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Presidential Documents

Title 3—

The President

Executive Order 12621 of December 29, 1987

President's Task Force on Market Mechanisms

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that Section 2(b) of Executive Order 12614 of November 5, 1987, is amended to read: "The Task Force shall submit its recommendations to the President no later than January 8, 1988."

Ronald Reagan

THE WHITE HOUSE,
December 29, 1987.

[FR Doc. 87-30181
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Rules and Regulations

Federal Register
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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

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. 87-034]

Mandatory Notification of Arrival

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by requiring that representatives of certain aircraft and watercraft notify us of intended arrivals at United States ports. Advance notification will make it possible for us to prepare to perform inspections and other required activities immediately upon arrival of the craft. Expediting inspection services in this way will reduce the periods during which unscheduled aircraft and watercraft must remain in port, awaiting one of our inspectors occupied elsewhere.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Charles A. Havens, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR Part 330 authorize Plant Protection and Quarantine (PPQ) inspectors and Veterinary Services (VS) inspectors to inspect certain carriers and travelers arriving at U.S. ports. These port inspections are designed to prevent incoming aircraft and watercraft from bringing plant and animal diseases or pests into the United States.

In a document published in the Federal Register on December 29, 1986 (51 FR 46864-46867, Docket Number 85-396), we proposed to amend the regulations by adding § 330.111, requiring that the PPQ office serving the port of arrival (PPQ office) receive advance notification before certain aircraft and watercraft arrive at U.S. ports. We received five comments addressing our proposal, three from government agencies and two from trade associations. All supported the proposal, but four recommended various modifications, which we discuss below.

We have changed the final rule in response to two of the recommendations. Also, in the interest of clarity, we have decided against finalizing our proposed definition of "arrival (arrive)." The "Definitions" section of any regulations should comprise only terms being used in some special sense; the fact that a term appears in a "Definitions" section signals this to the reader of the regulations. This explicit signal, or reader's aid, draws attention to the term's meaning precisely as we intend it, so that there is no question of what the regulations might mean. However, with the proposed definition of "arrival (arrive)," we made the mistake of transforming an action—that of reaching a place—into a measure of time, and created confusion about an ordinary term. Our regulations do not make sense if "arrival (arrive)" is understood to mean "the estimated time of docking or landing"; when we mean "estimated time" we say "estimated time." Therefore, we are not adding "arrival (arrive)" to the list of terms in § 330.100. In addition, we have made nonsubstantive changes to avoid ambiguity and present the provisions of this rule more clearly. With these exceptions, we are adopting the provisions of the proposal as a final rule for the reasons given in this and the previous document.

Comment

One commenter expressed concern about our ability to enforce the rule on mandatory notification. Under 7 U.S.C. 150gg and 163, we have authority to exact civil and criminal penalties from persons violating provisions of, and regulations under, the Federal Plant Pest Act and the Plant Quarantine Act.

Exempting precleared military aircraft from the mandatory notification provisions disturbed a second commenter, concerned that military cooperators would not inspect aircraft as thoroughly as would PPQ personnel. However, we have traced no infestation to any aircraft precleared by the military; given that experience, and the controls represented by our spotchecks of precleared aircraft, we consider the exemption justified. For the same reasons, we disagree with this commenter's argument that we should specify which members of the military we consider authorized to conduct these inspections for PPQ.

A third commenter focused on the conditions under which we will exempt aircraft or watercraft from the mandatory notification requirement. First, he objected to exempting carriers that do not regularly transport passengers or cargo for a fee, although he conceded that a case might be made for exempting those carriers originating in Mexico or Canada. As we indicated in our proposed rule, evidence amassed over the last decade revealed no significant disease or pest risk attributable to aircraft and watercraft in this category, that is, not regularly transporting passengers or cargo for a fee, irrespective of point of origin. This commenter also took issue with our willingness to waive the requirement that PPQ offices at all U.S. ports on a carrier's itinerary receive notification of planned arrivals. However, our willingness to waive this requirement is discretionary; we retain the right to make these decisions on a case-by-case basis. Finally, this commenter saw no reason for us to exempt aircraft on scheduled flights from having to notify us when an estimated time of arrival changes from the published schedule. We agree that an unannounced change by more than one hour could cause problems, and are adding this mandatory notification requirement to paragraph (g)(2) of § 330.111, thereby removing the exemption, as suggested.

A fourth commenter also objected to proposed paragraph (g)(2) of § 330.111, finding ambiguous our reference to carriers "granted continuing landing rights by the U.S. Customs Service." We meant to include in this category only flights scheduled in the North American and Worldwide editions of the Official Airline Guide. Our revised wording makes this clear. This commenter's further point that charter and ferry flights likewise warrant exemption from

the mandatory notification rule is inappropriate, because those are not scheduled flights. Unable to predict unscheduled arrivals, inspectors at the PPQ office need the advance notice we are requiring.

Executive Order 12291 and Regulatory Flexibility Act

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

This action will, with certain exceptions, affect all aircraft and watercraft arriving at United States ports from specified points outside the United States and from specified points within the United States. However, this action will require only that these aircraft and watercraft inform the PPQ office in advance of their arrival at United States ports. Existing requirements for inspection, sealing, and quarantine will not change.

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

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579-0054.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 330

Customs duties and inspection, Garbage, Imports, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Soil, Stone and quarry products, Transportation.

PART 330—FEDERAL PLANT PEST REGULATIONS: GENERAL; PLANT PESTS, SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

Accordingly, 7 CFR Part 330 is amended as follows:

PART 330—FEDERAL PLANT PEST REGULATIONS: GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for Part 330 is revised to read as follows and the authority citations following the sections in Part 330 are removed:

Authority: U.S.C. 147a, 150bb, 150dd-150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 44 U.S.C. 3507; 7 CFR 2.17, 2.51, and 371.2(c).

§ 330.100 [Amended]

2. In § 330.100, the paragraph designations are removed and the definitions are rearranged in alphabetical order.

3. In Part 330, a new § 330.111 is added to read as follows:

§ 330.111 Advance notification of arrival of aircraft and watercraft.

The owner, operator, or other representative of any aircraft or watercraft entering the United States from a foreign country, or arriving in the continental United States from Hawaii or any territory or possession of the United States, shall provide every Plant Protection and Quarantine office (OPPQ office) serving a port of arrival on the itinerary of the craft while in the United States with advance notification of intent to arrive at that port. This advance notification of arrival shall:

(a) Reach the appropriate PPQ office not less than 12 hours before the craft's estimated time of arrival at the port;

(b) Be communicated by radio, wire, telephone, or any other means; and

(c) Include the following information:

(1) The name or other identifying feature of the individual craft;

(2) The date and estimated time of arrival at the port;

(3) The location of arrival, providing the most site-specific data available, such as the dock, pier, wharf, berth, mole, anchorage, gate, or facility, and;

(4) The names of all foreign and non-Continental U.S. ports where any cargo, crew, or passenger destined for the continental United States has boarded the craft since its most recent arrival at a port in the United States.

(d) If the craft's estimated time of arrival changes by more than one hour, the PPQ office that serves the port of arrival must be notified and provided with updated information immediately.

(e) If the craft's site of arrival changes after a PPQ office has received advance notification of arrival, both that PPQ office and the newly affected PPQ office shall be notified of this change immediately. This applies, too, to site-specific changes involving watercraft.

(f) If the craft's point of arrival is an anchorage, the PPQ office shall be notified, as soon as possible after the craft's arrival at the anchorage, of the specified site, such as berth, mole, pier, to which the craft will be moving, as well as of its estimated time of arrival at that site.

(g) Aircraft and watercraft meeting any of the following conditions are exempt from the provisions in this section, and need not provide advance notification of arrival:

(1) The craft is not regularly used to carry passengers or cargo for a fee;

(2) The aircraft is making a flight scheduled in the Official Airline Guide, North American Edition, or the Official Airline Guide, Worldwide Edition, unless the scheduled time of arrival changes by more than one hour or the plane is diverted to another landing port;

(3) An inspector has precleared the aircraft in Hawaii, a territory or possession of the United States, or a foreign port, having determined that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I; or

(4) Personnel of the United States armed forces, including the U.S. Coast Guard, in Hawaii, a territory or possession of the United States, or a foreign port, have precleared an aircraft, having determined that the aircraft contained only articles that are not prohibited or restricted importation into the United States under the provisions of 7 CFR Chapter III and 9 CFR Chapter I.

(5) The owner, operator, or other representative of the aircraft or watercraft not leaving the United States has been informed in writing by a PPQ inspector that notification of intended arrival is not required at subsequent ports in the United States.

(Approved by the Office of Management and Budget under control number 0579-0054)

Done in Washington, DC, this 28th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-30042 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Parts 932 and 944

Olives Grown in California and Imported Olives; Establishment of Grade and Size Requirements for Limited Use Styles of California Processed Olives for the 1987-88 Season, Changes in Incoming and Outgoing Size Requirements for California Olives, and Conforming Changes in the Olive Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim rule which: (1) Established grade and size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments; (2) changed certain incoming and outgoing size ranges to allow smaller California olives to be included in limited use styles and whole and pitted olives; and (3) made similar changes in the olive import regulation to bring it into conformity with the domestic requirements. The provisions for items (2) and (3) are the same as those included in the interim rule. The provisions for item (1) are the same except for a correction in the weight requirements listed for certain varieties of olives. Olives used in limited use styles are too small to be desirable for use as whole or pitted canned olives because their flesh to pit ratio is too low. However, they are satisfactory for use in the production of products where the form of the olive is changed. Their use in such products is helping the California olive industry meet the increasing market needs of the food service industry. Items (1) and (2) were recommended by the California Olive Committee, which works with the Department in administering the marketing order program for olives grown in California. Item (3) is required pursuant to § 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V Division, AMS, USDA, P.O. Box 96458, Room 2532-S, Washington, DC 20090-6456; telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 [7 CFR Part 932], as amended [the order], regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the "Act".

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act [RFA], the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

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

There are approximately seven handlers of California olives subject to regulation under the order and approximately 1,390 producers in California. Approximately 26 importers of olives will be subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. About 75 percent of the production comes from the San Joaquin Valley and 25 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons in the 1972-73 crop year to a high of 146,500 tons in the 1982-83 crop year. Last year's production totaled 107,900 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Because of the alternate bearing tendencies and the extreme variance in the size of the 1987-88 crop the industry expects the crop to be slightly more than 63,000 tons. As of October 23, 1987, a total of 58,891 tons of olives were received by California olive handlers.

The primary use of California olives is for canned ripe olives which are eaten out of hand as hors d'oeuvres or used as an ingredient cooking. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

This action will allow handlers to market more olives than would be permitted in the absence of these relaxations in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers. In the absence of this action, the committee was concerned that there would not be enough olives this season to meet all market needs.

The interim rule was issued October 7, 1987, and published in the **Federal Register** on October 15, 1987 [52 FR 38223]. That rule invited interested persons to submit written comments through November 16, 1987. No comments were received.

The interim rule modified §§ 932.151, 932.152, and 932.153 of Subpart-Rules and Regulations [7 CFR 932.108-932.161]. The modifications established grade and size regulations for 1987-88 crop limited use size olives, and allowed more small olives to be used in limited use styles and in certain sizes of canned whole or pitted olives. The modifications were issued pursuant to §§ 932.51 and 932.52 of the order. That rule also made necessary conforming changes in the olive import regulation [Olive Regulation 1; 7 CFR 944.401]. The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever, grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order the same or comparable requirements must be imposed on the imports. The conforming changes would benefit importers because they permitted importers to use larger percentages of undersized limited use size olives and allowed more small olives to be used in certain sizes of canned whole or pitted olives.

Section 932.52(a)(3) provides that processed olives smaller than the sizes

prescribed for whole and pitted styles may be used for limited uses if recommended annually by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

To enhance supplies and allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1987–88 crop year [August 1–July 31]. The grade requirements are the same as those applied during the 1986–87 crop year, as are the sizes. However, the size tolerances have been increased for the various categories to make more undersize olives available for use in the production of limited use styles. The size tolerances specified in § 932.153(b)(2) and (3) are increased from 25 percent to 35 percent; the tolerances in § 932.153(b)(4) and (5) are increased from 20 percent to 35 percent. Permitting handlers to use larger percentages of undersized fruit in limited use style canned olives will have a positive impact on industry returns. In the absence of this action, undersized fruit would have to be used for noncanning uses, like oil, for which returns are lower.

The modifications hereinafter set forth in § 932.153 to implement these changes are the same as those contained in the interim rule except for a correction in the minimum size specified in paragraph (b)(3). The minimum size specified for Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties was incorrectly listed as 1/40 pound. It should have been 1/140 pound, the same as prescribed for the 1986–87 crop.

Section 944.401(b)(12) of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and pitted ripe olives to be used for limited use styles if they meet specified size requirements. Continuation of the limited use authorizations and tolerance changes for California olives require the changes made by the interim rule in § 944.401(b)(12) to be continued to keep the import regulation in conformity with the applicable domestic requirements.

