are sealed; and the reasonably ascertainable economic consequences of denial. Although EPA specifically solicited such information in the proposed rule mailed to Pathfinder, the petitioner did not respond. Thus, EPA is unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioner made good faith efforts to substitute non-PCBs for PCBs.

3. Petition Withdrawn

During the comment period on the proposed rule, General Electric Co., Fairfield, CT 06431 (PDE-99), withdrew its petition for exemption to process and distribute in commerce small quantities of PCBs for research and development.

F. Microscopy

EPA received two petitions to process and distribute in commerce PCBs for use in microscopy. McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., requested an exemption to process and distribute in commence PCBs for use as a mounting medium in microscopy. R.P. Cargille Laboratories, Inc., requested an exemption to process and distribute in commerce PCBs for the following: (1) Use as a mounting medium in microscopy; (2) use as a microscope immersion liquid; and (3) use as a precision calibration standard.

EPA proposed to grant a one year exemption to both petitioners to process and distribute in commerce PCBs for use as a mounting medium in microscopy, but only for use in art and historic conservation. EPA concluded that granting a limited exemption would not present an unreasonable risk of injury to health or the environment. Each of the petitioners would process PCBs in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protective equipment. Once the petitioners had distributed the PCBs, the risk of exposure to humans and the environment would be

minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of museum laboratory work. In addition, EPA concluded that granting a limited exemption would benefit society by allowing specialized microsocopy work in art and historic conservation to continue.

EPA proposed to limit the exemption to use in art and historic conservation, because it determined that the only essential use of PCBs was for permanently mounting sample particles of rare art and historic works. EPA determined that other uses of PCBs as a mounting medium in microscopy was a matter of convenience, not necessity. That is, persons would prefer to use PCBs to prepare a permanent slide than to use a non-PCB mounting medium, which would last approximately ten years.

EPA also proposed to deny Cargille's request for exemption to process and distribute in commerce PCBs for use as a microscope immersion liquid and for use as a precision calibration standard. Cargille did not show that granting an exemption would not result in an unreasonable risk; nor did it show that it made good faith efforts to substitute non-PCBs for PCBs. Furthermore, neither of these uses were authorized by EPA, and thus no one could legally use PCBs for these purposes. EPA concluded that it would be inappropriate to grant an exemption to process and distribute in commerce PCBs for uses that are not permitted.

The proposed actions of these exemptions petitions paralleled the proposed rule published in the Federal Register of November 17, 1983 (48 FR 52402). EPA proposed to renew indefinitely the authorization for using PCBs in microscopy, which would have expired on July 1, 1984, but only for use as a mounting medium in microscopy in art and historic conservation. As a result of comments received on the proposed use authorization rule, EPA issued a final rule appearing elsewhere in this issue of the Federal Register authorizing the following uses of PCBs indefinitely: (1) Use as a mounting medium in microscopy for all purposes; (2) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) use of small quantities of PCBs as an optical liquid. The new use authorizations are codified at 40 CFR 761.30 (k), (n), and (o), respectively. EPA concluded that authorizing these uses indefinitely does not present an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options. In that final rule, EPA also decided not to authorize the use of PCBs as a precision calibration standard, because of the availability of adequate substitutes for PCBs for this use.

During the comment period on the proposed PCB Exemptions Rule, EPA received the following comments:

McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., commented that EPA should grant it an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes, not just in art and historic conservation. The commentor described its need for an exemption to provide PCBs, which would be used by forensic scientists to study crime scene trace evidence and by manufacturers to preserve product samples for potential product liability claims.

McCrone Research Institute commented that EPA should grant an exemption to its sister organization, McCrone Accessories & Components, to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes, not just in art and historic conservation. The commentor described how PCBs are needed to preserve small particles on permanent slides for many important uses, including the study of particles from air and water pollution, atmospheric dust, integrated circuits, mineralogy, biology and medicine, contamination analysis, pharmacognosy, and crime scene trace evidence. The commentor argued in favor of expanding the exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes, so that McCrone Components & Accessories could process and distribute in commerce standard reference slides of hairs, fibers, pigments, minerals, and other materials. The commentor noted that using PCBs for mounting such slides is advantageous to all microscopists engaged in particle identification, since PCBs allow the particles to remain unchanged for as many years as they are preserved, while other mounting media do not have such long-term stability. Moreover, the commentor stated that limiting an exemption to process and distribute in commerce PCBs for use only in art and historic conservation would result in serious economic consequences to microscopists. The commentor noted that its six-volume particle atlas, which contains pictures of small particles mounted with PCBs, would become useless to the more than 5,000 laboratories which have spent more than $2 million to obtain it. Microscopists would not be able to prepare permanent slides for small particles, nor would they be able to use McCrone's particle atlas or reference slides for rapid particle identification. The commentor contended that these costs are great compared to the small volume of PCBs involved, almost all of which is encapsulated inthe slides. Finally, the commentor stated that EPA's suggestion of having microscopists remount slides every ten years was unrealistic, since microscopists would not do so and rapid identification by light microscopy would become impossible.

R.P Cargille Laboratories, Inc., commented that EPA's proposal to grant an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy only in art and historic conservation is too limited. Cargille stated that EPA should grant it an exemption to process and distribute in commerce PCBs for the following four uses: (1) Use as a mounting medium in microscopy for all purposes; (2) use as an immersion oil in low fluorescence microscopy; (3) use as an optical liquid in scientific experimentation; and (4) use as a precision calibration standard. Cargille estimated that it would process and distribute in commerce between 25 and 200 gallons of PCBs for these uses in the one year exemption period. Cargille described the uses other than as a mounting medium in microscopy as follows:

(1) Use as an immersion oil in low fluorescence microscopy—PCBs are used in medical research, where the immersion oil must not fluoresce, and where other immersion oils are not adequate. Each use would require approximately 0.01 cubic centimeters (cc).

(2) Use as an optical liquid in scientific experimentation—The primary use would be in applications requiring environmental stability, laser light transmission, and radiation "hardness." Other uses include space and communications applications needing optical stability to protect millions of dollars of experiments, equipment, or uninterruptible information transmission. Each use would require between 0.02 cc and 4 liters.

(3) Use as a precision calibration standard—PCBs would be used to calibrate refractometers and other

optical analytical instruments. Each use would require approximately 0.01 cc.

Cargille stated that it has been developed, processing, and distributing in commerce substitutes for PCBs and has reduced PCB usage in microscopy by 97 percent. Cargille contended that no substitutes are available for the remaining scientific and technical uses discussed above. PCBs contribute to temperature stability and range; withstand ultraviolet light, X-rays, and radiation exposure; and provide high refractive index and low dispersion. Cargille stated that denying the exemption would cost the government and private industry millions of dollars to find adequate substitutes to solve problems that could be handled by small amounts of PCBs.

1. Petition Granted

EPA is granting an exemption to McCrone Accessories & Components to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting McCrone an exemption would not result in an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

McCrone would process PCB in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protective equipment. Once McCrone had distributed the PCBs, the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work. In addition, EPA concluded that granting an exemption would benefit society by allowing specialized microscopy work to continue.

b. Good faith efforts finding. EPA was persuaded that at this time there are no adequate substitutes for PCBs for use as a permanent mounting medium in microscopy in some relatively rare instances, such as preserving crime scene evidence.

Therefore, EPA grants McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., Chicago, IL 60616 (PDE-149), an exemption for one year to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes.

2. Petition Granted in Part and Denied in Part

EPA is granting that portion of R.P. Cargille Laboratories' petition for exemption to process and distribute in commerce PCBs for the following uses: (1) Use as a mounting medium in microscopy for all purposes; (2) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) use of small quantities of PCBs as an optical liquid. EPA is granting an exemption for these uses for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting Cargille an exemption would not result in an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

Cargille would process PCBs in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protection equipment. Once Cargille had distributed the PCBs, the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work. In addition, EPA concluded that granting an exemption would benefit society by allowing specialized microscopy work to continue.

b. Good faith efforts finding. EPA concluded that Cargille made good faith efforts to develop substitutes for PCBs and to phase out the sale and use of PCBs whenever possible. EPA was persuaded that, in some circumstances, there are no adequate substitutes for PCBs at this time. For example, EPA has determined that there are no adequate substitutes for PCBs for use as a permanent mounting medium in microscopy in some relatively rare instances, such as preserving crime scene evidence; in low fluorescence medical research (other than capillary microscopy); and in space, communications, and defense-related projects that require specialized optical liquids.

During the public hearing on the proposed rule, Cargille stated that it would abide by the conditions contained in a consent order, which it was voluntarily entering into with EPA to settle an EPA action for alleged violations of the PCB regulations. In that consent order, Cargille agreed to store the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

Therefore, EPA grants R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), an exemption for one year to: (1) Process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes; (2) process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) process and distribute in commerce small quantities of PCBs for use as an optical liquid. The exemption is granted on the condition that Cargille stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

EPA is denying that portion of Cargille's petition for exemption to process and distribute in commerce PCBs for use as a precision calibration standard. Cargille submitted no information to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment, nor did it show that it made good faith efforts to substitute non-PCBs for PCBs. EPA concluded that adequate non-PCB substitutes do exist for this use. In fact, elsewhere in this issue of the Federal Register the EPA rejected a use authorization for this purpose.

Since no one could legally use PCBs as a precision calibration standard, EPA has concluded that it would be inappropriate to grant an exemption to process and distribute in commerce PCBs for this purpose.

G. Distribution in Commerce of Previously Imported and Repaired PCB Equipment

EPA received one exemption petition to distribute in commerce previously imported and repaired PCB equipment.

Honeywell, Inc., Waltham, MA 02154 (ME-51 and PDE-119), requested an exemption to: (1) Import PCB equipment (i.e., computer assemblies and subassemblies containing PCB small capacitors) for purposes of repair, resale, and disposal; (2) distribute in commerce the previously imported and repaired PCB equipment; and (3) export previously imported and repaired PCB equipment. Honeywell's petition for exemption to import PCB equipment is discussed in Unit V.H.2 of this preamble,

and its petition for exemption to export previously imported and repaired PCB equipment is discussed in Unit V.I.2 of this preamble.

When a computer assembly or subassembly fails in service overseas, Honeywell ships a replacement part and imports the failed equipment for repair at its service facilities in the United States. Honeywell states that it discovers whether failed equipment contains PCB small capacitors only after the equipment has been imported, opened, and inspected. If a piece of equipment contains a defective PCB small capacitor, Honeywell removes and disposes of it in an EPA-approved incinerator and replaces it with a non-PCB capacitor. Honeywell estimated that it removes and disposes of five to 40 PCB small capacitors annually. However, if a PCB small capacitor is functional, as it usually is, Honeywell does not remove it. Rather, Honeywell repairs the equipment and places it back in stock for distribution within the United States and for export, as the need arises.

Honeywell stated that in 1981 it imported for repair 1,105 pieces of equipment, which are known to have contained, or are suspected of containing, PCB small capacitors. In addition, Honeywell stated that at the end of 1982 it had in stock 1,620 repaired pieces of equipment, which are known to have contained PCB small capacitors when manufactured. Honeywell was unable to estimate how many of these pieces of equipment still contain PCB small capacitors.

EPA is granting Honeywell an exemption to distribute in commerce its existing inventory of previously imported and repaired PCB equipment containing PCB small capacitors. First, EPA concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment, because the PCB equipment contains only intact, nonleaking PCB small capacitors. Honeywell is in the same situation as the other petitioners who requested an exemption to distribute their existing inventories of PCB equipment containing PCB small capacitors. EPA is granting an exemption to those petitioners for the reasons discussed under Unit V.A of this preamble. Second, EPA concluded that Honeywell made good faith efforts to find substitutes for these PCBs, since it stopped purchasing PCB small capacitors prior to 1979 and disposed of its inventory of PCB small capacitors held for purposes of repair in October 1982. The factors that support these conclusions are discussed more fully in Unit V.A of this preamble.

Therefore, EPA grants Honeywell, Inc., Waltham, MA 02154 (PDE-119), an exemption for one year to distribute in commerce previously imported and repaired PCB equipment containing PCB small capacitors.

EPA reminds Honeywell that 40 CFR 761.60(b)(2)(iv)(A) requires it to dispose of PCB small capacitors in an EPA-approved incinerator when it disposes of PCB small capacitors or PCB equipment, if Honeywell at any time manufactured PCB capacitors or PCB equipment containing such capacitors. In addition, EPA reminds Honeywell that since January 1, 1979, EPA has required all PCB equipment containing a PCB small capacitor to be marked at the time of manufacture (which includes importation) with the statement "This equipment contains PCB Capacitors" (40 CFR 761.40(d)).

H. Importing PCBs

EPA received two petitions for exemption to import PCBs.

Dow Corning Corp., Midland, MI 48640 (ME-31.1), requested an exemption to import samples of PCB-containing fluid taken from PCB transformers, which have been retrofilled with Dow Corning's silicone transformer fluid, for purposes of testing and analysis. Dow Corning wants to analyze this fluid for PCB concentration, moisture content, and contaminants as part of its customer service program. Dow Corning stated that it will ship samples in groups of five to ten individually packaged and hermetically sealed 5.0 ml vials. Dow Corning estimated that it will import two groups of samples, with a total of approximately 600 ml of fluid containing no more than six percent PCBs, per month.

Honeywell, Inc., Waltham, MA 02154 (ME-51), requested an exemption to import PCB equipment, the facts of which are described in Unit V.G of this preamble.

1. Petition Granted

EPA is granting Dow Corning's exemption petition to import samples of PCB-containing fluid taken from PCB transformers for purposes of testing and analysis for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption would not present an unreasonable risk of injury to health or the environment. The vials hold only a small volume of fluid containing PCBs, and granting an exemption would result in the importation of less than one lb. of PCBs a year. Furthermore, Dow Corning stated that it will ensure that the vials are hermetically sealed, properly labeled, and assembled in packages with sufficient absorbent material to ensure that PCBs will not be released into the environment if an accident should occur.

To ensure proper handling of samples, Dow Corning stated that it will train the people who ship these samples. Initially, Dow Corning said that it will limit the number of people authorized to ship these samples and will instruct them in the safe handling of material containing PCBs, the proper precautions to minimize the incidence of spills, and the proper clean-up of spills. Trained personnel with experience in handling hazardous substances, including PCBs, will conduct or directly supervise the analyses of the samples in Dow Corning's laboratories in the United States. Dow Corning stated that it requires its workers to wear eye protection, prepare samples in a vented hood, take samples through a septum into a syringe, and weigh substances in sealed bottles, all of which will minimize exposure to PCBs. Dow Corning stated that it periodically audits its laboratories to ensure that proper safety procedures are being followed.

Dow Corning claimed that the costs of denial are confidential, but would be large enough to terminate the overseas marketing of its non-PCB transformer fluid. Dow Corning stated that it investigated having these fluids tested abroad, but did not find a qualified laboratory that could perform the analyses at a cost that would allow its non-PCB transformer fluid to remain competitively priced with other transformer fluids.

The considerations involved with this petition of Dow Corning are similar to those of the petitions for the manufacture, processing, and distribution in commerce of PCBs for research and development as described in Unit V.E of this preamble. As stated in that unit, the goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to petitioners, such as Dow Corning, who import small quantities of PCBs for the continuation of important research activities. The importation of small quantities of PCB fluid for research and development under the safeguards provided in the Dow Corning petition will aid in the Agency's implementation of section 6(e) of TSCA.

When the one-year exemption granted to Dow Corning in this rule expires, EPA will automatically renew the exemption

unless Dow Corning notifies EPA of any increase in the amount of PCBs to be imported or any change in the manner of import for PCBs. Any change in these factors may affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

b. Good faith efforts finding. EPA concluded that Dow Corning made good faith efforts to substitute non-PCBs for PCBs. Indeed, Dow Corning's petition for exemption to test the samples is an important part of its program to get customers to substitute Dow Corning's non-PCB transformer fluid for PCB transformer fluid. Granting an exemption will benefit society by promoting the use of a non-PCB transformer fluid as a substitute for PCBs, thereby reducing PCB contamination both within the United States and abroad. In addition, Dow Corning's success in marketing the non-PCB transformer fluid abroad may indirectly help it market such substitutes in the United States, as these substitutes become more widely accepted and used. Thus, granting Dow Corning an exemption furthers EPA's goal of phasing out PCBs.

Therefore, EPA grants Dow Corning Corp., Midland, MI 48640 (ME-31) an exemption for one year to import samples of PCB-containing fluid taken from PCB transformers for purposes of testing and analysis.

2. Petition Denied

EPA is denying Honeywell's exemption petition to import PCB equipment. In the proposed rule, EPA concluded that granting an exemption would result in an unreasonable risk of injury to health or the environment, since the added risk of exposure from importing PCBs into the United States outweighs the small costs of denial to Honeywell. In its exemption petition, Honeywell admitted that when the equipment is imported, Honeywell does not know whether the equipment contains PCB small capacitors and whether the capacitors are intact and nonleaking. Thus, EPA determined that there is a risk of exposure to humans and the environment to PCBs. Honeywell stated that it imports the non-functioning PCB equipment to its service facilities in the United States, because its overseas service facilities are currently unable to repair the equipment there and that it would cost $20,000 to set up proper overseas service facilities plus $10,000-$30,000 a year to identify and remove PCB small capacitors from the non-functioning equipment at these service facilities. However, EPA determined that the costs of setting up and operating the proper overseas facilities to identify and remove PCB small capacitors from the non-functioning equipment at these service facilities is not burdensome to Honeywell, whose 1982 sales revenues were $5.35 billion.

Honeywell did not submit any information on the issues of unreasonable risk and good faith efforts to substitute non-PCBs for PCBs, even after EPA specifically solicited comments in the proposed rule mailed to Honeywell. Therefore, for the reasons stated above, EPA is denying the petition of Honeywell, Inc., Waltham, MA 02154 (ME-51), to import PCB equipment.

I. Exporting PCBs

EPA received seven petitions for exemption to export PCBs. Three exemption petitions to export PCBs were originally submitted before the rule was proposed, and four new exemption petitions to export PCBs were received during the comment period on the proposed rule and accepted by EPA for consideration. EPA treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs within the United States, because EPA will have no control over the distribution, use, and disposal of PCBs once the PCBs have been exported.

In a policy statement published in the Federal Register of May 1, 1980 (45 FR 29115), EPA described specifically what petitioners who want to export PCBs must show to meet the statutory requirements of section 6(e)(3)(B) of TSCA: "EPA will not grant an exemption unless the nation to which export is destined has proper disposal facilities for ultimate disposal. EPA also will not grant an exemption for export for a use not authorized in the United States. In the context of exports, good faith efforts to find a substitute means the burden is on the petitioner to show that there are no substitutes for the PCBs, produced either by the petitioner or a competitor; and that the petitioner proves that it has expended substantial amounts of time and money searching for a substitute."

PolyScience Corp., Niles, IL 60648 (PDE-178), submitted its petition for exemption to process and export small quantities of PCBs in reference standard kits for use by analytical chemists. PolyScience stated that each kit contains 1.4 milligrams (mg) of PCBs, which are packaged in hermetically sealed 5.0 ml containers. PolyScience estimated that it will export approximately 14 mg of PCBs a year and estimated the costs of denial to be $945 to $1,875 a year.

During the comment period on the proposed rule, EPA received the following four new petitions for exemption to process and export PCBs for research purposes. EPA accepted each of these petitions for consideration, because the petitioner showed good cause for filing late, as required by EPA's policy statement published in the Federal Register of March 5, 1980 (45 FR 14247).

Chem Service, Inc., West Chester, PA 19380 (PDE-41), submitted a new petition for exemption to process and export small quantities of PCBs to foreign laboratories and chromatographic supply houses. The average package size ranges from 5.0 mg to 100 mg, and the PCBs are packaged in hermetically sealed 5.0 ml containers. Chem Service estimated that it will export a maximum of 250 mg of PCBs a year and estimated the costs of denial to be $4,000 to $6,000 a year.

Foxboro Co., North Haven, CT 06473 (PDE-21.1), submitted a new petition for exemption to process and export small quantities of PCBs for scientific experimentation of analysis. The PCBs are packaged in hermetically sealed containers no larger than 5.0 ml. Foxboro estimated that it will export less than two lbs. of PCBs a year and estimated that denial would cause a loss of as much as 25 percent of its business.

ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1), submitted a new petition for exemption to process and export small quantities of pure PCB isomers to foreign research and development laboratories, academic institutions, and government organizations. Individual containers hold 0.2 mg to 50 mg of PCBs, and the PCBs are packaged in hermetically sealed 5.0 ml containers. ULTRA Scientific estimated that it will export amounts varying from several milligrams to as much as 100 grams a year and stated that denial of the petition would result in a "severe economic loss," although that loss was not quantified.

ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.2), submitted a new petition for exemption to process and export

"large" quantities of pure PCB isomers for use as standards in research to assess the biological effects of exposure of test animals and plants to a particular PCB isomer. ULTRA Scientific wants to consolidate orders for specific PCB isomers, each of which would be packaged in a single container no larger than 500 ml. ULTRA Scientific contended that EPA should permit the export of "large" quantities of PCBs because researchers need PCBs in sufficient quantities to conduct biological studies. The petitioner claimed that exposure to PCBs to humans and the environment would be minimized by the physical properties of the PCB isomers and the careful handling procedures typical of laboratory work. The petitioner stated that restricting the exemption to the export of PCBs in 5.0 ml containers would present a greater risk of exposure to humans and the environment, because more containers of PCBs would have to be shipped and handled by research scientists to obtain the quantities needed for their research. The petitioner also stated that denying an exemption would cause irreparable economic harm, although the extent of that harm was not quantified.

Honeywell, Inc., Waltham, MA 02154 (PDE-119), requested an exemption to export previously imported and repaired PCB equipment, the facts of which are described under Unit V.G of this preamble.

Traco Industrial Corp., New York, NY 10027 (PDE-276), submitted a petition for exemption to distribute in commerce PCB capacitors. Traco did not specifically request an exemption to export PCBs, but stated that "the capacitors are being sold to our overseas market that does not carry the restrictions of the U.S. market." EPA has treated this as a petition for exemption to export PCB capacitors.

1. Petitions Granted

EPA is granting the four exemption petitions listed below for the following reasons:

a. Unreasonable risk finding. EPA concluded that granting an exemption to process and export small quantities of PCBs for research and development would not present an unreasonable risk of injury to health or the environment. The petitioners will export only small amounts of PCBs (approximately two lbs.) for purposes of scientific research. The risk of exposure to PCBs is small because the PCBs are packaged in hermetically sealed containers, which minimize exposure during storage and shipment. Once the PCBs have been distributed, the risk of exposure to humans and the environment is minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, by the careful handling procedures typical of laboratory work, and by the fact that the containers must bear the PCB warning label. In addition, granting an exemption will avoid certain costs, which vary from petitioner to petitioner. Finally, granting an exemption will benefit society by allowing important scientific research to continue.

b. Good faith efforts finding. EPA concluded that the good faith efforts finding is not relevant here, because there are no substitutes for pure PCBs for use in scientific research. Pure PCBs are needed for this research, because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

Therefore, EPA grants the following petitioners an exemption for one year to process and export small quantities of PCBs for research and development:

Chem Service, Inc., West Chester, PA 19380 (PDE-41).

Foxboro Co., North Haven, CT (PDE-21.1.).

PolyScience Corp., Niles, IL 60648 (PDE-178).

ULTRA Scientific, Inc., Hope, RI 02931 (PDE-282.1).

In this rulemaking and in the recent rulemaking to authorize the use of small quantities of PCBs for research and development indefinitely, EPA determined that there are no substitutes for PCBs for the continuation of important health, environmental, and analytical research, and that substitutes for PCBs in such applications will not be developed in the future. In this regard, there is a unique need for an exemption to process and export small quntities of PCBs for research and development. Furthermore, EPA determined that the processing, export, and use of small quantities of PCBs for research and development will not present an unreasonable risk of injury to health or the environment, because of the small quantities involved and the procedures used to minimize human and environmental exposure to PCBs.

In general, the goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to these petitioners, who will process and export small quantities of PCBs for research and development, since there are no substitutes for PCBs for the continuation of important research activities. In fact, PCBs will always be needed to ensure that the goal of section 6(e) of TSCA is being met. When the one-year exemption granted to these petitioners in this rule expires, EPA will automaticaly renew the exemption unless a petitioner notifies EPA of any increase in the amount of PCBs to be processed or exported or any change in the manner of processing or exporting PCBs. Any change in those factors might affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

2. Petitions Denied

EPA is denying the three exemption petitions listed below for the following reasons:

EPA is denying the exemption petition of ULTRA Scientific, Inc., Hope, RI 02931 (PDE-282.2), to process and export "large" quantities of PCBs for research purposes, because granting an exemption would result in an unreasonable risk of injury to health and the environment. EPA believes that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs in the event of a spill or leak, simply because more PCBs would be spilled or leaked from a 500 ml container than from a 5.0 ml container. Moreover, the petitioner did not estimate the total volume of PCBs to be processed and exported, nor did it estimate the reasonably ascertainable economic consequences of denial. In the absence of such information, EPA cannot determine that the benefits to society of granting an exemption outweigh the risks of injury. Finally, EPA believes that its decision to grant ULTRA Scientific an exemption to process and export small quantities of PCBs for research purposes will enable researchers to obtain the PCBs they need for research purposes and will mitigate any loss of business to ULTRA Scientific.

EPA is denying the exemption petition of Honeywell, Inc., (PDE-119), to export previously imported and repaired PCB equipment, because granting an exemption would result in an unreasonable risk of injury to health or the environment. Honeywell submitted

no information, even after EPA specificaly solicited comments on the proposed rule, to show that the nations to which export is destined have proper disposal facilities for the ultimate disposal of PCBs, nor did Honeywell estimate the reasonably ascertainable economic consequences of denial.

EPA is denying the exemption petition to Traco Industrial Corp., New York, NY 10027 (PDE-276), to distribute in commerce PCB capacitors. Traco's stated reason for wanting to export PCBs—to avoid the restrictions of the PCB regulations—is in direct opposition to the clear intent of TSCA, which is to minimize the addition of PCBs to the environment. Traco's only relief form the ban on exporting PCBs is to meet the requirements of section 6(e)(3)(B) of TSCA for obtaining an exemption. Traco did not produce any information for EPA to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment. Even after EPA specifically solicited comments in the proposed rule mailed to Traco, the petitioner submitted no information to show that the nations to which export is destined have proper disposal facilities for the ultimate disposal of PCBs, nor did it estimate the reasonably ascertainable economic consequences of denial. Finally Traco submitted no information to show that it made good faith efforts to substitute non-PCBs for PCBs. Accordingly, EPA is denying Traco's petition for exemption to export PCBs.

J. Actions Deferred Because of the Uncontrolled PCB Rule

EPA reviewed 49 petitions for exemption to manufacture, process, or distribute in commerce substances or mixtures inadvertently contaminated with 50 ppm or greater PCBs. The activities for which each of these petitioners requests exemption is affected by the Uncontrolled PCB Rule published elsewhere in this issue of the Federal Register. In the Uncontrolled PCB Rule, EPA is setting new regulatory cutoffs for the inadvertent manufacture, processing, distribution in commerce, and use of certain PCBs.

Since the new regulatory cutoffs in the Uncontrolled PCB Rule may affect many of these exemption petitions, EPA is not taking action on them in this final rule. Instead, EPA is addressing these exemption petitions in a proposed rule related notice published elsewhere in this issue of the Federal Register. Interested persons should refer to that notice for important information about these exemption petitions.

V Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has his principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so-called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the Federal Register, as reflected in "DATES" in this notice. The effective date of this rule has, in turn, been calculated from the promulgation date.

VI. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filed in docket number OPTS-66001 (manufacturing exemptions) and OPTS-66002 (processing and distribution in commerce exemptions) was consolidated into docket number OPTS-66008.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents which constitutes the record of this rulemaking. Public comments, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing or in connection with it are not listed, because these documents are exempt from Federal Register listing under section 19(a)(3). However, these documents are included in the public record, and a full list of these materials is available on request from EPA's TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT."

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-68005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS-66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Used in Microscopy and Research and Development," Docket No. OPTS-62031, 48 FR 52402, November 17 1983.

B. Federal Register Notices

(8) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs) Ban Exemption."

(9) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(10) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyl (PCB) Processing and Distribution in Commerce Prohibitions."

(11) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions."

(12) 44 FR 42727 July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs); Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(13) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(14) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal."

(15) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions;

Proposed Rule," Docket No. OPTS-66008.

(16) 48 FR 52402, November 17 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS-62031.

(17) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS-62032.

C. Support Documents

(18) USEPA, OPTS, EED, Letter from Marigene H. Butler, Philadelphia Museum of Art, to Martin P Halper, EPA, "Use of PCBs in Microscopy" (April 29, 1983).

(19) USEPA, OPTS, EED, Telephone Communication between Denise Keehner, EPA, and Martha Goodway, Smithsonian Institution, "Use of PCBs in Microscopy" (May 9, 1983).

(20) USEPA, OPTS, EED, "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984).

(21) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(22) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (April 1984).

(23) USEPA, OPTS, HERD, "Response to Comments on Health Effects of PCBs" (August 19, 1982).

(24) USEPA, OPTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use Ban Regulation: Economic Impact Analysis" (April 1979).

D. Reports

(25) USEPA, ORD, EMSL, "A Method for Sampling and Analysis of Polychlorinated Biphenyls (PCBs) in Ambient Air" (August 1978). EPA-600/4-78-048.

E. Other

(26) Manufacturing Exemption Petitions and Related Communications in Docket No. OPTS-66001.

(27) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS-66002.

VII. Executive Order 12291

Under Executive Order 12291, issued February 17 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order.

EPA has concluded that this rule is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Indeed, this rule allows the continued manufacture, processing, and distribution in commerce of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemptions.

Although this rule is not a major rule, EPA has prepared an Economic Impact Analysis using the guidance in the Executive Order to the extent possible. This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

VIII. Regulatory Flexibility Act

Section 604 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 604, requires EPA to prepare a regulatory flexibility analysis in connection with any rulemaking for which EPA must publish a general notice of proposed rulemaking. A regulatory flexibility analysis described the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 604 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA estimated the cost of this rule on small businesses, whose petitions for exemption EPA is denying. For purposes of this analysis, EPA considers a small business to be one whose annual sales revenues were less than $40 million. This cutoff is in accordance with the sales figures used by EPA to define a small business in a final rule for reporting chlorinated terphenyls under section 8(a) of TSCA, which was published in the Federal Register of March 26, 1984 (49 FR 11181).

EPA is denying four petitions for exemption from small businesses that want to distribute in commerce PCB small capacitors and PCB equipment containing PCB small capacitors. None of these petitioners estimated the reasonably ascertainable economic consequences of denial. Based on other information submitted by petitioners, EPA estimated the costs of denying Traco Industrial Corp.'s petition to be $65,100 (roughly 1.1 percent of its 1981 sales revenues of $6 million) and the costs of denying Trans-State Corp.'s petition to be $37,200 (roughly 1.5 percent of its 1981 sales revenues of $2.5 million). None of the four petitioners contended that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA also is denying Traco Industrial Corp.'s petition for exemption to export PCB capacitors. Although Traco did not estimate the reasonably ascertainable economic consequences of denial, the costs would be no greater than the costs of denying its entire petition, or $65,100 (roughly 1.1 percent of its 1981 sales revenues of $6 million). Traco did not contend that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying 24 petitions for exemption, which were submitted on behalf of 36 small businesses, to process and distribute in commerce PCBs in servicing customers' transformers. None of these petitioners submitted information on the reasonably ascertainable economic consequences of denial of these petitions. Based on comments submitted by other petitioners during this rulemaking, EPA now estimates the upper bound costs of denial to be approximately $21,000 per company. None of these petitioners contended that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying eight petitions for exemption from small businesses that want to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers. EPA was unable to estimate the total costs of denial, because the petitioners did not estimate the number of transformers to be bought and sold, the purchase price and resale value of such transformers, and the reasonably ascertainable economic costs of denial. In the proposed rule, EPA estimated the incremental costs of denial to be $90 to

$240 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer. Based on comments submitted by other petitioners during this rulemaking, EPA now estimates the incremental costs of denial to be $160 for a 46-gallon PCB-contaminated transformer and $2,400 to $4,000 for a 215-gallon PCB transformer. Given that the costs of replacing the similar sized PCB-contaminated transformer is approximately $1,600, and the costs of replacing a similar sized PCB transformer is approximately $13,000, the incremental costs amount to about 10 to 30 percent of replacement costs. Depending on the purchase price and resale value of used transformers, the additional costs resulting from denial might render a portion of this buying and selling activity unprofitable. None of these petitioners contended that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying Pathfinder Laboratories, Inc.'s petition for an exemption to manufacture, process, and distribute in commerce small quantities of PCBs for purposes of research and development. Pathfinder did not estimate the reasonably ascertainable economic consequences of denial, and EPA was unable to estimate the costs of denial. Pathfinder did not contend that denying its petition would result in a significant economic impact, even after EPA specifically solicited information about the economic consequences of denial in the proposed rule mailed to each petitioner.

EPA is denying one portion of R.P. Cargille Laboratories, Inc.'s petition for an exemption to process and distribute in commerce PCBs for use as a precision calibration standard in microscopy. Cargille did not estimate the reasonably ascertainable economic consequences of denying this portion of its exemption petition, but conceded in its petition that the "economic consequences of denying the petition are quite small." EPA believes that denial will result in no direct costs, since the use has never been authorized, and that the indirect costs will be small, since adequate non-PCB substitutes exist for this use.

EPA is denying ULTRA Scientific, Inc.'s petition for exemption to process and export "large" quantities of PCBs for purposes of scientific research. ULTRA Scientific stated that the economic harm would be "irreparable," but did not quantify the costs. EPA believes that any costs of denial are mitigated or eliminated by the exemption which EPA is granting ULTRA Scientific to process and export small quantities of PCBs for research purposes.

In accordance with section 605(b) of the Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required and will not be prepared for this rulemaking.

EPA further notes that section 606 of the Act states that the requirements of section 604 do not alter in any manner standards otherwise applicable by law to agency action. In general, the manufacture, processing, and distribution in commerce of PCBs are prohibited by section 6(e)(3)(A) of TSCA and the PCB regulations, 40 CFR Part 761. Section 6(e)(3)(B) of TSCA permits EPA to grant an exemption from these prohibitions, if the Administrator finds that a petitioner has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that it has made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically or socially desirable policy to grant an exemption to a small business, it could do so only if the small business met the requirements set forth in TSCA.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA's original request to collect information for this rulemaking was approved by OMB and was assigned OMB Control Number 2000-0466. EPA's subsequent request to collect information for this rulemaking through December 31, 1984, was approved by OMB and was assigned OMB Control Number 2070-0021.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

Dated: June 27, 1984.

Alvin L. Alm,

Acting Administrator.

PART 761—[AMENDED]

Therefore, 40 CFR Part 761 is amended by adding a new Subpart E consisting at this time of § 761.80 to read as follows:

Subpart E—Exemptions

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

(a) The Administrator grants the following petitioners an exemption for one year to distribute in commerce PCB small capacitors for purposes of repair:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Air Conditioning Contractors of America, Washington, DC 20036 (PDE-7).

(3) Association of Home Appliance Manufacturers, Chicago, IL 60606 (PDE-26.2).

(4) B & B Motor & Control Corp., New York, NY 10012 (PDE-30).

(5) Complete-Reading Electric Co., Hillside, IL 60162 (PDE-48).

(6) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

(7) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

(8) Harry Alter Co., Chicago, IL 60609 (PDE-111).

(9) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.1).