Section 932.51 of the order specifies size designations in addition to those contained in the U.S. Standards for Grades of Canned Ripe Olives [7 CFR Part 52]. This action leaves in effect a new paragraph (g) added to § 932.151 which modified the size designations. The modifications changed the approximate count per pound of Petites and Extra Large Sevillano "L" 's from 160 and 82, to 166 and 86, respectively, and changed the average count range (per pound) for Extra Large Sevillano "L" 's from 76–88, inclusive to 76–90, inclusive. The modifications eliminate a gap between the smallest Sevillano canning size (average count 65–75) and undersize Sevillano olives (average count above 91), and allow more small olives to be utilized.

In addition, this action also leaves in effect changes made in certain average count ranges contained in Tables I and II in § 932.152. These changes permit smaller olives to be included in the various size designations in conformity with the committee's recommendations to allow more small olives to be used for limited use styles and smaller olives to be used for whole and pitted styles. Continuation of these changes is expected to have a positive effect on industry returns and benefit both growers and handlers.

The average count ranges per pound in Table I for Extra Large Ascolano, Barouni, and St. Agostino olives in Variety Group 1 and all Extra Large olives in Variety Group 2 are changed from 65–88 to 65–90. This action also leaves in effect conforming changes in § 944.401(b)(3) of the olive import regulation necessary because of the change in Table I. Section 944.401(b)(3) specifies size requirements for Ascolano, Barouni, and St. Agostino olives in Variety Group 1. The minimum weight for such olives is changed from 1/88 pound to 1/90 pound each.

In Table II, which is redesignated as Table III by this action, the average count ranges per pound for Large and Extra Large Variety Group 2 olives are changed from 89–105 and 65–88 to 91–105 and 65–90, respectively. New Table III is contained in § 932.152(g)(2). These changes bring the average count ranges per pound into conformity with those specified for Extra Large Group 2 olives in Table I, and the U.S. Standards for Grades of Canned Ripe Olives [7 CFR 52.3751 through 52.3764] that establishes a count of 91–105 for "Large" canning size olives.

This action also establishes a new Table II in § 932.152(g)(1) with average count ranges per pound for limited use size olives in Variety Groups 1 and 2 for easier reference.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is determined that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act. Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action leaves in effect requirements currently being applied to California and imported olives under an interim rule; (2) the olive import requirements are mandatory under section 8e of the Act; (3) this action relieves restrictions on handlers and importers; and (4) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Parts 932 and 944

Marketing agreements and orders, Olives, California, Imports.

For the reasons set forth in the preamble, the following action pertaining to Parts 932 and 944 is taken:

PART 932—OLIVES GROWN IN CALIFORNIA

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citations for 7 CFR Parts 932 and 944 continue to read as follows:

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

§ 932.153 [Revised]

§§ 932.151, 932.152 and 944.401 [Amended]

2. Accordingly, the interim rule revising § 932.153, and amending §§ 932.151, 932.152 and 944.401(b), which was published at 52 FR 38223 on October 15, 1987, is adopted as a final rule with one change. In § 932.153(b)(3) the minimum weight "1/40" is changed to "1/140" wherever it appears in that paragraph.

Dated: December 24, 1987.

Robert C. Keeney,

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

[FR Doc. 87-29959 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AGENCY: Commodity Credit Corporation (CCC), U.S. Department of Agriculture (USDA).

ACTION: Interim rule.

SUMMARY: This interim rule amends regulations set forth at 7 CFR Part 1446 for the 1987 through 1990 crops of peanuts. This rule amends those regulations to provide that handlers selecting nonphysical supervision may, under certain circumstances, obtain credit toward their sound mature kernel (SMK) and sound split (SS) kernel obligations for the disposition of additional peanuts by crushing peanuts for use as oil in the domestic or export market. Under this rule, subject to certain restrictions, handlers will be able to crush peanuts for such credit when such peanuts are found to be ineligible for edible use due to aflatoxin contamination. In addition, handlers will be allowed annually a one-time option to crush peanuts which are eligible for edible use for application toward their SMK and SS obligations.

DATES: This interim rule is effective December 31, 1987; comments must be received on or before February 29, 1988.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Chief, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-447-7127. The Final Regulatory Impact Analysis will be available upon request.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512-1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by the regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560-0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

Discussion

Under the provisions of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended by the Food Security Act of 1985, for the 1986 through 1990 peanut crops, additional peanuts (non-quota peanuts) may be used by handlers only for export or for crushing. To insure that additional peanuts are used for those purposes, the disposition of additional peanuts must be supervised. There are two supervision options. Those two options are "physical" supervision and "nonphysical" supervision. Regulations concerning this aspect of the peanut program appear in 7 CFR Part 1446. Specific regulations governing non-physical supervision appear at 7 CFR 1446.139. Under § 1446.139, handlers who elect "nonphysical" supervision must export SMK and SS kernels in the following quantities: (1) SS kernels in an amount equal to twice the total amount of SS kernels acquired by the handler as additional peanuts for the relevant crop year; and (2) SMK's in an amount equal to the quantity of SMK's acquired as additional peanuts for the relevant crop year less an amount equal to the amount of SS kernels acquired as additional peanuts for the same crop year. The remaining quantities of total kernel content of peanuts (i.e., all other (AO) kernels) purchased as additional peanuts by the handler for the crop year may be crushed for domestic or foreign oil use, or exported for edible use or for crushing.

The provisions of § 1446.139 of the regulations implement provisions of section 359(p) of the 1938 Act. The relevant provisions of that section of the 1938 Act are as follows:

(p)(1) Except as provided in paragraph (2), the Secretary shall require that the handling and disposal of additional peanuts be supervised by agents of the Secretary or by area marketing associations designated pursuant to Section 108B(3)(A) of the Agricultural Act of 1949.

(2)(A) Supervision of the handling and disposal of additional peanuts by a handler shall not be required under paragraph (1) if the handler agrees in writing, prior to any handling or disposal of such peanuts, to comply with regulations that the Secretary shall issue.

(B) The Regulations issued by the Secretary under subparagraph (A) shall include, but need not be limited to, the following provisions:

(i) Handlers of shelled or milled peanuts may export peanuts classified by type in all of the following quantities (less such reasonable allowance for shrinkage as the Secretary may prescribe):

(I) Sound split kernel peanuts in an amount equal to twice the poundage of such peanuts purchased by the handler as additional peanuts.

(II) Sound mature kernel peanuts in an amount equal to the poundage of such peanuts purchased by the handler as additional peanuts less the amount of sound split kernel peanuts purchased by the handler as additional peanuts.

(III) The remaining quantity of total kernel content of peanuts purchased by the handler as additional peanuts and not crushed domestically * * *

Generally speaking, additional peanuts can be used either for crushing into oil or for export. However, because of the formula that appears in § 1446.139, the options of handlers choosing nonphysical supervision under the current regulations are limited in that there is a substantial portion of the obligation acquired by the handler as a result of the purchase of additional peanuts which may be satisfied by export only. This has been the source of requests for a change in the regulations.

Since the 1985 amendments to the 1938 Act first applied to the 1986 crop, the 1986 crop was the first year of operation for the provisions of § 1446.139 of the regulations. As a result of experiences with that crop year, essentially all segments of the peanut industry have requested that the

Department consider amending the program regulations to allow greater flexibility for handlers attempting to meet their disposition requirements for additional peanuts. There have been two sources of concern with respect to the requirements of § 1446.139 in this regard. The initial request for a change in those provisions arose out of the operation of the peanut quality control and indemnity programs administered by the Peanut Administrative Committee (PAC). The export market for additional peanuts is essentially limited to marketings for edible use, and peanuts containing aflatoxin are not eligible for such use. For that reason, essentially all aflatoxin-contaminated peanuts, to the extent that they were brought out of commingled storage, were treated by the PAC as quota peanuts since the peanuts could not be used to meet the main part of the disposition obligation for additional peanuts of handlers choosing nonphysical supervision. This was the case even though such peanuts were otherwise eligible for use for crushing into oil. In other words, since the aflatoxin peanuts could not be used to satisfy the export obligation for additional peanuts, they were effectively treated by the PAC as quota peanuts. However, since aflatoxin peanuts must be crushed, the actual value of that use was considerably less than the quota support value and the likely price paid by the handler to purchase the peanuts. This resulted in substantial losses to the PAC under the PAC indemnification program. Some corrective action was taken by the PAC by requiring that aflatoxin-contaminated peanuts, in order to be fully indemnified as quota peanuts, had to be remilled, blanched, or both remilled and blanched. However, there was an additional problem in that in some instances a handler might not have an export market for his peanuts at the end of the marketing year even though there might be a substantial market for peanuts to be used for crushing. In the event of such an occurrence, the crushing of the peanuts might not satisfy the handler's export obligation. Consequently, the handler would either be liable for a penalty or would have to purchase quota peanuts at quota prices and use such peanuts at a loss to satisfy the export obligation. The possibility of such harm is and was essentially universal for all handlers since, with only rare exceptions, peanut handlers have chosen nonphysical supervision as their supervision option. In response to the request for changes in the regulations in this regard, several options were considered, those being:

(1) Continuing the present system without amendment;

(2) Permitting a one-time change from nonphysical supervision to physical supervision to allow any additional peanuts to be crushed in order to meet a handler's nonphysical supervision export obligation;

(3) Permitting only aflatoxin-contaminated peanuts to be used for crushing to satisfy such a handler's disposition requirements for additional peanuts;

(4) Permitting a one-time change to physical supervision to allow crushing of peanuts to meet the additional peanut obligation, but limiting that to peanuts which meet edible standards;

(5) Subject to physical supervision: (a) Permitting aflatoxin peanuts to be crushed at any time within the normal marketing year for credit toward the additional peanut obligation, provided that a percentage of the handler's aflatoxin kernels which would be eligible for such credit could not exceed the percentage of the handler's purchases of additional peanuts to the total peanut purchases of the handler for the relevant crop year; and (b) permitting, for one time only for each marketing year, edible quality peanuts to be crushed for such credit.

It was determined that option 1 would be unduly restrictive on handlers for the reasons given above. Option 2 was considered unacceptable since it might create an unfair competitive advantage for peanut handlers who handle both additional and quota peanuts. Such handlers could effectively crush all of their aflatoxin peanuts for credit and thereby free all of their non-contaminated peanuts for use as quota peanuts. Such a result would work unfairly against those handlers who, because they do not handle additional peanuts, could not effectively move their aflatoxin-contaminated peanuts to an additional peanut use. Option 3 was considered unacceptable because it would not permit a handler without an export market to take corrective action to avoid a substantial loss. Option 4 was also considered unnecessarily restrictive, since it would unduly place losses on handlers for aflatoxin peanuts regardless of the actual ratio of additional peanuts purchased by the handler to total peanut purchases by the handler. For these reasons, it was determined that option 5 would be adopted for purposes of this interim rule.

Accordingly, this interim rule amends the regulations in 7 CFR Part 1446 by adding a new section, 7 CFR 1446.141, applicable to the 1987 through 1990 crops. That section, implemented in this rule, provides that prior to the end of the marketing year, additional peanuts that are graded or regraded as inedible due to aflatoxin contamination may be crushed under physical supervision of the area marketing association. In such cases, credits for the SMK, SS or AO content of the peanuts will be applied to the handler's export obligations for these kernels. However, for each kernel type, the percentage of the total quantity of such contaminated kernels eligible for export credit may not exceed the percentage that the handler's additional peanut purchases for the year comprises the handler's total peanut purchases for the year. For example, if additional peanut purchases amount to 20 percent of a handler's total purchases, only 20 percent of the handler's SMK and SS aflatoxin-contaminated kernels crushed for oil may be used for export credit under the allowance permitted by the new section. For edible quality peanuts, § 1446.141 provides, in addition, for a one-time per marketing year crushing for credit toward satisfying the handler's SS and SMK obligations. Such crushing must occur under physical supervision. Aflatoxin peanuts will not be limited to the one-time per year rule.

Peanuts have already begun to be marketed for the present marketing year. As the matters covered in this rule could be significant for handlers planning for the present marketing year, it has been determined that this rule should be issued as an interim rule.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse.

Interim Rule

Accordingly, 7 CFR Part 1446, Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops is amended as follows:

PART 1446—[AMENDED]

1. The authority citation for Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops continues to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 101, 108, A, 401 *et seq.* 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421 *et seq.*); Sec. 359, 375, 52 Stat. 31, 64 as amended (7 U.S.C. 1359, 1375), unless otherwise noted.

2. Section 1446.141 is added to read as follows:

§ 1446.141 Export credits for crushing SMK and SS peanuts for 1987 through 1990 crops.

(a) *Requesting physical supervision of crushing for export credit.* Beginning with the 1987 crop of peanuts, prior to August 31 of the year following the calendar year in which the peanuts were produced, or November 30 if an extension to export has been granted, a handler operating under the provisions of this subpart with respect to nonphysical supervision may request and arrange for the area marketing association to supervise the crushing of SMK and SS peanuts for export credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions and those set forth in paragraphs (b) through (d) of this section:

(1) *Peanuts contaminated with aflatoxine.* A request to change to physical supervision for crushing aflatoxin-contaminated peanuts for SMK and SS export credit may be made at any time prior to the final disposition date for additional peanuts for the relevant crop year.

(2) *Edible quality peanuts.* Unless otherwise approved by the Executive Vice President, CCC, a request to change to physical supervision for the crushing of peanuts that meet PAC edible export standards shall not be approved if a request for supervision of crushing of edible quality peanuts has been approved for the handler for peanuts of the same crop year and the crushing of such peanuts under physical supervision pursuant to the previous request has occurred prior to the approval of the current request.

(3) *Farmers stock peanuts.* In addition to the restriction set forth in paragraph (a)(2) of this section for edible quality peanuts, a request to change to physical supervision for crushing farmer stock peanuts must be made and approved prior to the peanuts being graded out of commingled storage.

(4) *Cost of supervision.* The handler shall bear the cost of all supervision required by this section or undertaken pursuant to this section.

(b) *Supervision of crushing of SMK and SS peanuts*—(1) *Farmers stock peanuts.* Physical supervision of farmers stock peanuts pursuant to this section must begin at the gradeout from commingled storage and continue through the crushing of the peanuts as required by the provisions of this subpart applicable to handlers' choosing physical supervision for all of their farmers stock peanuts.

(2) *Milled peanuts.* Subject to the provisions of paragraph (a) of this section, physical supervision of milled peanuts shall be provided under the provisions of this subpart applicable to physical supervision of milled peanuts. The association may require that the positive identified lots be regraded before crushing.

(c) *Determining export credit.* Export credit for SMK, SSS, and AO kernels crushed under physical supervision shall be determined for farmers stock peanuts from the applicable ASCS-1007, and for milled peanuts from the applicable FV-184-9.

(d) *Application of crushing credits to export/disposition obligation*—(1) *Peanuts meeting edible export standards.* The peanuts crushed for export credit which meet PAC edible export standards may apply pound for pound toward the SMK, SS, or AO kernel export credit for like kernel type crushed under physical supervision.

(2) *Peanuts not meeting edible export standards due to aflatoxin contamination.* Peanuts that are graded to regraded as inedible due to aflatoxin contamination may be crushed and credits for the SMK, SS, or AO kernel content applied to the export obligation for like kernel types, except that the percentage of peanuts allowed such credit for each kernel type shall not exceed the percentage of the total quantity of peanuts purchased by the handler for the marketing year which were additional peanuts purchased for crushing or export by the handler.

(3) *Peanuts not meeting edible export standards due to other factors.* Peanuts that do not meet edible export standards for any reason other than aflatoxin contamination are not eligible for crushing toward a handler's obligations under the nonphysical supervision option except as AO kernels.

Signed at Washington, DC on December 24, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-29970 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of extension of compliance date.

SUMMARY: The Farmers Home Administration (FmHA) announces an extension of the transition period from December 31, 1987, (Notice published in the **Federal Register** August 17, 1987, 52 FR 30658) to September 30, 1988, for States where certification of single family housing building plans and specifications cannot be readily obtained. During this time, uncertified plans and specifications will be accepted and reviewed by the FmHA County Supervisor in accordance with the former FmHA Minimum Property Standards (MPS). These standards were adopted from the Department of Housing and Urban Development (HUD) as of September 1, 1982, and were utilized until May 12, 1987, when FmHA regulations contained in 7 CFR Part 1924, Subpart A, were revised by a final rule published March 13, 1987 (52 FR 7998).

DATE: The transition period will be through September 30, 1988.

ADDRESS: Submission of plans and specifications will be to FmHA field offices; interested persons may contact their State FmHA Office for information.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Officer, Single Family Housing Processing Division, FmHA, USDA, Room 5347, South Agriculture Building, Washington, DC 20250, telephone: 202-475-4209.

SUPPLEMENTARY INFORMATION: The revised FmHA Instruction 1924-A "Planning and Performing Construction and Other Development," dated May 12, 1987, has been reviewed. It replaced the existing MPS with other development standards. FmHA is in the process of developing a proposed rule change that will authorize a wide range of individuals or organizations, trained and experienced in the compliance, interpretation or enforcement of applicable development standards, to certify that the plans and specifications meet adopted codes and standards. Therefore, rather than impact the public with requirements that may be obsoleted in the near future, we have extended the transition period from December 31, 1987 to September 30, 1988, to consider the proposed changes to FmHA Instruction 1924-A, "Planning and Performing Construction and Other Development."

The FmHA programs which are listed in the Catalog of Federal Domestic Assistance under numbers 10.405-Farm Labor Housing Loans and Grants; 10.411—Rural Housing Site Loans; 10.420—Rural Self-Help Housing Technical Assistance are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local

officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Numbers 10.404—Emergency Loans; 10.407—Farm Ownership Loans; 10.410—Very Low- and Low-Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Date: December 18, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-30045 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 80-054F-E-1]

Production of Dry Cured or Country Ham Not Using Prescribed Methods To Destroy Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Partial waiver of final rule—extension.

SUMMARY: On January 2, 1987, the Food Safety and Inspection Service (FSIS) published a notice announcing its intent to permit producers of dry cured or country ham not using the prescribed methods for destroying trichiane in pork to continue to use nonconforming methods until December 31, 1987. This waiver was provided to protect consumers and to permit dry cured or country ham producers to continue production while research concerning the effectiveness of current processing techniques was undertaken. Due to unavoidable delays in conducting the research, FSIS is exending that waiver to December 31, 1988, or until the publication of a final rule, whichever comes first.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Background

Prior to August 6, 1985, § 318.10(c)(3)(iv) of the Federal meat inspection regulations (9 CFR 318.10(c)(3)(iv)) provided two methods of destroying any possible live trichinae while processing dry salt cured hams, one of which may be used to manufacture country hams. These two methods have been in use for over 50 years. On February 7, 1985 (50 FR 5226), FSIS published a final rule, effective August 6, 1985, prescribing a third method for destroying live trichinae in dry salt cured hams and which could also be used for country hams. With the development and publication of the third method, FSIS believed it had addressed all dry curing methods currently in use. However, FSIS learned that many country ham producers use methods which still do not meet the requirements of any of the three prescribed methods. These producers use ambient temperatures that may not meet the time/temperature requirements; use a curing process that does not include a mid-cure re-exposure of the ham to salt (overhaul); wash the ham before the required curing time is completed; or in some way do not meet the requirements. For several years, the Agency has permitted the use of nonconforming processing methods since they were traditional, decade-old methods believed to be effective in destroying trichinae. In addition, the Department has not received any reports of trichinosis occurring from ingestion of any dry cured or country hams.

Because of the inability of certain producers to meet the August 6, 1985, effective date and since there were no reported cases of trichinosis from products not treated under the three prescribed methods, FSIS published a notice on June 18, 1985 (50 FR 25202), allowing producers of dry cured or country ham not using the prescribed methods to continue production until December 31, 1986, under the following conditions:

1. Any dry cured or country hams in processing prior to August 6, 1985, would be controlled under the previous two methods.

2. Dry cured ham producers using processing techniques not covered by the prescribed methods had to submit a description of their processed to FSIS by August 6, 1985, and the description had to contain the following information:

a. The average and maximum ham weight;

b. The cure and the smoking times and temperatures and, if used, heating times and temperatures;

c. The amount of salt used and how applied and, if applicable, how reapplied and/or replenished;

d. If and when hams are washed.

Dry cured and country ham producers were permitted to continue using their current processes until December 31, 1986, unless:

1. Upon initial review of the process, the Administrator determined that the method was not likely to prove effective: or

2. Data became available to substantiate the effectiveness or ineffectiveness of the method.

In the notice, FSIS stated that reserch would be conducted between that time and December 31, 1986, to find one or more additional processing methods.

On January 2, 1987, FSIS published an extension of the waiver until December 31, 1987. The Agency stated that because of unavoidable delays, research was still under way. In this connection, a considerable amount of time had been consumed in developing a fully satisfactory protocol. Secondly, there had been problems in assembling experimental equipment. Thirdly, the experimenters experience unexpected difficulties in conducting the experiment. Fourthly, there had been some difficulties with the interpretation and analysis of the test data. As a result, the experimenters did not submit a final report to the Agency until November 9, 1987.

The experimental data are complex, and are more indicative than conclusory. However, because of the importance of the indications for consumer health, using the experimental data coupled with other known data, the Agency has decided a proposed rule can be developed. The proposed rule should be published in the early part of 1988, and further procedures will be conducted in a timely fashion.

Because it is impossible to accurately estimate the time to complete the rulemaking, the Administrator is extending the waiver until December 31, 1988, or until a final rule is published and becomes effective, whichever occurs first.

Done at Washington, DC, on: December 28, 1987.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-29961 Filed 12-30-87; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 9

Revision of Freedom of Information Act Regulations; Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to Public Records in order to conform its Freedom of Information Act (FOIA) regulations to the FOIA as amended by the Freedom of Information Reform Act of 1986 and to reflect current NRC organizational structure and current agency practice and delegation. These amendments also reduce the repetition of statutory requirements. These amendments are necessary to inform the public about the procedural changes to the FOIA regulations.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7211.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) was signed by the President on October 27, 1986. The Act provides for broader exemption protection for law enforcement information (Exemption 7 of the FOIA) and new law enforcement record exclusions. The new exemption provisions became effective immediately. The amendments changed the threshold of records encompassed under Exemption 7 from "investigatory records" to all records or information compiled for law enforcement purposes. The Act also establishes new provisions related to the assessment of charges and waiving of fees for records requested under the FOIA. The Act requires affected agencies to use the March 27, 1987 (52 FR 10012) OMB guidelines in structuring their implementing regulations. The new fee structure provisions of the Act became effective on April 25, 1987.

Important features of the new fee structure involve substantial changes that relate to agency charges for search, review, and duplication of records. In addition, the new guidelines set forth procedures for conducting searches without charge, duplicating records without charge, waiving or reducing a fee, and the provisions for assessing interest on unpaid bills that are more than 30 days delinquent. Moreover, the Freedom of Information Reform Act of 1986 requires the agency to provide the first 100 pages of requested records free of charge for requests other than for commercial use.

Conforming amendments have been made to Part 2 and Part 9, Subparts B, C, and D, to conform cross-references to the renumbered sections of Part 9, Subpart A, and to reflect the changes to Exemption 7 of the FOIA.

The proposed rule was published in the **Federal Register** on August 6, 1987 (52 FR 29196). The comment period expired on August 26, 1987.

Analysis of Comments Received by NRC

The NRC received six comment letters from the following sources:

Public Citizen Litigation Group
Reporters Committee for Freedom of the Press
Ohio Citizens for Responsible Energy (OCRE)
Mr. Joseph M. Felton
Commonwealth Edison
Kerr-McGee Corporation

The comments are addressed below in sequential order according to the specific part of the proposed rule to which they apply.

1. Regulatory Analysis and Regulatory Flexibility Certification

One commenter stated that the conclusions drawn in these two discussions were "unsubstantiated and contrary to the small business size standards published by NRC in December 198[5]." The commenter further stated that the NRC should prepare an analysis that would show "the actual cost impact of the regulations on requesters." With regard to small entities, the commenter recommended the "NRC should consider reducing costs for search and reproduction."

When the NRC published its notice of adoption of size standards in December 1985 (50 FR 50241), it acknowledged that approximately 25 to 35 percent of its licensees were considered to be small entities. These licensees were comprised of various discrete groups, chiefly private practice physicians, small radiography and well logging companies, and various other small independent entities scattered among the remaining NRC materials licensees. It would be impossible to draw a correlation between small entities among NRC licensees and persons or entities submitting Freedom of Information Act (FOIA) requests. As the Securities and Exchange Commission indicated in its Initial Regulatory Flexibility Analysis (June 29, 1987; 52 FR 24145), "There is no reasonable method for estimating the number of entities involved." Neither the Freedom of Information Reform Act nor the guidelines of OMB and the Department of Justice suggest that agencies should tier or reduce the fees for any groups of requesters not specifially mentioned in the legislation. As a matter of practice, however, the NRC routinely places records responding to FOIA requests, along with their appendices, in the NRC's Public Document Room. This practice permits FOIA requesters, among whom may be commercial-use requesters and other small entities, to review requested records, and thus affords them an opportunity to reduce the financial burden by purchasing only records for which they are specifically interested. The financial burden of using the FOIA may also be reduced if a requester meets the legal requirements for a waiver and/or reduction of fees. The NRC provides procedures for making such a request at § 9.41.

A survey of 15 agencies revealed that 12 of them either stated that the Regulatory Flexibility Act did not apply to this type of rulemaking or did not mention the Regulatory Flexibility Act in the rulemaking at all.[1] Among the agencies stating that the Regulatory Flexibility Act does not apply is the Department of Justice, the agency taking the leading role in the development of the fee waiver guidelines. The NRC believes, absent any other comments regarding the subject, that its Regulatory Analysis and Regulatory Flexibility Certification represent a good faith effort at estimating the impact on requesters and the NRC.

2. Section 9.13 Definitions

Several commenters addressed one or more of the definitions in this section. One commenter stated that paragraph (2) under the definition of "agency record" is incongruent with § 9.200(b), which defines NRC personnel to include contractors. Part 9 was amended in 1985 to remove the reference (in former § 9.4 Availability of Records) to NRC contractor records because existing case law and long-standing agency practice held that records not actually in the possession and control of the NRC are not agency records. The definition in § 9.200(b) is not incongruent with § 9.13 because § 9.200(b) is in Subpart D, "Production or disclosure in response to subpoenas or demands of courts or other authorities," and pertains to the power of subpoenas and court orders, which is broader in scope than the term "agency record," which defines the reach of the FOIA.