(10) Motors & Armatures, Inc., Hauppauge, NY 11788 (PDE-161).

(11) National Association of Electrical Distributors, Stamford, CT 06301 (PDE-163).

(12) National Capacitor Corp., Garden Grove, CA 92641 (PDE-165).

(13) Service Supply Co., Phoenix, AZ 85013 (PDE-237).

(14) Wedzeb Enterprises, Inc., Lebanon, IN 46052 (PDE-297).

(15) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-293).

(b) The Administrator grants the following petitioners an exemption for one year to distribute in commerce PCB equipment containing PCB small capacitors:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Coleman Co., Inc., Wichita, KS 67201 (PDE-45.1).

(3) Donn Corp., Westlake, OH 44145 (PDE-63).

(4) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

(5) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

(6) Friedrich Air Conditioning & Refrigeration Co., San Antonio, TX 78295 (PDE-93).

(7) Gould, Inc., Electric-Moter Division, St. Louis, MO 63166 (PDE-103).

(8) GTE Products Corp., Danvers, MA 01923 (PDE-105).

(9) King-Seeley Thermos Co., Queen Products Division, Albert Lea, MN 56007 (PDE-139).

(10) L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

(11) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.3).

(12) National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).

(13) Royalite Co., Flint, MI 48502 (PDE-231).

(14) Sola Electric, Unit of General Signal, Elk Grove Village, IL 60007 (PDE-246).

(15) Transco, Inc., West Columbia, SC 29169 (PDE-276.1).

(16) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(c) The Administrator grants the following petitioners an exemption for one year to process PCB small capacitors and PCB equipment containing PCB small capacitors into other equipment and to distribute in commerce that equipment:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Gould, Inc., Electric Moter Division, St. Louis, MO 63166 (PDE-103).

(3) GTE Products Corp., Danvers, MA 01923 (PDE-105).

(4) L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

(5) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(d) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid for purposes of servicing customers' transformers:

(1) Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

(2) Ohio Transformer Corp., Louisville, OH 44641 (PDE-173).

(3) T & R Electric Supply Co., Inc., Colman, SD 57017 (PDE-265).

(4) Temco, Inc., Corpus Christi, TX 78410 (PDE-268).

(e) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers:

(1) Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

(2) Ohio Transformer Corp., Louisville, OH 44641 (PDE-173).

(3) Temco, Inc., Corpus Christi, TX 78410 (PDE-268).

(f) The Administrator grants the following petitioners an exemption for one year to manufacture small quantities of PCBs for research and development:

(1) California Bionuclear Corp., Sun Valley, CA 91352 (ME-13).

(2) Foxboro Co., North Haven, CT 06473 (ME-6).

(3) ULTRA Scientific, Inc., Hope, RI 02831 (ME-99.1).

(g) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for research and development:

(1) California Bionuclear Corp., Sun Valley, CA 91352 (PDE-38.1).

(2) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

(3) Foxboro Co., North Haven, CT 06473 (PDE-21.1).

(4) PolyScience Corp., Niles, IL 60648 (PDE-178).

(5) ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

(h) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes:

(1) McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., Chicago, IL 60616 (PDE-149).

(2) R.P Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(i) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy):

(1) R.P Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(2) [Reserved]

(j) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for use as an optical liquid:

(1) R.P Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(2) [Reserved]

(k) The Administrator grants the following petitioners an exemption for one year to distribute in commerce previously imported and repaired PCB equipment containing PCB small capacitors:

(1) Honeywell, Inc., Waltham, MA 02154 (PDE-119).

(2) [Reserved]

(l) The Administrator grants the following petitioners an exemption for one year to import samples of PCB-containing fluid taken from PCB transformers for purposes of testing and analysis:

(1) Dow Corning Corp., Midland, MI 48460 (ME-31.1).

(2) [Reserved]

(m) The Administrator grants the following petitioners an exemption for one year to process and export small quantities of PCBs for research and development:

(1) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

(2) Foxboro Co., North Haven, CT 06473 (PDE-21.1).

(3) PolyScience Corp., Niles, IL 60648 (PDE-178).

(4) ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

(n) The one-year exemption granted to petitioners in paragraphs (f), (g), (l) and (m) of this section shall be renewed automatically unless a petitioner notifies EPA of any increase in the amount of PCBs to be manufactured, imported, processed, distributed in commerce, or exported or any change in the manner of manufacture, processing, distribution in commerce, or export of PCBs. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comments, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

[FR Doc. 84-17902 Filed 7-9-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62032A; TSH-FRL-2587-1]

Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs). EPA issued a final rule published in the Federal Register of October 21, 1982 (47 FR 46980), excluding PCBs generated in closed and controlled waste manufacturing processes from the TSCA prohibitions. This final rule amends the October 21, 1982 rule by excluding additional processes from regulation, based on EPA's determination that PCBs generated in these processes do not present an unreasonable risk of injury to health or the environment. In addition, this notice defers action on 49 exemption petitions to manufacture, process, and distribute PCBs in commerce; authorizes the use of PCBs in heat transfer and hydraulic systems at concentrations of less than 50 parts per million (ppm); and authorizes the use of PCBs in the compressors and in the liquid of natural gas pipelines at concentrations of less than 50 ppm.

DATES: These regulations shall be considered promulgated for purposes of judicial review at 1:00 p.m. eastern standard time on July 24, 1984. These regulations shall become effective on October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.. (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2070-0008.

I. Overview of This Final Rule

In today's rule, EPA is taking four actions concerning PCBs. These actions are: (1) An amendment of the October 21, 1982 Closed and Controlled Waste Maunfacturing Processes Rule; (2) a deferral of action on 49 exemption petitions to manufacture, process, and distribute in commerce inadvertently generated PCBs; (3) a use authorization for PCBs in hydraulic and heat transfer fluid; and (4) a use authorization for PCBs in the compressors and liquid of natural gas pipeline systems. Units II, III, IV and V, respectively, discuss these actions in detail.

II. Amendment to the Closed and Controlled Waste Manufacturing Processes Rule

A. Overview of This Amendment

This rule will permit the manufacture, processing, distribution in commerce, and use of inadvertently generated and recycled PCBs under limited circumstances. It is based on a determination that exposure to these PCBs would not present an unreasonable risk to health or the environment. This determination takes into account the effects from exposure to inadvertently generated and recycled PCBs, as well as the cost of controlling these PCBs. The regulatory history of this amendment and the no unreasonable risk determination are described in greater detail in the remainder of this Unit of the preamble.

EPA emphasizes that while today's rule sets certain limits on inadvertently generated and recycled PCBs released to air, water, products, and waste in certain processes, the Agency is not implying that these release limits represent an absolutely safe level. Rather, the Agency has decided that the risks associated with allowing the levels of PCBs in this regulation are not unreasonable. This means that EPA has set these levels based on a balancing of the costs associated with setting even lower limits (or removing PCBs entirely from the products in question) with the attendant reduction in risk that would result from stricter regulation. EPA has concluded that stricter regulation would result in great expense for a small increment in risk reduction.

B. Background

Section 6(e) of TSCA generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. Section 6(e)(3)(B) of TSCA provides that any person may petition EPA for one-year exemptions from the prohibitions on manufacture, processing, and distribution in commerce of PCBs. EPA may grant such petitions, by rule, if the following two conditions are satisfied: (1) The exemption, if granted, would not present an unreasonable risk of injury to health or the environment; and (2) good faith efforts have been made to develop a PCB substitute which does not present an unreasonable risk of injury. In addition, section 6(e)(2) of TSCA permits EPA to exempt from the PCB ban totally enclosed uses of PCBs and authorizes EPA to allow continuation of non-totally enclosed uses of PCBs if the uses will not present an unreasonable risk of injury to health or the environment.

In the Federal Register on May 31, 1979 (44 FR 31514), EPA issued a regulation to implement the prohibitions of section 6(e) of TSCA. (This rule is hereafter referred to as the PCB Ban Rule.) Among other provisions, that rule: (1) Generally excluded from regulation materials containing PCBs in concentrations of less than 50 ppm; (2) designated all intact, non-leaking capacitors, electromagnets, and transformers (other than railroad transformers) as "totally enclosed," and permitted their use without specific conditions; and (3) authorized 11 non-totally enclosed uses of PCBs, based on the finding that they did not present unreasonable risks.

The Environmental Defense Fund (EDF) obtained judicial review of the PCB Ban Rule in the U.S. Court of Appeals for the District of Columbia Circuit in *EDF* v. *EPA*, 636 F.2d 1267 (D.C. Cir. 1930). On October 30, 1930, the court invalidated the regulatory exclusion of PCBs in concentrations of less than 50 ppm and EPA's determination that the use of PCBs in electrical equipment was "totally enclosed." However, the court upheld the use authorizations. This rule was remanded to EPA by the court for further action consistent with its opinion.

The issuance of the court's mandate without a stay would have adversely affected many industries throughout the United States, including both the electrical utility industry and certain segments of the chemical industry whose processes inadvertently generated PCBs as impurities or byproducts in concentrations below 50 ppm. Accordingly, on January 21, 1981, EPA, EDF, and certain industry intervenors in *EDF* v. *EPA* filed a joint motion with the court. The motion asked for a stay of that part of the court's mandate which set aside the designation of transformers, capacitors, and electromagnets as totally enclosed. During the period of the stay, EPA agreed to conduct a rulemaking on the use of PCBs in electrical equipment. On February 12, 1981, the court granted this joint motion. EPA subsequently addressed the use of certain electrical equipment containing PCBs in a rule, which was published in the Federal Register of August 25, 1982 (47 FR 37342). This will be referred to hereafter as the Electrical Equipment Rule.

The genesis of today's rule was another joint motion filed by the Chemical Manufacturers Association (CMA), EDF and other industry intervenors in *EDF* v. *EPA* on February 20, 1981. That motion sought a stay of

that part of the court's mandate overturning the 50 ppm cutoff established in the PCB Ban Rule. This motion also proposed that during the period of the stay: (1) EPA would conduct new rulemaking with respect to PCBs generated in low concentrations; and (2) industry groups would initiate studies to provide new information for subsequent rulemaking. A brief history of the events subsequent to the February 20, 1981 motion will explain how EPA arrived at today's rule.

Throughout the discussions leading to the February 20, 1981 joint motion, chemical industry representatives argued that some of their manufacturing processes inadvertently generate PCBs that present virtually no health or environmental risk because of limited PCB exposure potential. Industry representatives stated that some processes generating PCBs as byproducts are designed and operated so that no releases of PCBs occur or that the PCBs formed in the processes are disposed of in accordance with the PCB disposal regulations at 40 CFR 761.60. These processes were referred to as "closed manufacturing processes" and "controlled waste manufacturing processes," respectively. The joint motion proposed that EPA issue an ANPR to exclude these closed and controlled waste manufacturing processes from the prohibitions of section 6(e) of TSCA.

In addition to addressing the closed and controlled waste manufacturing processes, the February 20, 1981 joint motion also proposed the publication of an ANPR requesting information on all other manufacturing, processing, distribution in commerce, and use of PCBs in low concentrations. Such PCBs generated in and released from other than closed or controlled waste manufacturing processes are hereafter referred to as "uncontrolled PCBs" or "inadvertently generated PCBs." These PCBs which are not intentionally generated are also referred to as "non-Aroclor" PCBs. These non-Aroclor, inadvertently generated, PCBs are the principal subject of this rulemaking.

On April 13, 1981, the court entered an order in response to the February 20, 1981 joint motion. That order stayed the issuance of the court's mandate with respect to activities involving PCBs in concentrations of less than 50 ppm. Thus, the 50 ppm regulatory limit established in the PCB Ban Rule remains in effect for the duration of the stay, and persons who manufacture, process, distribute in commerce, and use PCBs in concentrations of less than 50 ppm may continue these activities during the stay. However, once the stay is lifted, any activity involving any quantifiable level of PCBs (as discussed in this notice) is banned unless that activity is specifically excluded, exempted, or authorized by regulation.

The court order of April 13, 1981 required EPA to take three actions. EPA was required to: (1) Issue ANPRs covering PCBs in concentrations of less than 50 ppm; (2) promulgate a final rule by October 13, 1982 to exclude generation of PCBs in closed and controlled waste manufacturing processes from the prohibitions of sections 6(e)(3)(A) of TSCA; and (3) advise the court by March 13, 1982 of EPA's plans and schedule for further action on PCBs generated as uncontrolled PCBs in concentrations of less than 50 ppm.

EPA issued two ANPRs on the 50 ppm regulatory limit which were published in the Federal Register of May 20, 1981 (46 FR 17617 and 46 FR 17619). The ANPRs established two separate rulemaking proceedings with respect to PCBs in concentrations of less than 50 ppm. The first ANPR announced rulemaking activities on PCBs generated in closed and controlled waste manufacturing processes. The second ANPR announced the rulemaking activities for uncontrolled PCBs.

In accordance with the April 13, 1981 court order, EPA on March 11, 1982 submitted a report to the court that set forth EPA's plans for further regulation of uncontrolled PCBs. Since the number of processes generating uncontrolled PCBs is related to the number of closed and controlled waste manufacturing processes, EPA requested that the court allow EPA to report on its further plans for regulation of uncontrolled PCBs following the completion of the Closed and Controlled Waste Manufacturing Processes Rule. EPA also requested that the court extend its stay of mandate until December 1, 1982, to allow EPA time to develop detailed plans for regulating uncontrolled PCBs after issues were resolved in the Closed and Controlled Waste Manufacturing Processes Rule. On April 9, 1982, the court issued an order granting EPA's request.

The Closed and Controlled Waste Manufacturing Processes Rule was published in the Federal Register of October 21, 1982 (47 FR 46980). That rule provides an exclusion from the general ban on the manufacture, processing and distribution in commerce of PCBs for closed and controlled waste manufacturing processes. The Closed and Controlled Waste Manufacturing Processes Rule sets the limits for inadvertently generated, non-Aroclor PCBs in products, air emissions and water discharges at the limit of quantitation (LOQ) and controls disposal of waste containing PCBs above the LOQ. These exclusions from the prohibitions of section 6(e) of TSCA were based on EPA's determination that risk would be *de minimis*, because there would be no measurable gain in protection of the environment or public health by attempting to regulate PCBs at levels that are nonquantifiable for all practical purposes. This environmentally conservative approach was taken because data were not available at that time to determine if higher concentration levels were appropriate.

C. Background for Today's Amendment

After issuing the final Closed and Controlled Waste Manufacturing Processes Rule, EPA in accordance with the April 9, 1982 court order, submitted to the court a plan for regulating uncontrolled PCBs. EPA stated that it intended to propose a rule by December 1, 1983 and to issue a final rule for uncontrolled PCBs by July 1, 1984. EPA also requested an extension of the court's stay of mandate until October 1, 1984. In response to this request, the court on December 17, 1982 stayed the mandate until further order. In addition, the court ordered EPA to submit a progress report on March 31, 1983 and quarterly thereafter. In accordance with this December 17 1982 order, EPA submitted progress reports at the end of March, June, September and December 1983; March and June 1984.

On April 13, 1983, CMA, EDF and the Natural Resources Defense Council (NRDC) presented a document to EPA entitled "Recommendation of the Parties for a Final EPA Rule on Inadvertent Generation of PCBs." This document represents a consensus proposal of CMA, EDF and NRDC and was the culmination of an independent negotiation effort between those parties that began in mid-1982.

The consensus proposal was designed to allow the manufacture of chemicals in processes that inadvertently generate PCBs if certain conditions are met. In the consensus proposal, EDF NRDC, and CMA proposed five basic conditions that would have to be met in order to qualify for an exclusion from the TSCA section 6(e)(3)(A) prohibitions. These conditions were:

1. Concentrations of inadvertently generated PCBs in products are to be limited to a 25 ppm average per year and a maximum of 50 ppm at any given time.

2. Concentrations of inadvertently generated PCBs at the point where such PCBs are vented to the ambient air are to be less than 10 ppm.

3. Concentrations of inadvertently generated PCBs discharged from manufacturing sites to water are to be less than 0.1 ppm for any resolvable gas chromatographic peak.

4. The concentration of PCBs described in item 1 is to be calculated after dividing the concentration of monochlorinated and dichlorinated biphenyls by factors of 50 and 5, respectively.

5. Various certification, reporting, and record maintenance requirements must be met to qualify for this exclusion from the general ban on manufacture, processing, distribution in commerce, and use of PCBs.

Further, the consensus proposal included an "upset provision." This provision would have provided an affirmative defense for those manufacturing situations in which PCB levels released are higher than would be allowed by the rule, provided that such releases are due to factors beyond the control of the operator.

Based on the data analyses EPA had completed when it received the consensus proposal, the Agency determined that it was appropriate to use the consensus proposal as a framework in this rulemaking. In a letter to CMA, EDF, and NRDC dated June 3, 1983, EPA stated that it would use the consensus proposal as a framework for regulation, although it intended to make modifications to that framework.

EPA also received information from a number of sources on PCBs that are recycled. Recycled PCBs are PCBs that were generated in the past and may enter certain limited manufacturing processes as PCB-contaminated raw materials. In general, these are intentionally generated PCBs (i.e., Aroclor) that are found in low concentrations.

On December 1, 1983, the Agency issued the proposed Uncontrolled PCBs Rule. Three actions were proposed in that notice: (1) An amendment to the Closed and Controlled Waste Manufacturing Processes Rule that would exclude additional activities from the TSCA section 6(e) PCB ban; (2) a deferral of action on 50 petitions previously filed under section § 6(e)(3)(B) of TSCA for exemptions from the PCB regulations (see Unit II.B for an explanation of exemption petitions), and (3) a use authorization for PCBs in heat transfer and hydraulic systems.

In determining the legal basis for this Uncontrolled PCBs Rule, EPA decided to adopt an approach under which the Agency will authorize those PCB activities which do not present unreasonable risks. This approach was suggested by CMA, EDF and NRDC in their consensus proposal. EPA's reason for adopting this approach is explained in the preamble to the proposed regulation at 48 FR 55079. The concept of unreasonable risk is explained further at 48 FR 55081.

To determine which processes would be affected by this rulemaking, EPA developed a list of approximately 200 chemical processes with a potential for generating PCBs. These chemical processes were then ranked as high, moderate, or low with respect to their potential to generate PCBs. EPA identified 70 chemical processes that were believed to have a high potential to inadvertently generate PCBs. Some of the processes included in this list were identified in petitions for exemption from the PCB Ban Rule that were previously submitted to EPA. The Agency focused on this group of 70 chemical processes in developing its assessments of environmental and human health exposures used to support this rulemaking.

The major difference between the criteria proposed by the Agency and the consensus proposal criteria is the addition of a concentration limit of 5 ppm for PCBs in consumer products with a high potential for exposure. These consumer products were deodorant bars and soaps, and plastic building materials and products. EPA also did not propose the "upset" provision suggested in the consensus proposal.

In response to the proposed rule, over thirty comments were submitted to the rulemaking record. No outside parties requested a public hearing in this rulemaking; therefore, no hearings were held.

D. General Comments on the Proposed Amendment

The majority of the comments received in this rulemaking generally agreed with the exclusions proposed in the December 8, 1983 Federal Register notice. However, many modifications to the rule and the supporting documents were suggested by the commenters. This Unit of the Preamble discusses many of the general comments made in response to the proposed rule. Unit F generally discusses the health effects and exposure assessment support documents and comments made with respect to these support documents. For further information concerning all of the comments made in response to the proposed rule, please refer to the support document "Response to Comments on the Proposed Uncontrolled PCBs Rule."

A number of comments were made on the exclusion for consumer products with a high potential for exposure. Several commenters pointed out that deodorant bars are regulated by the Food and Drug Administration (FDA); therefore, these products may not be regulated under TSCA. FDA informed EPA that appropriate terminology for this type of product that is not controlled by FDA is "detergent bars." EPA agrees with these points. Accordingly, the wording "soap and deodorant bars" has been changed to read "detergent bars" as suggested by the FDA.

Similarly, several commenters suggested that EPA should delete from the "plastic building materials and products" designation the words "and products" because those words are redundant. Other commenters suggested that plastic building materials and products should be removed altogether from the category of "consumer products with a high potential for exposure." In response to these comments, the Agency reevaluated the relevant exposure assessment, and determined that the exposure is not as great as originally estimated. The modifications to the exposure assessment are explained in the "Response to Comments on the Proposed Uncontrolled PCBs Rule." Accordingly EPA has removed plastic building materials and products from the "consumer products with a high potential for exposure" category. The PCB concentration in plastic building products will be limited to an annual average of 25 ppm PCBs with a 50 ppm maximum.

A number of commenters were uncertain as to which Aroclor products were to be included under the definition of recycled PCBs. In today's rule, EPA clarifies this issue by stating that the only PCBs permitted to be recycled are those Aroclor PCBs that enter the paper or the asphalt roofing manufacturing process as PCB-contaminated raw materials. The discounting factors for monochlorinated and dichlorinated biphenyls are not to be used in quantifying the recycled PCBs. EPA chose these products because information submitted to the Agency showed that these were the only products in which raw materials contaminated with Aroclor PCBs were used in a manufacturing process.

EPA has received information on recycled PCBs from the American Paper Institute (API) and the Asphalt Roofing Manufacturers Association (ARMA). API stated that its members have

detected PCBs in paper, pulp, and paperboard products. It believes that ambient PCBs are the source of the PCBs found in its members' products. ARMA, which represents about 15 companies, stated that asphalt roofing manufacturers have detected PCBs in asphalt roofing waste streams as a result of PCBs found in the waste oil used to adjust the viscosity of the asphalt. The PCBs are present in the waste paper used in the production of roofing felt, and in the asphalt used for saturation of the felt. PCBs have not been detected in the final asphalt roofing product.

Two commenters stated that since the LOQ for Aroclor PCBs in water is much lower than the LOQ described for non-Aroclor PCBs, permissable discharges of recycled PCBs (Aroclor PCBs) should be set at this lower LOQ level. Setting this limit for recycled PCBs is appropriate based on the environmental risk assessment. EPA agrees with these comments concerning the LOQ for Aroclors. Therefore, the Agency is modifying the discharge limit to water (see Unit II.K.3). EPA is setting the discharge limit for recycled Aroclor PCBs at roughly 3 parts per billion (ppb). EPA's reasons for setting the limit are explained further in this rulemaking record. Unit VI.D of this preamble also explains the relationship of this Aroclor LOQ to EPA's activities under the Clean Water Act.

Several commenters questioned the designation of certain chemical processes as having a high potential to inadvertently generate PCBs. EPA agrees that not all of the processes included on that list in the proposed rule inadvertently generate PCBs. The Agency has also determined that several other processes which inadvertently generate PCBs are not on that list. The Agency intended that this list be used only as a guide in developing a regulatory strategy for PCBs. The act of inadvertently generating PCBs is the primary consideration in deciding if a process needs to be certified as an excluded manufacturing process, not the fact that the process does/does not appear on the list of chemical processes with a high potential to inadvertently generate PCBs.

E. Today's Final Rule

Based on the considerations mentioned above and other information available to the Agency, EPA is modifying the criteria for exclusion from the prohibitions of section 6(e) of TSCA that were proposed on December 8, 1983. Today's rule excludes those PCB activities (including manufacture, processing, distribution in commerce, and use) that meet the criteria outlined below:

1. Inadvertently generated PCB concentrations in the components of detergent bars are limited to less than 5 ppm.

2. Inadvertently generated PCB concentrations present in all products except detergent bars are limited to an annual average of 25 ppm with a 50 ppm maximum. PCB concentrations in recycled paper are limited to an annual average of 25 ppm with a 50 ppm maximum.

3. Inadvertently generated and recycled PCB concentrations at the point where such PCBs are manufactured or processed and are vented to the ambient air are limited to less than 10 ppm.

4. Inadvertently generated PCB concentrations discharged from manufacturing or processing sites to water are limited to less than 0.1 ppm for any resolvable gas chromatographic peak. Recycled PCB concentrations discharged from manufacturing or processing sites to water are limited to less than 3 micrograms per liter (μg/1, roughly 3 ppb) total Aroclors.

5. All process wastes containing inadvertently generated or recycled PCBs at 50 ppm or greater PCBs are to be disposed of in accordance with the PCB disposal requirements of 40 CFR 761.60.

6. Quantitation of inadvertently generated PCBs to meet the criteria in items 1 through 5 is to be calculated after discounting the concentration of monochlorinated biphenyls by a factor of 50 and dichlorinated biphenyls by a factor of 5. These discounting factors do not apply to recycled PCBs.

7 The certification, reporting, and record maintenance requirements must be met.

F Effects on Human Health and the Environment

CMA, EDF and NRDC stated in the consensus proposal that while the parties to the consensus have different views on the toxicology of PCBs, they believe that their recommendation would assure an absence of unreasonable risk. According to the consensus proposal, the parties determined that it was not necessary to discuss the toxicology of PCBs in order to resolve this problem. The parties felt that a broad-based consideration of the health effects would only lead to further litigation.

To determine whether a risk is unreasonable section 6 of TSCA requires a balancing of the potential for harm from exposure as a result of manufacture, distribution in commerce, use, and disposal of the chemical under consideration against the cost to society of placing restrictions on that chemical. Specifically, TSCA requires that the following factors be considered:

1. The effects of inadvertently generated and recycled PCBs on human health and the environment.

2. The magnitude of exposure of these PCBs to humans and the environment.

3. The benefits of using those products containing PCBs.

4. The economic impact of this rule upon the national economy, small business, technological innovation, the environment, and public health.

EPA has considered these factors in determining that there is no unreasonable risk from an excluded activity as well as the qualitative approach recommended in the consensus proposal. Based on this information, EPA is conditionally excluding from regulation under section 6(e) of TSCA the manufacture, processing, distribution in commerce, and use of certain inadvertently generated non-Aroclor PCBs and the processing, distribution in commerce, and use of recycled PCBs in certain processes. This decision is based on a finding that such PCBs present no unreasonable risk of injury to human health and the environment.

1. Effects on Human Health

Toxicity and exposure are the two basic elements of risk. EPA considered both of these elements in determining the potential risks associated with PCBs and in deciding whether to grant an exclusion.

a. Health effects. The toxic effects of PCBs have been previously described in various documents that are part of the rulemaking record for the May 31, 1979 PCB Ban Rule and the August 25, 1982 Electrical Equipment Rule. EPA summarizes these findings here.

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin; circulate throughout the body; and be stored in the fatty tissue. In addition, EPA concludes that PCBs may cause chloracne, reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Data from studies using animals and limited available epidemiology data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have been demonstrated in

immature animals, following exposure to PCBs prenatally and via breast milk.

Available studies using animals indicate an oncogenic potential for PCBs. Available epidemiology data, however, are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiology research would be needed to correlate data from humans and animals. However, when considered with all the other information, EPA finds no reason to suggest that the data from animals would not predict an oncogenic potential in humans.

In some cases chloracne has occurred in humans exposed to PCBs. Severe cases of chloracne are painful, disfiguring, and may persist for long time periods before the symptoms disappear. Although the effects of chloracne may be reversible, EPA considers these effects to be significant. Since the administration of PCBs to experimental animals results in tumor formation, reproductive effects and developmental toxicity, EPA finds that there is the potential to produce these effects in humans exposed to PCBs.

During the comment period on the proposed Uncontrolled PCBs Rule, a number of commenters presented additional information about the health effects. In particular, the National Electrical Manufacturers Association submitted a document prepared by Drill et al. A more detailed analysis of these comments is presented in EPA's support document "Response to Comments on the Proposed Uncontrolled PCBs Rule."

The health and environmental effects issues raised by these commenters have been considered by EPA throughout the long history of its rulemakings on PCBs under the Clean Water Act (42 FR 6532, February 2, 1977) and TSCA (44 FR 31514, May 31, 1979). Issues on the health effects of PCBs have been the subject of litigation in two cases before the United States Court of Appeals for the District of Columbia Circuit, 636 F.2d 1267 (1980); 598 F.2d 62 (1978). The administrative record in this proceeding contains well over one hundred documents discussing the effects of PCBs.

As EPA has stated numerous times, the health and environmental effects of PCBs are of concern to the Agency. However, the Agency has acknowledged conflicting interpretations of the scientific data and disagreements as to the weight to be assigned to particular data in making regulatory decisions. These conflicts have been noted by industry and environmental group commenters throughout the PCB rulemaking proceedings under both the Clean Water Act and TSCA. The comments submitted in the proceeding on today's rule point out the same problems with conflicting interpretation of scientific evidence and disagreements over regulatory policymaking.

There is little value in revisiting these issues concerning the health and environmental effects of PCBs without substantial new information. While a number of new studies have been conducted on PCBs, those studies have not been sufficient to change any of EPA's findings with respect to the health and environmental effects of PCBs. Nevertheless, EPA has reviewed the data submitted by the commenters, which includes information previously submitted to the Agency, as well as new studies. EPA has determined that there is no reason to change its conclusions as to the hazards of PCBs.

b. Exposure assessment. Results of the National Human Adipose Tissue Survey conducted by EPA indicate that the estimated fraction of the national population having greater than 3 ppm of PCBs has decreased from 8 to 1 percent between 1977 and 1981, after increasing from 2.7 to 8 percent between 1972 and 1977 These data indicate that exposure of the U.S. population to PCBs is decreasing.

EPA conducted an exposure assessment to determine whether EPA could exclude materials containing PCBs at low concentrations from the statutory ban on PCBs without endangering human health or the environment. Few data were available to EPA regarding actual exposure to inadvertently generated and recycled PCBs. Therefore, for each potentially exposed population, EPA originally developed "maximum hypothetical exposures." EPA used the maximum hypothetical exposures as a screening device. Where the maximum hypothetical exposure level associated with a PCB concentration of 50 ppm was very low, no further work was done for this particular hypothetical exposure. Instead, the Agency concentrated on those situations where the estimated exposure levels were high. Assumptions for these hypothetical exposures were refined to obtain better and more reasonable worst-case estimates. Thus, for all of the estimated exposures presented in the support document, actual exposures are expected to be no more than the estimated exposures.

Included among the hypothetical exposure situations developed for this assessment are occupational, consumer, and general population exposures to PCBs through ingestion, inhalation, and dermal absorption. EPA also developed exposure assessments for recycled Aroclor PCBs. All of these exposure situations were designed to represent high frequency or duration of use (maximum hypothetical exposures).

After the exposure assessment was conducted, EPA found that for the majority of hypothetical exposures were extremely low. In some instances, estimates showed higher exposure. In those instances where EPA calculated higher exposures, further evaluation of the assumptions showed that the estimated exposures overestimated the actual expected exposures.

Detailed descriptions of the hypothetical exposures and their findings are included in the support document entitled "Revised Exposure Assessment for Incidentally Produced Polychlorinated Biphenyls." This support document contains revisions made in response to the comments on the earlier draft exposure assessment. Examples of situations with the highest exposures, and EPA's findings concerning them are given below.

In occupational settings, dermal exposure was estimated assuming immediate and total absorption. Inhalation and dermal exposure situations assumed that workers were exposed to PCBs for 38.5 years. All of these hypothetical exposures assumed that workers do not wear protective clothing.

EPA estimated the exposure from ingestion of fish and water obtained from streams which receive industrial wastewater discharge containing 100 micrograms of PCBs per liter of wastewater (μg/l). This is the LOQ for non-Aroclor PCBs. In this hypothetical exposure situation, the concentrations of PCBs in the drinking water and fish depend entirely on how much the PCB concentration is diluted by the receiving stream. Streams with low flow rates will have the highest concentrations of PCBs. If all of the fish and water in an individual's diet is obtained from a stream with a flow rate in the lower 50 percentile of streams receiving discharges from the chemical and plastics industries, exposure could be high.

EPA has determined that it could not practically measure non-Aroclor PCBs below 100 μg/l. Therefore, there is no measurable reduction in exposure. For recycled Aroclor PCBs, because they can be measured at a lower level, EPA has reduced the discharge limit to 3 μg/l, thereby reducing the exposure considerably. These discharge limits may be further reduced by more stringent regulations issued under EPA authorities, or any permits or pretreatment requirements issued by a state or local government.

EPA developed two hypothetical exposure situations to estimate maximum exposure resulting from the use of detergent bars. In both of these hypothetical exposures, EPA assumes that PCBs are present in the surfactant component of the detergent bars at 25 ppm. Comments submitted to the Agency in response to the proposed rule showed that some detergent bars may contain PCBs, although the levels are very low. If PCBs are not present in the components of detergent bars, then there will be no exposure to PCBs from these products.

The first hypothetical exposure assumes that all of the PCBs present in detergent bars are dermally absored. In actual use, most of the PCBs will be rinsed off before absorption. Thus, the estimated exposure overestimates the actual exposure. In a second hypothetical exposure, EPA assumes that only a detergent bar film is absorbed. Unlike all of the other hypothetical exposures that estimate dermal absorption of PCBs, this hypothetical exposure situation assumes that the absorption of PCBs is spread out over time and not instantaneous. The second hypothetical exposure is EPA's best estimate of maximum exposure to PCBs in detergent bars.

It is impossible to determine precisely whether the exposure estimated using the assumptions made in this second hypothetical exposure situation equal or exceed actual exposures. Since virtually all consumers come into contact with detergent bars which may contain PCBs on a daily basis, measures must be taken to minimize consumer exposure to PCBs in detergent bars. Therefore, EPA has set a 5 ppm concentration limit in the components of detergent bars. The surfactant is the component that is likely to contain PCBs; thus, PCB concentrations in the final detergent bar product will actually be well below 5 ppm.

EPA evaluated the exposure to PCBs from use of skin lotions and creams assuming that PCBs are present in the surfactant component of the skin lotions and creams at 25 ppm. This exposure assessment assumes daily usage, 100 percent immediate absorption, and generous application of the skin lotions and creams. Therefore, EPA believes that these exposure estimates overstate the actual exposures from skin lotions and creams. In fact, PCBs are only hypothesized to occur in skin lotions and creams. If PCBs do not occur in these products, there is no risk from PCB exposure in skin lotions and creams.

FDA is the Federal agency that regulates skin lotions and creams. EPA has provided this information to the FDA for appropriate action.

c. Magnitude of human exposure. As CMA, EDF and NRDC pointed out in the consensus proposal, the estimated total annual production of inadvertently generated PCBs approximates 100,000 pounds. This poundage is but a small percentage (1.0 percent) of the 10,000,000 pounds of Aroclor PCBs that the consensus proposal estimates to have entered the environment annually before PCB controls were instituted and less than 0.1% of the 150,000,000 pounds estimated to currently exist free in the environment.

In addition, the consensus proposal states that fewer than 11,000 pounds of inadvertently generated PCBs were estimated to enter products annually. Further, many products that contain inadvertently generated PCBs are chemical intermediates. In the consumer end-use products, the PCBs would in many instances be bound in tight matrices. CMA, EDF and NRDC estimate that fewer than 1,000 pounds annually are likely to enter the environment. Based on these facts, EPA agrees with the consensus proposal that releases of inadvertently generated PCBs are unlikely to have a measurable effect on the public health or the environment. Also, as noted above, exposures from the non-Aroclor and recycled PCBs are estimated to be low.

d. Quantitative risk assessments. At the time of the proposed rule, EPA had prepared quantitative carcinogenicity and reproductive/developmental risk assessments. The Agency has reviewed the range of quantitative risks and determined that the risks presented by the activities excluded in this rulemaking are not unreasonable. Therefore, after evaluating all of the information, EPA has concluded that the qualitative evaluation of health and environmental effects suggested in the consensus proposal is a reasonable approach to risk assessment.

In support of the proposed rule, EPA also developed a reproductive/developmental effects risk assessment for PCBs entitled "Quantitative Risk Assessment of Reproductive Risk Associated with PCB Exposure." This assessment included quantitative risk models without threshold levels, as well as a more traditional "No Observable Effects Level" (NOEL) approach to risk assessment. The Agency specifically requested comments on this preliminary reproductive/developmental effects risk assessment in the proposed rule.