The same commenter questioned the content of paragraph (4) of the same definition and asked who would make the determination of what information is substantial and what is not. The

[1] Agencies surveyed included the ACUS; Departments of Agriculture, Commerce, Defense, Energy, Justice, State, and Treasury; CIA; FEMA; ICC; NASA; NRC; Postal Service; and SEC.

commenter also questioned if the discretionary practice could shield potential wrongdoing. Another commenter recommended deleting paragraph (4) because it duplicates paragraph (3). As the commenter stated, "Records are either personal records or agency records, depending upon their content." NRC guidance issued in 1983 indicated that Commissioners' appointment records and telephone logs were not agency records, as long as the records did not contain any substantive information and they were not circulated for any agency decisionmaking. This view was upheld in a 1984 decision in *Bureau of National Affairs Inc.* v. *United States*, D.C. Cir. No. 83–1138. In that case, the court "held they were not agency records because they were not distributed to other employees and because they were created for the personal convenience of individual officers in organizing both their personal and business appointments." In the event a FOIA request is made for a specific Commissioner's appointment calendar, the Assistant Secretary of the Commission, in consultation with the Commission and the Office of the General Counsel, will make a disclosure determination.

Another commenter stated that the definition of "news" would "be crucial in deciding whether a requester is entitled to the benefits enjoyed by a representative of the news media." The commenter misunderstands the purpose of the definition of news. In the OMB guidelines, it was a part of the definition of "representatives of the news media," and the NRC decided to separate the term into two separate definitions; however, this separation has led to some misunderstanding, and they are being put back together to conform to the OMB definitions. The definition of news does not require each FOIA requester to be involved in matters "of current events" or "current interest to the public" in order to obtain records, but representatives of the news media should be. In addition, in response to another comment, the proposed definition of representatives of the news media has been expanded to conform more completely to OMB's final definition of the term to imply that newsletter publishers are included in this group.

One commenter recommended deleting the last sentence from the definition of "record" that reads "Record does not include an object or article such as a structure, furniture, a tangible exhibit or model, or a vehicle or piece of equipment." In response to this recommendation, the NRC has decided to retain this sentence because the commenter has provided no basis for its deletion, and the NRC believes this provides appropriate clarification.

3. Section 9.17 Agency Records Exempt From Public Disclosure

Several commenters noted that the explanatory information that formerly appeared in § 9.5 Exemptions has been deleted in proposed § 9.17, and one commenter suggested that this was due to a typographical error. When the NRC was revising the FOIA regulations, a decision was made to list the exemptions exactly as they appear in the law. For that reason, all of the explanatory information has been removed.

One commenter concluded that the removal of the explanatory information from the exemptions will "permit the public disclosure of a greater range of NRC documents * * *." As previously explained, the exemptions now track the law as written. The NRC lists the categories of agency records that are routinely made publicly available in § 9.21. This commenter also concluded that under the expanded scope of exemption 7 that it will be appropriate for his organization to protect (i) "any information which [it] obtains from criminal history records forwarded to it pursuant to 10 CFR 73.57 and subsequently provided to the NRC," and (ii) "any information which the NRC has obtained from investigative reports provided by [it] such that the release of that information could reasonably be expected to result in the identification of suspects, witnesses, complainants or employees or otherwise interfere with the effectiveness of an Employee Assistance Program." It should be noted that the commenter's organization is not a Federal agency, so the Freedom of Information Act has no applicability to his records. However to the extent that his organization's records are used by a Federal agency in a law enforcement proceeding, the records could qualify for protection from public disclosure by a Federal agency under exemption 7.

4. Section 9.19 Segregation of Exempt Information and Deletion of Identifying Details

One commenter noted that this section permits the NRC to delete names and identifying details which would constitute a clearly unwarranted invasion of personal privacy, but states that the agency proposal "eliminates the threshold test [a determination that the information withheld appears in personnel and medical or similar files] for invoking that exemption." (*New York Times Co.* v. *NASA*, Civil No. 86–2860 (D.D.C. June 3, 1987)) (appeal pending).

This section implements 5 U.S.C. 552(a)(2) of the FOIA, which does not have the threshold requirements mentioned by the commenter. The threshold requirement found in 5 U.S.C. 552(b)(6) is implemented at § 9.17(a)(6).

5. Section 9.21 Publicly Available Records

A commenter noted that the proposed section (§ 9.21(c)), which supersedes former § 9.7, deleted "final vote of each member of the Commission in every proceeding." Section 9.21(c) specifically implements 5 U.S.C. 552(a) which defines four categories of records which must be made public. The NRC dropped the reference to final votes because it was not specifically stated in 5 U.S.C. 552(a) as a category of records.

6. Section 9.23 Requests for Records

One commenter recommended the deletion of paragraph (c) because it pertained to when records were made available at a contractor's site. The NRC disagrees, and the paragraph will be retained because there is, for example, the possibility that records could be made available at an NRC Regional Office. The same commenter recommended a slight modification of paragraph (d) to indicate that "the introductory 'except' phrase applies to both sentences." The NRC has made this change.

7. Section 9.25 Initial Disclosure Determination

Several commenters addressed this section. One commenter concluded that this section will require any NRC employee who intends to release an otherwise withholdable (proprietary) record provided by a licensee to first obtain the licensee's approval prior to releasing the record. The commenter has drawn an inaccurate conclusion. Currently, Part 9 has no procedures pertaining to the decision to disclose records containing proprietary information; however, 10 CFR 2.790(b) does contain detailed procedures for assuring the proper handling and protection of records containing this type of information.

Another commenter stated that with regard to paragraph (d), the FOIA provides time for consultation between agencies but does not allow "wholesale referral of requests which are exclusive or primary responsibility of another agency." The commenter has drawn some erroneous conclusions regarding routine NRC procedures for processing FOIA requests. If the records that

respond to a FOIA request received by the NRC contain other agency records among the NRC records, the NRC segregates those records and ascertains whether or not the records in question have been made publicly available. If they have been, the NRC will release them. If they have not been made publicly available, the NRC will refer the records to the appropriate agency for a disclosure determination and, usually, a direct response to the requester.

A third commenter recommended a slight modification to paragraph (b), which the NRC has made. The commenter also requested the deletion of paragraph (f) because "as a practical matter, this procedure has never been followed by NRC." The NRC disagrees and the provision is being retained.

8. Section 9.29 Appeal from Initial Determination

One commenter recommended the deletion of paragraph (d) "since it represents an internal procedure which should be included in the NRC Manual rather than the regulations."

The NRC disagrees and is retaining the paragraph because the section tells the public how the agency processes appeals.

9. Section 9.33 Search, Review, and Special Service Fees

Several commenters objected to paragraph (a)(4) which permits the NRC to assess fees for unsuccessful searches.

Section 9.b. of the final OMB Guidelines published on March 27, 1987 (52 FR 10012) states that "Agencies should give notice in the regulations that they may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure." Further, if an agency estimates that the search charges will exceed $25, the agency must advise the requester, unless the requester agreed in advance to pay fees as high as what the agency anticipates. Under the Freedom of Information Reform Act, 5 U.S.C. 552(a)(4)(A)(ii) provides for fees to be charged for *search* for *all* requesters except educational or non-commercial scientific institutions or representatives of the news media when the records are not sought for commercial use. In addition, 5 U.S.C. 552(a)(4)(A)(iv) provides that "fee schedules shall provide for the recovery of only the direct costs of *search*, duplication, or review * * *. (Emphasis added) Therefore, the NRC has not changed paragraph (a)(4) of this section.

10. Section 9.35 Duplication Fees

The commenter questions why the charge in paragraph (b)(1) was not the same as the charge at the NRC's Public Document Room.

The cost for duplicating records at the Public Document Room is one that was negotiated between the NRC and a private contractor who specializes in high volume duplication which affords high cost efficiency. In contrast, in 1987, the NRC performed an in-house study of reproduction costs for typical FOIA requests. The figure derived—20¢ per page—is based on the following:

> * * * the operator's salary, figured on an average grade of XP-6/1 for a copy machine bindery worker in the quick copy center and GS-6/1 for the average clerical worker operating a copy machine in the satellite copy centers, the machine costs as well as copying supplies. These figures were based on NRC wide copying costs over the past year. A degree of difficulty 8.7 was added because of the highly customized style of work required to copy most FOIA documents that must be disassembled, hand-fed, reassembled in accordance with inventory instructions. This factor of difficulty was the result of time tests performed in the Quick Copy Center in the Phillips Building * * *. The base per cost costs are determined by a review of agency-wide figures and thus are not subject to fluctuations in volume in a quantity as small as 60,000 pages in a year.

The NRC's figure of 20¢ per page is not out of line in comparison with other agencies. For example, of 15 agencies listing fees, the Department of Energy is the only agency with a price as low as 5¢ per page. The average of the 15 agencies is almost 18¢ per page. For these reasons, the NRC will leave paragraph (b)(1) unchanged.

11. Section 9.37 Fees for Search, Review, and Duplication of Records by NRC Personnel

One commenter made several recommendations regarding this section: (i) A separate staff charge for duplication should be deleted since costs are already included in the copy cost; (ii) charges should be based on the actual salary of the person performing the search, not an average grade of all employees; (iii) if (ii) is not acceptable, the rates should be reduced to $10 for clerical staff and $20 for professional staff; (iv) the regulations should make clear that review time will only be charged once and not for each level of review; and (v) NRC should make clear in the regulations that it will charge costs based on quarter-hour time periods as the current regulations do.

The NRC response to these recommendations is as follows:

(i) The NRC agrees with this comment and the title and introductory text have been changed to delete the word "duplication."

(ii) and (iii) In developing this rule, the NRC followed the OMB guidelines which state that the elements of direct costs are the basic rate of hourly pay of the employee performing the task plus 16 percent for fringe benefits. The NRC also identified three types of homogeneous effort involved in the NRC search and review process—clerical, professional/managerial, and executive/Commission—and for each level, the NRC established an average salary figure. After establishing these figures, the NRC consulted with OMB and that agency expressed no objection to NRC's methodology or the figures that the methodology produced. Moreover, seven of the 15 agencies surveyed gave no specific salary figures but indicated that the fees for search and review were the actual salary of the employee performing the task plus 16 percent. The remaining 8 agencies indicated specific amounts, although there is very little uniformity among the figures. The NRC has decided to leave its fees as proposed.

(iv) In response to this comment, the review for which the NRC may charge is defined in § 9.13. This definition follows the language used to define review in the OMB guidelines. The NRC believes that the definition adequately defines the types of review effort for which the NRC may charge.

(v) No change has been made. The commenter is incorrect in the assertion that the NRC has made provision for quarter-hour time periods in its regulations.

12. Section 9.39 Search and Duplication Provided Without Charge

The commenter believes the categories of requesters are too narrow and tend to exclude bona fide nonprofit public interest organizations.

In responding to public comments regarding this point, OMB indicated that the legislative history does not define the term "educational institution" (52 FR 10013). In response to comments recommending the definition of education institution to be that used by the IRS for institutions qualifying for tax exempt status, OMB commented that it did "not think it appropriate to tie eligibility for inclusion in the 'education institution' fee category to an IRS interpretation of the institutions' eligibility for tax exempt status" (52 FR 10014). The NRC believes it is prudent and exhibits the goal of uniformity to

use the same definitions that OMB has used.

13. Section 9.41 Requests for Waiver or Production of Fees

Most commenters generally believed that this section is too burdensome, that the threshold is too steep to overcome, and that the Department of Justice Guidelines go beyond the intent of the law. Some suggested that the NRC should not use the 6 questions contained in the Justice Guidelines but should use the text indicated in the Freedom of Information Reform Act which consists of only two tests—"if disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

The NRC has independently reviewed the Department of Justice Guidelines and believes that the factors adopted reflect the intent of the law; however, the NRC has decided to delete factors 7, 8, and 9 of § 9.41(d) as a result of its further reflection of the comments.

One commenter recommended, for paragraphs (a)(2) and (b), adding the words "in excess of those authorized by § 9.39" after the word "fees." According to the commenter, this would "make clear that the specific information should only be submitted when a fee waiver is requested beyond the automatic waiver limits."

The NRC believes that the charges are clearly specified in the Freedom of Information Reform Act in 5 U.S.C. 552(a)(4)(A)(ii) and in the NRC's regulations at § 9.39. Therefore, no change has been made to these two paragraphs.

14. Section 9.43 Processing of Requests for a Waiver or Reduction of Fees

One commenter suggested that there is an inconsistency between paragraphs (a)(2) and (a)(5) and recommended revising the second sentence in (a)(5) to read, "If the fee is between $26 and $250, the NRC may not begin to process the request until the requester agrees to bear the estimated costs." The NRC believes that the factors relating to assessment of fees should be removed from this section into a newly created section, § 9.40 "Assessment of fees", for purposes of clarity.

The commenter also made the following observation:

In § 9.43(d), because of the mandatory 'shall' language, NRC is to be congratulated for taking the position that it will not charge fees if it does not act upon a fee waiver request within 10 days. This provision clearly reflects the efficiency of the FOIA staff and the Division of Rules and Records.

The NRC believes this interpretation is incorrect. In order to correct it, the NRC has deleted the phrase "within 10 working days" from the paragraph.

15. General Comment

One commenter made the following general comment:

NRC should clarify the status of organizations such as nonprofit public interest groups and state agencies which do not readily fall within the definitions set forth in the rule. Are such groups entitled to an automatic waiver or do they pay full costs like commercial use requesters? Similarly, what is the status of an individual requesting records for his own, non-commercial, use? Waiver or full costs?

The NRC is following the guidance with regard to the categories of requesters as defined by OMB. The legislative history is silent with regard to nonprofit groups. Within the NRC, fee waiver requests from these groups will be handled on a case-by-case basis.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150–0136 (Part 2) and 3150–0043 (Part 9).

Regulatory Analysis

The final rule implements the provisions of the FOIA as amended by the Freedom of Information Reform Act of 1986 and brings Part 9 into conformance with current agency practice and several of the major recommendations of the Office of the General Counsel.

The Freedom of Information Reform Act of 1986 established (1) three levels of fees, (2) new standards for waiving or reducing fees, and (3) an exclusion from providing records without charge. Basically, the NRC will not charge fees for the first two hours of search and the first 100 pages duplicated for all requesters, except commercial-use requesters. Any requester may also seek a waiver or reduction of fees for records in excess of 100 pages. The NRC will not charge fees if the cost of collecting the fee is equal to or greater than the fee itself.

There will be an economic impact on all requesters. However, the most significant economic impact will fall on commercial-use requesters. In keeping with the intent of the Federal user fee concept, the NRC will charge commercial-use requesters full direct cost fees for all search for, review, and duplication of requested records. Commercial-use requesters are not considered to be "small entities," and the NRC believes that assessment of the fees will not cause a significant economic burden on them.

Estimated Annual Costs for Commercial-Use Requesters

(Figure of 350 commercial-use requesters based on actual 1986 statistics)

Search costs (⅓ Clerical + ⅔ Professional)	$14,000
Review costs (Professional)	17,000
Total estimated costs	$31,000

For the remaining three categories of requesters, the Freedom of Information Reform Act requires agencies to provide 100 pages and two hours of search time free of charge. In addition, these requesters may request a waiver or reduction of fees, which would normally be charged for duplication and search time in excess of the initially waived amounts, if they can show that their request for agency records is in the public interest and is not primarily in their commercial interest.

As a result of the amendments, several principal economic impacts on the NRC are expected. Additional administrative effort will be required by the staff to record time spent in processing FOIA requests, time spent in recording staff processing reports, and time spent in determining the amount requesters will be billed. Also, additional staff duplication effort will be required to provide requesters copies that must be provided without charge.

Estimated Annual Costs for NRC To Process FOIA Requests

(Figures based on estimated 833 hours)

Staff recording of time (⅓ Clerical + ⅔ Professional)	$17,000
Billing Costs	3,000
Duplication of first 100 free pages (23,000 sheets × $.20 per page)	5,000
Total estimated costs	25,000

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small

entities. This final rule implements the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) which includes the establishment of three levels of fees and specific provisions regarding waiver or assessment of fees for search, review, and duplication of records. Because the Freedom of Information Reform Act of 1986 provides relief for all requesters, except for commercial-use requesters, through waiver or reductions of fees, the NRC does not believe that the majority of potential requesters would fall under the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

This final rule pertains to the implementation of the Freedom of Information Reform Act of 1986; therefore, no backfit analysis has been prepared.

List of Subjects

10 CFR Part 2

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

10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 2 and 9.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 2.790, paragraphs (a)(7), (b)(1)(ii), and (d) are revised to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

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

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

(b)(1) * * *

(ii) Contains a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant may designate with appropriate markings information submitted in the affidavit as a trade secret or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

(d) The following information shall be deemed to be commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

PART 9—PUBLIC RECORDS

3. The authority citation for Part 9 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99-570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

4. Section 9.1 is revised to read as follows:

§ 9.1 Scope and purpose.

(a) Subpart A implements the provisions of the Freedom of Information Act, 5 U.S.C. 552, concerning the availability to the public of Nuclear Regulatory Commission records for inspection and copying.

(b) Subpart B implements the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, concerning disclosure and availability of certain Nuclear Regulatory Commission records maintained on individuals.

(c) Subpart C implements the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, concerning the opening of Commission meetings to public observation.

(d) Subpart D describes procedures governing 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.

§§ 9.1a, 9.3, 9.5, and 9.8 [Removed]

5. Sections 9.1a, 9.3, 9.5, and 9.8 are removed.

§ 9.2 [Redesignated as § 9.3]

6. Section 9.2 is redesignated § 9.3 and revised to read as follows:

§ 9.3 Definitions.

As used in this part:

"Commission" means the Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974.

"Government agency" means any executive department, military department, Government corporation,

Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

"NRC" means the Nuclear Regulatory Commission, established by the Energy Reorganization Act of 1974.

"NRC personnel" means employees, consultants, and members of advisory boards, committees, and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

"Working days" mean Monday through Friday, except legal holidays.

§ 9.29 [Redesignated as § 9.5]

7. Section 9.2a is redesignated § 9.5 and is revised to read as follows:

§ 9.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission.

§ 9.2b [Redesignated as § 9.8]

8. Section 9.2b is redesignated § 9.8 and revised to read as follows:

§ 9.8 Information collection requirements: OMB approval.

(a) The NRC has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150–0043.

(b) The approved information collection requirements contained in this part appear in §§ 9.29, 9.41, 9.54, 9.55, and 9.202.

9. Subpart A currently consists of §§ 9.3–9.16. New §§ 9.3, 9.5, and 9.8 are redesignated to precede Subpart A and the remaining section in Subpart A are renumbered and revised to read as follows (new §§ 9.11 through 9.45):

Subpart A—Freedom of Information Act Regulations

Sec.
9.11 Scope of subpart.
9.13 Definitions.
9.15 Availability of records.
9.17 Agency records exempt from public disclosure.
9.19 Segregation of exempt information and deletion of identifying details.
9.21 Publicly available records.
9.23 Requests for records.
9.25 Initial disclosure determination.
9.27 Form and content of responses.
9.29 Appeal from initial determination.
9.31 Extension of time for response.
9.33 Search, review, and special service fees.
9.34 Assessment of interest and debt collection.
9.35 Duplication fees.
9.37 Fees for search and review of agency records by NRC personnel.
9.39 Search and duplication provided without charge.
9.40 Assessment of fees.
9.41 Requests for waiver or reduction of fees.
9.43 Processing of requests for a waiver or reduction of fees.
9.45 Annual Report to Congress.

Subpart A—Freedom of Information Act Regulations

§ 9.11 Scope of subpart.

This subpart prescribes procedures for making NRC agency records available to the public for inspection and copying pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and provides notice of procedures for obtaining NRC records otherwise publicly available. This subpart does not affect the dissemination or distribution of NRC-originated, or NRC contractor-originated, information to the public under any other NRC public, technical, or other information program or policy.

§ 9.13 Definitions.

As used in this subpart:

"Agency record" is a record in the possession and control of the NRC that is associated with Government business. Agency record does not include records such as—

(1) Publicly available books, periodicals, or other publications that are owned or copyrighted by non-Federal sources;

(2) Records solely in the possession and control of NRC contractors;

(3) Personal records in possession of NRC personnel that have not been circulated, were not required to be created or retained by the NRC, and can be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Government business; or

(4) Non-substantive information in logs or schedule books of the Chairman or Commissioners, uncirculated except for typing or recording purposes.

"Commerical-use request" means a request made under § 9.23(b) for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

"Direct costs" mean the expenditures that an agency incurs in searching for and duplicating agency records. For a commercial-use request, direct costs include the expenditures involved in reviewing records to respond to the request. Direct costs include the salary of the employee category performing the work based on that basic rate of pay plus 16 percent of that rate to cover fringe benefits and the cost of operating duplicating machinery.

"Duplication" means the process of making a copy of a record necessary to respond to a request made under § 9.23. Copies may take the form of paper copy, microform, audio-visual materials, disk, magnetic tape, or machine readable documentation, among others.

"Educational institution" means an institution which operates a program or programs of scholarly research. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.

"Noncommercial scientific institution" means an institution that is not operated on a commercial basis, as the term "commercial" is referred to in the definition of "commercial-use request," and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

"Office", unless otherwise indicated, means all offices, boards, panels, and advisory committees of the NRC.

"Record" means any book, paper, map, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics. Record does not include an object or article such as a structure, furniture, a tangible exhibit or model, a vehicle, or piece of equipment.

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who

make their products available for purchase or subscriptions by the general public.

"Review" means the process of examining records identified as responsive to a commercial-use request to determine whether they are exempted from disclosure in whole or in part. Also, review includes examining records to determine which Freedom of Information Act exemptions are applicable, identifying records or portions thereof to be disclosed, and excising from the records those portions which are to be withheld.

"Search" means all time spent looking for records, either by manual search or search using existing computer programs, that respond to a request including a page-by-page or line-by-line identification of responsive information within the records.

"Unusual circumstances" mean—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the NRC having substantial subject-matter interest therein.

§ 9.15 Availability of records.

The NRC will make available for public inspection and copying any reasonably described agency record in the possession and control of the NRC under the provisions of this subpart, and upon request by any person. Records that the NRC routinely makes publicly available are described in § 9.21. Procedures and conditions governing requests for records are set forth in § 9.23.

§ 9.17 Agency records exempt from public disclosure.

(a) The following types of agency records are exempt from public disclosure under § 9.15:

(1) Records (i) which are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (ii) which are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

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

(iii) Could reasonably by expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) Nothing in this subpart authorizes withholding of information or limiting the availability of records to the public except as specifically provided in this part, nor is this subpart authority to withhold information from Congress.

(c) Whenever a request is made which involves access to agency records described in paragraph (a)(7) of this section, the NRC may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this subpart when—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

§ 9.19 Segregation of exempt information and deletion of identifying details.

(a) For records required to be made available under 5 U.S.C. 552(a)(2), the NRC shall delete the name with any identifying details, if the release of the name or other identifying details of, or relating to, a private party will constitute a clearly unwarranted invasion of personal privacy. The NRC shall provide notification that names of parties and certain other identifying details have been removed in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

(b) In responding to a request for information submitted under § 9.23, in which it has been determined to withhold exempt information, the NRC shall segregate—

(1) Information that is exempt from public disclosure under § 9.17(a) from nonexempt information; and

(2) Factual information from advice, opinions, and recommendations in predecisional records unless the information is inextricably intertwined, or is contained in drafts, legal work products, and records covered by the lawyer-client privilege, or is otherwise exempt from disclosure.

§ 9.21 Publicly available records.

(a) Publicly available records of NRC activities described in paragraphs (c) and (d) of this section are available through the National Technical Information Service. Subscriptions to these records are available on 48x microfiche and may be ordered from the

National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans are also available from the National Technical Information Service.

(b) For the convenience of persons who may wish to inspect without charge or purchase copies of a record or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Public Document Room. The NRC Public Document Room is located at 1717 H Street NW., Washington, DC, and is open between 7:45 a.m. and 4:15 p.m. on Monday through Friday, except legal holidays.

(c) The following records of NRC activities are publicly available at the NRC Public Document Room for public inspection and copying:

(1) Final opinions including concurring and dissenting opinions as well as orders of the NRC issued as a result of adjudication of cases;

(2) Statements of policy and interpretations which have been adopted by the NRC and have not been published in the **Federal Register**;

(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manual and instructions to NRC personnel that affect any member of the public;

(5) Records made available for public inspection and copying under this chapter and the NRC Manual. (NRC Bulletin 3203-15 describes the "NRC Policy for Routinely Making NRC Records Publicly Available");

(6) Current indexes to records made available under 5 U.S.C. 552(a)(2) and that are made publicly available are listed in NUREG-0550, "Title of List of Documents Made Publicly Available," which is published monthly.

(d) Records made publicly available under paragraphs (c)(1), (2), and (5) of this section are also available for purchase through the National Technical Information Service.

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person or in writing at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

(i) Each record requested must be described in sufficient detail to enable the Public Document Room to locate the record. If the description of the record is not sufficient to allow the Public Document Room staff to identify the record, the Public Document Room shall advise the requester to select the record from the indexes published under § 9.21(c)(6).

(ii) In order to obtain copies of records expeditiously, a person may open an account at the Public Document Room with the private contracting firm that is responsible for duplicating NRC records.

(2) A person may also order records routinely made available by the NRC under § 9.21 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161.

(b) A person may request agency records by submitting a request authorized by 5 U.S.C. 552(a)(3) to the Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The request must be in writing and clearly state on the envelope and in the letter that it is a "Freedom of Information Act request." The NRC does not consider a request as received until it has been received and logged in by the Director, Division of Rules and Records, Office of Administration and Resources Management.