The comments received identified two areas of concern for the Agency: (1) These were scientific and policy issues dealing with quantitative risk assessment for reproductive/developmental effects risk assessments in general, and (2) those associated with PCBs in particular. After evaluating these comments, EPA has decided that additional time is needed to resolve the scientific and policy issues surrounding quantitative risk assessment for reproductive/developmental effects. Therefore, EPA is not using this risk assessment to support this rulemaking.

2. Effects on the Environment

In previous PCB rulemaking, EPA concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources. Available data show that PCBs affect the productivity of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

EPA conducted a quantitative environmental risk assessment of PCBs for this rulemaking, including a review of available environmental data. This assessment can be found in the support document entitled "Environmental Risk and Hazard Assessments of Polychlorinated Biphenyls." EPA concluded that ambient concentrations and food chain transport of PCBs may impair the reproductive potential of commercially valuable fish and certain wild mammals. PCB residues are strongly correlated with reductions in natural populations of marine mammals and may be correlated with declines in river otter populations. High PCB residues have been found in various birds, especially gulls and carnivorous birds, but no resulting effects have been demonstrated.

In addition, EPA estimated the toxicity for the monochlorinated through hexachlorinated biphenyls and for decachlorinated biphenyl. These estimates show that as the number of chlorine atoms on the biphenyl molecule increases, the no observable effect concentration (NOEC) for fish decreases. These estimates were

partially based upon data obtained using the most sensitive fish species.

According to the consensus proposal, the total annual production of inadvertently generated PCBs approximates 100,000 pounds, most of which are never released to the environment. CMA, EDF, and NRDC estimate that fewer than 1,000 pounds annually are likely to enter the environment. This annual production is only 0.01 percent of the 10 million pounds of Aroclor PCBs that are estimated to have entered the environment annually before PCB controls were instituted. This production is only 0.0007 percent of the total 180 million pounds of Aroclor PCBs estimated to have entered the environment prior to institution of PCB controls. In addition, the consensus proposal states that various monitoring studies have documented the declining load of PCBs in the environment. Based on these facts, EPA agrees with the conclusion stated in the consensus proposal that releases of PCBs from inadvertent generation, even at a level of 10,000 pounds of PCBs released annually, would have no measurable effect on the declining environmental load.

EPA is setting the non-Aroclor PCB concentration limit for water discharges below 0.1 ppm, the LOQ for these PCBs. This is the level below which non-Aroclor PCBs cannot practically and reliably be measured. Setting the concentration limit for PCBs below this level will in effect be equivalent to a total ban on PCBs in water discharges. Likewise, the Agency is setting the PCB concentration limit for water discharges from processes that are recycling PCBs below 3 ppb, the LOQ for Aroclor PCBs. This limit for Aroclor PCBs in water discharges is the result of several comments submitted on the proposed Uncontrolled PCBs Rule.

3. Discounting Factors for Monochlorinated and Dichlorinated Biphenyls

The consensus proposal provided discounting factors for monochlorinated biphenyls and dichlorinated biphenyls of 50 and 5, respectively. As stated in the consensus proposal, despite the manufacture in the United States of approximately 10 million pounds of monochlorinated biphenyls and more than 100 million pounds of dichlorinated biphenyls (as part of commercial PCB mixtures) from 1930 to 1978, no monochlorinated biphenyls and few, if any, dichlorinated biphenyls have been detected in humans or the environment. The consensus proposal attributes these monitoring results to several factors that distinguish between monochlorinated and dichlorinated biphenyls and the higher chlorinated biphenyls.

In contrast to the more highly chlorinated biphenyls, the monochlorinated and dichlorinated biphenyls are: (1) Less likely to adsorb to solids; (2) more likely to dissolve in water; (3) more likely to move from natural bodies of water to air; (4) more likely to biodegrade; and (5) less likely to bioaccumulate. Thus, CMA, EDF, and NRDC concluded that monochlorinated and dichlorinated biphenyls are less persistent in the environment and less likely to magnify or accumulate than the more highly chlorinated biphenyls.

In support of these discounting factors, CMA, EDF, and NRDC considered data by Moolenaar (1982) as well as information provided by Dow Chemical Company in a May 13, 1982 citizen's petition to amend 40 CFR Part 761. In general, this information demonstrates that monochlorinated and dichlorinated biphenyls are less persistent than more highly chlorinated biphenyls. The information included environmental variables such as environmental persistence, residence time in water, and fish bioconcentration. Adipose and plasma levels in capacitor workers and levels in human milk samples were also considered. A chart is presented in the consensus proposal that compares persistence data for monochlorinated and dichlorinated biphenyls with persistence data for trichlorinated biphenyls, demonstrating that monochlorinated and dichlorinated biphenyls are less persistent than trichlorinated biphenyls.

These discounting factors encompass all activities involving inadvertently generated monochlorinated and dichlorinated PCBs, but do not apply to any other PCBs subject to EPA regulation. This position is consistent with previous EPA PCB regulatory policy. The Agency has a long history, in regulations under both the Clean Water Act and TSCA, of covering the lesser chlorinated PCBs in the same manner as the higher chlorinated PCBs. The decision to affect this policy under Clean Water Act regulations was upheld by the United States Court of Appeals of the District of Columbia Circuit in *EDF v. EPA*, 598 F.2d 62 (1978). EPA has continued this policy under TSCA regulations. The definition of PCBs under 40 CFR 761.3 states that PCBs consist of any chemical substance "that is limited to the biphenyl molecule that has been chlorinated to varying degrees."

Today's rule is making a small exception to this long-standing policy. While EPA is continuing to regulate the lesser chlorinated PCBs for all intentionally generated PCBs, the Agency has determined that discounting inadvertently generated monochlorinated and dichlorinated bipheyls will not present an unreasonable risk. EPA has arrived at this decision based on the very small amounts of monochlorinated and dichlorinated biphenyls that will be generated and released as a result of this rule, the fact that these PCB homologs are generally less persistent and less likely to bioaccumulate than the higher chlorinated PCB homologs and the high cost of preventing the generation of the monochlorinated and dichlorinated biphenyls in manufacturing processes. Accordingly, EPA has determined that the incremental risk reduction that would result from more stringent regulation of the monochlorinated and dichlorinated biphenyls in the limited circumstances of this regulation is outweighed by the costs that would be incurred.

To illustrate how these discounting factors would work, assume a product is analyzed and found to have a PCB concentration of 510 ppm PCBs. After further analysis it is determined that the product contains 10 ppm of decachlorinated biphenyl and 500 ppm of monochlorinated biphenyl. Since the discounting factor for monochlorinated biphenyl is 50, this product, for purposes of this regulation, contains only 10 ppm of monochlorinated biphenyl (500 ppm monochlorinated biphenyl — 50 discounting factor = 10 ppm PCBs). This product would be found in compliance since, for purposes of this regulation, it would be considered to contain only 20 ppm PCBs (10 ppm attributed to monochlorinated biphenyl and 10 ppm attributed to decachlorinated biphenyl). Although the PCB limits for detergent bars are lower, calculation of total PCBs in the components of detergent bars would be discounted similarly.

G. Regulatory Impact Analysis, Benefits, and Availability of Substitutes

1. Benefits of PCBs and Availability of Substitutes

CMA has stated that any chemical process involving carbon, chlorine, and elevated temperatures is likely to inadvertently generate some PCBs. Chlorine and carbon are two of the most abundant elements on Earth. Thus, both are present in many chemical processes. In fact, as mentioned in Unit II.C of this preamble, EPA originally developed a list of approximately 200 chemical processes with a potential to

inadvertently generate PCBs. These 200 chemical processes are of major importance to the organic chemical industry. For example, many of these processes produce high volume chlorinated solvents.

A wide variety of other products are known or believed to contain inadvertently generated PCBs. Among these products are paints, printing inks, agricultural chemicals, plastic materials, and detergent bars. These products are widespread and products, such as detergent bars and paint, are considered essential, non-luxury items in our society. Thus, many of the products that contain inadvertently generated PCBs have great societal value.

Industry commented in response to the Closed and Controlled Waste Manufacturing Processes Rule that, in general, cost-competitive substitutes are not available for products contaminated with low level PCBs. In general, industry has not been successful in modifying processes to prevent the incidental formation of any PCBs. Furthermore, CMA has commented that research programs to study ways of reducing incidental PCB formation are very costly and have met with limited success.

EPA estimated the cost of controlling the level of inadvertently generated PCBs, considering that if exclusions were not provided by this rule, these processes would be banned. Estimates of the benefit to producers of a 25 ppm cutoff range from approximately $77 million to $451 million if plants continue operations for 10 years. The estimated benefits to producers, distributors, and commercial users who remain in business for 10 years range from $950 million to $5.59 billion.

EPA believes that most of the chemical processes with unknown PCB concentrations that are analyzed in the RIA are produced in low volumes. In addition, a number of interested parties commented that PCBs have not been detected in products whose manufacture was suspected to involve inadvertent generation of PCBs. Based on this information, EPA believes that the majority of products are already below the 25 ppm limit (5 ppm for detergent bars).

2. Economic Consequences

EPA evaluated several options for dealing with the uncontrolled PCBs. One of these options was to allow the total ban of section 6(e) to take effect. EPA also had the option to set permissible levels of PCBs either higher or lower than the levels set in this rule.

Had EPA allowed the ban to become effective, companies could: (1) Modify the processes that inadvertently generate PCBs so that they would not generate PCBs, (2) substitute PCB-containing products with non-PCB-containing products, or (3) apply for annual exemptions under section 6(e)(3)(B) of TSCA. Industry has commented that substituting products or substituting processes to eliminate inadvertently generated PCBs is not generally feasible. Thus, the selection of this regulatory option could result in a major disruption in commerce.

The Regulatory Impact Analysis (RIA) prepared for this rulemaking estimates that if no exclusion were provided by this rule, the total costs of the exemption petition process for producers, distributors, and commercial users over the next 10 years would range from $950 million to $5.6 billion. These costs are extremely high and would present a significant economic burden to industry while the amount of PCBs eliminated by such regulation would be small. However, EPA believes that in the majority of cases PCB concentration levels are currently below the levels excluded by this rule.

If EPA set the PCB concentration limits at a higher level, the result will be much lower costs. However, higher PCB concentration limits would result in significantly higher risks of injury to health and the environment. Conversely, if EPA set the PCB concentration limits at a lower level, the result would be lower risks of injury to health and the environment. The costs associated with lowering these concentration limits, however, would be much greater, approaching the total costs estimated for the exemption petition process.

The only identifiable costs of this rule with respect to uncontrolled PCBs result from the certification, recordkeeping, and reporting requirements. These costs were estimated in the RIA to range from $10 million to $59 million over a 10-year period. Thus, this rule presents very low costs in comparison with more restrictive approaches.

EPA estimates that this rule will not result in a disruption of commerce. A disruption of commerce is likely if the total ban or more restrictive concentration limit options were chosen. EPA also believes that this rule will not stifle new technology. EPA estimates that the discounting factors for monochlorinated and dichlorinated biphenyls are likely to save industry $800 thousand to $4.7 million each year based on the avoidance of exemption costs.

EPA analyzed the distribution of benefits of this rule across companies of various sizes and employment. According to the RIA, many small businesses will benefit from the exclusions provided by this rule in avoiding the expense associated with filing annual exemption petitions. Thus, the Agency concludes that small businesses generating inadvertent PCBs will benefit from the provisions of this rule.

With respect to technological innovation, it is reasonable to assume that at least some portion of the money that industry will save by not being subjected to a total PCB ban will go to research and development activities. No negative comments were made on the RIA completed for the proposed Uncontrolled PCBs Rule. Therefore, no major changes have been made in the final RIA. For further details, see the support document "Regulatory Impact Analysis of the Final Rule Regulating Inadvertent PCB Generation from Uncontrolled Sources."

H. Unreasonable Risk Determination

EPA concludes that the risks associated with the manufacture, processing, distribution in commerce and use of those inadvertently generated and recycled PCBs excluded from the prohibitions of section 6(e) of TSCA by this rule are outweighed by the costs that would be incurred if these PCBs were to be banned. The high costs of eliminating the low risks that might be attributed to the inadvertent generation of low level concentrations of PCBs would place an unwarranted burden on society, with only a minimal reduction in public health risks. Therefore, EPA concludes that the exclusions provided for in this rule do not present an unreasonable risk of injury to health or the environment. The following facts support this conclusion.

1. Although the number of processes that inadvertently generated PCBs may be large, the total quantity of such PCBs is estimated to be less than 100,000 pounds per year. Of this estimated total, only 1,000 pounds are expected to enter the environment yearly. In contrast, it is estimated that 10 million pounds entered the environment annually before PCB controls were instituted. It is also estimated that there are currently 150,000,000 pounds of PCBs that are currently present in the environment as free PCBs.

2. This rule will save society the enormous costs of instituting a ban on low level concentrations of inadvertently generated PCBs. The rule does impose recordkeeping and reporting burdens; however, the larger burdens imposed on industry by the prohibitions of section 6(e)(3), in particular the annual exemption process with its uncertainties, are avoided.

3. Monochlorinated and dichlorinated biphenyls are not as persistent in the environment as other PCBs. A measure of persistence in humans is the level of a substance found in adipose tissue; monochlorinated and dichlorinated biphenyls have not been found in adipose tissue. Further, EPA estimates that these discounting factors are likely to save industry $800 thousand to $4.7 million yearly. Therefore, the discounting factors established in this rule will not present unreasonable risks to human health or the environment.

4. EPA determined that none of the realistic hypothetical exposures were significant, especially when compared to the 150,000,000 pounds of PCBs already existing in the environment. When those hypothetical situations showing a high exposure were reviewed, EPA found that these hypothetical exposures overstate the actually expected exposures. Therefore, EPA concludes that the risks associated with these exposure situations are not unreasonable.

EPA is setting a lower, more protective concentration limit of 5 ppm PCBs in the components of detergent bars based on the high exposure potential of these products. This limit is more protective of consumers who are often unaware of potential hazards from exposure to chemicals in consumer use products.

5. EPA has also determined that exposure to recycled PCBs at the levels excluded by this rule are of minimal significance; therefore, the risks associated with these exposures are not unreasonable.

6. The recordkeeping and reporting requirements set in this rule provide EPA with a means of accounting for major releases of inadvertent PCBs, and for reassessing the findings in this rule, if necessary.

7 In general, substitutes are not reasonably available for products contaminated with low level PCBs and the processes that generate these PCBs cannot be cost-effectively modified to prevent the formation of any PCBs.

8. Small companies would benefit from this rule and the rule could provide some impetus to technological innovation in the chemical industry.

I. Disposal Requirements

In the May 1979 PCB Ban Rule, EPA concluded generally that PCBs at levels of 50 ppm or greater must be disposed of in accordance with the requirements of 40 CFR Part 761. The 50 ppm cutoff was a practical level which would allow EPA to reasonably administer TSCA and attain the objectives of section 6(e) of TSCA (44 FR 31516). Today's rule does not deal with the regulatory cutoff for disposal of PCBs established in the PCB Ban Rule except for authorizing discounting factors for inadvertently generated monochlorinated and dichlorinated biphenyls. The discounting factors do not apply to any other PCBs regulated under TSCA.

Suggestion has been made that EPA take regulatory action to resolve issues relating to disposal regulations. Concern has been expressed with the 50 ppm cutoff for PCB disposal, including the fact that waste oil containing less than 50 ppm PCBs may be burned as fuel. EPA notes that, while legitimate concerns may be raised about the disposal regulations, this proceeding is not the proper forum to deal with those issues. In this proceeding, EPA is dealing only with issues arising from the *EDF* v. *EPA* lawsuit. These issues did not relate to the disposal regulations.

J. Recordkeeping, Certification, and Reporting

The consensus proposal would have required manufacturers to meet certain recordkeeping, certification, and reporting requirements. In the proposed rule, EPA adopted these requirements with minor modifications. Today's rule adopts the requirements proposed in the December 8, 1983, Federal Register notice.

Today's rule requires manufacturers who intend to take advantage of this exclusion, to notify EPA of products leaving the manufacturing site or imported products that contain greater than 2 micrograms of PCBs per gram of product (μg/g) for any resolvable gas chromatographic peak (roughly 2 ppm). These reports must include the number, type, and location of excluded manufacturing processes. In addition, these reports must include a certification, signed by an appropriate corporate official, that: (1) The manufacturer is in compliance with all requirements of the regulation, including requirements for products, air, and water releases, and process waste disposal; (2) the determination of compliance is based on actual monitoring or on a theoretical assessment; and (3) monitoring data or the theoretical assessment is maintained. EPA intends to use the information required under this rule in developing an enforcement strategy and compliance monitoring program. These reports must be filed with EPA by October 1, 1984 or within 90 days of starting up a process or commencing importation of PCBs. These reports must be repeated whenever chemical process conditions are significantly modified to make the previous reports invalid.

Manufacturers who wish to take advantage of the exclusion must also report to the Agency if they are releasing more than 10 pounds of PCBs to air or water annually. Furthermore, manufacturers must report the total quantity of PCBs in products leaving the site of an excluded manufacturing process in any calendar year when the total production quantity exceeds 0.0025 percent of that site's rated capacity for such manufacturing processes. Importers must report to EPA whenever the quantity of PCBs imported in any calendar year exceeds 0.0025 percent of the average total quantity of product containing PCBs imported by the importer between 1978 and 1982.

Reports of theoretical analyses or actual monitoring must be kept for seven years or three years after the process ceases, whichever is shorter. Reports of theoretical assessments must include a description of the reactions generating PCBs, levels generated, and levels released. The basis for these estimates, as well as the names and qualifications of personnel preparing the assessment, must be included in the report. Monitoring reports must include the data, the method of analysis, quality assurance plan, name of analysts, the date and time of the analysis, the identification of the sample matrix, and the lot numbers for the sample.

A report to EPA will not be required for those PCBs in air, waste, and products below to LOQ, as established under the Closed and Controlled Waste Processes Manufacturing Rule. Generally, a report will not be required for those PCBs in water below the LOQ. However, under certain conditions PCBs could be released at concentration levels below the practical LOQ, but still result in elevated levels of total PCBs. This would occur if the discharges containing the low level PCBs are released at very high volumes. In light of the fact, theoretical assessments that predict a plant will release more than 10 pounds of PCBs annually in the water discharges must be submitted to EPA, even if PCBs are not quantitated in the discharges during monitoring.

Since CMA, EDF, and NRDC jointly recommended the basic recordkeeping, certification, and reporting requirements in this rule, EPA believes that these reporting requirements do not present an unreasonable burden on the regulated industry. The recordkeeping, certification, and reporting requirements have been incorporated in §§ 761.185, 761.187, and 761.193 of this rule.

Substances that are covered by this rule and are exported or imported are also subject to the exporting and

importing requirements of TSCA sections 12(b) and 13. EPA regulations interpreting section 12(b) requirements appear at 40 CFR Part 707 Imported products are covered by TSCA section 13 certification requirements at 19 CFR 12.118 through 12.127 and 127.8 (amended), (48 FR 34734, August 1, 1983). EPA's policy in support of these requirements appears at 40 CFR Part 707 (48 FR 55462, December 13, 1983).

K. Quantitation of PCB Concentration Levels

1. Analytical Chemistry Methodology

The consensus proposal recommends that the analytical chemistry methods developed for the Closed and Controlled Waste Manufacturing Processes Rule by used in determining the non-Aroclor PCB concentration level in particular media. EPA agrees with CMA, EDF and NRDC that the analytical chemistry methodology developed for the Closed and Controlled Waste Manufacturing Processes Rule is appropriate under this rule. Thus, the PCB analytical chemistry methodology that will be used for non-Aroclor PCBs in determining compliance with today's rule will be the Closed and Controlled Waste Manufacturing Processes Rule guidance that was set forth in the document entitled "Analytical Methods for By-Product PCBs—Preliminary Validation and Interim Methods."

The analytical chemistry guidance document presents methods for chemically analyzing inadvertently generated PCBs in commercial products, product waste streams, water dischargers, and air. These analytical chemistry methods are based on a determination of quantities of PCBs using capillary gas chromatography/electron impact mass spectrometry (CGC/EIMS). This analytical chemistry methodology for commercial products and product waste streams relies heavily on a strong quality assurance program.

Several comments on the use of different, more Aroclor-sensitive analytical chemistry methods in water were submitted in response to the proposed Uncontrolled PCBs Rule. EPA recognizes that there is a specific analytical chemistry methodology to determine Aroclor PCB concentrations in water. This analytical chemistry methodology is a test method published by the EPA for Organochlorine Pesticides and PCBs, referred to as Method 608. This method uses gas chromatography/electron capture (GC/EC) to analyze for Aroclor PCBs while the method for non-Aroclor PCBs uses CGC/EIMS.

GC/EC is the more sensitive method. It establishes chemists to measure at very low levels specific quantities of a limited number of PCB compounds with a highly recognizable pattern (Aroclor PCBs). On the other hand, CGC/EIMS is a more specific method. Using CGC/EIMS, a chemist can confirm the actual presence of a great number of different PCB compounds, but cannot specify quantities at the very low concentrations possible by using Method 608. Since Aroclor PCBs have more easily recognizable patterns than non-Aroclor PCBs, the issue of specificity is not as crucial as with non-Aroclor PCBs. Therefore, the Agency believes that it is appropriate to utilize GC/EC in the chemical analysis of Aroclor PCBs.

2. Sampling Scheme

EPA has developed a sampling technique for non-Aroclor PCBs that will be used by the Agency when it monitors for compliance during an enforcement inspection. This sequential sampling protocol bases the decision to take a further sample of the results on previous analyses. The advantage of sequential sampling is that early results will, in some cases, provide adequate evidence for a decision of compliance or noncompliance, and the expense of further testing can be avoided. Under this sampling protocol, only a few chemical analyses would be required to confirm non-Aroclor PCB levels in product, air, and water samples which are strongly compliant (very low PCB levels) or strongly noncompliant (very high PCB levels). Given this protocol, no more than seven samples would need to be analyzed.

This sampling scheme has been developed for non-Aroclor PCBs and will not be used for sampling Aroclor PCBs. Further information about the sequential sampling protocol is included in the support document entitled "Guidance Document on Sampling and Sample Selection for Uncontrolled PCBs."

3. Establishing a Baseline for Measurement of PCBs

The lowest concentration of a substance that an analytical process can detect is referred to as the limit of detection (LOD). The lowest concentration of a substance that an analytical process can quantify with a known level of precision and which can be reproduced in repeated analyses is referred to as the limit of quantitation (LOQ). Thus, the baseline level for quantifying the total PCB concentration could be established at the LOD, the LOQ, or at an arbitrary level between these values.

In the Closed and Controlled Waste Manufacturing Processes Rule, EPA selected the LOQ in establishing the numerical cutoffs instead of the LOD. At that time, EPA concluded that it may be impossible to confirm the identity of non-Aroclor PCBs at the LOD. EPA concluded that a PCB concentration at or near the LOQ is needed to confirm the identity of the chlorinated biphenyls for compliance monitoring purposes (47 FR 46984). EPA reaffirms these conclusions reached in the Closed and Controlled Waste Manufacturing Processes Rules. Therefore, EPA is establishing the baseline for quantitating PCBs at the LOQ.

EPA has considered the appropriate baseline to use for measuring Aroclor PCBs. The Agency has decided that for purposes of this regulation, the appropriate baseline for measuring Aroclor PCBs is also the LOQ, rather than the LOD.

In light of the need to select a single LOQ level which can be widely achieved, even in difficult matrices, these data lead EPA to conclude that a practical LOQ for all wastewaters is 3 μg/L. This level is reasonably within the range of levels demonstrated in interlaboratory validations on different kinds of wastewaters, and, in fact, allows for some increase in the method LOQ for less efficiently removed interferences. EPA also notes that, on a case-by-case basis, it will often be possible to achieve far lower LOQs for specific wastewaters. Such determinations would, however, be more appropriate for specific wastewaters and permit authorities than for this general PCB rule. For further information concerning this LOQ, refer to the support document "Practical Limit of Quantitation of EPA Method 608 for Use in Aroclor Analysis of All Wastewaters" (memo from J. Smith to S. Sterling).

III. Notice of Deferral of Action on PCB Exemption Petitions

In the Federal Register of November 1, 1983 (48 FR 50486), EPA proposed to grant 49 exemption petitions, deny 73 exemption petitions, and defer action on 50 exemption petitions that had been previously submitted to the Agency. The exemption petitions on which EPA proposed to defer action are to manufacture, process, or distribute in commerce substances or mixtures inadvertently contaminated with 50 ppm or greater PCBs.

EPA was aware that the ongoing PCB rulemaking described in Unit II of this

preamble would affect the disposition of certain exemption petitions. Some of the petitioners are engaged in activities that, because of the discounting for monochlorinated and dichlorinated biphenyls, involve concentrations of PCBs at levels below the new limits and, therefore, will no longer require exemptions. Other petitioners are engaged in activities that involve concentrations of PCBs at levels above the new limits and, therefore, will still require exemptions to continue their activities.

In the December 8, 1983 Federal Register notice on uncontrolled PCBs (48 FR 55076), EPA gave notice that it intended to defer action on 50 exemption petitions that may be affected by the Uncontrolled PCBs Rule. No comments were received on the proposed deferral of action for certain exemption petitions that may be affected by the Uncontrolled PCBs Rule. The Agency is hereby giving notice that it has deferred action on these exemption petitions.

After proposing the Uncontrolled PCBs Rule, EPA discovered that one of the petitions listed in the proposed rule did not deal with inadvertently generated PCBs. Since the disposition of that petition would not be affected by the exclusion for inadvertently generated and recycled PCBs, EPA has not included the petition (Honeywell, Inc., ME-51) in the listing of those petitions on which EPA is deferring action. Therefore, in today's notice, the Agency is deferring action on 49 exemption petitions.

Elsewhere in today's Federal Register, EPA is requesting additional comments on the 49 exemption petitions that would be affected by the Uncontrolled PCBs Rule. The 49 petitioners whose exemption petitions are affected by the Uncontrolled PCBs Rule are listed in that notice. As stated in that notice, the 49 petitioners must evaluate the Uncontrolled PCBs Rule and decide whether they still need exemptions to continue their activities.

If a petitioner still needs an exemption, it must submit written comments renewing its exemption petition to continue the activity. These comments must be submitted no later than October 1, 1984. If an exemption petition is renewed, EPA will allow the petitioner to continue the activity for which it requests exemption until EPA has acted to grant or deny the exemption. If the exemption petition is not renewed, EPA will dismiss the exemption petition.

IV. Amendment to the 1979 Use Authorizations for PCBs in Hydraulic and Heat Transfer Fluid

A. Background

PCBs were manufactured for use in hydraulic and heat transfer systems in a variety of industries until 1972. The aluminum, copper, iron and steel forming industries used hydraulic systems with commercial Aroclor PCB fluid. PCBs in heat transfer systems were used in the inorganic chemical, organic chemical, plastics and synthetics, and petroleum refining industries. High PCB levels apparently remained in some systems until at least 1979. In addition, some unknown quantity of unused PCB fluids was probably kept by facilities after production ceased in 1972 and used for topping-off hydraulic and heat transfer systems.

Under section 6(e)(2) of TSCA, EPA may authorize the use of PCBs if the Agency finds that the use will not present an unreasonable risk of injury to health or the environment. In the PCB Ban Rule, EPA determined that the continued use of PCBs in hydraulic systems and heat transfer systems under certain conditions did not present an unreasonable risk. Therefore, in 1979, EPA authorized the non-totally enclosed use of PCBs at concentrations of 50 ppm or greater in hydraulic systems and in heat transfer systems (40 CFR 761.30 (d) and (e)). These use authorizations expire on July 1, 1984. In promulgating these use authorizations, EPA assumed that the conditions of those authorizations, which required retrofilling with non-PCB fluids, would reduce the PCB concentration levels in those systems to below 50 ppm by July 1, 1984.

With the overturning of the 50 ppm regulatory cutoff as a consequence of *EDF* v. *EPA*, the status of heat transfer systems and hydraulic systems with less than 50 ppm PCBs will be placed in doubt after July 1, 1984. EPA is clarifying the status of these systems in today's rule by authorizing the use of PCBs in these systems at concentrations of less than 50 ppm for their remaining useful lives. Systems with more than 50 ppm PCBs are unlawful after July 1, 1984. Under this rule, hydraulic and heat transfer systems cannot be filled (i.e., "topped off") with fluids containing 50 ppm or greater of PCBs. In addition, EPA is requiring that workers wear protective gloves under circumstances which would most likely lead to dermal exposure.

To determine whether a risk from PCB use is unreasonable, EPA balances the probability that harm will occur from the use against the benefits to society of the authorized use. In determining whether these uses of PCBs at concentrations of less than 50 ppm presented unreasonable risks, EPA considered the effects of PCBs on health and the environment, including the magnitude of PCB exposure to humans and the environment; the benefits of using PCBs; the availability of substitutes for PCB uses; and the economic impact resulting from the rule's effect upon the national economy, small business, technological innovation, the enviroment, and human health. EPA proposed that the use of PCBs at levels of less than 50 ppm be continued for heat transfer and hydraulic systems.

EPA has determined that the use of PCBs in hydraulic and heat transfer fluid at concentrations of less than 50 ppm under certain circumstances does not present an unreasonable risk of injury to human health or the environment. Therefore, EPA is amending the PCB Ban Rule to authorize for the remaining useful lives of these systems the use of PCBs in hydraulic and heat transfer fluid at concentrations of less than 50 ppm provided that workers wear protective gloves whenever performing certain high exposure tasks.

B. Human Health and Environmental Risks

In determining whether to amend § 761.30 (d) and (e), EPA generated exposure and risk assessments for these uses of PCBs. A review of the general methodology for exposure and risk assessments, and a general analysis of the health and environmental effects of PCBs, are included under Unit II of this preamble. Information related specifically to the use of PCB fluids in hydraulic and heat transfer systems is described below. Further details concerning the exposure assessment for these uses are included in Volume IV of the support document entitled "Exposure Assessment for Incidentally Produced Polychlorinated Biphenyls."

Two categories of factors are particularly important to the evaluation of risk for these uses of PCBs: (1) The estimated contamination level, number, and size of PCB-contaminated hydraulic and heat transfer systems at the expiration deadline for these uses of PCBs under the PCB Ban Rule; and (2) the estimated number of workers protentially exposed to PCBs from contaminated systems during a period of exposure assumed to be 38.5 years. EPA inspection data were primarily used for developing estimates for these key factors.

Worker exposure to leaked PCBs from heat transfer and hydraulic systems may occur through both inhalation and dermal absorption during machine operation and during maintenance and repair operations. EPA has estimated the maximum inhalation exposure to PCBs that volatilize from the leaked hydraulic or heat transfer fluid. The exposure assessment of PCB fluid that has volatilized from these systems includes considerations of evaporation rates, emission rates, "downwind" concentrations, and annual inhalation. These annual inhalation estimates have been developed for worker exposure during 40 hours per week and 48 weeks per year.

Occupational dermal exposure from these uses of PCBs has been calculated from several variables. These variables include annual PCB dermal exposure, the duration of exposure, the frequency of exposure, the PCB exposure level, the skin area exposed, the absorption rate of PCBs through the skin, liquid thickness on skin, the density of liquid, and the PCB concentration in the liquid.

Using these exposure calculations for machine operations, and maintenance and repair workers, EPA determined that the carcinogenic risk from the long-term dermal and inhalation exposure to PCBs in hydraulic and heat transfer systems is very low. However, the hypothetical dermal absorption situations may have a higher risk because of higher exposures. In evaluating the risks from exposure to PCBs in hydraulic and heat transfer systems, EPA assumed a constant 50 ppm exposure each workday for a period of 38.5 years. These assumptions represent a worst-case; therefore, the estimated exposures are probably overstated.

EPA believes that it is necessary to protect workers from the higher dermal exposures presented in this assessment. EPA believes that the highest occupational dermal exposures result from actual maintenance of the heat transfer and hydraulic systems. To mitigate these exposures, EPA has added a requirement to this use authorization that workers are provided with and wear protective gloves whenever performing certain high exposure tasks. EPA has reviewed information on protective materials. Based on PCB break-through times for different materials, EPA has determined that viton elastomer is the only material that will adequately protect workers.

These use authorizations for heat transfer and hydraulic systems require owners to provide and workers to wear viton elastomer gloves whenever doing work on these systems that present a high potential exposure to PCBs. EPA believes that maintenance work on these systems presents a high potential exposure.

C. Regulatory Impact Analysis

EPA has developed a regulatory impact analysis for the reauthorization of these uses of PCBs. In this analysis EPA has evaluated the various regulatory options by comparing the total and incremental costs for achieving different PCB concentration levels with the total and incremental pounds of PCBs removed in order to comply with each concentration level. Cost estimates were determined for average hydraulic and heat transfer systems attaining compliance with the various draining, fluid replacement, testing, and disposal requirements in the current PCB regulations in § 761.30 (d) and (e) at each concentration level. In addition, EPA has prepared cost estimates for requiring the use of protective gloves.

In its Regulatory Impact Analysis (RIA), EPA considered three regulatory options: (1) Reauthorizing the use of PCBs in these systems at a 25 ppm concentration level; (2) reauthorizing the use of PCBs in these systems at PCB levels greater than 50 ppm; and (3) reauthorizing the use of PCBs in these systems at a 50 ppm concentration level.

In evaluating these regulatory options, EPA considered the costs involved in a mandatory removal of PCBs from hydraulic and heat transfer systems to concentration levels of less than 25 ppm. Mandatory immediate removal of PCBs in these systems to levels of less than 25 ppm would severely affect significant segments of the metal forming, die-casting, chemical, plastics and synthetics, and petroleum refining industries. In addition, technological factors may prevent an undetermined percentage of hydraulic and heat transfer systems from achieving an elimination of PCB residues below a 25 ppm concentration level. For reasons related to the internal geometry as well as operating and design characteristics of hydraulic and heat transfer systems, PCB residues tend to persist despite complete draining and refilling. Finally, EPA has concluded that an immediate removal of contaminated systems is not necessary to safeguard human health or the environment from high level risks arising from these uses of PCBs.

EPA has determined that tightening the standard from 50 ppm to 25 ppm would result in approximately 2,300 pounds of PCBs removed from the environment at an estimated cost of approximately $103 million. EPA also has determined that relaxing the standard from 50 ppm to 100 ppm would result in an estimated additional 4,000 pounds of PCBs in the environment. The 50 ppm standard would not impose an additional cost over the 1979 PCB Ban since that rule established a requirement that all heat transfer and hydraulic systems reduce PCB levels below 50 ppm by July 1, 1984.

EPA has balanced the cost of these options with the risks from exposure to humans and the environment. While the 100 ppm option is less costly than either the 25 or 50 ppm option, it is less protective of human health and the environment. Conversely, the 25 ppm option results in a lower risk to human health and the environment at a high cost.

EPA received a number of comments on the proposed PCB use authorization for heat transfer and hydraulic fluid. These comments argued for a use authorization at levels between 25 and 100 ppm PCBs, the levels EPA discussed in the proposed rule. No commenters argued for a significantly higher or lower use authorization. Given the EPA analysis described above, the fact that numerous persons have been able to reach a 50 ppm level in their heat transfer and hydraulic fluids, and the fact that comments advocated a range of 25 to 100 ppm, EPA concludes that 50 ppm is reasonable and is setting its use authorization accordingly. EPA also believes that this reauthorization at 50 ppm PCBs would impose minimal additional costs incurred under the use conditions set in the PCB Ban Rule. The minimal additional costs are imposed by the requirement that workers wear protective gloves.