(1) A Freedom of Information request covers only agency records that are in existence on the date the Director, Division of Rules and Records, receives the request. A request does not cover agency records destroyed or discarded before receipt of a request or which are created after the date of the request.

(2) All Freedom of Information Act requests for copies of agency records must reasonably describe the agency records sought in sufficient detail to permit the NRC to identify the requested agency records. Where possible, the requester should provide specific information regarding dates, titles, docket numbers, file designations, and other information which may help identify the agency records. If a requested agency record is not described in sufficient detail to permit its identification, the Director, Division of Rules and Records, shall inform the requester of the deficiency within 10 workng days after receipt of the request and ask the requester to submit additional information regarding the request or meet with appropriate NRC personnel in order to clarify the request.

(3) Upon receipt of a request made under paragraph (b) of this section, the NRC shall provide written notification to the requester that indicates the request has been received, the name of the individual and telephone number to contact to find out the status of the request, and other pertinent matters regarding the processing of the request.

(4) (i) The NRC shall advise a requester that fees will be assessed if—

(A) A request involves anticipated costs in excess of the minimum specified in § 9.39; and

(B) Search and duplication is not provided without charge under § 9.39; or

(C) The requester does not specifically state that the cost involved is acceptable or acceptable up to a specified limit.

(ii) The NRC has discretion to discontinue processing for records responsive to a request made under this paragraph (b) until—

(A) A required advance payment has been received;

(B) The requester has agreed to bear the estimated costs;

(C) A determination has been made on a request for waiver or reduction of fees; or

(D) The requester meets the requirements of § 9.39.

(c) If a requested agency record that has been reasonably described is located at a place other than the NRC Public Document Room or NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at the other location.

(d) Except as provided in § 9.39—

(1) If the record requested under paragraph (b) of this section is a record available through the National Technical Information Service, the NRC shall refer the requester to the National Technical Information Service; and

(2) If the requested record has been placed in the NRC Public Document Room under § 9.21, the NRC may inform the requester that the record is in the PDR, and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section.

(e) The Director, Division of Rules and Records, shall promptly forward a Freedom of Information Act request made under § 9.23(b) for an agency record which is not publicly available in the NRC Public Document Room under § 9.21 to the head of the office primarily concerned with the records requested and to the General Counsel, as appropriate. The responsible office will conduct a search for the agency records responsive to the request and compile those agency records to be reviewed for initial disclosure determination under §§ 9.25 and 9.27.

§ 9.25 Initial disclosure determination.

(a) The head of the responsible office shall review agency records located in a search under § 9.23(b) to determine whether the agency records are exempt from disclosure under § 9.17(a). If the head of the office determines that,

although exempt, the disclosure of the agency records will not be contrary to the public interest and will not affect the rights of any person, the head of the office may authorize disclosure of the agency records. If the head of the office authorizes disclosure of the agency records, the head of the office shall furnish the agency records to the Director, Division of Rules and Records, who shall notify the requester of the determination in the manner provided in § 9.27.

(b) Except as provided in paragraph (c) of this section, if, as a result of the review specified in paragraph (a) of this section, the head of the responsible office finds that agency records should be denied in whole or in part, the head of the office will submit that finding to the Director, Division of Rules and Records, who will, in consultation with the Office of the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Director, Division of Rules and Records, determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Director, Division of Rules and Records, shall notify the requester of the determination in the manner provided in § 9.27.

(c) For agency records located in the office of a Commissioner or in the Office of the Secretary of the Commission, the Assistant Secretary of the Commission shall make the initial determination to deny agency records in whole or in part under § 9.17(a) instead of the Director, Division of Rules and Records. For agency records located in the Office of the General Counsel, the General Counsel shall make the initial determination to deny agency records in whole or in part instead of the Director, Division of Rules and Records. If the Assistant Secretary of the Commission or the General Counsel determines that the agency records sought are exempt from disclosure and that their disclosure is contrary to the public interest and will adversely affect the rights of any person, the Assistant Secretary of the Commission or the General Counsel shall furnish that determination to the Director, Division of Rules and Records, who shall notify the requester of the determination in the manner provided in § 9.27.

(d) If a requested record that is located is one of another Government agency or deals with subject matter over which an agency other than the NRC has exclusive or primary responsibility, the NRC shall promptly refer the record to that Government agency for disposition or for guidance regarding disposition.

(e) The 10-working day period for response to a request for agency records provided in paragraphs (a), (b), and (c) of this section may be extended for unusual circumstances as provided in § 9.31.

(f) In exceptional circumstances where is does not appear possible to complete action on a request within the maximum 20 working-day limit as provided in § 9.31, the Director, Division of Rules and Records, may seek an agreement with the requester for a specified extension of time in which to act upon the request. The NRC shall confirm the agreement for an extension of time in writing.

(g) If the NRC does not respond to a request within the 10-working-day period, or within the extended periods described in paragraph (e) of this section, the requester may treat that delay as a denial request and immediately appeal to the Executive Director for Operations as provided in § 9.29(a) or sue in a district court as noted in § 9.29(c).

§ 9.27 Form and content of responses.

(a) When the NRC has located a requested agency record and has determined to disclose the agency record, the Director, Division of Rules and Records, shall promptly furnish the agency record or notify the requester where and when the agency record will be available for inspection and copying. The NRC will normally place copies of agency records disclosed in response to Freedom of Information Act requests in the NRC Public Document Room and, for agency records relating to a specific nuclear power facility, in the Local Public Document Room established for that facility. The NRC shall also advise the requester of any applicable fees under § 9.35.

(b) When the NRC denies access to a requested agency record or denies a request for a waiver or reduction of fees, the Director, Division of Rules and Records, shall notify the requester in writing. The denial includes as appropriate—

(1) The reason for the denial;

(2) A reference to the specific exemption under the Freedom of Information Act and the Commission's regulations authorizing the withholding of the agency record or portions of it;

(3) The name and title or position of each person responsible for the denial of the request, including the head of the office recommending denial of a record;

(4) A statement stating why the request does not meet the requirements of § 9.41 if the request is for a waiver or reduction of fees; and

(5) A statement that the denial may be appealed within 30 days from the receipt of the denial to the Executive Director for Operations or to the Secretary of the Commission, as appropriate.

(c) The Director, Division of Rules and Records, shall maintain a copy of each letter granting or denying requested agency records or denying a request for waiver or reduction of fees in accordance with the NRC Comprehensive Records Disposition Schedule.

§ 9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for agency records or a request for waiver or reduction of fees under this subpart within 30 days of the date of the NRC's denial. For agency records denied by an Office Director reporting to the Executive Director for Operations or for a denial of a request for a waiver or reduction of fees, the appeal must be in writing and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records denied by an Office Director reporting to the Commission, the Assistant Secretary of the Commission, or by the Advisory Committee Management Officer, the appeal must be in writing and addressed to the Secretary of the Commission. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Executive Director for Operations or Secretary of the Commission.

(b) The NRC shall make determination on any appeal made under this section within 20 working days after the receipt of the appeal.

(c)(1) If the appeal of the denial of the request for agency records is upheld in whole or in part, the Executive Director for Operations or the Secretary of the Commission shall notify the requester of the denial, specifying—

(i) The exemptions relied upon;

(ii) An explanation of how the exemption applies to the agency records withheld; and

(iii) The reasons for asserting the exemption.

(2) If, on appeal, the denial of a request for waiver or reduction of fees for locating and reproducing agency records is upheld in whole or in part, the Executive Director for Operations shall notify the person making the request of

his decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.41.

(3) The Executive Director for Operations or Secretary of the Commission shall inform the requester that the denial is a final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides or has a principal place of business, in which the agency records are situated, or in the District of Columbia.

(d) The Executive Director for Operations or Secretary of the Commission shall furnish copies of all appeals and written determinations on appeals to the Director, Division of Rules and Records.

§ 9.31 Extension of time for response.

(a) In unusual circumstances defined in § 9.13, the NRC may extend the time limits prescribed in § 9.25 or § 9.29 by not more than 10 working days. The extension may be made by written notice to the person making the request to explain the reasons for the extension and indicate the date on which a determination is expected to be dispatched.

(b) An extension of the time limits prescribed in §§ 9.25 and 9.29 may not exceed a combined total of 10 working days per request.

§ 9.33 Search, review, and special service fees.

(a) The NRC charges fees for—

(1) Search, duplication, and review, when agency records are requested for commercial use;

(2) Duplication of agency records provided in excess of 100 pages when agency records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, or a representative of the news media;

(3) Search and duplication of agency records in excess of 100 pages for any request not described in paragraphs (a)(1) and (2) of this section;

(4) The direct costs of searching for agency records. The NRC will assess fees even when no agency records are located as a result of the search or when agency records that are located as a result of the search are not disclosed; and

(5) Computer searches which include the cost of operating the Central Processing Unit for that portion of operating time that is directly attributable to searching for agency records plus the operator/programmer salary apportionable to the search.

(b) The NRC may charge requesters who request the following services for the direct costs of the service:

(1) Certifying that records are true copies; or

(2) Sending records by special methods, such as express mail, package delivery service, etc.

§ 9.34 Assessment of interest and debt collection.

(a) The NRC shall assess interest on the fee amount billed starting on the 31st day following the day on which the billing was sent in accordance with NRC's regulations set out in § 15.37 of this chapter. Interest is at the rate prescribed in 21 U.S.C. 3717.

(b) The NRC will use its debt collection procedures under Part 15 of this chapter for any overdue fees.

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555 by the duplicating service contractor are as follows:

(i) Six cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charges vary as follows depending on the reproduction process that is used:

(A) Xerographic process—$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and with variable length) reduced or full size;

(B) Photographic process—$7.00 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width up to a maximum size of 42 inches in length) full size only.

(ii) Six cents per page for microform to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charge is $1.25 per square foot or $3.00 for a reduced-size print (18 x 24 inches).

(iii) One dollar per mocrofiche to microfiche.

(iv) One dollar per aperture card to aperture card.

(2) Self-service, coin-operated, duplicating machines are available at the PDR for the use of the public. Paper to paper is $0.10 per page. Microform to paper is $0.10 per page on the reader printers.

(3) A requester may submit mail-order requests for contractor duplication of NRC records made by writing to the NRC Public Document Room. The charges for mail-order duplication of records are the same as those set out in paragraph (a)(1) of this section, plus mailing or shipping charges.

(4) A requester may open an account with the duplicating service contractor. A requester may obtain the name and address and billing policy of the contractor from the NRC Public Document Room.

(5) Any change in the costs specified in this section will become effective immediately pending completion of the Commission's rulemaking that amends this section to reflect the new charges. The Commission shall post the charges that will be in effect for the interim period in the Public Document Room. The Commission shall complete the rulemaking necessary to reflect the new charges within 15 working days from the beginning of the interim period.

(b) The NRC shall assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located in Washington, DC or at local Public Ducument Rooms:

(1) Sizes up to 8½ x 14 inches made on office copying machines—$0.20 per page of copy; and

(2) The charge for duplicating records other than those specified in paragraphs (a) and (b) is computed on the basis of NRC's direct costs.

(c) In compliance with the Federal Advisory Committee Act, a requester may purchase copies of transcripts of testimony in NRC Advisory Committee proceedings, which are transcribed by a reporting firm under contract with the NRC directly from the reporting firm at the cost of reproduction as provided for in the contract with the reporting firm. A requester may also purchase transcripts from the NRC at the cost of reproduction as set out in paragraphs (a) and (b) of this section.

(d) Copyrighted material may not be reproduced in violation of the copyright laws.

(e) Charges for the duplication of NRC records located in NRC Local Public Document Rooms are those costs that the institutions maintaining the NRC Local Public Document Room collections establish.

§ 9.37 Fees for search and review of agency records by NRC personnel.

The NRC shall charge the following hourly rates for search and review of agency records by NRC personnel:

(a) Clerical search, review, and duplication at a salary rate that is equivalent to a GG–7, Step 5 plus 16 percent fringe benefits;

(b) Professional/managerial search, review, and duplication at a salary rate

that is equivalent to a GG–13, Step 5 plus 16 percent fringe benefits; and

(c) Senior executive or Commissioner search, review, and duplication at a salary rate that is equivalent to an ES–3 plus 16 percent fringe benefits.

§ 9.39 Search and duplication provided without charge.

(a) The NRC shall search for agency records requested under § 9.23(b), without charges when agency records are not sought for commercial use and the records are requested by an educational or noncommercial scientific institution, or a representative of the news media.

(b) The NRC shall search for agency records requested under § 9.23(b) without charges for the first two hours of search for any request not sought for commercial use and not covered in paragraph (a) of this section.

(c) The NRC shall duplicate agency records requested under § 9.23(b) without charge for the first 100 pages of standard paper copies, or equivalent pages in microfiche, computer, disks, etc., if the requester is not a commercial-use requester.

(d) The NRC may not bill any requester for fees if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) The NRC may aggregate requests in determining search and duplication to be provided without charge as provided in paragraphs (a) and (b) of this section, if the NRC finds a requester has filed multiple requests for only portions of an agency record or similar agency records for the purpose of avoiding charges.

§ 9.40 Assessment of fees.

(a) If the request is expected to require the NRC to assess fees in excess of $25 for search and/or duplication, the NRC shall notify the requester that fees will be assessed unless the requester has indicated in advance his or her willingness to pay fees as high as estimated.

(b) In the notification, the NRC shall include the estimated cost of search fees and the nature of the search required and estimated cost of duplicating fees.

(c) The NRC will encourage requesters to discuss with the NRC the possibility of narrowing the scope of the request with the goal of reducing the cost while retaining the requester's original objective.

(d) If the fee is determined to be in excess of $250, the NRC shall require an advance payment.

(e) Unless a requester has agreed to pay the estimated fees or, as provided for in paragraph (d) of this section, the requester has paid an estimated fee in excess of $250, the NRC may not begin to process the request.

(f) If the NRC receives a new request and determines that the requester has failed to pay a fee charged within 30 days of receipt of the bill on a previous request, the NRC may not accept the new request for processing until payment of the full amount owed on the prior request, plus any applicable interest assessed as provided in § 9.34, is made

(g) Within 10 working days of the receipt of NRC's notice that fees will be assessed, the requester shall provide advance payment if required, notify the NRC in writing that the requester agrees to bear the estimated costs, or submit a request for a waiver or reduction of fees pursuant to § 9.41.

§ 9.41 Requests for waiver or reduction of fees.

(a)(1) The NRC shall collect fees for searching for, reviewing, and duplicating agency records, except as provided in § 9.39, unless a requester submits a request in writing for a waiver or reduction of fees. To assure that there will be no delay in the processing of Freedom of Information Act requests, the request for a waiver or reduction of fees should be included in the initial Freedom of Information Act request letter.

(2) Each request for a waiver or reduction of fees must be addressed to the Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(b) A person requesting the NRC to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The NRC will waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 9.23(b), it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the NRC shall consider the following factors:

(1) How the subject of the requested agency records concerns the operations or activities of the Government;

(2) How the disclosure of the information is likely to contribute to an understanding of Government operations or activities;

(3) If disclosure of the requested information is likely to contribute to public understanding;

(4) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;

(5) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and

(6) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(e) If the written request for a waiver or reduction of fees does not meet the requirements of this section, the NRC will inform the requester that the request for waiver or reduction of fees is being denied and set forth the appeal rights under § 9.29 to the requester.

§ 9.43 Processing of requests for a waiver or reduction of fees.

(a) Within 10 working days after receipt of a request for access to agency records for which the NRC agrees to waive fees under § 9.39(a) through (d) or § 9.41(c), the NRC shall respond to the request as provided in § 9.25.

(b) In making a request for a waiver or reduction of fees, a requester shall provide the information required by § 9.41(b).

(c) After receipt of a request for the waiver or reduction of fees made in accordance with § 9.41, the NRC shall either waive or reduce the fees and notify the requester of the NRC's intent to promptly provide the agency records or deny the request and provide a statement to the requester explaining why the request does not meet the requirements of § 9.41(b).

(d) As provided in § 9.29, a requester may appeal a denial of a request to waive or reduce fees within 30 days to the Executive Director for Operations.

§ 9.45 Annual report to Congress.

(a) On or before March 1 of each calendar year, the Chairman of the NRC will submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report includes—

(1) The number of determinations made by the NRC to deny requests for records made to the NRC under this part and the reasons for each determination;

(2) The number of appeals made by persons under § 9.29, the results of the appeals, and the reason for the action taken on each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(5) A copy of every rule the NRC published affecting this part;

(6) A copy of the fee schedule and the total amount of fees collected by the NRC for making records available under this part; and

(7) Any other information that indicates efforts to administer fully the provisions of 5 U.S.C. 552.

(b) The NRC shall make a copy of each report submitted to the Congress under paragraph (a) of this section available for public inspection and copying in the NRC Public Document Room.

10. Section 9.85 is revised to read as follows:

§ 9.85 Fees.

Fees shall not be charged for search for or review of records requested pursuant to this subpart or for making copies or extracts of records in order to make them available for review. Fees established pursuant to 31 U.S.C. 483c and 5 U.S.C. 552a(f)(5) shall be charged according to the schedule contained in § 9.35 of this part for actual copies of records requested by individuals, pursuant to the Privacy Act of 1974, unless the Director, Division of Rules and Records, waives the fee because of the inability of the individual to pay or because making the records available without cost, or at a reduction in cost, is otherwise in the public interest.

11. Section 9.100 is revised to read as follows:

§ 9.100 Scope of subpart.

This subpart prescribes procedures pursuant to which NRC meetings shall be open to public observation pursuant to the provisions of 5 U.S.C. 552b. This subpart does not affect the procedures pursuant to which NRC records are made available to the public for inspection and copying which remain governed by Subpart A, except that the exemptions set forth in § 9.104(a) shall govern in the case of any request made pursuant to § 9.23 to copy or inspect the transcripts, recordings, or minutes described in § 9.108. Access to records considered at NRC meetings shall continue to be governed by Subpart A of this part.

12. In § 9.200, paragraph (b) is revised to read as follows:

§ 9.200 Scope of subpart.

* * * * *

(b) For purposes of this subpart, the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.3 of this part, including NRC contractors.

* * * * *

Dated at Washington, DC, this 23rd day of December 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-29904 Filed 12-30-87; 8:45 am]

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10 CFR Parts 2, 30, 40, 50, 55, 60, 61, 70, 71, 72, 110 and 150

Completeness and Accuracy of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule and statement of policy.

SUMMARY: The NRC is amending its regulations to codify the obligations of licensees and applicants for licenses to provide the Commission with complete and accurate information, to maintain accurate records and to provide for disclosure of information identified by licensees as significant for licensed activities. This action re-emphasizes the NRC's need to receive complete, accurate, and timely communications from its licensees and license applicants if the NRC is to fulfill it statutory responsibilities. In addition, the Commission is revising its Enforcement Policy to reflect the new rule.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mary E. Wagner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1683.

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 1987, the Nuclear Regulatory Commission published in the **Federal Register** (52 FR 7413) a proposed rule to codify an applicant's and licensee's obligation to ensure the completeness and accuracy of its communications with the Commission, to maintain accurate records and to report to the NRC information identified by the applicant or licensee as having a significant implication for the public health and safety or common defense and security.

As discussed in the statement of considerations that accompanied the proposed rule, accuracy and forthrightness in communications to the NRC by licensees and applicants for licenses are essential if the NRC is to fulfill its responsibilities to ensure that utilization of radioactive material and the operation of nuclear facilities are consistent with the health and safety of the public and the common defense and security. Several provisions of the Atomic Energy Act highlight the importance of accurate information. Section 186 provides that:

> Any license may be revoked for any material false statement in the application or any statement of fact required under section 182 * * *.

Section 182 provides that:

> The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee.

Applications for and statements made in connection with, licenses under sections 103 and 104 shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

This need for accuracy in communications has been emphasized through the adoption in licensing provisions, although not on a uniform basis, of requirements regarding the submission of applications. See, e.g., 10 CFR 50.30(b), 55.10(d), 61.20(a), 70.22(e) and 72.11(b).

The Commission's expectation of accuracy in communications has not been limited to written information submitted in applications. The Commission's decision in a 1976 enforcement action taken against a utility established a comprehensive requirement for applicants and licensees to provide complete and accurate information to the Commission. In that case, false statements were alleged to have been made in the utility's submissions to the Commission on the geology of the plant site. Omissions of information by the utility were also evaluated: Two were failures to present evidence at the Licensing Board construction permit hearings about suspected faulting and the third omission was the utility's failure to provide the Board or staff with reports prepared by its geology consultant. In its decision, the Commission concluded "that the material false statement phrase in the Atomic Energy Act may appropriately be read to require full disclosure of material data". Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), aff'd, 571 F.2d 1289 (4th Cir. 1978) (hereinafter VEPCO). The Commission decided materiality is to be judged by whether information has a natural tendency or capability to influence an agency decisionmaker; that knowledge of the falsity of a material statement is not necessary for a material false statement under section 186 and that material omissions are actionable to the same extent as affirmative material false statements.

Under this standard, both the inaccurate written statements and the omissions made by the utility in that case were subject to civil penalties. In subsequent years, the Commission took a number of enforcement actions for material false statements. These enforcement actions included the following factual situations: omission of information about receipt of draft reports during oral statements made in an informal meeting between the staff and a licensee; statements in a telephone call, letter and oral briefing that mobile sirens forming part of a licensee's prompt public notification system were installed and operational, when in fact they were not; oral statements to an NRC inspector that licensed material had not been out of storage, when in fact it had been used; and erroneous statements in response to an IE Bulletin concerning the use of certain lubricants and fasteners.

The Commission's General Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C, originally published on March 9, 1982 (47 FR 9987), specifically dealt with enforcement for material false statements. In March 1984, after several years of handling enforcement cases under the VEPCO holding and this enforcement policy, the Commission specifically solicited comments on whether the Commission should consider changes to its policy on material false statements. (49 FR 8584, March 8, 1984). Comments received in response to this solicitation were summarized in the March 11, 1987 notice.

On August 31, 1984 the Commission formally established the Advisory Committee for Review of the Enforcement Policy, a small committee of individuals selected from outside the agency, to conduct an in-depth study of the enforcement program. (49 FR 35273, September 6, 1984). In addition to considering the comments already submitted to the Commission, the Committee solicited further comments from interested persons on the extent to which the NRC's enforcement policy had been serving the purposes announced by the Commission, including the policy on material false statements. (50 FR 1142, January 9, 1985). Public meetings were held by the Committee during which 46 witnesses drawn from NRC staff, licensees, industry groups and law/consulting groups gave testimony to the Committee, many of whom commented on the material false statement policy. The Committee's conclusions and recommendations are summarized in the March 11, 1987 **Federal Register** notice proposing this rule.

II. Analysis of Public Comments

In response to the March 11, 1987 **Federal Register** notice, the Commission received comments from 23 organizations and individuals, including utilities, law firms, citizens' organizations, a medical physicist, a commercial testing laboratory, and other members of the public. Copies of the comments may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, DC. The comments, summarized and responded to below, have been categorized under the following topics: (1) Licensee notification of significant information; (2) legal issues; (3) material false statements; and (4) completeness of information.

Licensee Notification of Significant Information

Many commenters opposed the adoption of paragraph (b) of the regulation, in its entirety. A variety of reasons were given as to why paragraph (b) should not be adopted.

Comment: Several commenters expressed the view that the reporting requirements of paragraph (b) are vague and difficult to implement; what is "significant" is not defined, and cautious licensees will flood the Commission with information.

Response: The Commission believes that the requirements of proposed paragraph (b) are sufficiently clear that licensees will be able to determine when reporting is required. The standard for reporting is not so broad that licensees should have difficulty recognizing it. For example, the rule does not require licensees to predict what the NRC will likely deem to be "material" information, an arguably vague standard; rather, the standard is one of a licensee's own recognition of information with significant health or safety or common defense or security implications. This is a standard that the Commission should reasonably expect licensees to understand and apply. Moreover, the notice of proposed rulemaking gives guidance, in the form of examples, as to what could indicate recognition by licensees of the significance of the information. As noted in VEPCO, no specific set of regulations can be expected to cover all possible circumstances; within this constraint, the Commission believes the requirements of paragraph (b) are clearly set forth.

Comment: One commenter expressed the view that the provision that the requirement is "not applicable to information * * * required to be provided * * * by other requirements" could be interpreted to mean that paragraph (b) does not apply to power reactors.

Response: The provision that the rule is "not applicable to information * * * required to be provided * * * by other requirements" is intended to make clear that the rule requires the reporting of residual information not covered by one of the specific reporting requirements, and is not intended to exempt power reactor licensees from the provision.

Comment: Some commenters expressed the view that paragraph (b) is unnecessary. They felt that paragraph (a) of the proposed regulation provides the necessary degree of confidence that information that is significant enough to have implications for the public health and safety or the common defense and security will be provided to the Commission. In the same vein, others noted that the Commission cites no instance where a licensee discovered, but was able to conceal, some significant information because it was not specifically reportable; therefore, since no need for the requirement has been identified, it should not be imposed.

Response: No specific set of reporting requirements, such as those already existing under NRC regulations, can ever be expected to cover all possible circumstances, and for this reason a residual requirement is considered appropriate.

Comment: Several commenters thought that the two-day period for notification of the appropriate Regional Administrator was not long enough.

Response: The Commission believes that, once a licensee recognizes information as having significant implications for public health and safety or the common defense and security, two working days is ample time in which to report the information. As noted below, this notification may be oral.

Comment: One commenter questioned whether the notification was to be oral or in writing.

Response: The notification may be oral.

Comment: One commenter saw some ambiguity in the proposed rule with respect to the relationship between paragraph (a) and paragraph (b); since the intent element of paragraph (b) does not apply to omissions under paragraph (a), and most information can be linked to some licensing submittal or construed to be covered by paragraph (a). It was suggested that the rule be clarified to include all omissions under paragraph (b), to avoid an "overly broad" enforcement policy.