EPA is aware that the total costs estimated in the RIA for lowering the PCB concentration levels in those heat transfer and hydraulic systems that are above 50 ppm are about an order of magnitude greater than the total costs originally projected in 1979 (44 FR 31534). Despite this large difference in total costs, there are only minor differences between the unit cost estimates underlying the 1979 and the present estimates. The differences in the compliance costs per machine developed for the 1984 analysis do not differ substantially from the 1979 estimates.

Data available to the Agency indicate that most systems can achieve a PCB concentration level of less than 50 ppm. In addition, EPA did not receive comments in this rulemaking that the 1979 economic analysis or the current economic analysis were substantially in error. The differences between costs estimated in the current RIA and the 1979 economic analysis apparently have

resulted from different assumptions in projecting the number of affected heat transfer and hydraulic systems, and the volume capacity of these systems.

D. Availability of Substitutes for PCB Fluid in Hydraulic and Heat Transfer Systems

There exist numerous substitutes for PCBs in hydraulic and heat transfer fluids that have been successfully used by firms to lower the PCB concentration levels in their contaminated systems to less than 50 ppm. Included among the chemical compounds used in non-PCB substitutes for hydraulic fluid are: (1) Phosphate esters; (2) water/glycol solutions; and (3) water/oil emulsions. Water/glycol-based products constitute the leading non-PCB substitutes. In addition, various non-PCB heat transfer fluids are available, such as: (1) Modified esters; (2) synthetic hydrocarbons; (3) polyaromatic compounds; (4) partially hydrogenated and mixed terphenyls; and (5) blends of diphenyls.

E. No Unreasonable Risk Determination

The Agency has concluded that the risks associated with these uses of PCBs at concentrations of less than 50 ppm are outweighed by the benefits of the continued used of contaminated hydraulic and heat transfer systems, and the costs that are avoided by not requiring the further removal of the PCBs remaining in these systems at less than 50 ppm after July 1, 1984. Therefore, EPA concludes that authorizing the use of PCBs in these systems at concentrations of less than 50 ppm does not present an unreasonable risk of injury to health or the environment for the following reasons:

1. The reauthorization of the use of PCBs in hydraulic and heat transfer fluid at a concentration level of less than 50 ppm with workers wearing protective gloves under high exposure conditions would adequately safeguard workers from risks to human health. In evaluating the exposure from long-term exposure to PCBs from contaminated systems at a 50 ppm level, EPA assumed daily exposure over a work life of approximately 38.5 years. Thus, while the exposures determined by EPA, particularly the dermal absorption, are relatively high, these exposures are overestimated. Furthermore, the requirement to wear gloves would further reduce these exposures.

2. This proposed reauthorization would impose minimal costs additional to those costs incurred under the use conditions in the PCB Ban Rule. According to the Agency's regulatory impact analysis, without any reauthorization, the impact would be severe, since all contaminated systems could conceivably be removed from service and disposed of under a strict enforcement of the no use provision of section 6(e) of TSCA. The minimal additional costs are imposed by the requirement that workers wear protective gloves.

3. Compared to the option of authorizing use at a 25 ppm level, this reauthorization is more cost-effective. According to the Agency's regulatory impact analysis, compared with a concentration level of 50 ppm for these uses, a 25 ppm performance standard for affected systems would result in approximately 2,400 incremental pounds of PCBs removed from the environment at an estimated incremental cost of at least $103 million.

4. Allowing the use of PCBs in contaminated hydraulic and heat transfer systems at a 50 ppm concentration level would avoid severe economic consequences for significant segments of the metal forming, die casting, chemical, plastics and synthetics, and petroleum refining industries.

5. There are adequate non-PCB hydraulic and heat transfer fluids for use in contaminated systems to lower the PCB concentration level at least to 50 ppm.

6. The elimination of PCBs from contaminated hydraulic and heat transfer systems may not be technologically feasible through existing retrofill technologies. For reasons related to the internal geometry, and operating and design characteristics of these systems, PCB residues tend to persist despite draining and retrofilling.

V Use Authorization for PCBs in the Compressors and the Condensate of Natural Gas Pipelines

A. Background

In the 1979 PCB Ban Rule, EPA authorized the use of PCBs in the compressors of natural gas pipelines until May 1, 1980. EPA believed that by May 1, 1980, the PCB concentrations in these compressors could be reduced below 50 ppm. However, the PCB concentrations in some of these compressors could not be reduced to below 50 ppm by that date.

Under a compliance monitoring program instituted by EPA and the pipeline companies, the 28 compressors found to contain PCBs have been drained of the PCB liquid and retrofilled. The compliance monitoring program requires that these compressors be monitored following retrofill to ensure that PCB levels are maintained below 50 ppm. In all of the natural gas pipeline compressors found to contain PCBs, the PCB levels have been reduced below 50 ppm.

Liquids found in natural gas pipelines also have been found to contain elevated PCB levels. PCBs were first identified in liquid found in the gas pipelines in January 1981 when a PCB-containing oily condensate was found in the gas meters of some residential customers of a Long Island, New York, distribution company. Under EPA's direction 33 transmission companies undertook voluntary monitoring of this liquid and the natural gas to determine PCB concentrations. Twelve companies which found elevated PCB concentrations in this liquid continued to supply EPA with monitoring data and developed methods to lower the PCB concentrations in the liquid. In addition, EPA Regional Offices have been collecting data on natural gas distribution systems.

Natural gas pipeline liquid sampled under this monitoring program was found to contain PCBs in concentrations higher than 50 ppm. Thus, liquid in the natural gas pipelines as well as pipeline compressors were found to be contaminated with PCBs. EPA's Compliance Monitoring Staff began implementing remedial plans with four basic objectives: (1) To contain the contamination to limited areas of the transmission system; (2) to eliminate any further entry of PCBs into the system; (3) to remove remaining PCB contamination from these systems; and (4) to ensure proper handling of PCBs that were removed.

PCB contamination in the natural gas pipelines is thought to have occurred through several sources. The major sources of contamination are thought to be: (1) The lubricating oils used in natural gas pipeline compressors; (2) "fogging" of the lines with an oil vapor to minimize the entrainment of dust and other particles in the pipeline system; and (3) migration of PCBs from contaminated lines into other systems. By the 1960s, fogging of pipelines was virtually non-existent due to improved dry filters, and the replacement of cast-iron pipe with welded steel pipes. PCBs have not been used as lubricating oils in compressors since the 1970s.

Since the compliance monitoring program began, two companies have consistently found PCBs below the 50 ppm contamination level in the liquid found in natural gas pipeline systems. Ten transmission companies are still reporting under the compliance monitoring program. These companies are working to remove the remaining

PCB contaminated liquids from their lines.

With the overturning of the 50 ppm regulatory cutoff as a consequence of *EDF* v. *EPA*, the status of natural gas pipelines with less than 50 ppm PCBs in the compressors and in the pipeline liquid would be in doubt after the stay of the court's mandate is lifted. Several natural gas companies submitted comments on the proposed rule requesting an authorization for the continued use of PCBs in the compressors and in the liquid found in natural gas pipelines. EPA is responding to these comments by authorizing the use of PCBs in compressors and in the liquid found in natural gas pipelines at concentrations of less than 50 ppm.

EPA has determined that the use of PCBs in the compressors and in the liquid found in natural gas pipelines at concentrations of less than 50 ppm does not present an unreasonable risk of injury to human health or the environment. Therefore, EPA is authorizing this use of PCBs.

B. Human Health and Environmental Risks

The major potential human exposure to PCBs in the compressors and liquid found in natural gas pipelines is occupational. Occupational exposure is limited by several factors. First, natural gas is flammable and toxic; thus, natural gas pipelines are necessarily closed systems. Second, the natural gas pipeline liquid is removed from enclosed fixtures at specific collection points. Third, it appears from data submitted by gas transmission companies that draining of the natural gas pipeline liquid does not occur daily, but approximately monthly. Indeed, companies have often found no natural gas pipeline liquid at collection points during some periods of the year. Fourth, many companies require that employees wear protective clothing when handling this liquid. In order to insure that all workers are aware that this equipment contains PCBs, EPA is requiring that these compressors be marked with PCB labels as decribed at 40 CFR 761.40.

EPA has also examined monitoring data for indoor air concentrations of PCBs in homes using natural gas. Based on these data, the Agency has found no evidence that PCBs in the compressors or in the liquid of natural gas pipelines are entering customers' homes. Since exposure and toxicity are the two basic elements of risk, if there is no additional exposure to PCBs attributable to the natural gas, there will be no additional risk to the consumers.

The exposure assessment for PCBs in the compressors and liquids of natural gas pipelines is included as Attachment Z (volume II) of the support document entitled "Final Report: Exposure Assessment for Incidentally Produced Polychlorinated Biphenyls." For further information concerning this exposure assessment, please consult that document.

C. Economic Impact Analysis

If the Agency does not authorize the use of PCBs in natural gas compressors and the liquids in natural gas pipelines, the result would be a ban on all contaminated compressors and natural gas pipelines after the stay of mandate is lifted by the court. Thus, in the absence of action by EPA, the industry must comply with a zero PCB level.

Only 28 remaining compressors are contaminated with PCBs. The costs of replacing all 28 compressors alone could be $227 million, based on average capital and installation costs for 1978 through 1981. The cost of pipeline replacement is estimated to be at least $30 billion, based on average capital and installation costs for 1978 through 1981. These costs do not take into account the unknown amount of distribution system pipeline that would be affected by a ban on PCBs. The combined replacement cost, system down-time, and reductions in natural gas supply during replacement activities would have serious implications for the national economy. Since a use authorization would avoid these costs, these estimates represent the benefits that would result from granting an authorization.

The only cost that would be incurred specifically from this rule would be the cost of labeling the remaining 28 compressors that contain PCBs. EPA is requiring that natural gas pipeline compressors be marked with the M_L marker described at 40 CFR 761.40. This is the same marker that is currently in use on other PCB-containing equipment. The cost of this labeling is expected to be minimal.

D. Availability of Substitutes for PCBs in Compressors and Natural Gas Pipelines

As discussed in the background section of this Unit of the preamble, PCBs are no longer used for fogging natural gas pipelines or in compressors as lubricating oils. Several substitutes for PCB lubricating oils are available. These substitutes for PCB fluids have been used in natural gas pipeline compressors for many years.

E. No Unreasonable Risk Determination

The Agency has concluded that the risks associated with these uses of PCBs at concentrations of less than 50 ppm are outweighed by the benefits of the continued use of compressors and liquids found in natural gas pipelines containing low levels of PCBs, and the costs that are avoided by not requiring the further removal of PCBs remaining in the compressors and pipeline liquids. Therefore, EPA concludes that authorizing the use of PCBs in these systems at concentrations of less than 50 ppm does not present an unreasonable risk of injury to health or the environment for the following reasons:

1. The authorization of the use of PCBs in compressors and in the liquids of natural gas pipelines at a concentration level of less than 50 ppm would adequately safeguard workers and consumers from risk to human health.

2. According to the Agency's economic impact analysis, the potential impact of no authorization would be severe, since all contaminated systems would conceivably have to be removed from service and disposed of under a strict enforcement of section 6(e) of TSCA.

3. There exist adequate substitutes for PCBs. PCB levels in contaminated systems will continue to decline below 50 ppm without further Agency action as PCB substitutes are used, and as equipment contaminated with PCBs is replaced.

VI. Relationship to Other PCB Regulations

The major focus of this rule is the control of the manufacture, processing, distribution in commerce, use, and disposal of PCBs that are not now regulated under other EPA rules. This unit reviews other EPA regulations to control PCBs, as well as other relevant Federal rules. Previous units of this preamble have already discussed the relationship of this rule to the Closed and Controlled Waste Manufacturing Processes Rule, and the regulations for disposal of PCBs under TSCA.

A. Amendments to the PCB Electrical Equipment Rule

Authorizations for the use and servicing of transformers, capacitors, electromagnets, and other electrical equipment with fluid containing 50 ppm or greater PCBs were promulgated in the Electrical Equipment Rule published in the Federal Register of August 25, 1982 (47 FR 37342). These authorizations amended the PCB Ban Rule, which included conditions for the servicing of transformers and electromagnets. No section of this rule affects any provision of the Electrical Equipment Rule.

B. Regulations Under the Federal Pesticide and Food, Drug, and Cosmetic Statutes

Two Federal statutes that affect chemicals which may contain inadvertently generated PCBs are the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, and the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 321 *et seq.* If the manufacture, processing, distribution in commerce, or use of a substance is regulated under either FIFRA or FFDCA, the substance is not subject to regulation under TSCA insofar as the substance is manufactured, processed, or distributed in commerce for use solely as a pesticide, food, food additive, drug, cosmetic, or medical device. If a substance has multiple uses, only some of which are regulated under FIFRA or FFDCA, the manufacture, processing, distribution in commerce, and use of the substance for the remaining uses would come within the jurisdiction of TSCA.

The Agency has determined that raw materials, intermediates, and inert ingredients produced or used in the manufacture of pesticides are substances or mixtures that may be regulated under TSCA. Furthermore, while a chemical manufactured for use as a pesticide is regulated under FIFRA, a chemical that is manufactured for undetermined purposes is regulated under TSCA. Thus, PCBs that are unintentional impurities in a chemical that is for undetermined purposes are subject to this regulation from the time they are first manufactured until they are identified as part of a pesticide product.

EPA has determined that since the Food and Drug Administration (FDA) considers intermediates or catalysts to be components of a food, food additive, drug, cosmetic, or medical device regulated under FFDCA, chemicals used as intermediates or catalysts for these purposes are not regulated under TSCA. As soon as the FDA regulates a product, its manufacture, processing, or distribution in commerce solely for an FDA-regulated use is excluded from the jurisdiction of TSCA. Hence, no provisions of this rule will apply to the manufacture, processing, or distribution in commerce of intermediates or catalysts with PCBs generated as unintentional impurities solely for an FDA-regulated use.

C. PCB Effluent Standards Under Section 307(a) of the Clean Water Act

Under section 307(a) of the Clean Water Act (CWA), 33 U.S.C. 1317 EPA promulgated final effluent standards for the discharge of PCBs into navigable waters (40 CFR 129.105; 42 FR 6532, February 2, 1977) by manufacturers of intentionally produced PCB fluid (i.e., Aroclor products), manufacturers of electrical capacitors, and manufacturers of electrical transformers; and also prohibits the discharge of Aroclor PCBs as process wastes.

Today's regulation, in contrast, is restricted to inadvertently generated PCBs and certain processes that involve the use of recycled PCB-contaminated materials. Therefore, the TSCA and the CWA section 307 regulations cover different persons and different operations and have no effect on each other. Both regulations apply independently.

D. PCB Effluent Limitation Guidelines, New Source Performance Standards, and Permits Under the CWA

Industrial wastewater discharges are generally regulated under the CWA, and not under TSCA. Today's rule necessitates that EPA determine what levels of PCBs may be discharged to water in manufacturing and recycling processes under TSCA. Otherwise, all PCB discharges to water would be banned as of the date the court's mandate in *EDF* v. *EPA* is issued (see Unit II.B of this preamble.). The deadline for promulgating today's TSCA regulation, however, presents a problem in coordinating this regulation with activities under the CWA. The Agency's resolution of this problem and the historical background are explained in this section.

Under the CWA, wastewater discharges are limited by a variety of technology-based effluent limitations and standards with more stringent water quality-based standards applied as needed. Therefore, CWA requirements may differ from those promulgated today. Such requirements may also be imposed by states or local governments instead of or in addition to those mandated by EPA.

The existence of less stringent CWA requirements at a particular facility does not relieve any discharger from the obligation to comply with today's TSCA rule. Similarly, nothing in the TSCA rule affects the authority or prevents EPA or any state or local government from applying or enforcing more stringent requirements to facilities regulated under the CWA or state or local law.

One ongoing CWA rulemaking is particularly relevant to this TSCA rule. On November 18, 1982, EPA proposed CWA effluent limitations guidelines based on "best available technology" (BAT) and "new source performance standards" (NSPS) which would limit the discharge of Aroclor 1242 from mills in the deink subcategory of the pulp, paper, and paperboard point source category where fine and tissue papers are made (47 FR 52066). The proposed BAT effluent limitations (maximum for any one day) for Aroclor 1242 were: (1) 0.00014 kilograms per thousand kilograms (kg/kkg) where fine paper is produced; and (2) 0.00018 kg/kkg where tissue paper is produced. The proposed NSPS (maximum for any one day) for Aroclor 1242 were: (1) 0.00011 kg/kkg where fine paper is produced; and (2) 0.00014 kg/kkg where tissue paper is produced.

There are a number of coordination issues between this action under TSCA and regulation of wastewater discharges under the CWA. For example, the levels proposed under the CWA for pulp and paper mills were based on more extensive data relating just to deink mills, while the levels determined under today's rule are based on data applicable to all water wastestreams. Because the TSCA and CWA regulations would cover the same facilities in the case of deink mills, EPA needs time to coordinate data collected in the rulemaking proceeding for today's rule and the proceeding under the CWA. Additionally, since the November 1982 proposal, the EPA Industrial Environmental Research Laboratory in Cincinnati, Ohio has developed additional data for detecting and quantifying Aroclor in industrial effluents.

EPA would like to consider all these data in support of today's rule to determine whether more stringent limits under TSCA should be set for deink mill discharges. The Agency, however, must respond to the July 1, 1984 deadline. In today's rule, therefore, EPA is setting final limits for recycled PCBs based on the data in the TSCA record and on TSCA authority. These limits may be superseded by more stringent limits established under the CWA.

VII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the Federal Register, as reflected in "DATES" in this notice.

VIII. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents, which constitutes the record of this rulemaking. However, public comments are not listed, because these documents are exempt from Federal Register listing under section 19(a)(3). A full list of these materials will be available on request from EPA's TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT."

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-68005, 43 FR 7150, February 17 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS-66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, and Distribution in Commerce Exemptions," Docket No. OPTS-66008, 48 FR 50486, November 1, 1983.

(8) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; PCBs in Concentrations Below Fifty Parts Per Million," Docket No. OPTS-62018, 46 FR 27619, May 20, 1981.

B. Federal Register Notices

(9) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs) Ban Exemption."

(10) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(11) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyl (PCB) Processing and Distribution in Commerce Prohibitions."

(12) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions."

(13) 44 FR 42727 July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs); Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(14) 45 FR 14247 March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(15) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal."

C. Support Documents

(16) CMA, EDF NRDC, "Recommendation of the Parties for a Final EPA Rule on Inadvertent Generation of PCBs," April 13, 1983.

(17) USEPA, OPTS, EED, "Draft Report: Estimation of Environmental Concentrations of Incidentally Generated Polychlorinated Biphenyls" (July 16, 1982).

(18) USEPA, OPTS, EED, "Draft Report: Modeling of PCBs in Ground Water" (July 14, 1983).

(19) USEPA, OPTS, EED, "Polychlorinated Biphenyls in Human Adipose Tissue and Mother's Milk" (November 12, 1982).

(20) USEPA, OPTS, EED, "Exposure Assessment for Polychlorinated Biphenyls (PCBs): Incidental Production, Recycling, and Selected Authorized Uses, Volumes I-IV" (Final Report, May 2, 1984).

(21) USEPA, OPTS, HERD, "Environmental Risk and Hazard Assessments for Various Isomers of Polychlorinated Biphenyls (Monochlorobiphenyl through Hexachlorobiphenyl and Decachlorobiphenyl)" (April 1984).

(22) USEPA, OPTS, ETD, "Regulatory Impact Analysis of the Final Rule Regulating Inadvertent PCB Generation from Uncontrolled Sources, Volumes I-II" (April 1984).

(23) USEPA, OPTS, ETD, "Regulatory Impact Analysis of PCB Use Authorizations for Hydraulic and Heat Transfer Systems" (June 1984).

(24) USEPA, OPTS, ETD, "Regulatory Impact Analysis of the PCB Use Authorization for Natural Gas Systems" (April 1984).

(25) USEPA, OPTS, EED, "Guidance Document on Sampling and Sample Selection for Uncontrolled PCBs" (1983).

(26) USEPA, OPTS, EED, "Estimation of Releases from Spills of Inadvertently Produced PCBs" (April 1982).

(27) USEPA, OPTS, EED, "Summary of Organic Chemical Product Classes Potentially Containing Inadvertently Generated PCBs" (December 1982).

(28) USEPA, OPTS, EED, "Organic Chemical Processes Leading a Generation of Incidental Polychlorinated Biphenyls" (February 10, 1983).

(29) USEPA, ORD, Environmental Monitoring and Support Laboratory, "TEST METHOD: Organochlorine Pesticides and PCBs—Method 608" (July 1982).

(30) USEPA, OPTS, EED, "Response to Comments on the Proposed Uncontrolled PCBs Rule," (June 1984).

(31) USEPA, OPTS, EED, Memorandum from John Smith (EED, DDB) to Sherry Sterling (EED, CRB), "Practical Limit of Quantitation of EPA Method 608 for Use in Aroclor Analysis of All Wastewaters" (June 5, 1984).

IX. Executive Order 12291

Under Executive Order 12291, issued February 17 1981, EPA must determine whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has concluded that this rule is not a major rule as the term is defined in section 1(b) of the Executive Order.

EPA made this determination on the findings that the annual effect of the rule on the economy would be less than $100 million; it would not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it would not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. This rule will allow certain manufacturing and recycling of PCBs that would otherwise

be prohibited by section 6(e) of TSCA. In addition, this rule will allow the use of PCBs in certain hydraulic and heat transfer system, and in the compressors and in the condensate of natural gas pipelines. Therefore, this rule will reduce the overall costs and economic impact of section 6(e) of TSCA.

This rule excludes certain manufacturing processes from statutory requirements to file annual petitions for exemption under section 6(e)(3)(B) of TSCA. EPA has estimated in the regulatory impact analysis for this rule that resulting cost savings would range from $155 million to $1.6 billion. In addition, EPA is authorizing: (1) The use of PCBs in hydraulic and heat transfer fluid at concentrations of less than 50 ppm for the remaining useful lives of these systems, and (2) the use of PCBs in compressors and in the condensate of natural gas pipelines at concentrations of less than 50 ppm.

Although this rule is not a major rule, EPA has prepared to the extent possible, a Regulatory Impact Analysis using the guidance in the Executive Order. This rule was submitted to the Office of Management and Budget (OMB) prior to publication, as required by the Executive Order.

X. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

This rule excludes certain manufacturing processes from statutory requirements to file annual petitions for exemption under section 6(e)(3)(B) of TSCA. In addition, the rule will allow the indefinite use of PCBs in hydraulic and heat transfer fluid with concentration levels of less than 50 ppm, and in the compressors and condensate of natural gas pipelines at concentrations of less than 50 ppm.

For those persons who would qualify under the conditions of this rule, the effect will be the avoidance of costs associated with section 6(e) of TSCA, and EPA regulations at 40 CFR Part 761. Since EPA expects this rule to have no negative economic effect to any business entity, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

XI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping, reporting, and certification requirements of this proposed rule constitute a "collection of information," as defined in 44 U.S.C. 3502(4). The information collection requirements in this rule (summarized in Unit II of this preamble) have been submitted to the Office of Management and Budget (OMB) under section 3504(b) of the PRA. OMB has assigned the control number 2070-0008 to this final rule.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

Dated: June 27, 1984.

Alvin L. Alm,

Acting Administrator.

PART 761—[AMENDED]

Therefore, 40 CFR Part 761 is amended as follows:

1. In § 761.1, paragraphs (b) and (f) are revised to read as follows:

§ 761.1 Applicability.

* * * * *

(b) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this rule include, but are not limited to, dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and other chemical substances or combination of substances, including impurities and byproducts and any byproduct, intermediate or impurity manufactured at any point in a process. Most of the provisions of this part apply to PCBs only if PCBs are present in concentrations above a specified level. For example, Subpart D applies generally to materials at concentrations of 50 parts per million (ppm) and above. Also certain provisions of Subpart B apply to PCBs inadvertently generated in manufacturing processes at concentrations specified in the definition of "PCB" under § 761.3. No provision specifying a PCB concentration may be avoided as a result of any dilution, unless otherwise specifically provided.

* * * * *

(f) Unless and until superseded by any new more stringent regulations issued under EPA authorities, or any permits or any pretreatment requirements issued by EPA, a state or local government that affect release of PCBs to any particular medium:

(1) Persons who inadvertently manufacture or import PCBs generated as unintentional impurities in excluded manufacturing processes, as defined in § 761.3, are exempt from the requirements of Subpart B of this part, provided that such persons comply with Subpart J of this Part, as applicable.

(2) Persons who process, distribute in commerce, or use products containing PCBs generated in excluded manufacturing processes defined in § 761.3 are exempt from the requirements of Subpart B provided that such persons comply with Subpart J of this part, as applicable.

(3) Persons who process, distribute in commerce, or use products containing recycled PCBs defined in § 761.3, are exempt from the requirements of Subpart B of this part, provided that such persons comply with Subpart J of this part, as applicable.

2. In § 761.3, the definitions of "closed manufacturing process" and "controlled waste manufacturing process" are removed the definitions of "excluded manufacturing process" and "recycled PCBs" are added, and the definitions of "PCB" and "PCB Item" are revised to read as follows:

§ 761.3 Definitions.

* * * * *

"Closed manufacturing process" [Removed].

* * * * *

"Controlled waste manufacturing process" [Removed].

* * * * *

"Excluded manufacturing process" means a manufacturing process in which quantities of PCBs, as determined in accordance with the definition of inadvertently generated PCBs, calculated as defined, and from which releases to products, air, and water meet the requirements of (1) through (5) of this definition, or the importation of products containing PCBs as unintentional impurities, which products meet the requirements of (1) and (2) of this definition.

(1) The concentration of inadvertently generated PCBs in products leaving any manufacturing site or imported into the United States must have an annual average of less than 25 ppm, with a 50 ppm maximum.

(2) The concentration of inadvertently generated PCBs in the components of detergent bars leaving the manufacturing site or imported into the United States must be less than 5 ppm.

(3) The release of inadvertently generated PCBs at the point at which emissions are vented to ambient air must be less than 10 ppm.

(4) The amount of inadvertently generated PCBs added to water discharged from a manufacturing site must be less than 100 micrograms per resolvable gas chromatographic peak per liter of water discharged.

(5) Disposal of any other process wastes above concentrations of 50 ppm PCB must be in accordance with Subpart D of this part.

* * * * *

"PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. Refer to § 761.1(b) for applicable concentrations of PCBs. PCB and PCBs as contained in PCB items are defined in § 761.3. For any purposes under this Part, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

* * * *

"PCB Item" is defined as any PCB Article, PCB Article Container, PCB Container, or PCB Equipment, that deliberately or unintentionally contains or has a part of it any PCB or PCBs.

* * * * *

"Recycled PCBs" are defined as those intentionally manufactured PCBs which appear in the processing of paper products or asphalt roofing materials as PCB-contaminated raw materials and which meet the requirements of (1) through (5) of this definition.

(1) The concentration of Aroclor PCBs in paper products leaving any manufacturing site or imported into the United States must have an annual average of less than 25 ppm with a 50 ppm maximum.

(2) There are no detectable concentrations of Aroclor PCBs in asphalt roofing materials.

(3) The release of Aroclor PCBs at the point at which emissions are vented to ambient air must be less than 10 ppm.

(4) The amount of Aroclor PCBs added to water discharged from a processing site must at all times be less than 3 micrograms per liter (μg/l) for total Aroclors (roughly 3 parts per billion (3 ppb)).

(5) Disposal of any other process wastes above concentrations of 50 ppm PCB must be in accordance with Subpart D of this part.

* * * * *

3. In § 761.20 the fourth sentence of the introductory text, paragraphs (a), (b)(1) and (b)(2), the introductory text of paragraph (c), and paragraphs (c)(1) and (c)(2) are revised; and paragraph (c)(4) is added to read as follows:

§ 761.20 Prohibitions.

* * * In addition, the Administrator hereby finds, under the authority of section 12(a)(2) of TSCA, that the manufacture, processing, and distribution in commerce for export from the United States of PCBs at concentrations of 50 ppm or greater and of PCB Items with PCB concentrations of 50 ppm or greater presents an unreasonable risk of injury to health within the United States.

* * * * *

(a) No person may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that an authorization is not required to use those PCBs or PCB Items resulting from an excluded manufacturing process or recycled PCBs defined in § 761.3, provided all applicable conditions of § 761.1(f) are met.

(b) * * *

(1) No person may manufacture PCBs for use within the United States or manufacture PCBs for export from the United States without an exemption, except that an exemption is not required for PCBs manufactured in an excluded manufacturing process as defined in § 761.3, provided that all applicable conditions of § 761.1(f) are met.

(2) PCBs at concentrations less than 50 ppm may be imported or exported for purposes of disposal.

(c) No person may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States or for export from the United States without an exemption, except that an exemption is not required to process or distribute in commerce PCBs or PCB Items resulting from an excluded manufacturing process as defined in § 761.3, or to process or distribute in commerce recycled PCBs as defined in § 761.3 provided that all applicable conditions of § 761.1(f) are met.

(1) PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for purposes other than resale may be distributed in commerce only in a totally enclosed manner after that date.

(2) PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater may be processed and distributed in commerce in compliance with the requirements of this Part for purposes of disposal in accordance with the requirements of § 761.60.

* * * * *

(4) PCBs, at concentrations of less than 50 ppm, or PCB Items, with concentrations of less than 50 ppm, may be processed and distributed in commerce for purposes of disposal.

* * * *

4. In § 761.30, paragraphs (d), (e), and (i) are revised to read as follows:

§ 761.30 Authorizations.

* * * * *

(d) *Use in heat transfer systems.* After July 1, 1984, intentionally manufactured PCBs may be used in heat transfer systems in a manner other than a totally enclosed manner at a concentration level of less than 50 ppm provided that the requirements of paragraphs (d) (1) through (7) of this section are met.

(1) Each person who owns a heat transfer system that ever contained PCBs at concentrations above 50 ppm must test for the concentration of PCBs in the heat transfer fluid of such a system no later than November 1, 1979, and at least annually thereafter. All test sampling must be performed at least three months after the most recent fluid refilling. When a test shows that the PCB concentration is less than 50 ppm, testing under this paragraph is no longer required.

(2) Within six months of a test performed under paragraph (d)(1) of this section that indicates that a system's fluid contains 50 ppm or greater PCB (0.005% on a dry weight basis), the system must be drained of the PCBs and refilled with fluid containing less than 50 ppm PCB. Topping-off with heat transfer fluids containing PCB concentrations of less than 50 ppm is permitted.

(3) After November 1, 1979, no heat transfer system that is used in the manufacture or processing of any food, drug, cosmetic or device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, may contain transfer fluid with 50 ppm or greater PCB (0.005% on a dry weight basis).

(4) Addition of fluids containing PCB concentrations greater than 50 ppm is prohibited.

(5) Data obtained as a result of paragraph (d)(1) of this section must be

retained for five years after the heat transfer system reaches 50 ppm PCB.

(6) Each person who owns a heat transfer system that contains PCBs must provide workers with gloves made of viton elastomer to protect workers from dermal exposure to PCBs.

(7) All persons who maintain a heat transfer system must wear viton elastomer gloves while doing maintenance work on that system.

(e) *Use in hydraulic systems.* After July 1, 1984, intentionally manufactured PCBs may be used in hydraulic systems in a manner other than a totally enclosed manner at a concentration level of less than 50 ppm provided that the requirements in paragraphs (e) (1) through (7) of this section are met.

(1) Each person who owns a hydraulic system that ever contained PCBs at concentrations above 50 ppm must test for the concentration of PCBs in the hydraulic fluid of each system no later than November 1, 1979, and at least annually thereafter. All test sampling must be performed at least three months after the most recent fluid refilling. When a test shows that the PCB concentration is less than 50 ppm, testing under this paragraph is no longer required.

(2) Within six months of a test under paragraph (e)(1) of this section that indicates that a system's fluid contains 50 ppm or greater PCB (0.005% on a dry weight basis), the system must be drained of the PCBs and refilled with fluid containing less than 50 ppm PCB. Topping-off with hydraulic fluids containing PCB concentrations less than 50 ppm to reduce PCB concentrations is permitted.

(3) Addition of PCBs at concentrations of greater than 50 ppm is prohibited.

(4) Hydraulic fluid may be drained from a hydraulic system and filtered, distilled, or otherwise serviced in order to reduce the PCB concentration below 50 ppm.

(5) Data obtained as a result of paragraph (e)(1) of this section must be retained for five years after the hydraulic system reaches 50 ppm.

(6) Each person who owns a hydraulic system that contains PCBs must provide gloves made of viton elastomer to protect workers from dermal exposure to PCBs.

(7) All persons who maintain a hydraulic system that contains PCBs must wear viton elastomer gloves while doing maintenance work on that system.

* * * * *

(i) *Use in compressors and in the liquid of natural gas pipelines.* PCBs may be used indefinitely in the compressors and in the liquids of natural gas pipelines at a concentration level of less than 50 ppm provided that they are marked in accordance with § 761.45(a).

* * * * *

5. In § 761.60, paragraphs (a)(1), the introductory text of (a)(4) and (a)(5), (a)(6), (b)(3), the introductory text of (b)(5), (b)(6), the introductory text of (c)(1), (c)(3), and (d)(1) are revised to read as follows:

§ 761.60 Disposal requirements.

(a) *PCBs.* (1) Except as provided in paragraphs (a) (2), (3), (4), and (5) of this section, PCBs at concentrations of 50 ppm or greater must be disposed of in an incinerator which complies with § 761.70.

* * * * *

(4) Any non-liquid PCBs at concentrations of 50 ppm or greater in the form of contaminated soil, rags, or other debris shall be disposed of:

* * * *

(5) All dredged materials and municipal sewage treatment sludges that contain PCBs at concentrations of 50 ppm or greater shall be disposed of:

* * * * *

(6) When storage is desired prior to disposal, PCBs at concentrations of 50 ppm or greater shall be stored in a facility which complies with § 761.65.

* * * * *

(b) * * *

(3) *PCB hydraulic machines.* PCB hydraulic machines containing PCBs at concentrations of 50 ppm or greater such as die casting machines may be disposed of as municipal solid waste or salvage provided that the machines are drained of all free-flowing liquid and the liquid is disposed of in accordance with the provisions of paragraph (a) of this section. If the PCB liquid contains 1000 ppm PCB or greater, then the hydraulic machine must be flushed prior to disposal with a solvent containing less than 50 ppm PCB under transformer solvents at paragraph (b)(1)(i)(B) of this section and the solvent disposed of in accordance with paragraph (a) of this section.

* * * * *

(5) *Other PCB Articles.* PCB articles with concentrations at 50 ppm or greater must be disposed of:

* * * *

(6) *Storage of PCB Articles.* Except for a PCB Article described in paragraph (b)(2)(ii) of this section and hydraulic machines that comply with the municipal solid waste disposal provisions described in paragraph (b)(3) of this section, any PCB Article, with PCB concentrations at 50 ppm or greater, shall be stored in accordance with § 761.65 prior to disposal.

* * * *

(c) *PCB Containers.* (1) Unless decontaminated in compliance with § 761.79 or as provided in paragraph (c)(2) of this section, a PCB container with PCB concentrations at 50 ppm or greater shall be disposed of:

* * * * *

(3) Prior to disposal, a PCB container with PCB concentrations at 50 ppm or greater shall be stored in a facility which complies with § 761.65.

(d) *Spills.* (1) Spills and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs.

* * * * *

6. In § 761.65 the following introductory text is added at the beginning of the section:

§ 761.65 Storage for disposal.

This section applies to the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater.

* * * * *

7. In § 761.70, the following introductory text is added to the beginning of the section:

§ 761.70 Incineration.

This section applies to facilities used to incinerate PCBs required to be incinerated by this part.

* * * * *

8. In § 761.75, the following introductory text is added to the beginning of the section:

§ 761.75 Chemical waste landfills.

This section applies to facilities used to dispose of PCBs in accordance with the part.

* * * * *

9. In § 761.180, the following introductory text is added to the beginning of the section:

§ 761.180 Records and monitoring.

This section contains recordkeeping and reporting requirements that apply to PCBs, PCB Items, and PCB storage and disposal facilities that are subject to the requirements of the part.

* * * * *

10. In § 761.185, the section is revised and OMB control number 2070-0008 is added to read as follows:

§ 761.185 Certification program and retention or records by importers and persons generating PCBs in excluded manufacturing processes.

(a) In addition to meeting the basic requirements of § 761.1(f) and the

definition of excluded manufacturing processes at § 761.3, manufacturers with processes inadvertently generating PCBs and importers of products containing inadvertently generated PCBs must report to EPA any excluded manufacturing process or imports for which the concentration of PCBs in products leaving the manufacturing site or imported is greater than 2 micrograms per gram (2 μg/g, roughly 2 ppm) for any resolvable gas chromatographic peak. Such reports must be filed by October 1, 1984 or, if no processes or imports require reports at the time, within 90 days of having processes or imports for which such reports are required.

(b) Manufacturers required to report by paragraph (a) of this section must transmit a letter notifying EPA of the number, the type, and the location of excluded manufacturing processes in which PCBs are generated when the PCB level in products leaving any manufacturing site is greater than 2 μg/g for any resolvable gas chromatographic peak. Importers required to report by paragraph (a) of this section must transmit a letter notifying EPA of the concentration of PCBs in imported products when the PCB concentration of products being imported is greater than 2 μg/g for any resolvable gas chromatographic peak. Persons must also certify the following:

(1) Their compliance with all applicable requirements of § 761.1(f), including any applicable requirements for air and water releases and process waste disposal.

(2) Whether determinations of compliance are based on actual monitoring of PCB levels or on theoretical assessments.

(3) That such determinations of compliance are being maintained.

(4) If the determination of compliance is based on a theoretical assessment, the letter must also notify EPA of the estimated PCB concentration levels generated and released.

(c) Any person who reports pursuant to paragraph (a) of this section:

(1) Must have performed either a theoretical analysis or actual monitoring of PCB concentrations.

(2) Must maintain for a period of three years after ceasing process operations or importation, or for seven years, whichever is shorter, records containing the following information:

(i) *Theoretical analysis.* Manufacturers records must include: the reaction or reactions believed to be generating PCBs; the levels of PCBs generated; and the levels of PCBs released. Importers records must include: the reaction or reactions believed to be generating PCBs and the levels of PCBs generated; the basis for all estimations of PCB concentrations; and the name and qualifications of the person or persons performing the theoretical analysis; or

(ii) *Actual monitoring.* (A) The method of analysis.

(B) The results of the analysis, including data from the Quality Assurance Plan.

(C) Description of the sample matrix.

(D) The name of the analyst or analysts.

(E) The data and time of the analysis.

(F) Numbers for the lots from which the samples are taken.

(d) The certification required by paragraph (b) of this section must be signed by a responsible corporate officer. This certification must be maintained by each facility or importer for a period of three years after ceasing process operation or importation, or for seven years, whichever is shorter, and must be made available to EPA upon request. For the purpose of this section, a responsible corporate officer means:

(1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

(2) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(e) Any person signing a document under paragraph (d) of this section shall also make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information. Based on my inquiry of the person or persons directly responsible for the gathering information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for falsifying information, including the possibility of fines and imprisonment for knowing violations.

Dated: _____

Signature: _____

(f) This report must be submitted to the U.S. Environmental Protection Agency, Document Processing Center, P.O. Box 2070, Rockville, MD 20852, Attention: PCB Notification. This report must be submitted by October 1, 1984 or within 90 days of starting up processes or commencing importation of PCBs.

(g) This certification process must be repeated whenever process conditions are significantly modified to make the previous certification no longer valid.

(Approved by the Office of Management and Budget under control number 2070-0008)

11. Section 761.187 and OMB control number 2070-0008 are added to read as follows:

§ 761.187 Reporting importers and by persons generating PCBs in excluded manufacturing processes.

In addition to meeting the basic requirements of § 761.1(f) and the definition of excluded manufacturing process at § 761.3, PCB-generating manufacturing processes or importers of PCB-containing products shall be considered "excluded manufacturing processes" only when the following conditions are met:

(a) Data are reported to the EPA by the owner/operator or importer concerning the total quantity of PCBs in product from excluded manufacturing processes leaving any manufacturing site in any calendar year when such quantity exceeds 0.0025 percent of that site's rated capacity for such manufacturing processes as of October 1, 1984; or the total quantity of PCBs imported in any calendar year when such quantity exceeds 0.0025 percent of the average total quantity of such product containing PCBs imported by such importer during the years 1978, 1979, 1980, 1981 and 1982.

(b) Data are reported to the EPA by the owner/operator concerning the total quantity of inadvertently generated PCBs released to the air from excluded manufacturing processes at any manufacturing site in any calendar year when such quantity exceeds 10 pounds.

(c) Data are reported to the EPA by the owner/operator concerning the total quantity of inadvertently generated PCBs released to water from excluded manufacturing processes from any manufacturing site in any calendar year when such quantity exceeds 10 pounds.

(d) These reports must be submitted to the U.S. Environmental Protection Agency, Document Processing Center, P.O. Box 2070, Rockville, Maryland 20852, Attention: PCB Notification.

(Approved by the Office of Management and Budget under control number 2070-0008)

12. Section 761.193 and OMB control number 2070-0008 are added to read as follows:

§ 761.193 Maintenance of monitoring records by persons who import, manufacture, process, distribute in commerce, or use chemicals containing inadvertently generated PCBs.

(a) Persons who import, manufacture, process, distribute in commerce, or use chemicals containing PCBs present as a result of inadvertent generation or recycling who perform any actual monitoring of PCB concentrations must maintain records of any such monitoring for a period of three years after a process ceases operation or importing ceases, or for seven years, whichever is shorter.

(b) Monitoring records maintained pursuant to paragraph (a) of this section must contain:

(1) The method of analysis.

(2) The results of the analysis, including data from the Quality Assurance Plan.

(3) Description of the sample matrix.

(4) The name of the analyst or analysts.

(5) The date and time of the analysis.

(6) Numbers for the lots from which the samples are taken.

(Approved by the Office of Management and Budget under control number 2070-0008)

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40 CFR Part 761

[OPTS-62031A; TSH FRL-2590-2]

Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Use in Microscopy and Research and Development

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends portions of an existing EPA rule concerning certain chemical substances known as polychlorinated biphenyls (PCBs). EPA is amending the PCB Ban rule, published in the Federal Register of May 3, 1979 (44 FR 31514) by: (1) Authorizing indefinitely the use of PCBs as mounting media in microscopy, (2) authorizing indefinitely the use of PCBs as immersion oils in low fluorescence microscopy, (3) authorizing indefinitely the use of PCBs as optical liquids, and (4) authorizing indefinitely the use of small quantities of PCBs for use in research and development. EPA has determined that these uses of PCBs do not pose unreasonable risks to public health or the environment. EPA is not authorizing the use of PCBs as calibration standards.

DATES: These amendments shall be considered promulgated for purpose of judicial review under section 19 of the Toxic Substances Control Act (TSCA) at 1:00 p.m. Eastern Daylight Time on July 24, 1984. These amendments shall be effective on July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.. (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the use of PCBs after January 1, 1978. The statute does, however, set forth two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a "totally enclosed manner." A "totally enclosed manner" is defined by TSCA to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant, as determined by the Administrator by rule." TSCA also allows EPA to authorize the use of PCBs in a manner other than a totally enclosed manner if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

EPA promulgated a rule at 40 CFR Part 761, which was published in the Federal Register of May 31, 1979 (44 FR 31514), to implement section 6(e) (2) and (3) of TSCA. EPA authorized, among other provisions of this rule, the non-totally enclosed use of PCBs for 11 activities. These authorizations were for the following activities: (1) Servicing of electrical transformers, (2) use in and servicing of railroad transformers, (3) use in and servicing of mining equipment, (4) use in carbonless copy paper, (5) use in pigments, (6) servicing of electromagnets, (7) use in natural gas pipeline compressors, (8) use in hydraulic systems, (9) use in heat transfer systems, (10) use in small quantities for research and development, and (11) use in microscopy mounting medium.

In the May 31, 1979 PCB Ban Rule, EPA also excluded from regulation materials containing PCBs in concentrations under 50 parts per million (ppm), and determined that the use of electrical transformers, capacitors, and electromagnets was "totally enclosed."

The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review: (1) EPA's determination that the use of electrical transformers, capacitors, and electromagnets was totally enclosed, (2) EPA's decision to set a regulatory cutoff at 5 ppm, and (3) EPA's decision to authorized the continued use of the 11 non-totally enclosed uses of PCBs. On October 30, 1980, the Court invalidated the regulatory exclusion for PCB concentrations below 50 ppm and the determination that the use of transformers, capacitors and electromagnets was totally enclosed. However, the Court decided that there was substantial evidence in the record to support EPA's decisions on the 11 use authorizations. Thus, the Court upheld the 11 use authorizations (*Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, 636 F.2d 1267).

Subsequent to the promulgation of the rule on May 31, 1979 and the 1980 Court decision, three of these use authorizations were amended. These amendments were promulgated for the use and servicing of PCBs in electrical equipment transformers, electromagnets, and railroad transformers. Of the remaining use authorizations, four expire on July 1, 1984: Heat transfer systems, hydraulic systems, microscopy as a mounting medium, and small quantities for research and development. The four use authorizations that expire on July 1, 1984, contain various conditions.

Section 761.30(d) authorizes the use of PCBs in heat transfer systems until July 1, 1984, subject to conditions regarding testing and requirements for reducing PCB concentrations. The authorization for the use of PCBs in hydraulic systems until July 1, 1984, in § 761.30(e) contains similar requirements for testing and reducing PCB concentrations until the PCB concentration in the equipment reaches 50 ppm. (Since the May 31, 1979 PCB Ban Rule established a regulatory cutoff at 50 ppm for the manufacture, processing, distribution in commerce, and use of PCBs, EPA essentially left unregulated heat transfer and hydraulic systems containing less then 50 ppm.)

The use authorization for the use of PCBs as a mounting medium in microscopy until July 1, 1984, in § 761.30(k), contains no special conditions or requirements. The use authorization for the use of small quantities of PCBs for research and

development until July 1, 1984, in § 761.30(j), requires that PCBs used in this manner be originally contained in hermetically sealed, five-milliliter containers, and that they be used only for purposes of scientific experimentation on or chemical analysis of PCBs.

In the Federal Register of November 17 1983 (48 FR 52402), EPA proposed to amend the May 1979 use authorizations for the use of PCBs as mounting medium and the use of PCBs in small quantities for research and development. EPA proposed to authorize indefinitely the use of PCBs as mounting media in art and historic conservation, and to authorize indefinitely the use of small quantities of PCBs in research and development. EPA received 15 comments on the proposed use authorizations and held a public hearing on January 16, 1984 in Washington, D.C. At the hearing, three parties provided testimony on the proposed use authorizations.

In this final rule, EPA is amending the May 1979 use authorizations for the use of PCBs as a mounting medium in microscopy and the use in small quantities for research and development. EPA is authorizing the use of PCBs as mounting media in microscopy indefinitely, and, authorizing the use of small quantities of PCBs in research and development indefinitely. EPA is also issuing indefinite use authorizations for the use of PCBs in immersion oils for fluorescence microscopy, and the use of PCBs as optical liquids. EPA became aware of these uses of PCBs through public comments on the proposed rule and testimony supplied at the January 16, 1984 public hearing. Information was provided that indicated that there are no adequate substitutes for PCBs in these areas.

Comments submitted in response to the proposed rule also suggested that EPA consider authorizing the use of PCBs as calibration standards for refractometers. EPA has determined that there are adequate substitutes for PCBs for use as calibration standards for refractometers. Therefore, EPA is not authorizing this use of PCBs.

The second phase of rulemaking on the manufacture, processing, distribution in commerce, and use of PCBs in concentrations below 50 ppm was proposed in the Federal Register of December 8, 1983 (48 FR 55076). In this related rulemaking, EPA proposed to authorize indefinitely the use of heat transfer and hydraulic systems that contain less than 50 ppm PCBs.

II. Summary of the Final Rule

EPA is authorizing the use of PCBs: (1) As a mounting medium in microscopy, (2) as an immersion oil in fluorescence microscopy, (3) as optical liquids, and (4) in small quantities for research and development. EPA is not authorizing the use of PCBs as calibration standards. This final rule modifies and clarifies some of the requirements discussed in the proposed rule because of information obtained during the public comment period and at the public hearing on the proposed rule.

Briefly, in the proposed rule EPA: (1) Authorized indefinitely the use of PCBs as a microscopic mounting medium in the field of art and historic conservation and (2) authorized indefinitely the use of small quantities of PCBs in research and development.

In response to comments received on the proposed rule, EPA has broadened the use authorization for the use of PCBs as a mounting medium in art and historic conservation to include the use of PCBs as a microscopic mounting medium in all fields of use. EPA is also authorizing the use of PCBs as an immersion oil in fluorescence microscopy and as optical liquids. Although EPA considered, as part of this rulemaking, authorizing the use of PCBs as calibration standards for refractometers, available information suggested that adequate nonPCB substitute materials are available for this use. Therefore, EPA is not authorizing the use of PCBs as calibration standards for refractometers.

Comments submitted in response to the proposed rule regarding the use of small quantities of PCBs as immersion oils, as optical liquids, and as calibration standards suggested that EPA consider authorizing these other apparently ongoing research-related uses of PCBs. Comments regarding these uses were accompanied by a request for EPA to expand existing use authorizations to include the use of PCBs as immersion oils in fluorescence microscopy, the use of PCBs as an optical liquid, and the use of PCBs as calibration standards for refractometers.

EPA determined that authorizing the use of small quantities of PCBs as immersion oils in fluorescence microscopy, the use of PCBs as optical liquids in scientific experimentation, and the use of PCBs as calibration standards for refractometers (as suggested in comments submitted in response to the proposed rule) would require separate determinations that these uses do not pose unreasonable risks to public health and the environment. EPA completed analyses of these other uses and has made a determination that PCBs used as immersion oils in fluorescence microscopy and as optical liquids do not pose unreasonable risks to public health or the environment, and, is therefore issuing use authorizations for these specific uses as part of this final rule. EPA has also made a determination that adequate non-PCB substitutes exist for use as calibration standards for refractometers. Therefore, EPA is not issuing a new use authorization for this use.

III. Use Authorizations

In order to authorize a use of PCBs under section 6(e)(2)(B) of TSCA, EPA must find that such use "will not present an unreasonable risk of injury to health or the environment." To determine whether a risk is unreasonable, EPA must balance the probability that harm will occur from the use, against the adverse effects on society of the proposed regulatory action. In determining whether an unreasonable risk is present, EPA has considered the following factors:

1. The effects of PCBs on human health and the environment.
2. The magnitude of PCB exposure to humans and the environment.
3. The benefits of using PCBs and the availability of substitutes for PCB uses.
4. The economic impact resulting from the rule's effect upon the national economy, small business, and technological innovation.

These factors are listed in section 6(c) of TSCA and are applicable to determinations concerning whether a chemical presents an unreasonable risk under section 6 (a) and (e) of TSCA.

The remaining units of this preamble will discuss these key factors in the unreasonable risk determinations made in this rule. Finally, they will present specific findings for the determinations that the use of PCBs as mounting media, low fluorescence immersion oil, as optical fluids, and in small quantities for research and development do not present unreasonable risks. The remaining units will also address EPA's decision not to authorize the use of PCBs as calibration standards for refractometers.

A. Effects on Human Health and the Environment

In determining whether use authorizations are warranted, EPA first considered information regarding the effects of PCBs on human health and the environment. The effects of PCBs were described in various documents which were part of the rulemaking record for

the May 31, 1979 rule. EPA has reviewed this information, new information submitted to the Agency since 1979, as well as other recent literature on the effects of PCBs. The results of this analysis are presented in the document "Response to Comments on Health Effects on PCBs." Copies of this document are available through the TSCA Assistance Office (see "FOR FURTHER INFORMATION CONTACT"). Summaries of the Agency's conclusions in the areas of the health and environmental effects of PCBs are presented below.

1. Health Effects

Based upon available information, EPA has concluded that persons exposed to PCBs can develop chloracne. Although the effects of chloracne are reversible, EPA does not consider this effect of exposure to PCBs to be insignificant.

In addition to chloracne, EPA has identified reproductive effects, developmental toxicity, and oncogenicity as additional areas of concern. Effects in these areas have been identified in animal studies and are, therefore, considered to be effects which have the potential to be produced in humans. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes at doses that do not result in other signs of toxicity. Animal data indicate that prenatal exposure to PCBs can result in various degrees of developmental effects. Postnatal effects have also been demonstrated in immature animals following exposure to PCBs prenatally and via breast milk.

Furthermore, available animal studies suggest an oncogenic potential of PCBs (the degree of which would be dependent on exposure). Available epidemiological data are not adequate to confirm or negate the oncogenic potential in humans at this time. Although additional epidemiological research is needed in order to correlate human and animal data, EPA does not find any evidence to suggest that the animal data would not be predictive of human potential.

From available data, EPA believes that PCBs produce little or no nutagenic activity. However, more information is needed to draw a final conclusion on the potential mutagenicity of PCBs.

2. Environmental Effects

PCBs have been shown to affect the productivity of phytoplankton and the composition of phytoplankton communities. Further, deleterious effects on environmentally important freshwater invertebrates from PCBs have also been demonstrated. PCBs have also been shown to impair reproductive success in both birds and mammals.

It has also been demonstrated that PCBs are toxic to fish at very low levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in fish bone development and reproductive organs have also been associated with exposure to PCBs.

EPA has concluded that PCBs can concentrate and be transferred in freshwater and marine organisms. Transfer up the food chain from phytoplankton to invertebrates, fish, and mammals can ultimately result in human exposure to PCBs through the consumption of PCB-containing food.

B. Potential for Exposure to PCBs

Toxicity and exposure are the two basic components of risk. As indicated above, EPA believes that in addition to chloracne, based on animal data there is a potential for reproductive effects and developmental toxicity as well as oncogenicity in humans exposed to PCBs. EPA also believes that PCBs do present a hazard to the environment.

However, minimizing exposure to PCBs should minimize any potential risk. In determining if a particular use of PCBs presents an unreasonable risk, EPA assesses the potential for exposure of humans or the environment to PCBs as a result of the use. Further, as part of its analysis, EPA considers the need for regulatory requirements to reduce exposure or eliminate exposure associated with the use of PCBs.

1. Exposure From the Use of PCBs as a Mounting Medium

PCBs, including Aroclor 1254, 1260, 5442 and 5460, have been used in microscopy since the 1930s. Although microscopists initially used quart samples of PCBs that were provided free of charge, eventually, several firms began developing and marketing PCBs as a microscope mounting medium.

In the field of microscopy, PCBs are used in art and historic conservation to preserve specimens permanently, and in the identification and preservation of small environmental, forensic, and industrial contaminant particles. PCBs were also used prior to 1979 in microscope immersion oils. The identification of these particles is based on the morphological and optical properties of these particles as they appear relative to the optical properties of PCBs. EPA estimates that there are about 850 laboratories in which PCBs are used in the preparation of permanent slides. Assuming that there are one to three microscopists per laboratory, the size of the worker population potentially exposed to PCBs from this use ranges from 850 to 2,550.

In mounting a specimen, a particle is placed on a slide, a coverslip is placed over the particle, and a drop of PCBs is placed near the interface of the coverslip and the slide. The PCBs move beneath the coverslip through capillary action and the particle is thereby permanently mounted. The slide is prepared on a lightly heated surface (which increases the volatility of the PCBs and the potential for inhalation exposure during use), and excess PCBs are wiped from the preparation with a tissue (resulting in some potential for dermal exposure). A one ounce quantity lasts typically 3 to 5 years. EPA estimates that about 430 ounces of PCBs currently exist in laboratories and are being used as mounting media.

Although users are exposed to only small quantities of PCB mounting medium (less than one ounce per year per user), these products do contain high concentrations of PCBs. Thus, the use of PCBs for microscopic mounting does pose some level of risk to users. However, EPA marking regulations (40 CFR Part 761, Subpart C) require the labeling of containers, and microscopists who use PCBs are for the most part highly trained workers who are accustomed to working with PCBs as well as other potentially toxic materials. Because of the small quantities of PCBs used in this application and the highly trained nature of these workers, EPA expects that exposure to workers from this use is limited.

2. Exposure From the Use of PCBs in Immersion Oils for Low Fluorescence Microscopy

Comments submitted in response to the proposed rule indicate that PCBs are useful as microscope immersion oils in medical research. These comments indicate that small amounts of PCB immersion oils with low auto-fluorescence are useful in cancer studies where fluoresence microscopy is used. The technique used in immersion microscopy involves placing a drop of immersion oil on the coverslip of a slide and lowering the objective lens of the microscope until it just touches the oil.

EPA is also aware of a medical diagnostic procedure that involves the use of microscope immersion oils. According to one source, examination of the nail-fold capillaries can provide

useful information in a variety of rheumatic disorders. The capillaries are best seen when a clear viscous liquid is applied to the skin surface, and microscope immersion oil is commonly used for this purpose. This technique is termed capillary microscopy.

Although PCB-containing immersion oil was used in many applications prior to the issuance of the May 1979 PCB Ban Rule, today, the only critical use of PCBs in immersion microscopy appears to be their use in fluorescence microscopy. EPA believes that the use of PCB immersion oil in capillary microscopy is not a critical use of PCBs. In fact, sources in the medical community (physicians and representatives of the American Medical Association) have indicated that many physicians and diagnosticians are unaware that some immersion oils even contain PCBs. This is because containers of PCB immersion oil produced prior to 1978 were not required to be labeled as containing PCBs. Since very small amounts of immersion oils are used per application, older supplies of this unlabeled material are still being used in medical laboratories. Physicians and representatives of the American Medical Association have indicated to EPA that PCB-free immersion oil is an adequate substitute for this use pattern.

Data submitted as part of the May 1979 rulemaking record indicate that technicians in hospital laboratories would spend about an hour per day using immersion microscopes. The 1970 census reportedly showed 119,308 employed laboratory technologists. The census also reportedly showed 55,000 biological scientists, many of whom may use immersion oils.

Comments submitted in response to the November 17 1983 proposed rule suggest that following the issuance of the May 1979 PCB Ban Rule, 97 percent of users of immersion oils were able to switch to substitute materials. Of the approximately 5,229 remaining users, the comments further indicate that during the last few years, 97 percent of these users were able to switch to newly developed immersion oils. Based on these comments, and the data from the 1970 census, EPA believes that only 50 to 157 researchers now find PCB immersion oil useful for specialized fluorescence microscopy uses.

Although EPA estimates that less than 0.01 cubic centimeter (cc) of PCB immersion oil is used per application, the low fluorescence immersion oil reportedly contains 34 percent PCBs. Further, skin contact with immersion oil may be frequent, because lenses and slides used in immersion oil microscopy are wiped clean of excess oil with tissue following the completion of laboratory studies. As was the case with the use of PCBs in microscope mounting medium, there is also some potential for inhalation exposure to PCBs from this use pattern because of the use of illuminators in conjunction with microscopes. The illuminators could serve as a heat source and increase the volatility of the PCBs.

In capillary microscopy the potential for significant exposure to PCBs is much greater because the oil is applied directly and intentionally to the skin of patients. Although small amounts of immersion oils are applied, given the expected high rate of dermal absorption of PCBs, intentional skin application may result in significant exposure to PCBs.

The use of PCB immersion oil in fluorescence microscopy requires only relatively small amounts of PCBs. Comments submitted in response to the proposed rule indicate that scientists and laboratory workers are highly trained and experienced in the handling of toxic chemicals. Further, the May 1979 PCB Ban Rule included marking regulations that require containers to be labeled as containing PCBs. Given the highly trained nature of these workers, the relatively small amounts of PCBs used per application, and the fact that products containing PCBs must be labeled as such, EPA has concluded that this use results in only a limited potential for exposure to PCBs.

Although the use of PCBs in capillary microscopy also requires only relatively small amounts of PCBs, given the expected high rate of dermal absorption of PCBs, intentional application to the skin may result in significant exposure to PCBs. EPA has concluded that the use of PCBs in capillary microscopy may result in significant exposure to PCBs.

3. Exposure From the Use of PCBs in Small Quantities for Research and Development

PCBs are used in toxicological and environmental testing. They are also used in analytical chemistry as "reference standards" for the analysis of unknown compounds that may contain PCBs.

These uses require only relatively small amounts of PCBs. Further, EPA marking regulations require containers to be labeled as containing PCBs. In addition, EPA regulations require PCBs used in small quantities for research and development to be hermetically sealed in five-milliliter containers. This volume restriction was instituted to ensure that the use of PCBs in research and development resulted in only limited exposure to PCBs.

Given the highly trained nature of laboratory workers and scientists, the small amounts of PCBs used, and the fact that products containing PCBs must be labeled as such, EPA has concluded that the use of small quantities of PCBs for research and development results in only a limited potential for exposure to PCBs.

4. Exposure From the Use of PCBs as Optical Fluids

According to comments received on the proposed rule, as is the case with the use of PCB low fluorescence immersion oil, the number of researchers utilizing PCBs as optical liquids is relatively small: About 50 researchers. These comments indicate that scientists in the fields of space, communications, and defense-related research use 0.02 cc to 4 liters of PCBs in certain specialized optical applications including use in fiber optic connectors. Although the amount of PCBs used per application may be up to 4 liters, comments submitted in response to the proposed rule indicate that the PCBs used in these applications are contained in optical equipment and thus exist in a permanent or semi-permanent state.

This use of PCBs requires only a relatively small amount of PCBs. Further, during use, these PCBs are contained in optical equipment such as in fiber optic connectors, where they exist in a permanent or semi-permanent state. Given the highly trained nature of scientists, the relatively small amounts of PCBs used per application, and the fact that the PCBs are contained within optical equipment, EPA has concluded that this use results in only a limited potential for exposure to PCBs.

5. Exposure From the Use of PCBs as Calibration Standards

Comments submitted in response to the proposed rule indicate that PCBs are useful as calibration standards. These comments indicate that small amounts of PCBs are used as calibration standards for refractometer calibration.

The technique used in calibrating a refractometer involves placing 0.01 cc of PCBs in the refractometer and calibrating the refractometer based on the known refractive index of the PCBs. Since refractometers are used to measure the refractive indices of substances, it is important to calibrate accurately the instrument before using it to measure experimentally the refractive indices of other materials.

The calibration of a refractometer occurs in a laboratory setting at a frequency of about once per week. Assuming that there are refractometers

in most laboratories, and that the 1970 census data are correct, EPA estimates that about 174,000 technologists could potentially use PCBs as calibration standards. However, there are many other different materials, with known refractive indices that could also be used for purposes of calibrating refractometers.

Although EPA estimates that about 0.01 cc of PCB calibration standard is used per application, the calibration standards contain high concentrations of PCBs. Further, skin contact with calibration standards may occur during use because calibrating a refractometer involves the transfer of the PCBs to a small cell within the instrument and the subsequent removal and cleansing of the cell following the completion of the calibration exercise.

EPA recognizes that the PCBs as calibration standards requires only relatively small amounts of PCBs. Further, EPA acknowledges that scientists and researchers are highly trained and generally experienced in the handling of toxic chemicals such as PCBs, and PCB products must be labeled as containing PCBs. Given these factors, EPA believes that the use of PCBs as calibration standards for refractometers results in a limited potential for exposure to PCBs.

C. The Benefits of Using PCBs and the Availability of Substitutes

1. Mounting Medium

PCBs have been reported to be an ideal mounting medium for light microscopy primarily because of their stability, refractive index, viscosity, and thermoplastic properties. In the past, the principal users have been mineralogists and chemical microscopists employed in chemical laboratories such as police crime laboratories, museum conservation laboratories, industrial laboratories, where contaminant particles in drugs, food, and plastics are identified, and in laboratories studying environmental contaminants.

Although testimony at the September 1978 public hearing on the original authorization for the use of PCBs as a mounting medium indicated that a substitute mounting medium would be available before July 1, 1984, comments submitted in response to the November 17 1983 proposed rule suggest that adequate substitute materials still are not available in some areas of use.

In April 1983, EPA sent letters to persons who testified about this use at the September 1978 public hearing. In particular, EPA requested current information on the availability of substitute materials. Two responses indicated that an adequate substitute for use in art and historic conservation was still not yet available. One firm did indicate that they had tested a number of different materials over the last five years, and that a potential substitute material was currently undergoing testing. A review of petitions submitted to EPA for exemption from the ban on the manufacture, processing, and distribution in commerce of PCBs indicated that at least one firm expects to develop a substitute mounting medium by January of 1985. However, firms currently testing this material on a trial basis are less confident about the efficacy of this material.

In the proposed rule, EPA believed that the only essential use of PCBs as a mounting medium was in the field of art and historic conservation. That is, EPA believed that no adequate substitutes existed for this particular use pattern. Because of the nature of art and historic conservation, rare particles must be permanently mounted in a medium that will not discolor or lose its optical properties in time. Based on information submitted by users of PCB mounting medium, EPA believes that the only medium that displays this property is PCB.

Although the stability of PCBs makes them attractive to other users as well, EPA believed that these other users are not frequently called upon to prepare permanent slides of particles that can be considered to be rare. Comments submitted in response to the proposed rule indicate that EPA's basic assumption was correct: That other users are not frequently called upon to prepare permanent slides of rare particles. However, these comments also indicate that in the relatively rare circumstances where a permanent mount is needed in fields other than art and historic conservation, there is no adequate substitute for PCBs at this time. Although mounting media exist with similar refractive indices and viscosities to PCBs, these media reportedly discolor in time. Examples of other uses where PCBs are necessary include the preservation of crime evidence and the preservation of samples from manufacturing process upsets.

2. Immersion Oils

Comments received in response to the proposed rule indicate that PCB immersion oil has the lowest fluorescence of any currently available formulation, and that this property is particularly important in fluorescence microscopy where the immersion oil must not fluoresce, so as to compete with the fluorescence of the specimen under analysis. Testimony at the September 1978 public hearing on the original use authorizations indicated that substitute immersion oils for PCBs were available. Thus, in 1979, EPA decided not to authorize the use of PCBs in immersion oil. However, comments submitted in response to the November 17 1983 proposed rule indicate that the substitute immersion oils, which were thought to be in existence in 1979, proved to be inadequate for certain specialized uses.

According to comments submitted in response to the proposed rule, since 1979 no completely satisfactory substitute for PCBs has been found, and, that after extensive research, there appears to be no other material with the desirable low auto-fluorescence, low dispersion, and high refractive index of PCBs.

According to sources in the medical community, adequate substitutes for PCB immersion oils are, however, available for use in capillary microscopy.

3. Research and Development

Other chemicals cannot be substituted in toxicological, environmental or analytical testing for PCBs.

4. PCBs in Optical Fluids

Comments on the use of PCBs as optical liquids in space, communications, and defense-related research projects indicate that for certain specialized optical uses, including the use of PCBs in fiber optic connectors and tunable light receivers, there are no adequate substitutes for PCBs. According to comments on the proposed rule, there are relatively few compounds with as high a refractive index as PCBs and none that also have the long term stability.

An example of an optical use of PCBs, where their use is essential, is the use of PCBs with tunable light receivers for the analysis of light from the solar telescope to be installed in Skylab II. According to these comments, PCBs are necessary in these light receivers because of their stability and ability to transmit light better in the blue and green regions of the spectrum than other potential substitute fluids. This region of the spectrum is where starlight is transmitted.

5. Calibration Standards

Although comments on the proposed rule indicate a desire to have PCBs available for use as calibration standards for refractometers, EPA believes that adequate substitute materials exist for PCBs for this use

pattern. As discussed in the preceding unit, comments on the proposed rule indicate that there are compounds available with the high refractive index of PCBs. Further, in the rulemaking record to the May 31, 1979 PCB Ban Rule, one of the major producers of microscope immersion oils indicated that they had produced PCB-free immersion oils that could be used as calibration liquids; the refractive indices of these materials are high and known to four significant figures. Since long term stability is not really an essential feature for a calibration standard (as long as the stability is known), EPA believes that these other materials with similar refractive indices to PCBs could be used for purposes of calibrating refractometers. EPA believes that although substitute materials may not have the long term stability of PCBs, their stability is known. Therefore, EPA believes that nonPCB materials can be substituted for use as calibration standards for refractometers.

D. Economic Impact of Regulatory Options

1. Mounting Medium

The May 1979 PCB Ban Rule (44 FR 31514) authorized the use of PCBs as a mounting medium for microscope slides until July 1, 1984. In anticipation of this expiration date, EPA considered the following major options: allowing the authorization for use as a mounting medium to expire on July 1, 1984; extending the authorization to allow all or limited uses of PCBs for microscopic mounting for a limited time; and, amending the authorization to allow all or limited uses of PCBs for microscopic mounting for an indefinite period of time.

a. Allowing the authorization to expire on July 1, 1984. The direct cost of a ban can be represented as the lost sales to the producers (netted out against any increase in sales of substitutes), and the lost value of a permanent slide mount with desirable optical properties to the users. The cost to the producers of allowing the use authorization to expire on July 1, 1984, is about $2,500 per year, which includes a consideration of the lost sales plus the costs of collection and disposal in EPA-approved PCB disposal facilities.

In addition, there are other potential costs associated with the loss of use of PCBs for permanent mounting. In areas such as art and historic conservation, crime investigation, and certain industrial uses (where EPA believes that no adequate substitutes exist), the impacts of banning PCB use may be significant. However, it is difficult to estimate the monetary value of being unable to prepare a permanent slide mount of a sample of a rare art or historic work, a piece of crime evidence, or a sample from a manufacturing process upset. Comments submitted in response to the proposed rule suggest that these potential costs could be significant.

b. Extending the use authorization to allow all or limited uses of PCBs to continue for several years. Under this option, the economic impact of an immediate ban could be reduced. First, this option would allow additional time for the development of substitutes in areas where none exist. Second, this option would allow the continued sale and use of PCBs for the length of the extension to the authorization.

In the proposed rule, EPA authorized the use of PCBs as a mounting medium only in the field of art and historic conservation. Comments received in response to the proposed rule indicate that there are essential uses of PCBs as a mounting medium in areas other than art and historic conservation. For this reason, EPA did not consider limiting the use of PCBs as a mounting medium in this final rule.

c. Amending the use authorization to allow the use of PCBs to continue indefinitely. Allowing PCBs to be used indefinitely as a mounting medium for microscope slides would have no negative economic impact on users or producers of the medium.

2. Immersion Oil

In response to comments received on the proposed rule, EPA considered three major options for the use of PCBs in immersion oil for fluorescence microscopy: Not authorizing the use of PCBs in immersion oil; authorizing the use of PCBs in immersion oil for several years; and, authorizing the use of PCBs in immersion oil indefinitely.

a. Not authorizing the use of PCBs in immersion oil. Since this use is currently not an authorized use, there is no direct cost associated with not authorizing the use of PCBs in this manner. However, although there are no lost sales to consider, there are other potential indirect costs associated with not being able to use PCBs as low fluorescence immersion oils. In certain areas of medical research, such as in cancer studies, comments on the proposed rule indicate that there are no adequate substitutes for PCB low fluorescence immersion oils. It is difficult to estimate the monetary value of not being able to obtain the best view of a sample under analysis as part of a cancer research study. However, comments submitted on the proposed rule indicate that PCB low fluorescence immersion oil is very valuable in cancer research studies.

Sources in the medical community have indicated, however, that PCBs are not valued in capillary microscopy because PCB-free substitute materials are available for this use pattern. In this case, then, there would be no direct costs (i.e., lost sales) or indirect costs associated with not authorizing the use of PCB immersion oils in capillary microscopy.

b. Authorizing the use of PCBs in immersion oil for several years. This option would allow the use of PCBs for an additional period of time, while research continues for the development of substitutes in areas where none exist. EPA is concerned, however, about the cost to industry and EPA of reconsidering this use authorization should it expire prior to the development of an adequate substitute.

c. Authorizing the use of PCBs in immersion oils indefinitely. Allowing PCBs to be used in immersion oil would have no negative economic impact on users of the medium.

3. Research and Development

Small quantities of PCBs are used in toxicological testing, in environmental sampling, and in analytical testing by industry, the public, and governmental agencies. Analytically pure samples of PCBs are probably used every day in laboratories throughout the country. Although allowing the statutory ban to become effective is theoretically one available alternative, EPA believes an immediate ban on these uses of PCBs would be unacceptable since it would disrupt a broad range of beneficial activities throughout the United States.

Further, EPA believes that analytically pure PCBs will be needed for the foreseeable future. Thus, EPA is issuing an indefinite use authorization for the use of small quantities of PCBs in research and development. This option has no negative economic impact on producers or users of small quantities of PCBs in research and development.

4. PCBs in Optical Liquids

In response to comments on the proposed rule, EPA considered three major options for the use of small quantities of PCBs as optical liquids: not authorizing the use of PCBs in optical liquids; authorizing the use of PCBs in optical liquids for several years; and, authorizing the use of PCBs in optical fluids indefinitely.

a. Not authorizing the use of PCBs in optical fluids. Since this use is not currently an authorized use, there are no direct costs of not authorizing the use of

PCBs as optical fluids. However, there may be indirect costs associated with researchers being unable to use PCBs in certain critical areas of research. As was the case with the use of PCBs in mounting medium and immersion oil, it is difficult to quantify the monetary value of being unable to use PCBs in optical research-related equipment. However, comments on the proposed rule indicate that PCBs are very valuable as optical liquids.

b. Authorizing the use of PCBs in optical liquids for several years. As was the case with the use authorizations for the use of PCBs in mounting medium and immersion oil, EPA is concerned about the costs to industry and EPA of reconsidering this use authorization, should it expire prior to the development of adequate substitute materials.

c. Authorizing the use of PCBs in optical liquids indefinitely. There is no negative economic impact associated with this option.

5. Calibration Standards for Refractometers

In response to comments received on the proposed rule, EPA considered three major options for the use of PCBs as calibration standards for refractometers: not authorizing this use; authorizing this use for a fixed period of time; and, authorizing this use indefinitely.

a. Not authorizing the use of PCBs as calibration standards. Since the use of PCBs as calibration standards is not currently an authorized use, there is no direct cost of not authorizing the use of PCBs in this manner. Further, EPA believes that there is little indirect cost associated with not authorizing the use of PCBs as calibration standards, because EPA believes that adequate non-PCB substitutes exist for this use pattern.

b. Authorizing the use of PCBs as calibration standards for several years. This option would allow the use of PCBs as calibration standards for several years, while research continues for the development of a calibration standard with the long-term stability of PCBs. EPA is concerned, however, about the cost to industry and EPA of reconsidering this use authorization should it expire prior to the development of a substitute with the long term stability of PCBs.

c. Authorizing the use of PCBs as calibration standards indefinitely. Allowing PCBs to be used as calibration standards indefinitely would have no negative economic impact on users of the medium.

E. Risk Benefit Assessment

1. Use as a Mounting Medium in Microscopy

The use of PCBs as a mounting medium presents some level of risk to microscopists because EPA believes that PCBs are toxic and that there is a potential for exposure to these PCBs during use. EPA recognized the risks posed to users of PCB mounting medium in the May 1979 use authorization but nevertheless authorized the use until July 1, 1984. In its May 1979 decision, EPA determined that the continued use of PCBs in this manner until July 1, 1984, did not pose an unreasonable risk to public health or the environment because of the small quantities of PCBs used and the lack of an adequate substitute.

Allowing an immediate ban to take effect as of July 1, 1984, could result in substantial costs to specific groups of users for whom an adequate substitute is not yet available. At the same time, an immediate ban would be the most environmentally attractive alternative because it would result in a reduction in exposure to PCBs and could stimulate the immediate development of substitute materials.

Extending the May 1979 use authorization for several more years reduces the immediate impact of a ban, but increases human and environmental exposure to PCBs compared to a ban. Extending the authorization for several years could create uncertainty in the regulated community about the possibility of future extensions to the authorization. In addition, future extensions to this use authorization would require both Agency and industry resources.

Amending the use authorization to allow the indefinite use of PCBs as a mounting medium eliminates any negative economic impact on producers or users of the material. However, this option is the least attractive alternative environmentally, since it allows the indefinite use of PCBs.

Limiting the use of PCBs to use only in art and historic conservation would reduce the environmental impact of an indefinite use authorization. However, EPA believes that in most fields of microscopy there would be occasions where the use of PCBs for the preparation of a permanent mount would be necessary. Finally, this option eliminates the uncertainty associated with a timed authorization and future costs to industry and EPA of reconsidering this use authorization. Should EPA become aware of the development of an adequate substitute for use in art and historic conservation (through its yearly review of petitions for exemption to manufacture, process, and distribute in commerce PCBs), EPA will consider amending the indefinite use authorization and allow it to expire.

2. Use of PCBs as Immersion Oils

The use of PCBs as low fluorescence immersion oils presents some level of risk to microscopists because EPA believes that PCBs are toxic and that there is a potential for exposure to these PCBs during use. However, EPA also believes that scientists and researchers are highly trained and generally experienced in the use of toxic materials such as PCBs. These factors limit the potential for exposure to PCBs during their use as low fluorescence immersion oils.

The use of PCB immersion oil in capillary microscopy presents a higher potential risk because this technique involves the direct and intentional application of PCBs to the skin surface. EPA believes that PCBs are toxic and that exposure to PCBs should be avoided. Further, EPA believes that adequate substitutes for PCBs exist in capillary microscopy.

Since the use of PCBs in capillary microscopy is not currently an authorized use, there is no direct cost (lost sales) associated with not authorizing this particular use. There are also no indirect costs to consider, because adequate substitutes for PCBs exist for use in capillary microscopy.

Although not authorizing this use of PCBs as low fluorescence immersion oils would result in little direct economic impact on users of this immersion oil, in certain limited areas of medical research, there are no adequate substitutes for PCBs. At the same time, not authorizing this use would be the most attractive alternative environmentally because it would result in no additional exposure to PCBs.

Allowing the use of PCBs as immersion oils in fluorescence microscopy for several years would reduce the immediate economic impact of a ban, but would also increase exposure to PCBs when compared to the option of not authorizing this use. In addition, should adequate substitute materials not be developed by the expiration date of the authorization, EPA and industry may have to expend additional resources re-examining this use for a possible time extension to the authorization.

Allowing the indefinite use of PCBs as immersion oils in fluorescence microscopy eliminates any exonomic impact on producers or users of the oil. However, this is the least attractive

option environmentally, since this essentially allows a new use of PCBs (with the associated additional exposure to PCBs) to occur indefinitely. This option eliminates the uncertainty associated with use authorizations with fixed expiration dates, and eliminates future costs to industry and EPA of reconsidering this use pattern should adequate substitute materials not be developed by the expiration date of the authorization.

Should EPA become aware of the development of an adequate substitute for PCB immersion oil in fluorescence microscopy (through its yearly review of petitions for exemption to manufacture, process, and/or distribute in commerce PCBs for use as immersion oil), EPA will consider amending the indefinite use authorization and allow it to expire.

3. Use of PCBs in Small Quantities for Research and Development

The use of PCBs in research and development presents some level of risk to users because EPA believes that PCBs are toxic. While there is some potential for exposure to PCBs during their use in research and development, EPA recognized the low potential for exposure when it originally authorized the use of PCBs in small quantities for research and development until July 1, 1984. In its May 1979 decision, EPA determined that the continued use of PCBs in research and development until July 1, 1984, did not pose an unreasonable risk to public health or the environment. This was because of the importance of ongoing research on the effects of PCBs and the need, by both industry and government, to have analytical standards. EPA determined that the limited exposure associated with the use of small quantities of PCBs for research and development did not pose an unreasonable risk in light of the potential benefits of continued research.

Although allowing an immediate ban to take effect as of July 1, 1984, would reduce exposure to PCBs, EPA believes that such a ban could disrupt a broad range of beneficial ongoing activities. These activities include toxicological and environmental testing and analytical testing. Although amending the May 1979 use authorization by extending it for several years would reduce exposure to PCBs compared to an indefinite use authorization it would serve only to delay the economic impact of a ban for several years. Finally, creating an indefinite use authorization would result in no economic impact to either producers or users of these materials, but, would increase exposure to PCBs compared to the two alternatives discussed above.

4. Use of PCBs as Optical Fluids

The use of PCBs as optical fluids presents some risk to users because PCBs are toxic, and there is some potential for exposure to PCBs during use. However, PCBs used as optical fluids are in a permanent or semi-permanent state in optical equipment. Further, scientists and researchers are highly trained workers, generally experienced in the use of toxic chemicals such as PCBs.

Although not allowing this use of PCBs would result in little direct economic impact on users of this material, EPA believes that in certain optical research areas, including the use of PCBs in fiber optic connectors and tunable light receivers, there are no adequate substitutes for PCBs. At the same time, not authorizing this use would be the most attractive alternative environmentally, because it would result in no additional exposure to PCBs.

Allowing the use of PCBs as optical fluids for several years would reduce the immediate impact of a ban, but, would increase exposure to PCBs when compared to the option of not authorizing this use. In addition, should adequate substitute materials not be developed prior to the expiration date of the authorization, EPA and industry may have to expend additional resources re-examining this use for a possible time extension.

Authorizing the indefinite use of PCBs as optical fluids eliminates any economic impact on producers or users of this material. However, this is the least attractive alternative environmentally, since this essentially allows a new use of PCBs (with the associated additional exposure to PCBs) to occur. This option eliminates the uncertainty associated with use authorizations that have fixed expiration dates, and also eliminates future costs to EPA and industry of reconsidering this use pattern should adequate substitute materials not be developed by the expiration date of the authorization.

Should EPA become aware of the development of adequate substitutes for PCB optical fluids (through its yearly review of petitions for exemption to manufacture, process, or distribute in commerce PCB optical liquids), EPA will consider amending the indefinite use authorization and allow it to expire.

5. Use of PCBs as Calibration Standards

The use of PCBs as calibration standards for refractometers presents some level of risk to users because EPA believes that PCBs are toxic and that there is some potential for exposure to these PCBs during use. However, factors such as the highly trained nature of researchers, their experience in handling toxic chemicals, and the fact that PCB products must be labeled as containing PCBs mitigate the risks associated with this use of PCBs.

Since the use of of PCBs as calibration standards for refractometers is not currently an authorized use, there are not direct costs (lost sales) associated with not authorizing this particular use. Further, there are no indirect costs to consider, since EPA believes that adequate substitutes exist for the use of PCBs in this manner.

Not authorizing the use of PCB as calibration standards is the most attractive alternative environmentally, because selecting this option would mean no additional exposure to PCBs. Further, because EPA believes that adequate substitutes exist for PCBs, there are no direct or indirect costs associated with not authorizing this use.

Authorizing the use of PCBs for a fixed period of time or indefinitely would serve only to increase exposure to PCBs in an area where other adequate substitute materials exist.

F Findings on the Use of PCBs as a Mounting Medium in Microscopy, as an Immersion Oil, as an Optical Fluid, and in Small Quantities for Research and Development

1. Mounting Medium

In view of the analysis above, EPA proposes to authorize the use of PCBs as a mounting medium indefinitely. EPA believes that authorizing the use of PCBs as a mounting medium indefinitely does not present an unreasonable risk for the following reasons:

a. If EPA did not authorize the use of PCBs as a mounting medium, mounts of specimens, including some rare and valuable specimens, could discolor in time and be lost.

b. There are no substitutes for PCBs as mounting media in the preparation of permanent mounts.

c. Releases of PCBs to the environment and exposure to humans and biological organisms from the use of PCBs in this relatively small field is expected to be limited because of the highly trained nature of scientists, their experience in handling toxic chemicals, the small quantities used, and the fact that PCB products must be labeled as containing PCBs.

EPA will monitor progress in the development of substitute materials for use in microscope mounting by reviewing information submitted annually through the exemption petition

process. Should substitute materials be developed, EPA will consider amending this authorization to allow it to expire.

2. Immersion Oil

In view of the analysis above, EPA is authorizing the use of PCBs as low fluorescence immersion oils indefinitely. EPA is not authorizing the use of PCB immersion oils in capillary microscopy. EPA has concluded that the use of PCBs as immersion oils in fluorescence microscopy does not pose unreasonable risk to public health or the environment for the following reasons:

a. If EPA did not authorize the use of low fluorescence PCB immersion oils, the use of PCB immersion oils in beneficial areas including certain types of medical research would be banned.

b. Releases of PCBs to the environment and exposure to humans and other biological organisms from the use of PCB immersion oils in low fluorescence microscopy are expected to be minimal because of the highly trained nature of scientists, their general experience in handling toxic chemicals, the small quantities used, and the fact that PCB products must be labeled as containing PCBs.

c. There are no adequate substitutes for PCBs in certain specialized low-fluorescence uses.

3. Research and Development

In view of the analysis above, EPA proposes to authorize the use of small quantities of PCBs for research and development indefinitely. EPA has concluded that the use of small quantities of PCBs for research and development indefinitely does not pose an unreasonable risk to public health or the environment for the following reasons:

a. If EPA did not authorize the use of small quantities of PCBs for research and development, beneficial toxicological, environmental, and analytical testing of PCBs would be banned.

b. Releases of PCBs to the environment and exposure to humans and other biological organisms from the use of PCBs in small quantities for research and development are expected to be minimal.

c. There are no substitutes for PCBs in research and development.

d. Analytical grade PCBs are needed for the foreseeable future.

4. Use of PCBs Optical Liquids

In view of the analysis above, EPA is authorizing the use of PCBs as optical liquids. EPA has concluded that the use of PCBs optical liquids does not pose an unreasonable risk to public health or the environment for the following reasons:

a. If EPA did not authorize the use of PCBs as optical liquids, the use of PCBs in beneficial areas including space, communications, and defense-related research would be banned.

b. Releases of PCBs to the environment and exposure to humans and other biological organisms from the use of PCBs as optical liquids are expected to be minimal because of the highly trained nature of scientists, their general experience in handling toxic chemicals such as PCBs, the small quantities of PCBs used and the sealed nature of their use, and the fact that PCB products must be labeled as containing PCBs.

c. There are no adequate substitutes for PCBs.

5. Calibration Standards

In view of the analysis presented above, EPA is not authorizing the use of PCBs as calibration standards for refractometers.

IV. Executive Order 12291

Under Executive Order 12291, issued February 17 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impacts Analysis be prepared. EPA has determined that this amendment to the PCB rule is not a major rule as the term is defined in section 1(b) of the Executive Order.

EPA has determined that the amendment is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be substantially less than $100 million; it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. In fact, this rule allows uses of PCBs in mounting medium and research and development to continue that would otherwise be prohibited by section 6(e) of TSCA after July 1, 1984. This rule also allows two additional uses of PCBs; the use as immersion oil and the use as optical fluids.

This amendment ws submitted to the Office of Management and Budget (OMB) as required by the Executive Order 12291.

V Regulatory Flexibility Act

Under section 604(b) of the Regulatory Flexibility Act, 5 U.S.C. 603, the Administrator may certify that a rule will not have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

The effect of this rule is to avoid the disruption of a broad range of activities and to reduce the costs of complying with TSCA. This rule will reduce the burden on small businesses that would otherwise be encountered if the July 1, 1984 ban on the use of PCBs as a mounting medium and in small quantities for research and development went into effect. This rule also allows two additional previously unauthorized uses of PCBs. Since no negative economic impact is expected upon any business activity from the promulgation of this rule, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

VII. Official Record of Rulemaking

In accordance with the requirements of section 19(A)(3)(E) of TSCA, EPA is issuing the following list of documents which constitute the record of this rulemaking. Public comments, the transcript of the rulemaking hearing, or submissions made at the rulemaking hearing or in connection with it are not listed because these documents are exempt from Federal Register listing under section 19(a)(3). A full list of these materials will be available on request by contacting the TSCA Public Information Officer (see ADDRESSES).

A. Previous Rulemaking Records

(1) Official rulemaking record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibition Rule" published in the Federal Register of May 31, 1979, (44 FR 31514).

(2) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Final Regulation" published in the Federal Register of February 17 1978, (43 FR 7150).

(3) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution, and Use in Closed and Controlled Waste Manufacturing Processes" published in the Federal Register of October 21, 1982, (47 FR 46980).

(4) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution,

in Commerce and Use Prohibitions; Use in Electrical Equipment" published in the Federal Register of August 25, 1982, (47 FR 37342).

(5) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Microscopy and Research and Development" published in the Federal Register of November 17 1983, (48 FR 52402).

(6) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rules" published in the Federal Register of November 1, 1983 (48 FR 50486).

B. Federal Register Notices

(7) USEPA, "Polychlorinated Biphenyls (PCBs) Disposal and Marking Final Regulation" 43 FR 7150, February 17 1978.

(8) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions" 44 FR 31514, May 31, 1979.

(9) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment" 47 FR 37342, August 25, 1982.

(10) USEPA,"Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes" 47 FR 46980, October 21, 1982.

(11) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Microscopy and Research and Development" 48 FR 52402, November 17 1983.

(12) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rules" 48 FR 50486, November 1, 1983.

C. Support Documents

(13) USEPA, OPTS, EED, "Letter Soliciting Data on Use Authorization for Use of PCBs in Microscopy." April 13, 1983.

(14) Philadelphia Museum of Art, Marigene H. Butler, "Comments on Use Authorization for Microscopy." April 29, 1983.

(15) USEPA, OPTS, EED, "Record of Telephone Communication Between Martha Goodway of the Smithsonian and Denise Keehner of EPA." May 9(?), 1983.

(16) R.P Cargille Laboratories, Inc., William J. Sacher, "Petition for PCB Processing and Distribution in Commerce Exemption." July 18, 1983.

(17) McCrone Research Institute, Walter C. McCrone, "Petition from PCB Processing and Distribution in Commerce Prohibitions." July 9, 1983.

(18) McCrone Research Institute, Walter C. McCrone, "Letter Describing Safety Precautions in Handling of PCBs." January 7 1983.

(19) Journal of the American Medical Association, "Letter: Polychlorinated Biphenyls in Microscope Immersion Oil." April 1, 1983.

VIII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the Federal Register, as reflected in **"DATES"** in this notice. The effective date has, in turn been calculated from the promulgation date.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

(Sec. 6, Pub. L. 94-469; 90 Stat. 2025 (15 U.S.C. 2605))

Dated: June 27 1984.

Alvin L. Alm,

Acting Administrator.

PART 761—[AMENDED]

Therefore, 40 CFR 761.30 is amended by revising paragraphs (j) and (k) and adding paragraphs (n) and (o) to read as follows:

§ 761.30 Authorizations.

* * * * *

(j) *Small quantities for research and development.* PCBs may be used in small quantities for research and development, as defined in § 761.3(ee), in a manner other than a totally enclosed manner, indefinitely. Manufacture, processing, and distribution in commerce of PCBs in small quantities for research and development is permitted only for persons who have been granted an exemption under TSCA section 6(e)(3)(B).

(k) *Microscopy mounting medium.* PCBs may be used as a permanent microscopic mounting medium in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as a mounting medium are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

* * * * *

(n) *Microscopy immersion oil.* PCBs may be used as an immersion oil in fluorescence microscopy, in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as a low fluorescence immersion oil are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(o) *Optical liquids.* PCBs may be used as optical liquids in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as optical liquids are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

[FR Doc. 84-17901 Filed 7-0-84; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66008B; TSH-FRL-2584-7]

Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petitions for Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for additional comments on certain individual and class petitions for exemption.

SUMMARY: This proposed rule related notice addresses 50 of the remaining individual and class petitions for exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. EPA is issuing this notice to solicit comments on 49 petitions for exemption to manufacturers, process and distribute in commerce substances or mixtures inadvertently contaminated with 50 parts per million (ppm) or greater PCBs. All of these petitions are affected by the final PCB Exclusions, Exemptions, and Use Authorizations Rule (hereinafter referred to as the Uncontrolled PCB Rule) published elsewhere in this issue of the Federal Register, which may make an exemption unnecessary. EPA also is issuing this notice to solicit comments on Ward Transfer Co., Inc.'s petition for exemption to buy and sell used PCB-contaminated transformers. In evaluating this exemption petition, EPA raised a new issue about whether granting an exemption would result in an unreasonable risk or injury to health or the environment.

DATES: (1) The 49 petitioners whose exemption petitions are affected by the Uncontrolled PCB Rule must evaluate that rule and decide whether they still need an exemption to continue their activities. If a petitioner still needs an exemption, it must submit written comments renewing its exemption petition no later than October 1, 1984.

(2) For Ward Transformer Co., Inc.'s exemption petition, EPA will accept comments from petitioner and other interested parties until August 23, 1984.

(3) An informal public hearing, if requested, will be held in Washington, D.C., on September 6, 1984. The exact time and location of the hearing will be available by calling EPA's TSCA Assistance Office. EPA intends to evaluate the comments submitted and to conduct rulemaking in accordance with the procedures described in Unit II of this preamble. Reply comments made in response to issues raised at the hearing must be submitted no later than one week after the hearing.

ADDRESSES: Since some comments pertaining to the 51 deferred exemption petitions may contain confidential business information, all comments should be sent in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket number OPTS-66008B. Comments received on this proposed rule related notice will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 Environmental Protection Agency, 401 M St., SW., Washington, D.C.

The exact time and location of the hearing, if requested, will be available by calling EPA's TSCA Assistance Office.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, D.C.. (554-1404), outside the USA: (Operator-202-554-1414).

SUPPLEMENTARY INFORMATION:

I. Introduction

The proposed PCB Exemptions Rule published in the Federal Register of November 1, 1983 (48 FR 50486) addressed 172 pending individual and class exemption petitions. During the comment period on the proposed rule, 17 of the 172 exemption petitions were withdrawn or dismissed, and four new exemption petitions were accepted for consideration. Thus, 159 exemption petitions remain to be resolved. EPA is taking action on 109 exemption petitions in the final PCB Exemptions Rule published elsewhere in this issue of the Federal Register. In this proposed rule related notice, EPA is soliciting comments on the other 50 exemption petitions.

II. Comments and Rulemaking Procedures

EPA encourages commentors to submit nonconfidential information. However, commentors who believe that they can state their position only by using confidential information may submit it to the Agency in accordance with the requirements of 40 CFR 750.16 (for manufacturing exemptions) or 40 CFR 750.36 (for processing and distribution in commerce exemptions). Persons who submit confidential information must, at the same time, submit a nonconfidential summary of the information claimed to be confidential for inclusion in the public record. Please mark confidential information "CONFIDENTIAL" and send it via certified mail to the TSCA Public Information Office (see address listed under "ADDRESS"). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2. Information not marked "CONFIDENTIAL" will be placed in the public record and may be publicly disclosed by EPA without prior notice.

EPA will conduct all public hearings in accordance with EPA's "Procedures for Conducting Rulemaking Under section 6 of the Toxic Substances Control Act" (40 CFR Part 750). Commentors who want to participate in the public hearings must write to EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT") and indicate that they want to participate. The public hearings are meant to provide an opportunity for commentors to present additional information or to discuss new issues, not to repeat information already presented to EPA in written comments.

III. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than one year.

EPA's Interim Procedural Rules for PCB Manufacturing Exemptions describe the required content of manufacturing exemption petitions and

the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the Federal Register of November 1, 1978 (43 FR 50905) and are codified at 40 CFR 750.10–750.21.

EPA's Interim Procedural Rules for PCB Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the Federal Register of May 31, 1979 (44 FR 31558) and are codified at 40 CFR 750.30–750.41.

B. History of PCB Rulemaking

The history of PCB rulemaking is described in detail in the proposed PCB Exemptions Rule published in the Federal Register of November 1, 1983 (48 FR 50486). Since that proposed rule was published, EPA has issued two final rules that affect EPA's disposition of these pending exemption petitions.

First, the Uncontrolled PCB Rule published elsewhere in this issue of the Federal Register addresses the manufacture, processing, distribution in commerce, and use of certain inadvertently generated and recycled PCBs in low level concentrations. Among other things, that rule does the following: (1) Amends the PCB rule published in the Federal Register of October 21, 1982 (47 FR 46980) (the Closed and Controlled Waste Manufacturing Processes Rule) by excluding additional processes from regulation; and (2) defers action on 49 petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCB pending the submission of additional information by petitioners.

Second, the PCB Exemptions Rule published elsewhere in this issue of the Federal Register takes final action on 109 of the pending exemption petitions and defers action on the 50 exemption petitions addressed in this proposed rule related notice.

C. Effect of This Notice on Previous Policy Statements

In the Federal Register of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the Federal Register of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as the activities were underway before January 1, 1979 (for manufacturing) and July 1, 1979 (for processing and distribution in commerce).

The 49 petitioners whose exemption petitions are affected by the Uncontrolled PCB Rule must evaluate that rule and decide whether they still need an exemption to continue their activities. If a petitioner still needs an exemption, it must submit written comments renewing its exemption petition no later than October 1, 1984. If an exemption petition is renewed, EPA will allow the petitioner to continue the activities for which it requests exemption until EPA has acted to grant or deny the exemption. If the exemption petition is not renewed, EPA will dismiss the exemption petition.

In evaluating Ward Transformer Co., Inc.'s petition for exemption to buy and sell used PCB-contaminated transformers, EPA is raising a new issue about whether granting an exemption would result in an unreasonable risk to health or the environment. This issue is discussed in detail in Unit VII of this preamble. EPA will accept comments until August 23, 1984. EPA will allow the petitioner to continue buying and selling used PCB-contaminated transformers until EPA has acted to grant or deny the exemption.

EPA intends to continue its policy of requiring petitioners who file late exemption petitions to show "good cause" why EPA should accept the petition for consideration, as described in the notice published in the Federal Register of March 5, 1980 (45 FR 14247).

IV Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically, EPA considers the following factors:

1. The effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denying an exemption petition.

These are the same factors that EPA must consider in deciding whether a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under sections 6(a) and 6(e) of TSCA.

A. Effects on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that are part of the rulemaking record for the PCB Ban Rule published in the Federal Register of May 31, 1979 (44 FR 31514). Before the proposed PCB Exemptions Rule was published, EPA evaluated this information, plus new information submitted to the Agency and other recent literature. The results are presented in EPA's "Response to Comments on Health Effects of PCBs" (August 19, 1982). During the comment period on the proposed PCB Exemptions Rule, two commentors presented additional information about the adverse health effects of PCBs. EPA evaluated this information, as well as other recent literature, and has determined that none of the information submitted changes EPA's conclusions about the health effects of PCBs. The results are presented in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984). All of these documents are included in the rulemaking record and are summarized below. Copies of these documents are available from EPA's TSCA Assistance Office (see address listed under "**FOR FURTHER INFORMATION CONTACT**").

1. Health Effects

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree of which would depend on exposure. Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that

do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmental toxic effects. Postnatal effects have been demonstrated on immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases chloracne may occur in humans exposed to PCBs. Severe cases of chloracne are painful, disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. Environmental Effects

Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are released into the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs also have been demonstrated.

3. Risks

Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA takes exposure into consideration when evaluating each exemption petition, as discussed in later units of this preamble.

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the activity for which exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA takes the benefits and costs into consideration when evaluating each exemption petition, as discussed in later units of this preamble.

V. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considers the kind of exemption the petitioner is requesting, whether substitutes exist and are readily available, and whether the petitioner expended time and money to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it does to substitute non-PCBs for PCBs or to show why it does not seek to substitute non-PCBs for PCBs. EPA considers the attempt to make good faith efforts when evaluating each exemption petition, as discussed in later units of this preamble.

VI. Actions Affected by the Uncontrolled PCB Rule

In earlier proposed PCB Exemptions Rule, EPA deferred action on 49 petitions for exemption to manufacture, process, or distribute in commerce substances or mixtures inadvertently contaminated with 50 ppm or greater PCBs. EPA did so because the activities for which each of these petitioners requested exemption would be affected by the ongoing Uncontrolled PCB Rulemaking. Only 49 of these exemption petitions remain to be resolved because EPA dropped one of the exemption petitions which is not affected by the Uncontrolled PCB Rule and which was incorrectly included in the earlier proposed PCB Exemptions Rule.

In this notice EPA is still deferring action on these 49 exemption petitions because the final Uncontrolled PCB Rule, published elsewhere in this issue of the Federal Register, sets new regulatory cutoffs for the inadvertent manufacture, processing, distribution in commerce, and use of certain PCBs. EPA recognizes that the new regulatory cutoffs may affect many of the 49 petitions for exemption to manufacture, process, or distribute in commerce inadvertently generated PCBs. For example, some petitioners are engaged in activities that, because of the discounting for monochlorinated and dichlorinated biphenyls, involve concentrations of PCBs at levels below the new regulatory cutoffs and, therefore, will no longer need an exemption. On the other hand, other petitioners are engaged in activities that involve concentrations of PCBs at levels above the new regulatory cutoffs, and, therefore, will still need an exemption to continue their activities.

Each petitioner should review the Uncontrolled PCB Rule to decide whether it still needs an exemption. If an exemption is still needed, a petitioner must renew its exemption petition by submitting updated information to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment and to show that it made good faith efforts to develop non-PCB substitutes for PCBs. Petitioners must submit the information required by 40 CFR 750.10–750.21 (for manufacturing exemption petitions) and 40 CFR 750.30–750.41 (for processing and distribution in commerce exemption petitions) no later than October 1, 1984. EPA will evaluate the new information submitted and will then propose to grant or deny each petition based on the information submitted.

If a petitioner does not renew its exemption petition by October 1, 1984, EPA will assume that the petitioner no longer needs an exemption and will dismiss the exemption petition. The effect of such a dismissal is that the petitioner would not be allowed to continue the activities if it does not notify EPA of compliance with the Uncontrolled PCB Rule. The continuation of such activities would be a violation of section 15 of TSCA and would make the petitioner liable for penalties under section 16 of TSCA.

Each of the 49 exemption petitions, except for one petition submitted by Mobay Chemical Corp., is for activities that were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce). Each of these petitioners (except Mobay Chemical Corp.) is still allowed to continue the activities for which it requested exemption until EPA acts on the petition, in accordance with the EPA policy described in Unit III.C of this preamble. Mobay Chemical Corp. is not allowed to engage in the activities for which it requested exemption until EPA acts on the petition, because such activities were not underway before July 1, 1979.

Therefore, each of the following 49 exemption petitioners should evaluate the effects of the Uncontrolled PCB Rule

and, if necessary, renew its exemption petition by October 1, 1984:

A. Manufacturing Exemptions

Aluminum Co. of America, Pittsburgh, PA 15219 (ME-3).
American Hoechst Corp., Somerville, NJ 08876 (ME-5).
Diamond Shamrock Corp., Pasadena, TX 77501 (ME-27).
Dow Chemical Co., Midland, MI 48640 (ME-29, ME-30 and ME-30.1).
General Electric Co., Fairfield, CT 06431 (ME-39).
Hilton-Davis Chemical Co., Division of Sterling Drug Inc., Cincinnati, OH 45237 (ME-50).
Olin Corp., Stamford, CT 06904 (ME-75).
PPG Industries, Inc., Pittsburgh, PA 15222 (ME-81 and ME-81.1).
SDS Biotech Corp., Painesville, OH 44077 (ME-28 and ME-28.1).
Stauffer Chemical Co., Westport, CT 06880 (ME-90).

B Processing and Distribution in Commerce Exemptions

Acme Printing Ink Co., Chicago, IL 60607 (PDE-164.1).
Aluminum Co. of America, Pittsburgh, PA 15219 (PDE-13).
American Can Co., Greenwich, CT 06830 (PDE-14).
American Cyanamid Co., Savannah, GA 31402 (PDE-16).
American Hoechst Corp., Somerville, NJ 08876 (PDE-70.5).
American Paper Institute, Inc., Washington, DC 20036 (PDE-89).
American Thermoplastics Corp., Subsidiary of Phillips Petroleum Co., Houston, TX 77020 (PDE-245.1).
Binney & Smith, Inc., Easton, PA 18042 (PDE-34).
Buckeye Printing Ink Co., Inc., Columbus, OH 43209 (PDE-164.2).
Chemical Specialties Manufacturers Association, Washington, DC 20036 (PDE-42).
Columbia Paint Corp., Huntington, WV 25728 (PDE-47).
Crown Metro, Inc., Greenville, SC 29606 (PDE-70.1).
Daicolor Division, Daimichiseika Color & Chemicals America, Inc., Pine Brook, NJ 07058 (PDE-58).
Dow Chemical Co., Midland, MI 48640 (PDE-64 and PDE-67).
Dow Chemical Co., Plaquemine, LA 70764 (PDE-68).
Eastman Kodak Co., Eastman Chemicals Division, Kingsport, TN 37662 (PDE-70.6).
Forrest Paint Co., Eugene, OR 97402 (PDE-90).
Galaxie Chemical Corp., Paterson, NJ 07524 (PDE-95).
Goodyear Tire & Rubber Co., Akron, OH 44316 (PDE-102).
Hilton-Davis Chemical Co., Division of Sterling Drug Inc., Cincinnati, OH 45237 (PDE-70.4).
Ideal Toy Corp., Hollis, NY 11423 (PDE-70.3).
Inmont Corp., Clifton, NJ 07015 (PDE-123).
Minnesota Mining & Manufacturing Co., St. Paul, MN 55133 (PDE-157.2).
Mobay Chemical Corp., Dyes and Pigments Division, Union, NJ 07083 (PDE-157.10).
National Association of Chemical Distributors, Chicago, IL 60602 (PDE-162).
National Paint and Coatings Association, Washington, DC 20005 (PDE-167).
Prestige Printing Ink Co., Fort Worth, TX 76105 (PDE-70.2).
Reed Plastics Corp., Holden, MA 01520 (PDE-224).
Soap and Detergent Association, New York, NY 10016 (PDE-244).
Society of the Plastics Industry, Inc., New York, NY 10017 (PDE-245).
Uniroyal Chemical Co., Rovel Polymers Group, Naugatuck, CT 06770 (PDE-283).
Uniroyal, Inc., Middlebury, CT 06749 (PDE-284).
U.S. Department of the Treasury, Bureau of Engraving and Printing, Washington, DC 20228 (PDE-288).
United States Printing Ink Co., East Rutherford, NJ 07073 (PDE-164.3).

VII. Ward Transformer Co., Inc.

Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE-294), submitted a petition for exemption to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers. Since the requested exemption is for an activity that was underway before July 1, 1979, the petitioner has been allowed to continue the activities for which it requested exemption until EPA acts on the petition, in accordance with the EPA policy described in Unit III.C of this preamble.

The petitioner is engaged in the following activities for which an exemption is required: (1) Buying and selling PCB transformers or PCB-contaminated transformers without introducing PCBs into these transformers; and (2) buying PCB transformers or PCB-contaminated transformers, introducing non-PCB fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v). The petitioner needs an exemption, because it is distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3(i).

In the earlier proposed rule, EPA described certain activities that do not require an exemption. Section 6(e)(3)(C) of TSCA and 40 CFR 761.20(c)(1) allow a person to distribute in commerce PCB transformers and PCB-contaminated transformers without the need for an exemption, provided the following conditions are met:

(1) The transformer was originally distributed in commerce before July 1, 1979, for purposes other than resale.

(2) The transformer is totally enclosed (i.e., intact and nonleaking) when it is distributed in commerce.

(3) No PCBs are introduced into the transformer (including PCB fluid or PCB-contaminated fluid originally removed from and returned to the same transformer.)

(4) The transformer is distributed in commerce only within the United States. Unless each of the four conditions described above is met, a person must petition for and obtain an exemption from EPA before processing or distributing in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers.

EPA originally proposed to deny Ward Transformer's exemption petition, because the petitioner did not show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs, due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs. In addition, EPA determined that the costs of denying these petitions would be small. Based on the limited information submitted by the petitioner, EPA estimated the incremental costs of denial to be $90 to $240 for an average size PCB-contaminated transformer, assuming that all the transformer fluid had to be replaced and disposed of. EPA recognized that the additional costs resulting from denial might render a portion of petitioner's buying and selling activity unprofitable, but concluded that the added risk of exposure to PCBs and the small costs of denial outweighed the relatively small benefits to society of granting an exemption.

Since Ward Transformer did not submit enough information to meet the first statutory requirement for obtaining an exemption, EPA did not base the proposed denial on the second requirement of TSCA section 6(e)(3)(B), which is that petitioner must make good faith efforts to substitute non-PCBs for PCBs.

During the comment period on the proposed rule, EPA received the following comments:

Ward Transformer commented that EPA should grant it an exemption to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers for the following reasons: (1) Granting an exemption would result in no unreasonable risk of injury to health or the environment, because Ward Transformer's bulk oil storage facilities, storage yard containment, runoff control, and waste water treatment comply with all EPA regulations for handling, storing, and disposing of PCBs; (2) Ward Transformer uses only non-PCB fluid (i.e., less than 50 ppm PCBs) to refill the used transformers that it buys and sells; and (3) denying an exemption would cause Ward Transformer to go out of business, because sales of 200 used transformers in 1982 represented 33 percent of its business and sales of 95 used transformers in 1983 represented 30 percent of its business. Ward Transformer commented that since all of these transformers were retrofilled with non-PCBs, it has shown good faith efforts to substitute non-PCBs for PCBs. During the public hearing on the proposed rule, EPA asked Ward Transformer why it does not reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them. In its reply comment, Ward Transformer explained that it is not technically feasible for it to reclassify PCB-contaminated transformers to non-PCB transformers before selling them, because it does not have the facilities to energize and place "in service" for 90 days transformers having many different sizes and voltages. In addition, Ward Transformer stated that it would be prohibitively expensive to do so (an estimated $100,000 per transformer in electricity costs alone).

The Electrical Apparatus Service Association (EASA) also submitted comments in support of granting an exemption to Ward Transformer and 264 other companies it represents. EASA's comments are basically the same as those of Ward Transformer: granting an exemption would allow a company to replace a customer's burned-out transformer in days instead of months, thereby helping small utilities and industrial companies provide efficient and reliable electrical service throughout the United States; would not result in human or environmental exposure to PCBs; and would avoid large costs of denial. During the public hearing on the proposed rule, EPA asked EASA why a company does not reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them. In its reply comment, EASA explained that it is not technically feasible for companies to reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them, because repair shops do not have the facilities to energize and place "in service" for 90 days transformers having many different sizes and voltages.

In considering Ward Transformer's petition for an exemption, EPA is aware that Robert Ward, Jr., an officer of Ward Transformer, was convicted under the criminal provisions of section 16(b) of TSCA, 15 U.S.C. 2615, of knowingly or willfully causing the unlawful disposal of PCBs, and under 18 U.S.C. 2 of aiding and abetting the unlawful disposal of PCBs (*United States* v. *Ward*, 676 F.2d 94 (4th Cir. 1982), *cert. denied*, 103 S. Ct. 79 (1982)). Throughout this rulemaking, neither EPA nor Ward Transformer has raised the issue of Mr. Ward's PCB-related conviction as a factor in deciding whether to grant an exemption to Ward Transformer. In the absence of information to the contrary, EPA believes that Mr. Ward's conduct creates a cause for concern that granting an exemption to Ward Transformer may result in an unreasonable risk of injury to health or the environment. This concern can be allayed if Ward Transformer submits clear and convincing evidence to show that granting an exemption would not result in such a risk.

Therefore, EPA specifically solicits the following information on the issue of unreasonable risk: (1) A description of the methods Ward Transformer uses to protect workers during the buying, servicing, and selling of PCB transformers and PCB-contaminated transformers; (2) records of the amount of PCB fluid and PCB-contaminated fluid Ward Transformer collected and disposed of since July 1, 1982; (3) records of the PCB disposal sites and the owners or operators of those sites where Ward Transformer disposed of PCB fluid and PCB-contaminated fluid since July 1, 1982; (4) records of how many PCB transformers and PCB-contaminated transformers Ward Transformer purchased and from whom since July 1, 1982; (5) records of how many PCB transformers and PCB-contaminated transformers Ward Transformer sold and to whom since July 1, 1982; (6) the amount of Ward Transformer's total sales (in dollars) since July 1, 1982; and (7) the reasonably ascertainable loss of sales (in dollars) if EPA were to deny an exemption to buy and sell used PCB-contaminated transformers. In addition, Ward Transformer should provide an affirmation that it has acted since July 1, 1982 in a manner that indicates good faith compliance with all applicable federal, state, and local laws and regulations for the protection of human health and the environment. Based on the information submitted on the earlier proposed rule and additional information submitted in response to this notice, EPA will take final action to grant or deny Ward Transformer s exemption petition.

EPA realizes that delaying final action on Ward Transformer's exemption petition will allow it to continue the activities for which it requested an exemption until EPA acts on the petition. In the interest of fairness or other similarly situated petitioners, whose exemption petitions are being granted or denied in the final PCB Exemptions Rule published elsewhere in this issue of the Federal Register, EPA intends to issue a final rule as soon as possible. If EPA does grant an exemption to Ward Transformer, EPA intends to make the exemption expire on the same date as the one-year exemption granted to other companies in the final PCB Exemptions Rule published elsewhere in this issue of the Federal Register.

VIII. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted in docket number OPTS-66001 (manufacturing exemptions) and OPTS-66002 (processing and distribution in commerce exemptions) was consolidated into docket number OPTS-66003. Information and comments submitted in response to this proposed rule related notice will be filed in docket number OPTS-66003B.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents which constitutes the record of this rulemaking. A supplementary list or lists may be published any time on or before the date the final rule is issued. Public comment, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing or in connection with it are not listed, because these documents are exempt from Federal Register listing under section 19(a)(3). However, these documents are included in the public record, and a full list of these materials is available on request from EPA's

TSCA Assistance Office listed under **FOR FURTHER INFORMATION CONTACT.**

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-66005, 43 FR 7150, February 17 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS-66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Develpment," Docket No. OPTS-62031, 48 FR 52402, November 17 1983.

B. Federal Register Notices

(8) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs); Ban Exemption."

(9) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(10) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyls (PCBs) Processing and Distribution in Commerce Prohibitions."

(11) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions."

(12) 44 FR 42727 July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs); Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(13) 45 FR 14247 March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(14) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal."

(15) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS-66008.

(16) 48 FR 52402, November 17 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS-62031.

(17) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS-62032.

C. Support Documents

(18) USEPA, OPTS, EED, Letter from Marigene H. Butler, Philadelphia Museum of Art, to Martin P Halper, EPA, "Use of PCBs in Microscopy" (April 29, 1983).

(19) USEPA, OPTS, EED, Telephone Communication between Denise Keehner, EPA, and Martha Goodway, Smithsonian Institution, "Use of PCBs in Microscopy" (May 9, 1983).

(2) USEPA, OPTS, EED, "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984).

(21) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(22) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (Apr. 1984).

(23) USEPA, OPTS, HERD, "Response to Comments on Health Effects of PCBs" (August 19, 1982).

(24) USEPA, OTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use in Ban Regulation: Economic Impact Analysis" (Apr. 1979).

D. Reports

(25) USEPA, ORD, EMSL, "A Method for Sampling and Analysis of Polychlorinated Biphenyls (PCBs) in Ambient Air" (August 1978). EPA-600/4-78-048.

E. Other

(26) Manufacturing Exemption Petitions and Related Communications in Docket No. OPTS-66001.

(27) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS-66002.

IX. Executive Order 12291

Under Executive Order 12291, issued February 17 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule related notice is not a "major rule" as that term in defined in section 1(b) of the Executive Order.

EPA has concluded that this proposed rule related notice is not a "major" rule under the criteria of section 1(b) because the annual effect on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Indeed, this proposed rule related notice allows the continued manufacture, processing, and distribution in commerce of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners whe met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemptions.

Although this proposed rule related notice is not a major rule, EPA has analyzed the economic impact using the guidance in the Executive Order to the extent possible. This proposed rule related notice was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

X. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with any rulemaking for which EPA must publish a general

notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA estimated the costs of denying Ward Transformer Co., Inc.'s petition for exemption to buy and sell used PCB-contaminated transformers. EPA estimated the incremental costs of denial to be $160 for a used 46-gallon PCB-contaminated transformer. Ward Transformer stated that it sold 200 transformers in 1982 and 95 transformers in 1983. Assuming that granting an exemption would allow Ward Transformer to sell 150 PCB-contaminated transformers during a one-year exemption, EPA estimated the total costs of denial to be $24,000.

EPA did not estimate the costs of denial for the 49 exemption petitions affected by the Uncontrolled PCB Rule. At this point, EPA cannot predict how many exemption petitions will be renewed and, if renewed, how many will be granted or denied. EPA will estimate the economic impact of denial on small business entities after it receives any renewed petitions.

Therefore, in accordance with section 605(b) of the Act, I certify that a final rule, if promulgated, will not have a significant economic impact on a Substantial number of small entities. EPA solicits comments from petitioners and other interested persons concerning the economic impact of this proposed rule related notice on small business entities. In addition, EPA is sending a copy of this proposed rule related notice to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of Section 603 do not alter in any manner standards otherwise applicable by law to agency action. In general, the manufacture, processing, and distribution in commerce of PCBs are prohibited by section 6(e)(3)(A) of TSCA and the PCB regulations, 40 CFR Part 761. Section 6(e)(3)(B) of TSCA permits EPA to grant exemptions from these prohibitions, if the Administrator finds that a petitioner has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that it has made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically or socially desirable policy to grant an exemption to a small business, it could do so only if the small bussiness met the requirements set forth in TSCA.

XI. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA's original request to collect information for this rulemaking was approved by OMB and was assigned OMB Control Number 2000-0466. EPA's subsequent reguest to collect information for this rulemaking through December 31, 1984, was approved by OMB and was assigned OMB Control Number 2070-0021.

List of Subjects in 40 CFR Part 761

Hazardous materials, labeling, polychlorinated biphenyls, recordkeeping and reporting requirements, environmental protection.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

Dated: June 27, 1984.

Alvin L. Alm,

Acting Administrator.

[FR Doc. 84-17300 Filed 7-9-84; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Tuesday
July 10, 1984

Part III

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 298
Chapter 2 of the Education Consolidation and Improvement Act of 1981, Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981

AGENCY: Education Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for activities authorized under Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). These proposed regulations implement changes made to Chapter 2 by the Education Consolidation and Improvement Act of 1981 Technical Amendments to improve the administration of the program.

DATE: Comments must be received on or before August 24, 1984.

ADDRESS: Comments should be addressed to Mr. Allen King, Deputy Director, Division of Educational Support, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2006, FOB-6), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Allen King. Telephone: (202) 245-7965.

SUPPLEMENTARY INFORMATION:

A. Overview of Chapter 2

Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 2 consolidated over 40 education grant programs into a single authorization of grants to States for the same purposes as the antecedent programs, but to be used in accordance with the educational needs and priorities of State and local educational agencies (SEAs and LEAs) as determined by those agencies. The basic responsibility for the administration of Chapter 2 funds is in the SEAs. Responsibility for the design and implementation of Chapter 2 programs, however, is mainly that of LEAs, school superintendents and principals, and classroom teachers and supporting personnel. Final regulations implementing the provisions of Chapter 2 were published on November 19, 1982 in 47 FR 52368 as 34 CFR Part 298.

Overview of these proposed regulations

On December 8, 1983, Congress enacted the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98-211) to improve the implementation of the ECIA. These proposed regulations implement changes made to Chapter 2 by Pub. L. 98-211. In particular, the Secretary proposes to amend the following sections of the Chapter 2 regulations in 34 CFR Part 298:

Section 298.3 General responsibilities of State and local educational agencies

This section implements three changes made by Pub. L. 98-211. First, paragraph (a)(2) implements section 9(b) of Pub. L. 98-211, which requires States to assure in their Chapter 2 applications that, apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA has not exercised any influence in the decisionmaking processes of its LEAs concerning the LEAs' expenditures of Chapter 2 funds. Second, paragraph (b) incorporates the provision on State rulemaking contained in section 15 of Pub. L. 98-211. This proposed amendment replaces the prior authority for State rulemaking contained in § 298.3(a)(2). Third, paragraph (c)(2) implements section 9(c) of Pub. L. 98-211, which places responsibility on each LEA to ensure that each expenditure of funds under Chapter 2 is for the purpose of meeting the educational needs within the schools of the LEA.

Section 298.5 Allotments to States of Chapter 2 funds

Paragraph (a)(1) implements the change made by section 11 of Pub. L. 98-211, which requires the Secretary to reserve one percent of the Chapter 2 appropriation for payments to the Insular Areas.

Section 298.7 LEA applications

Paragraph (a) implements the requirement in section 13 of Pub. L. 98-211 that SEAs certify LEA applications.

Section 298.17 State audits

Paragraph (b)(2) implements section 12 of Pub. L. 98-211, which permits States to audit LEAs receiving less than an average of $5,000 per year under Chapter 2 once every five years, rather than every two years as required by Section 1745 of the Omnibus Budget Reconciliation Act of 1981.

Section 298.51 Practice and procedure

Section 16 of Pub. L. 98-211 deletes the reference to a hearing "on the record" in section 592(a) of the ECIA. In so doing, Congress made clear that it did not intend the lengthy and time-consuming hearing procedures required by the Administrative Procedure Act to apply to withholding hearings under the ECIA. Therefore, as the proposed change to § 298.51 indicates, practice and procedure before the Education Appeal Board for withholding hearings under the ECIA will be governed by the same rules that govern proceedings for the review of the final audit determinations or cease and desist complaints. These rules include the taking of a transcript of the proceedings. *See* 34 CFR 78.48.

C. Application of Other Statutes and Regulations

Public Law 98-211 makes several changes in the applicability of other statutes that affect Chapter 2. Section 18(a) of Pub. L. 98-211 amends section 596 of the ECIA to clarify the applicability of the General Education Provisions Act (GEPA) to Chapter 2. As amended, section 596 provides that, unless a section of GEPA is specifically excluded by section 596, the provisions in GEPA apply to Chapter 2. With two exceptions, the amendment to section 596 coincides with the Department's position on the applicability of GEPA published on November 19, 1982 at 47 FR 52370. The first exception concerns the applicability of section 425 of GEPA, which deals with appeal procedures at the State and Federal level available to an LEA that has been adversely affected by a decision of its SEA. The second exception concerns the applicability of section 437(b of GEPA, which authorizes the Secretary and the Comptroller General of the United States to have access to records of recipients' funds for purposes of audit or program compliance. Public Law 98-211 makes sections 425 and 437(b) applicable to Chapter 2.

Section 18(b) of Pub. L. 98-211 repeals a portion of the "State Uses of Federal Funds" report required by section 406A(a) of GEPA. The repealed sections required States to collect and furnish information on the amount of Federal funds received by each LEA, the purposes for which these funds were spent, and the individuals served by these activities, all tabulated with respect to the second preceding year.

According to section 596 of the ECIA, sections, 434, 435, and 436 of GEPA are not applicable to Chapter 2 "except to the extent that such sections relate to fiscal control and fund accounting procedures. " The Secretary indicated in the preamble of the Chapter 2 regulations that the provision in section 434 that applies to Chapter 2 is subsection (a)(2) pertaining to the

Secretary's discretionary authority to request a plan on audits. The Secretary decided not to require such a plan for audits of the Chapter 2 program. *See* 47 FR 52370 (November 19, 1982). Upon further consideration in conjunction with the review of GEPA applicability in Pub. L. 98-211, the Secretary has determined that sections 434(b) (2) and (3) relating to SEA suspension and withholding of payments to LEAs that have failed to comply with Federal program requirements also deal with fiscal control and fund accounting procedures and are therefore applicable to Chapter 2.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financial assistance under Chapter 2. However, the regulations will not have a significant economic impact on the LEAs affected. The regulations implement technical amendments enacted by Congress and impose minimal requirements to ensure the proper allocation and expenditure of Chapter 2 funds. Some provisions of the regulations may reduce burdens and increase flexibility for LEAs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before August 24, 1984 will be considered in developing the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2006, FOB-6, 400 Maryland Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 298

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—education, Private schools, State administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.151, Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: July 3, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Part 298 of Title 34 of the Code of Federal Regulations as follows:

PART 298—ACTIVITIES UNDER CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

1. Section 298.3 is revised to read as follows:

§ 298.3 General responsibilities of State and local educational agencies.

(a) *State educational agencies.* (1) Except as provided in paragraph (a)(2) of this section, a State educational agency (SEA)—

(i) Has the basic responsibility for the administration of funds made available under Chapter 2; and

(ii) Is the State agency responsible for the administration and supervision of programs assisted with Chapter 2 funds.

(2) Apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA may not exercise any influence in the decisionmaking process of a local educational agency (LEA) concerning the expenditures described in the LEA's application under section 566 of Chapter 2.

(b) *State rulemaking.* (1) Chapter 2 does not—

(i) Authorize States to issue regulations that apply to LEAs operating programs or projects funded under Chapter 2, except as related to State audits and financial responsibilities; or

(ii) Encourage, preempt, or prohibit regulations issued under State law.

(2) If a State adopts rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2 (including those based on State interpretation of any Federal statute, regulation, or guideline), the State shall—

(i) Ensure that the rules, regulations, or policies are not in conflict with the provisions of—

(A) Chapter 2;

(B) The regulations in this part; or

(C) Other applicable Federal statutes and regulations.

(3) If a State adopts rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2 (including those based on State interpretation of any Federal law, regulation, or guideline), the State shall identify the rule, regulation, or policy as a State-imposed requirement.

(c) *Local educational agencies.* (1) Section 566(c) of Chapter 2 provides that each LEA has complete discretion, subject only to the provisions of Chapter 2, in determining how funds the agency receives under section 565(a) of Chapter 2 are distributed among the purposes of Chapter 2 in accordance with the LEA's Chapter 2 application.

(2) In exercising this discretion, an LEA shall ensure that each expenditure of Chapter 2 funds is for the purpose of meeting the educational needs within the schools of that LEA.

(Sec. 561(b), 20 U.S.C. 3811(b); sec. 564(a), 20 U.S.C. 3814(a), as amended by sec. 9(b) of Pub. L. 98-211; sec. 566(c), 20 U.S.C. 3816(c), as amended by sec. 9(c) of Pub. L. 98-211; sec. 591(d), 20 U.S.C. 3871(d), added by sec. 15 of Pub. L. 98-211)

2. Section 298.5 is amended by revising paragraph (a)(1) to read as follows:

§ 298.5 Allotments to States of Chapter 2 funds.

(a) * * *

(1) Reserves one percent of the Chapter 2 appropriation for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands to be allotted in accordance with their respective needs. If no more reliable data are available, the Sercretary determines respective needs according to the relative enrollments in public and private schools within each territory;

* * * * *

(Sec. 563, 20 U.S.C. 3813, as amended by sec. 11 of Pub. L. 98-211)

3. Section 298.7 is amended by revising paragraph (a) to read as follows:

§ 298.7 LEA applications.

(a) An LEA may receive its allocation of funds under Chapter 2 for any year for which its application to the SEA has been certified to meet the requirements in section 566(a) of Chapter 2.

* * * *

(Sec. 566, 20 U.S.C. 3816, as amended by sec. 13 of Pub. L. 98-211)

4. Section 298.17 is amended by revising paragraph (b) to read as follows:

§ 298.17 State audits.

* * * * *

(b) *Frequency of audit.* (1) Except as provided in paragraph (b)(2) of this section, a State shall conduct the audits required by paragraph (a) of this section every two years. The first two-year period begins on July 1, 1982.

(2) A State does not need to audit LEAs that receive less than an average of $5,000 per year under Chapter 2 more frequently than once every five years.

* * * * *

(Sec. 1745 31 U.S.C. 1243 note; sec. 564(c), 20 U.S.C. 3814(c), added by sec. 12 of Pub. L. 98-211)

5. Section 298.51 is revised to read as follows:

§ 298.51 Practice and procedure.

Practice and procedure before the Board in a proceeding for review of a final audit determination, an intent to withhold funds, or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78 (Education Appeal Board).

(Sec. 592(a), 20 U.S.C. 3872(a), as amended by sec. 16 of Pub. L. 98-211; sec. 451(c) of GEPA, 20 U.S.C. 1234(e))

[FR Doc. 84-18202 Filed 7-9-84; 8:45 am]
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Federal Register

Tuesday
July 10, 1984

Part IV

Department of Energy

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Notice

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Gulf Oil Corporation in settlement of enforcement proceedings brought by the DOE's Office of Special Counsel.

DATE AND ADDRESS: Applications for refund must be postmarked by January 7 1985, should conspicuously display a reference to case number HFX-0101, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION: Suggested formats for refund may be obtained by writing to:

Mrs. Margaret A. Slattery, Public Docket Room, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Other information may be obtained by contacting:

Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Gulf Oil Corporation and the DOE. The consent order settled nearly all disputes between the DOE and Gulf concerning possible violations of DOE price controls in the firm's sales of petroleum products to its customers during the period August 19, 1973 through January 31, 1976.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by January 7 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 29, 1984.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Supplemental Order

Name of Petitioner: Gulf Oil Corporation
Date of Filing: March 26, 1984
Case Number: HFX-0101

This Decision and Order relates to special refund procedures promulgated by the Office of Hearings and Appeals (OHA) on July 13, 1979. Those refund procedures were never implemented, because the DOE was enjoined by a United States District Court from implementing them. A recent settlement of litigation by the DOE and Gulf Oil Corporation (Gulf) lifted the injunction, and we are now in a position to proceed with a special refund proceeding to distribute $42,240,000 obtained from Gulf plus accumulated interest.

I. Background

The history of this proceeding is complex and rather unusual. On July 26, 1978, Gulf and the DOE entered into a consent order in which Gulf agreed to remit $42,240,000 to the DOE in lieu of any further remedial action by the DOE with respect to interaffiliate imported crude oil transactions and purchases of foreign crude oil by Gulf through a foreign affiliate during the period August 19, 1973, through January 31, 1976. *See Office of Special Counsel for Compliance,* 4 DOE ¶ 82,511 at 85,041 (1979). In response to a Petition for Special Redress filed by the DOE's Office of Special Counsel for Compliance (OSC), the OHA issued an Interim Decision and Order describing interim refund procedures that the OHA intended to implement in that case. *Office of Special Counsel for Compliance,* 1 DOE ¶ 82,536 (1978).

The 1978 Petition for Special Redress filed in the Gulf matter was perceived by OHA as the first of a new type of proceeding in which sizable sums of money tendered to the DOE by regulated firms in the oil industry in settlement of pending enforcement actions would be distributed among their customers as restitution for alleged overcharges. Thereafter the DOE developed and promulgated new procedural regulations for the distribution of refunds which superseded the interim procedures. *See* Notice of Proposed Rulemaking, 43 FR 53256 (November 15, 1978); Notice of Rulemaking, 44 FR 8561 (February 9, 1979); 10 CFR Part 205, Subpart V On March 2, 1979, OSC filed a Petition for the Implementation of Special Refund Procedures in which it requested that the OHA adopt and utilize the procedures set forth in the new Subpart V of the DOE regulations to distribute funds to be paid by Gulf pursuant to the July 26, 1978 consent order. On July 13, 1979, the OHA issued a Decision and Order in which it established refund procedures (hereinafter the "1979 refund procedures"), based on the newly adopted Subpart V regulations, for the distribution of the funds that Gulf would remit to the DOE. *Office of Special Counsel for Compliance,* 4 DOE ¶ 82,511 (1979).

The DOE regulations in effect at the time required notice of a proposed consent order which involves a settlement of over $500,000 to be published in the Federal Register and a public comment period of 30 days prior to finalization of the consent order. Before the Gulf consent order was made final, a lawsuit was filed in the United States District Court for the Eastern District of New York. *Stertz v. Gulf Oil Corporation,* 78 Civ. 1813 (E.D.N.Y. filed August 12, 1978). *Stertz* purported to be a class action brought against Gulf on behalf of purchasers of Gulf products. The DOE was joined as a party to the proceeding and was enjoined by the court from taking any further action regarding the proposed Gulf settlement. As a result of the injunction issued in *Stertz,* the DOE never finalized the Gulf consent order, Gulf did not remit the $42,240,000 to the DOE, and the refund process at OHA was unable to go forward.

On March 20, 1984, Gulf and the DOE entered into a Stipulation of Settlement in *Stertz.* Under the terms of the settlements, Gulf would pay $42,240,000 into an interest-bearing escrow account in the United States Treasury, the injunction preventing implementation of the refund process would be lifted, and the DOE would modify the 1979 refund procedures in certain respects.[1] The

[1] The Stipulation of Settlement did not resolve the issue of whether Gulf should be required to pay the DOE interest for the use of the consent order funds since 1978. The Gulf consent order was signed on July 26, 1978. Under DOE regulations, notice of a consent order which involves more than $500,000 must generally be published in the Federal Register,

Continued

1979 procedures and the 1984 modifications to them are described in detail below.

The refund procedures originally established in *Office of Special Counsel for Compliance*, 4 DOE ¶ 82,511 (1979), were published in the Federal Register on July 23, 1979. 44 FR 43098–100 (1979). They provided that a future notice would be published in the Federal Register describing procedures in more detail, including the period of time during which the OHA would accept applications for refund. Applications could be filed by any persons who believed that they were entitled to a refund as a direct result of Gulf's alleged pricing practices during the period August 19, 1973, through January 31, 1976. Persons who had obtained final judgments against Gulf after trial in a court of competent jurisdiction for claims arising out of alleged overstatements of landed crude oil costs by Gulf during that same period and persons who had reached settlement agreements for claims of that type could also file for a refund based on those judgments and settlements, provided the amount of any settlement had been approved by OSC. A reserve fund, to be established with funds from the escrow account, would be provided for payment of court judgments or settlements that might occur in cases still pending after nine months and that involve claims based on matters addressed in the 1978 Consent Order. The amount of the reserve fund would be jointly determined by Gulf and OSC or, if they should fail to agree upon a sum, by an independent third party.

The 1979 refund procedures also specified the required contents of an application for refund, which will be described in detail below. A refund would be granted if the applicant persuasively demonstrated the amount of its Gulf purchases during the consent order period and, if the applicant were a reseller or wholesale purchaser, it met additional conditions prescribed for those businesses. Refunds would be processed first for all direct purchasers from Gulf and all motorists and homeowners who purchased Gulf products through independent resellers. Any funds remaining after the above claims are paid and the reserves were established would be distributed pro rata in a second stage to all remaining claimants. Any funds remaining after that second-stage distribution would be disbursed as OHA deemed appropriate. The procedures also provided that Gulf would assist in the evaluation of refund applications and provide reasonable information to an applicant upon request.

Because of the March 20, 1984 Stipulation of Settlement, the 1979 refund procedures must be modified in several material respects. Approval of a judgment or settlement by OSC, which is necessary before an applicant may apply for a refund based on the judgment or settlement, shall not be unreasonably withheld. The time limit within which Gulf may file such claims on behalf of potential recipients and within which Gulf must notify OHA of any outstanding claims of this type has been shortened from 15 months to 9 months from the date of the Federal Register notice announcing that OHA will begin accepting refund applications. Many aspects of the refund procedures are declared to be not applicable to claims based upon court judgments or settlements. These include the contents of an application in section 4 of the refund procedures, the requirement of demonstrating that an applicant reseller was not required to pass through cost reductions in section 5(a)(ii)(A) (which was applicable only to certain resellers in any case), and the provisions in sections 5, 6 and 7 for hearings convened and conducted by OHA with respect to refund applications. The modifications also clarify the fact that applications based upon judgments and settlements shall be paid dollar for dollar and not on the basis of the $0.00122 per gallon figure which applies to applicants basing their refund claims upon purchases of Gulf products. They further specify that the "independent party" proposed in section 11(a) of the 1979 procedures (now section 10(a)), whose function is to determine an amount to be placed in the reserve fund for an outstanding claim when Gulf and OSC cannot reach an agreement, is to be a Special Master, Referee, or Magistrate of the United States District Court for the Eastern District of New York. In addition, only purchasers who bought directly from Gulf (including from company-owned retail service stations and heating oil distributorships) shall receive refunds in the initial stage of this proceeding, together with applicants claiming refunds based on approved court judgments and settlements. Applications from motorists who did not purchase motor gasoline directly from Gulf and homeowners who did not purchase heating oil directly from Gulf will be processed in the second stage, concurrent with all other applications based upon indirect purchases. Finally, any amendments to the procedures as modified above must be approved by the United States District Court for the Eastern District of New York.

The Stipulation of Settlement requires the DOE to give Gulf 10 days written notice before it makes any disbursements from the escrow account. In addition, it provides that a particular document filed in the *Stertz* litigation that contains supplemental comments of both OSC and Gulf, which is referred to as the "Joint Supplemental Comments," shall govern any future disputes that may arise in connection with the refund of any Consent Order monies, notwithstanding the provisions of Section 15 of the 1979 refund procedures.

Revised procedures governing the Gulf refund process, as required by the 1984 Stipulation of Settlement, are set forth below. In summary, they provide that Applications for Refund must be postmarked within 180 days after the date of publication of the Federal Register notice inviting the submission of applications. Any application not filed on a timely basis may be summarily dismissed, and the applicant shall not be entitled to any portion of the funds in the escrow account. If a refund of more than $100 is claimed, the application must be filed in duplicate, because a copy will be made available for public inspection in the OHA Public Docket Room, Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. Any applicant who believes that his application contains confidential information must indicate so on the first page of the application and submit two additional copies of his application from which the information which the applicant claims is confidential has been deleted.

If the application is based upon a court judgment or settlement, a certified copy of the judgment or settlement must be submitted with the application. In all other cases, as explained in more detail below, the application must generally contain the following information:

(1) The name, address and telephone number of the applicant;

(2) A complete statement of the basis of the claim;

(3) For the period August 1, 1973 through January 31, 1976, the total

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and the public must generally be afforded a 30-day period in which to comment before the consent order can become effective. 10 CFR 205.199J.

In the present case, the litigation was commenced before the Gulf consent order could become effective. As a result, Gulf did not remit the settlement sum to the DOE in 1978, and the firm had the beneficial use of the funds until recently, when, as a part of the settlement agreement, it deposited the money into an escrow account maintained by the DOE. In a recent decision the court determined that Gulf is liable to pay the interest on the $42,240,000 for the period from March 6, 1980 through March 26, 1984, the date on which Gulf paid that sum to the DOE, at 12 percent per annum.

quantity of covered petroleum products (a) purchased directly from Gulf and (b) purchased from resellers;

(4) For each type of product, the quantity, location and period of time during which the purchases were made, and if the product is motor gasoline or heating oil, whether it was purchased for personal use in the applicant's home or automobile;

(5) Copies of all recipts, invoices, contracts, agreements, insturments or other documents that establish the validity of the claim;

(6) A statement of whether the applicant has ever filed any other application for refund involving Gulf products with the DOE and whether the applicant is currently or has been a party in any court proceeding involving alleged crude oil pricing violations by Gulf; and

(7) A sworn statement signed by the applicant that all statements made in the application are true and correct to the best of his knowledge and belief.

OHA will review all applications submitted in a timely manner, and grant or deny each application according to the following criteria. OHA may extend the time within which an application may be filed upon a showing of good cause. 10 CFR 205.285. An application must demonstrate that the applicant actually purchased the claimed amount of covered Gulf products during the appropriate time period, or, in the case of an application based upon a court judgment or settlement, that the applicant is entitled to the award of a specific sum of money. In addition, if the applicant is a reseller whose prices were subject to the regulations of the DOE or its predecessors during the relevant period and if the application is based upon purchases of covered Gulf products rather than upon a court judgment or settlement, there must be a demonstration that the applicant would not have been required to pass through to its customers a cost reduction equal to the refund claimed. If the applicant is a wholesale purchaser of Gulf products, such as a public utility, and is subject to federal, state or local regulation of rates or tariffs, it must certify that it will notify each such regulatory agency of any refund it receives pursaunt to these procedures.

If an applicant submits an application based upon purchases of covered Gulf products, he is entitled, upon its approval, to a refund equal to the volume of those products in gallons multiplied by $0.00122. If an approved application is based upon a court judgment or settlement, the applicant will receive payment in the amount of the judgment or settlement, provided, however, that the amount of any such judgment to be satisfied from the Consent Order fund should be limited to such portion of the judgment which is the proportion of $42,240,000 to the total overstated landed costs upon which the judgment is determined, if such disallowed landed costs exceed $42,240,000.

II. Refund Procedures To Be Implemented

The text of the special refund procedures adopted by the DOE for this proceeding and published in the Federal Register on July 23, 1979, as modified by the terms of the Stipulation of Settlement entered into by OSC and Gulf on March 20, 1984, follows. These procedures are the result of a negotiated settlement and are therefore unique to this case. They should not be viewed as precedent with respect to refund procedures in any future or ongoing Subpart V cases.

1. *Notice.* The Office of Hearings and Appeals shall publish an appropriate notice describing the procedures that shall be available to persons who wish to obtain a refund from a special escrow account containing the funds remitted to the DOE pursuant to a consent order entered into by Gulf and the Department of Energy. A notice of this type shall be published in the Federal Register and in such other manner as the Office of Hearings and Appeals deems necessary or desirable. Other methods of publication may include press releases, advertisements in major newspapers and trade journals, and direct mailings to Gulf customers and to trade and customer organizations.

2. *Application for Refund; Filing.* (a) After the date specified in the notice published pursuant to section 1 any person who believes that he is entitled to a refund as a direct result of the pricing practices upon which the Consent Order was based may file an application for refund with the Office of Hearings and Appeals of the Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Any application received before the date specified in the notice will not be considered unless it is resubmitted during the filing period. All applications must be signed by the applicant and should be labeled "Application for Refund—Gulf Oil Corporation Consent Order."

(b) Applications for refunds in excess of $100 must be filed in duplicate, and these applications will be available for public inspection in the Office of Hearings and Appeals, Public Docket Room, at 1000 Independence Avenue, S.W., Washington, D.C. 20585. Any applicant who believes that his application contains confidential information must so indicate on the first page of his application and submit two additional copies of his application from which the information the applicant claims is confidential has been deleted. A statement must also be provided specifying why any such information is privileged or confidential.

(c) Any person who has obtained a final judgment against Gulf after a trial in a court of competent jurisdiction for a claim arising out of alleged overstatements of landed crude oil costs by Gulf during the period August 19, 1973, through January 31, 1976, may submit a refund application based on that judgment. Gulf may also submit an application for refund pursuant to these rules on behalf of any person who has obtained a final judgment against Gulf or with whom it has signed a settlement agreement for the type of claims referred to in the previous sentence. With respect to any agreed upon final judgment or settlement agreement, however, an application for refund may be filed only if the terms, conditions, and amount specified in the agreed upon judgment or settlement agreement have been approved by the Special Counsel. The Office of Special Counsel shall not unreasonably withhold approval of agreed upon judgments or settlement agreements. Applications filed by Gulf pursuant to this subsection shall be considered as having been filed in a timely manner if they are filed within 9 months of the date of publication of the notice required under section 1 of these procedures.

3. *Time for Filing Applications.* An application for refund must be filed during the period that the Office of Hearings and Appeals specifies in the notice issued pursuant to section 1. No applications received before the filing period or after the final deadline or extensions thereof will be considered. The filing period shall not be less than 180 days from the date of publication of the notice in the Federal Register. The Office of Hearings and Appeals may grant extensions of time in which to file applications for refunds for good cause shown. Requests for extensions of time must be in writing and submitted during the filing period.

4. *Contents of Application.* This paragraph shall not apply to applications based upon section 210 judgments or approved settlements. All other applications shall contain the following information:

(a) The name, address and telephone number of the applicant;

(b) A complete statement of the basis for the claim (including the applicant's Gulf account number and other identifying information);

(c)(i) The total quantity of covered petroleum products purchased directly from Gulf and (ii) the total quantity purchased from resellers of Gulf products during the period August 19, 1973 through January 31, 1976;

(d) With respect to each type of product the quantities, locations, periods of time during which the purchases were made and if the product is motor gasoline or heating oil whether it was for the applicant's personal use in his automobile or residence;

(e) Copies of all receipts, invoices, contracts, agreements, instruments or other documents necessary to establish the validity of the claim, including documents necessary to provide the quantities of covered Gulf petroleum products purchased during the period August 19, 1973 through January 31, 1976;

(f) A statement of whether the applicant has ever filed any other application for refund involving Gulf products with the Department of Energy and whether the applicant is currently or has been a party in any court proceeding involving alleged crude oil pricing violations by Gulf; and

(g) A sworn statement signed by the applicant that all statements made in the application are true and correct to the best of his knowledge and belief.

In the alternative, an application may be filed by employing a format suggested by the Department of Energy.

5. *Criteria for Evaluation.* (a) An application for refund based upon purchases of covered Gulf products shall be granted only if an applicant has persuasively demonstrated (i) the amount of Gulf petroleum products purchased during the August 19, 1973 through January 31, 1976 period and (ii) (A) if the applicant is a reseller whose prices were subject to the regulations of the FEA or DOE during the relevant period, that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed, or (B) if the applicant is a wholesale purchaser of Gulf products that is subject to federal, state or local regulation of rates or tariffs, that it has certified that it will notify each such regulatory agency of any refund it receives pursuant to these procedures. The "pass-through" requirement described above shall not apply to applications based upon Section 210 judgments or approved settlements.

(b) The amount of the refund to which a purchaser of Gulf products is entitled shall generally be determined by multiplying the volume in gallons of covered Gulf petroleum products purchased by $0.00122, plus a share of approved interest. Provided, however, that section 210 judgments and approved settlements described in section 2(c) herein be paid dollar for dollar in the amount of such judgments and approved settlements, and not on the basis of the $0.00122 per gallon presumption set forth in the procedures; provided further, however, that the amount of any such judgment to be satisfied from the Consent Order fund shall be limited to such portion of the judgment which is the proportion of $42.24 million to the total overstatement of landed costs upon which the judgment is determine, if such disallowed landed costs exceed $42.24 million.

6. *Processing of Applications.* (a) The Director of the Office of Hearings and Appeals may appoint an administrator to evaluate applications under guidelines established by the Office of Hearings and Appeals. The administrator, if he is not a federal government employee, may be compensated from the funds referred to in the Consent Order. The administrator may design and distribute an optional application form for the convenience of the applicants.

(b) The Office of Hearings and Appeals or its designee may initiate an investigation of any statement made in an application and may require verification of any statement made in an application and may require verification of any document submitted in support of a claim. The Office of Hearings and Appeals or its designee may solicit and accept submissions from interested persons, including Gulf Oil Corporation and the Office of Special Counsel of Compliance, relevant to any application. In evaluating an application, the Office of Hearings and Appeals or its designee may consider information obtained from any other source and may on its own initiative convene a hearing or conference if, in its discretion, it decides that a hearing or conference will advance its evaluation of an application.

(c) The Director of the Office of Hearings and Appeals or his designee shall conduct any hearing or conference that is convened with respect to an application for refund and will specify the time and place for the hearing or conference and notify the applicant. The official conducting the hearing may administer oaths and affirmations, rule on the presentation of information, receive relevant information, dispose of procedural requests, determine the format of the hearing and otherwise regulate the course of the hearing.

(d) The hearing provisions described in this section 6 and in sections 5 and 7 of these procedures shall not apply to applications based upon section 210 judgments or approved settlements.

7. *Decision of the Department of Energy.* Upon consideration of the application and other relevant information received or obtained during the course of the proceeding, the Director of the Office of Hearings and Appeals or his designee shall issue an order granting or denying the application. The order shall contain a concise statement of the relevant facts and the legal basis for the decision. A copy of the order, with such modification as is necessary to ensure the confidentiality of information protected from public disclosure by 18 U.S.C. 1905, shall be served upon the applicant and any person who participated in the proceeding. If the order grants the application and directs payment of a refund, the DOE shall give Gulf 10 days written notice prior to making any disbursement from the escrow account described in section 1.

8. *Effect of Failure to File Timely Application for Refund.* Any application not filed on a timely basis may be summarily dismissed and the applicant shall not be entitled to any portion of the funds submitted pursuant to the Consent Order.

9. *Participation by Gulf Oil Corporation.* Gulf shall assist in the evaluation of applications for refund to the extent contemplated by the Consent Order, including submitting any documents or information that the Office of Hearings and Appeals or its designee determines is relevant to its evaluation of a claim. An applicant who has unsuccessfully requested information or documents from Gulf may submit to the Office of Hearings and Appeals a request that information or documents believed to be in the possession of Gulf Oil Corporation and necessary to the evaluation of his claim be furnished either to the Office of Hearings and Appeals or to the applicant. Gulf will be given an opportunity to comment on the request. After considering request and the comments of Gulf, the Office of Hearings and Appeals or its designee may issue an order granting the request if it determines that the requester seeks relevant and material evidence and that compliance with the rquest will not impose an unreasonable burden on Gulf. The Director of the Office of Hearings and Appeals or his designee may in an appropriate case order that Gulf be reimbursed from funds in the escrow account for the actual expenses incurred

by Gulf in complying with the provisions of this section.

10 *Reserves.* (a) The Office of Hearings and Appeals shall establish a reserve from the account described in section 1 to provide payment of the final court judgments or settlements of court actions. Gulf shall notify OHA within 9 months from the date of publication of the notice required under section 1 of any outstanding court actions involving claims based on the matters addressed in the Consent Order. The amount of the reserve for each pending action shall be jointly determined by Gulf and Special Counsel, subject to OHA approval. If Gulf and Special Counsel do not agree on the amount of a reserve or whether a court action is qualified for the establishment of a reserve within 10 months of the date of publication of the notice required under section 1 of these procedures, Gulf and Special Counsel shall petition the United States District Court for the Eastern District of New York for the appointment of a Special Master, Referee or Magistrate to make the necessary determination.

(b) The Office of Hearings and Appeals may establish a reserve from the account described in section 1 to pay administrative expenses that cannot be precisely determined prior to the final disbursement of all refunds.

11. *Limitations.* (a) The aggregate amount of all refunds authorized by the Office of Hearings and Appeals shall not exceed the amount to be remitted pursuant to the Consent Order by Gulf Oil Corporation, plus interest accrued, reduced by any administrative costs and reserves authorized by the Office of Hearings and Appeals. The Office of Hearings and Appeals shall first pay Section 210 judgements and approved settlements, the reserve fund described in section 10(a) above, and direct purchasers who have filed administrative claims. After such amounts have been paid, all approved administrative expenses have been paid, and the reserve authorized in section 10(b) has been established, all remaining funds shall be paid on a pro rata basis to indirect purchasers of Gulf products whose applications have been approved. The Office of Hearings and Appeals may delay payment of any refunds until all applications have been processed.

(b) If an action for judicial review of these procedures is filed within 30 days of their publication in the Federal Register challenging the authority of the DOE or the validity of the Decision and Order or any portion thereof, the DOE will not be obligated to pay any part of the Consent Order fund to claimants whose refunds are affected by the litigation until 15 days following final adjudication or other resolution of such judicial action.

12. *Interim and Ancillary Orders.* The Director of the Office of Hearings and Appeals or his designee may issue any interim or ancillary orders, or make any rulings or determinations necessary to ensure that the refund proceedings, including the operations of any administrator appointed in connection with these proceedings and any appeal procedures, are conducted in an appropriate manner and are not unduly delayed.

13. *Remaining Funds.* Any funds, including any accumulated interest, remaining in the account described in section 1 on any reserves after the disposition of all timely applications for refund and payment of approved expenses of administering the refund procedures may be remitted to the United States pursuant to the Consent Order or distributed in any other manner as the Director of the Office of Hearings and Appeals deems appropriate.

14. *Reference to Decision and Joint Supplemental Comments.* The principles stated in this Decision and in the joint supplemental comments that were submitted on June 7 1979 in this proceeding by the Special Counsel for Compliance of the DOE and Gulf Oil Corporation, as amended by the March 20, 1984 Stipulation of Settlement in *Stertz* v. *Gulf Oil Corporation*, 78 Civ. 1813 (E.D.N.Y.), shall be followed in construing the refund procedures. To the extent that those two documents may conflict, the Joint Supplemental Comments shall govern.

15. *Amendments.* These procedures may be amended by order of the Office of Hearings and Appeals. However, no amendments to these procedures may take effect until approved by the United States District Court for the Eastern District of New York. Any such amendment shall be published in the Federal Register.

It is therefore ordered that:

(1) The Special Refund Procedures, as described and set forth in the above Decision of the Department of Energy, shall be employed in the distribution of the Consent Order fund established as the result of a settlement agreed to by the Department of Energy and Gulf Oil Corporation on July 26, 1978.

(2) The procedures described in paragraph 1 above shall become effective upon publication of this Decision and Order in the Federal Register.

Date: June 29, 1984.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

(OHA Use Only)

Suggested Format

Application for Gulf Refund—HFX-0101

1. Name of Firm or Business _____
Address during period for which refund is claimed _____

_____

2. Person to receive refund _____
Address _____
Contact Person, if different _____
Telephone _____

3. Type of Applicant:
Gas Station _____
Consumer _____
Other (specify) _____

4. Total gallonage for which a refund is requested _____

_____

5. Did you purchase these products directly from Gulf? Yes ——— No ——— Do not know ———. (If your claim is based in part on products purchased directly from Gulf and in part on products purchased indirectly, please file two refund applications—one for all direct purchases and another for all indirect purchases.)

6. Was the product you bought Gulf-branded? Yes ——— No ———. If not, please attach an explanation why you believe the product came from Gulf.

7. Name of Immediate Supplier(s), if not Gulf

_____

Address _____
Telephone _____

8. Name of Gulf sales representative, if applicable _____

_____

Address _____
Telephone _____

9. Gulf customer account number, if applicable _____

_____

10. If you were a reseller or a gas station, please demonstrate that you would not have been required to pass through to your customers a cost reduction equal to the refund claimed, by submitting (i) a schedule showing your banks of unrecouped increased product costs; (ii) a certification that you had cost banks exceeding the amount of refund claimed; or (iii) any other evidence which would make that showing.

11. Have you ever filed any other application for refund involving Gulf products with the Department of Energy? Yes ——— No ———. If yes, please attach an explanation. Are you currently or have you ever been a party in any court proceeding involving alleged crude oil pricing violations by Gulf Yes ——— No ———

12. Please use the following schedule to show the quantity of your purchases of Gulf products on a monthly basis for the period for which you claim a refund:

	1973	1974	1975	1976
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
Yearly total				
Grand total [1]				

[1] This figure should equal the total gallonage reported in Item 4.

I swear (or affirm) that the information contained in this application and attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal government may be subject to a jail sentence, a fine, or both pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure.

Date _____

Signature of Applicant _____

Title _____

[FR Doc. 84-18234 Filed 7-9-84; 8:45 am]

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Federal Register

Tuesday
July 10, 1984

Part V

Department of Energy

Announcement of Availability of Environmental Assessment, and Publication of Proposed Findings of No Significant Impact and Floodplain and Wetlands Statement of Findings; Remedial Action at the Shiprock Uranium Mill Tailings Site, Shiprock, New Mexico; Notices

DEPARTMENT OF ENERGY

Announcement of Availability of Environmental Assessment, and Publication of Proposed Findings of No Significant Impact, Remedial Action at the Shiprock Uranium Mill Tailings Site, Shiprock, New Mexico

AGENCY: Department of Energy.

ACTION: Notice of availability of environmental assessment, and publication of proposed findings of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (DOE/EA-0232) on the proposed remedial action at the inactive uranium milling site located on the Navajo Indian Reservation at Shiprock, New Mexico. Based on the analyses in the EA, a proposed finding of no significant impact has been prepared. The EA and proposed findings are being made available for public review; the public review period will close August 9, 1984.

Following completion of the public review period, DOE will make its final determination whether to prepare an Environmental Impact Statement.

Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95-604, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. On November 8, 1979, DOE designated 24 inactive processing sites for remedial action under Title I of UMTRCA, including the inactive uranium mill tailings site at Shiprock, New Mexico (44 FR 74892).

UMTRCA charges the Environmental Protection Agency (EPA) with the responsibility for promulgating remedial action standards for inactive mill sites. The propose of these standards is to protect the public health and safety and the environment from radiological and non-radiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR 192) were promulgated on January 5, 1983, and became effective on March 7 1983. The DOE has proposed a plan of remedial action that will satisfy the EPA standards. Under UMTRCA, the DOE and the Navajo Tribe entered into a cooperative agreement effective October 7 1983, for remedial action at the Shiprock site. Under the agreement, the Navajo Tribe must concur with the remedial action plan to be developed for the site. The DOE will provide funds for the remedial action.

All remedial actions must be selected and performed with the concurrence of the Nuclear Regulatory Commission (NRC). In conformance with the UMTRCA, the required NRC concurrence with the selection and performance of remedial actions and the licensing of the long-term maintenance and surveillance of disposal sites will be for the purpose of ensuring compliance with the standards set by the EPA.

Project Description

The Shiprock site is located on the Navajo Indian Reservation in northwestern New Mexico, approximately one mile south of the town of Shiprock. The former Navajo Mill was operated at the Shiprock site from 1954 until 1963 by Kerr-McGee Oil Industries, Inc., and from 1963 to 1968 by the Vanadium Corporation of America and its successor, Foote Mineral Company. Before and during the milling operations the site was leased from the Navajo Tribe. When the Foote Mineral Company's lease expired in 1973, full control of the site reverted to the Navajo Tribe.

Remaining at the site are four of the original mill buildings and two tailings piles as well as two new buildings constructed by the Navajo Engineering and Construction Authority. Tailings are the residue of the uranium ore processing operations and are in the form of finely ground rock, much like sand. The generally rectangular tailings piles cover approximately 72 acres within a designated site of about 144 acres and contain about 1.9 million cubic yards of tailings and contaminated materials. The total amount of contaminated materials including the tailings, soils beneath the tailings, and material at the estimated 18 vicinity properties (off-site locations) is estimated to be 2.8 million cubic yards.

Proposed Action

The proposed action (Alternative 1) for the Shiprock tailings pile is stabilization in place. The tailings on the north side of the pile would be relocated 300 feet away from the edge of a 70-foot-high escarpment overlooking the San Juan River, contaminated material from around the pile and vicinity properties would be added to the pile, contaminated on-site buildings would be decontaminated, and surface runoff diversion ditches would be constructed. The pile would be recontoured to nearly level on top (2 percent slope) and would have 5:1 side slopes (20 percent). A seven-foot-thick cover would be constructed over the pile to inhibit radon emanation and water infiltration to assure compliance with EPA standards. A layer of pit run rock (1 to 1.5 feet thick) would be added to protect the site from erosional forces, penetration by plants and animals, and inadvertent human intrusion.

Several alternatives to the proposed action were analyzed in the EA. These included (2) no action, (3) decontamination of the Shiprock site and relocation of the wastes to the Many Devils site 3 miles to the south, (4) decontamination of the Shiprock site and relocation of the wastes to the San Juan site 26 miles east, and (5) decontamination of the Shiprock site and relocation of the wastes to the Coal Mine site 22 miles east of the Shiprock site.

Proposed Finding

The DOE is aware of the many concerns that have been expressed during public meetings and cooperating agency review about the environmental and health impacts from the proposed remedial action. In general, concerns relate to the impacts from radiation released during remedial action, air quality impacts, loss of developable land, ground-water impacts, and floodplain and wetlands effects.

The EA focused on these impacts from the proposed remedial action and identified mitigation measures that will be implemented to reduce these effects to an insignificant level. The proposed finding of no significant impact for stabilization in place is based on the following findings which are supported by the information and analyses in the EA:

- Floodplain and wetlands—Approximately 34 acres of vegetation and 52,000 cubic yards of contaminated soils must be removed from the 100-year floodplain and wetlands area of the San Juan River. Pursuant to Executive Order 11988 and 10 CFR Part 1022, the DOE has prepared a floodplain and wetlands assessment (Appendix J, EA) and has initiated consultation with the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, and Navajo Fish and Wildlife Department.

The proposed action includes all practicable measures to minimize harm to or within the floodplain and wetlands and includes the following: materials will be excavated during the dry season; riparian vegetation will be left intact; excavated areas will be recontoured to prevent drainage of shallow ground water and assist reestablishment of scrub-shrub wetlands and emergent wetlands; selected vegetation will be

replanted; and water bars, mulch, or other measures will be used to minimize discharge of sediment. The impacts will be insignificant.

DOE is publishing, current with this notice, a floodplain and wetlands statement of findings for the proposed action, pursuant to Executive Order 11988, and 10 CFR 1022.

• Radiation release—The increased radiation exposure above background levels to the general population during the remedial action will be extremely low: the estimated chance of one additional cancer death in 10 years is 0.0019; the estimated chance of one additional cancer death in 1000 years is 0.463. (With no action, these chances are 0.063 and 6.31, respectively.) The estimated chance of an additional cancer death among workers at the site is 0.0035. The DOE will closely monitor the release of radon and particulates during the remedial action.

The release of radon and contaminated particulates will be reduced by dampening contaminated material with water, by limiting contaminated material-handling operations during adverse weather conditions, and by using trucks with tight-fitting tailgates and covers when the material is to be moved. All waste-water streams will be isolated from surface-water systems by drainage-control methods.

Human exposure to residual radioactive material will be reduced further by restricting access, and by providing worker training programs and the monitoring and protective equipment necessary for use by the remedial action workers.

The radiation impacts from the proposed action are insignificant.

• Air quality—The site and surrounding area are in attainment of the National Ambient Air Quality Standards for hydrocarbons (HC), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), carbon monoxide (CO), and total suspended particulates (TSP). Dispersion modeling indicated that combustion emissions from construction equipment will not exceed Federal primary and secondary standards. However, TSP (24-hour) were estimated to exceed the Federal secondary standards (150 microg/m^3) but not the 24-hour primary standard (260 microg/m^3). The modeling used was conservative in that mitigation measures were credited with only a 50 percent reduction in particulate emissions from the site. The air-quality impacts of the proposed action will be temporary and will not be significant.

• Surface-water quality—During remedial action, a low probability exists that surface waters would experience a slight increase in contaminants due to the relocation of tailings and contaminated materials. These impacts would be minimal because of low precipitation and because of erosion control measures.

Surface waters would not be impacted after remedial action because the tailings will be isolated from surface-water contact by 7 feet of compacted cover and a system of drainage diversion ditches.

• Ground-water quality—The design features of the stabilized pile would essentially prevent future contamination of the shallow ground-water system in the alluvium and weathered Mancos Shale. The 7-foot-thick compacted sandy silt cover would inhibit infiltration of precipitation and thereby inhibit further contamination of the shallow ground water. This ground water is not presently used and has no potential for future use because of its naturally high content of total dissolved solids and inability to yield sufficient quantities for productive uses.

The deep usable ground-water system in the Dakota Sandstone would not be affected by remedial action because it is isloated from the shallow contaminated water by the thick (2100 feet) and virtually impermeable Mancos Shale.

• Threatened and endangered species—The Mesa Verde cactus, listed as threatened by the U.S. Fish and Wildlife Service (FWS), has been found in the undisturbed hills near the site. The DOE has initiated consultation with the FWS as required by section 7 of the Endangered Species Act. The remedial action has been designed to eliminate any impacts to this species by placing a barrier and buffer zone between the cacti and construction activity and by selecting a currently active (i.e., disturbed) borrow site for cover materials.

• Cultural resources—Six archaeological sites were identified adjacent to the site. One of the sites is located on the proposed borrow area; however, the site is a trash scatter that is less than 50 years old and is of little cultural significance. The other five sites would be protected during the remedial action by the barrier and buffer zone. The survey reports are under review by the Area Archaeologist of the Navajo Area Office, Bureau of Indian Affairs, and the Cultural Resources Management Program of the Navajo Tribe as required by Section 106 of the National Historic Preservation Act of 1966 and related implementing regulation.

• Land use—Stabilization in place would result in the permanent commitment of about 76 acres of land at the site. The site is located about 1 mile south of the town of Shiprock, New Mexico.

In implementing its decision, the DOE will comply with all applicable Federal and tribal regulations to avoid or minimize health and environmental impacts.

Single copies of the EA are available from: James A. Morley, UMTRA Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue, NE., Suite 1700, Albuquerque, New Mexico 87108, (505) 844-3941.

Comments: Comments on the EA and proposed finding of no significant impact may be sent to James A. Morley at the above address. Comments received within 30 days of this notice will be considered.

FOR FURTHER INFORMATION CONTACT: Robert J. Stern, Director, Office of Environmental Compliance PE-25, Office of the Assistant Secretary for Policy, Safety, and Environment, Room 4G-085 Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585.

Issued at Washington, D.C., June 21, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84-18237 Filed 7-6-84; 8:45 am]

BILLING CODE 6450-01-M

Floodplain and Wetlands Statement of Findings; Remedial Action at the Shiprock Uranium Mill Tailings Site, Shiprock, New Mexico

AGENCY: Department of Energy.

ACTION: Floodplain and Wetlands Statement of Findings.

This is a Statement of Findings, prepared pursuant to Executive Orders 11988 and 11990, and 10 CFR 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements.

Pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604, enacted November 8, 1978), the U.S. Department of Energy (DOE) proposes to clean up the residual radioactive wastes and other contamined materials at the inactive uranium milling site located on the Navajo Reservation at Shiprock, New Mexico (see Attachment A).

The proposed remedial action will move and stabilize the radioactive wastes according to a plan to be concurred in by the U.S. Nuclear Regulatory Commission and the Navajo Tribe. The proposed remedial action is in conformance with the U.S. Environmental Protection Agency

Standards (EPA) for Cleanup of Inactive Uranium Processing Sites (40 CFR 192).

Most of the radioactively contaminated materials (969,000 cu. yds.) are located out of the 100-year floodplain and wetlands along the San Juan River. However, about 52,000 cu. yds. of contaminated soils lie within the 100-year floodplain/wetlands, and adjacent arroyo (see Attachments A and B). Therefore, each of the remedial action alternatives involves action in a floodplain-wetlands area.

The principal feature of the proposed action, stabilization in place, is the movement of tailings and other contaminated soils (e.g., floodplain soils and windblown soils) approximately 300 feet back from the edge of the escarpment overlooking the San Juan River. This will protect the stabilized pile from long-term river meander and slope recession. These materials will be consolidated into a gently contoured embankment located approximately 60 feet above the 100-year flood level. The materials would be covered with 7 feet of silty sand to control radon exhalation and water infiltration; this cover would be topped with 1 to 1.5 feet of pit run rock for erosion protection.

Specific construction activities related to the floodplain and wetlands area include: (1) Removal of 34 acres of vegetation on the floodplain prior to excavation of about 41,000 cu. yds. of contaminated soils (average 1 foot deep); (2) removal of 6 acres of vegetation in an arroyo north of the tailings pile prior to excavation of about 11,000 cu. yds. of contaminated soils; (3) construction of a ramp to connect the floodplain with the embankment (70 feet above the river level); (4) filling, grading, and armoring of erosion swales on the escarpment below the embankment; (5) grading and revegetating the floodplain and wetlands area (34 acres) where contaminated soils were excavated.

The DOE examined five alternatives for the remedial actions in the *Environmental Assessment (EA) of Remedial Action at the Shiprock Uranium Mill Tailings Site, Shiprock, New Mexico,* DOE/EA-0232. The DOE's proposed action (Alternative 1) is stabilization and control of the Shiprock site's residual radioactive wastes on the designated site. The other four alternatives analyzed in the EA include: (2) No action; (3) decontamination of the Shiprock site and relocation of the wastes to the Many Devils site; (4) decontamination of the Shiprock site and relocation of the wastes to the San Juan site; and (5) decontamination of the Shiprock site and relocation of the wastes to the Coal Mine site.

Pursuant to 10 CFR 1022, the DOE prepared a floodplain and wetlands assessment. This assessment is incorporated in the EA (Appendix J).

The remedial action has been designed to conform to applicable Federal and Navajo Tribal regulations. Before construction begins, all applicable permits and approvals, such as those required under section 404 of the Clean Water Act, will be obtained from the U.S. Army Corps of Engineers and other agencies having jurisdiction.

Initial consultation with the agencies has taken place and, as a result, the design has been modified to include several mitigative measures.

During the construction activities, impacts to the floodplain will be minimized by several means: materials will be excavated from the floodplain during the seasonally dry period (February through April); riparian vegetation adjacent to areas under excavation will be left intact; and revegetation will be initiated as soon as practicable.

The potential short- and long-term impacts to the wetlands area would be mitigated by the following actions: (1) Recontouring of excavated areas to create drainage patterns that are favorable to reestablishment of scrub-shrub wetlands and emergent wetlands (select topsoil fill or fertilizer amendments may be needed in some areas to create conditions suitable for growth of desirable plant species); (2) excavation of contaminated materials in emergent wetlands so that the areas are not permanently drained of shallow ground water; (3) revegetation of the area using plant materials that will lead to reestablishment of palustrine scrub-shrub and emergent wetlands (revegetation would be accomplished by using plant seed, shrub transplants, and tree/shrub "pole planting" and plant species would be selected to provide wildlife habitat and grazing forage for livestock—livestock will be prevented from grazing until vegetation is reestablished); (4) selective use of water bars, mulch, riprap, or other soil erosion controls to minimize erosion in arroyos (including the 6 acres north of the pile) that would otherwise discharge sediment onto the floodplain and impede revegetation efforts; and (5) establishment of a 50-foot buffer zone along the bank of the San Juan River, where, in most cases, earth disturbing activities will not be allowed.

If areas of contaminated soils are identified closer than 50 feet to the river, the contaminated soils would be excavated. Earth disturbance within the buffer zone would be recontoured and revegetated in a manner similar to other areas of the floodplain.

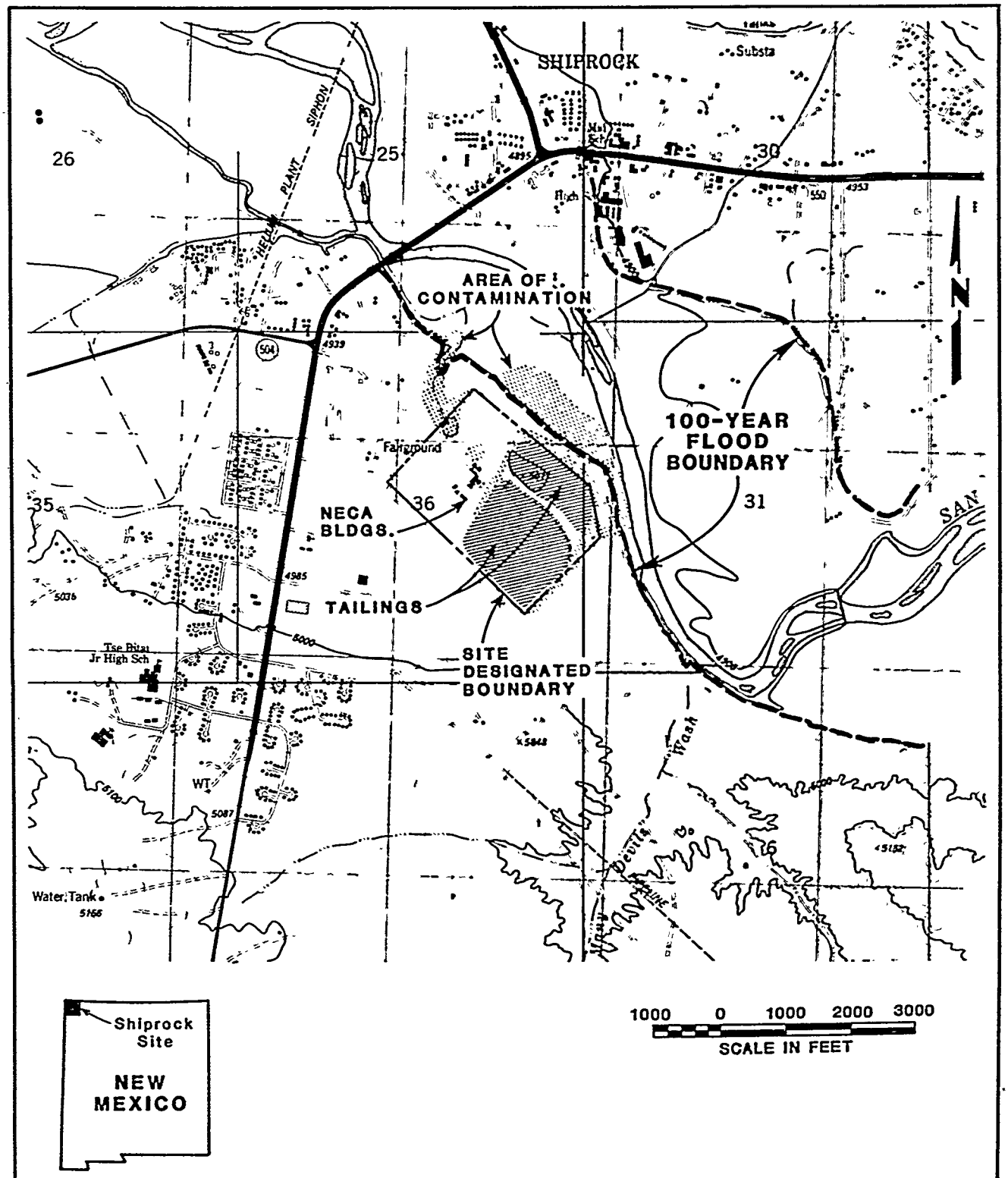
The no action alternative would leave contaminated material in the flood plain. Cleanup of materials (alternatives (1), (3), (4), and (5)), inherently involves action within the floodplain and wetlands area. On the basis of the floodplain and wetland assessment, the DOE has determined that there is no practicable alternative to the proposed activities in the floodplain and wetlands, and that the proposed action has been designed to minimize potential harm to or within the floodplain and wetlands.

Issued at Washington, D.C., June 21, 1984.

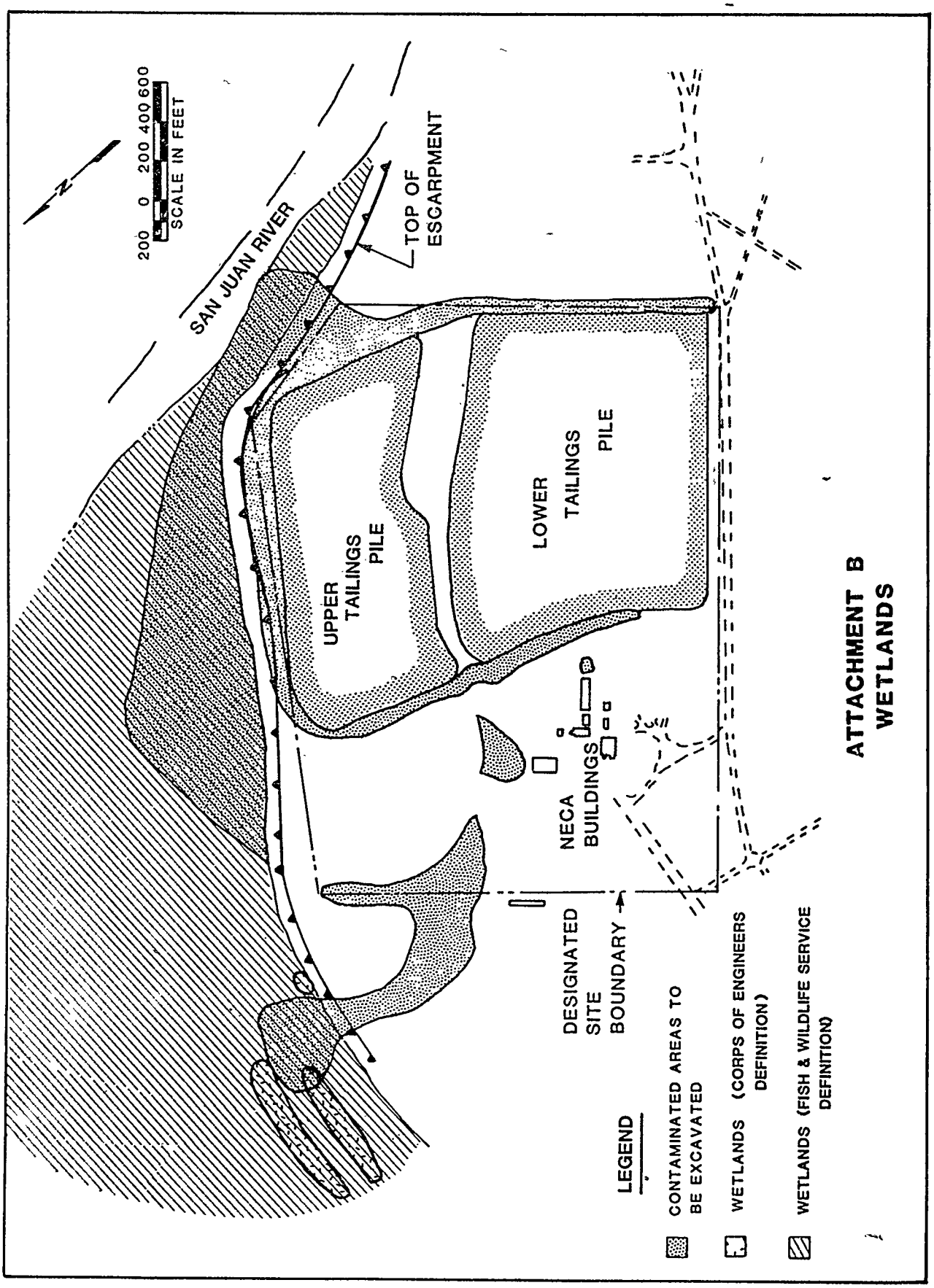
Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

BILLING CODE 6450-01-M



ATTACHMENT A
SAN JUAN RIVER 100-YEAR FLOOD PLAIN



ATTACHMENT B
WETLANDS

[FR Doc. 84-18228 Filed 7-9-84; 8:45 am]
BILLING CODE 6450-01-C

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