Response: The Commission does not wish to limit violations for omissions to situations involving an element of intent, as the commenter has proposed. Paragraph (a) and paragraph (b) impose two distinct requirements. Paragraph (a) codifies an applicant's and a licensee's obligation to ensure accuracy and completeness of communications with the Commission or in records required by the Commission to be maintained. Paragraph (b) pertains to a licensee's obligation to report information identified by the licensee as significant, notwithstanding a non-reportability determination under other reporting requirements. While intent is an appropriate element of a violation under paragraph (b), it is not a necessary element of a violation under paragraph (a).

Comment: One commenter argued that proposed § 55.6b(b), which imposes a notification requirement that runs directly to individual licensed operators, interferes with managerial prerogatives and subjects individual operators to serving two masters.

Response: The Commission has decided to delete proposed § 55.6b(b) from the final rule. The Commission appropriately looks to the utility licensee to evaluate the safety significance of information identified by its employees, and to notify the NRC of information having significant safety or security implications. Employees are expected to notify company management of information of which they become aware that may have such implications. Appropriate company officials would then be required to determine the significance of the information and reportability to the Commission. NRC's adoption of a rule which would place on the individual operator an obligation to report information directly to NRC, independent of the employee's obligation to report such information to his employer, would place the individual in a situation involving potential conflict with his management (if the employee thought the information was significant and his employer did not), without appreciably enhancing the agency's ability to obtain needed safety information. Section 55.6a(a) of the proposed rule is being retained, and appears as § 55.9 in the final rule.

Comment: A number of commenters criticized the rule for imposing a reporting requirement only on information which an applicant or licensee determines to be significant. Some thought this provision will allow licensees to evade the rule by never finding any information to be significant. One commenter said that leaving the decision to the utilities as to what is "significant" essentially amounts to an abdication of responsibility by the NRC.

Response: While deference is being given the licensee under the rule, it is not absolute nor is it an abdication of the NRC's responsibilities. A licensee cannot evade the rule by never "finding" information to be significant. The fact that a licensee considers information to be significant can be established, for example, by the actions taken by the licensee to evaluate that information. Thus, even though the rule contains a subjective test in requiring reporting of information a licensee recognizes as significant, there are objective indicia of recognition that can be used by the NRC in determining whether a licensee in fact recognizes the significance of the information in question. The Commission believes that the rule as drafted, requiring reporting of significant information only when licensee recognizes it as such, offers more guidance to a licensee than a formulation which would require a licensee to try to predict what the Commission will deem to be material, and is sufficiently specific to discourage attempts to evade the rule.

Legal Issues

Comment: One commenter questioned the Commission's legal authority to impose an "additional recordkeeping requirement" and a "new notification requirement", arguing that section 182 of the Atomic Energy Act does not authorize the imposition of a generic recordkeeping requirement or generic notification requirement.

Response: The Commission has extensive statutory authority in addition to section 182 to require licensees and applicants to report complete information and to maintain accurate records. That authority is derived from the licensing provisions in the Atomic Energy Act and the rulemaking authority of section 161o of the Atomic Energy Act, which permit the imposition of reporting requirements and recordkeeping requirements. Neither Paragraph (a) of the new rule, which codifies an applicant's and licensee's obligation to ensure the accuracy of its communications with the Commission, nor paragraph (b), which codifies in modified form the "full disclosure" aspects of the VEPCO decision, creates any new obligations for licensees and applicants.

Comment: It was also argued that section 186 of the Atomic Energy Act permits revocation of a license only for a material false statement in connection with a license application or with statements provided in response to a request under section 182.

Response: The commenter's conclusion is based on his reading sections 182 and 186 of the Atomic Energy Act to say that a material false statement can exist only when the statement in question is contained in an application or sought by the NRC under section 182 of the Act. The commenter is both misreading section 186 and misconstruing the basis of authority for the new rule. One can make the

argument that a literal reading of the Atomic Energy Act requires a false statement to be in an application or a response sought by the NRC under section 182. However, the court in VEPCO held that the Commission's expanded interpretation of section 186 permitted the term "material false statements" to encompass omissions as well as affirmative statements. Moreover, the Commission's long standing practice since the VEPCO decision has been consistent with the VEPCO interpretation to reach statements and omissions not contained in an application or section 182 response.

More importantly, the new rule does not utilize the term "material false statement" and is not based solely on sections 186 and 182. Rather, the rule is also based on the licensing provisions of the Act and section 161. It is inconceivable that Congress would have established the broad regulatory authority in the Atomic Energy Act, which is considered unique, Siegel v. AEC, 400 F.2d 778, 783 (D.C. Cir. 1968), and not granted sufficient authority for the Commission to require communications, regardless of the format, to be complete and accurate. The public health and safety and common defense and security require no less. Under the new regulations, civil penalties would be authorized under section 234 because the regulations are issued under the enumerated licensing provisions in section 234(a)(1). In addition, a violation of these regulations would constitute a violation for which a license could be revoked under section 186. Under section 186, a license can be revoked for failure to meet a regulation, including the communication regulation. Finally, the Act permits a license to be revoked because of conditions which would warrant refusing to grant a license on an original application. Clearly, the Commission would not have issued a license to persons who were not committed to providing complete and accurate information in all of their communications to the Commission.

Material False Statements

Most commenters endorsed, as a positive proposal, the Commission's decision to exercise its discretion in the application of the term "material false statement" to miscommunications and limiting the use of the term to situations where there is an element of intent. They expressed the view that careful use of the label "material false statement" should assure that any adverse connotation associated with its use is justified.

Comment: A few commenters opposed narrowing the application of the term "material false statement". In their view, retention of the material false statement language (and its negative connotations) for a broad range of communication errors would provide more incentive for licensees to report information in a timely and complete fashion.

Response: As many commenters have pointed out, a charge of material false statement is equated by most people with lying and an intention to mislead. Because of this connotation, the Commission believes the charge should be reserved for such communication failures.

Under prior policy, a material false statement could be either an affirmative statement, oral or written, or an omission, and could be unintended and inadvertent as well as intentional. The Commission believes that application of the term material false statement to all of these situations is not as effective in improving accuracy and completeness of information as the reservation of this label as an additional enforcement tool in egregious situations. The rule will minimize the potential of persons not providing information because of a fear of being labeled as a submitter of a material false statement.

Comment: One commenter criticized the rule for not containing a definition of material false statement.

Response: The Commission has decided to exercise its discretion in the application of the term material false statement by limiting the use of the term to situations where there is an element of intent. As emphasized in the statement of considerations accompanying both the proposed rule and this final rule, the Commission is reserving the use of this label as an additional enforcement tool in egregious situations, which will be determined on a case-by-case basis. With the adoption of this rule, the Commission will have the mechanism to apply the full range of enforcement sanctions to inaccurate communications or records without reliance on the term material false statement. Thus, the label of material false statement is no longer significant from a legal perspective.

Moreover, the Department of Justice supports the Commission's decision not to define a material false statement, in view of the potential for confusion between the Commission's use of the term material false statement in its civil context and criminal prosecutions for material false statements under 18 U.S.C. 1001.

Comment: One commenter objected to the use of the term "careless disregard" which is used in the statement of considerations accompanying the proposed rule to illustrate a situation where a material false statement label might be appropriate. To the commenter, the concept of "careless disregard" is appropriately used in the context of negligent behavior and not where there is an element of intent.

Response: The concept of "careless disregard" goes beyond simple negligence, as the term has been applied in judicial decisions defining willful conduct and as it has been applied by this agency. See, e.g., Trans World Airlines, Inc. V. Thurston, 83 L.Ed.2d 523, 537 (1985); Reich Geo-Physical, Inc., ALJ-85-1, 22 NRC 941, 962-63 (1985). "Careless disregard" connotes a reckless regard or callous our indifference toward one's responsibilities or the consequences of one's actions, and in that sense it appropriately describes circumstances in which the Commission may apply the term "material false statement."

Completeness of Information

Comment: One commenter thought that the requirement in paragraph (a) for "completeness of information", if interpreted in a strict sense, may encompass more than the NRC intended, and will exact superfluous information.

Response: Since the Commission, in requiring completeness of information, is not imposing a new requirement, it does not expect to see an increase in the amount of information reported by a licensee or applicant as a result of this codification of existing policy.

Comment: Another commenter expressed the view that reporting as much information as possible during an event can conflict with providing complete and accurate information; in practice, the requirement may limit information exchange during an incident to information known to be accurate.

Response: As described above, since the Commission, in requiring complete and accurate information, is not imposing a new requirement, it does not expect to see a significant change in licensee or applicant behavior in reporting as a result of this codification of existing policy.

Comment: Some commenters stated that oral communications should be excluded from the rule, on fairness grounds. One commenter noted that in telephone communications the data transmitted and the data received are not always identical in that people interpret communications within their own terms of reference. Moreover, when an inadvertent error is made in an oral communication, a call back to correct

the error, in the view of this commenter, would be an admission of a violation of the rule.

Response: The rule covers all communications. However, the Commission intends to apply a rule of reason in assessing completeness of a communication. For example, in the context of reviewing an initial application or a renewal application for a license, it is not uncommon for an NRC reviewer to seek additional information to clarify his or her understanding of the information already provided. This type of inquiry by the NRC does not necessarily mean that incomplete information which would violate this rule has been submitted.

Normally, an inadvertent error in an oral communication that is promptly corrected will not result in an enforcement action. Further guidance on oral communications is provided below in the discussion of Enforcement Policy associated with the rule.

Comment: One commenter noted that only a very small percentage of documents maintained by a licensee undergo the kind of scrutiny given to documents actually provided to the NRC as an affirmative representation of what it believes to be correct information on which the NRC should rely in licensing or regulating a plant. The commenter predicted a "compliance nightmare" if the standard of completeness were applied to all files generated for licensee's internal use, such as quality assurance (QA) files.

Response: It has always been implicit in the Commission's requirements that a licensee maintain certain records that those records accurately reflect the activities documented. An incomplete QA file is a violation of existing requirements. The explicit statement in paragraph (a) of the new rule of the standard of accuracy of records required by the NRC to be kept does not in any way change existing recordkeeping requirements or add to the kind or nature of records expected to be maintained.

III. The New Regulations

After careful consideration of all the comments received, the Commission has deleted proposed § 55.6b(b), which would impose a notification requirement, running directly to licensed operators and senior operators, for significant information, and otherwise adopted the amendments in the same form that they appeared in the March 11, 1987 **Federal Register** proposed rule.

The new regulations include identical provisions in Parts 30, 40, 50, 60, 61, 70, 71, 72, and 110 which contain two elements: (a) A general provision which codifies the current policy which requires that all information provided to the Commission by an applicant or licensee or required by the Commission to be maintained by the applicant or licensee shall be complete and accurate in all material respects; and (b) a reporting requirement to replace the full disclosure aspects of the current material false statement policy that would require applicants and licensees to report to the NRC information identified by the applicant or licensee as having a significant implication for the public health and safety or common defense and security. The amendment to Part 55 contains the first element only. Section 150.20 is being amended to provide that when an Agreement State licensee is operating within NRC's jurisdiction under the general license granted by § 150.20, the licensee is subject to the above requirements.

These regulations are being issued under the Commission's authority in sections 62, 63, 65, 81, 82, 103, 104, 107, 161c, 161o, 182, and 274, as well as section 186, of the Atomic Energy Act of 1954, as amended. In addition, while section 186 can be read as addressing only material false statements made in certain contexts, the scope of the Commission's responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as well as the Commission's decision in the VEPCO case and subsequent enforcement actions under that statement of the law, make it clear that the Commission has the inherent authority to require communications with the agency on regulatory matters to be complete and accurate regardless of their context. Under section 186 of the Atomic Energy Act, failure to observe any of the terms or provisions of any regulation of the Commission is an explicit basis for revocation of a license. Thus, with the adoption of these new regulations regarding accuracy in communications and records, a violation of paragraph (a) or (b) of the proposed rule may be grounds for revocation of a license as well as imposition of civil penalties under section 234 of the Atomic Energy Act.

The final rule codifies in a uniform manner an applicant's and a licensee's obligation, as articulated in the VEPCO decision, to ensure the accuracy of its communications with the Commission. The provision does not create any new obligations for licensees and applicants; rather, it describes in a regulation rather than in an adjudicatory decision, the standard for accuracy and completeness to be adhered to when supplying information to the agency or when generating and maintaining records required to be kept by the Commission. The standard described in paragraph (a) of the proposed rule, "complete and accurate in all material respects," continues the degree of accuracy prescribed in the VEPCO decision; that is, any information provided to the Commission or maintained in records required by the Commission which has the ability to influence the agency in the conduct of its regulatory responsibilities must be complete and accurate.

Under this rule, not only material incorrect information, written or oral, but omitted information which causes an affirmative statement to be materially incomplete or inaccurate, will be subject to sanctions. The rule uses the phrase "provided to the NRC" rather than "submitted to the NRC" to indicate that all communications, oral or written, throughout the term of the license, not just at the application stage, are expected to be complete and accurate. The Commission intends to apply a rule of reason in assessing completeness of a communication. For example, in the context of reviewing an initial application or a renewal application for a license, it is not uncommon for an NRC reviewer to seek additional information to clarify his or her understanding of the information already provided. This type of inquiry by the NRC does not necessarily mean that incomplete information which would violate this rule has been submitted.

This new provision also makes explicit the requirement that records required to be maintained by the Commission must be complete and accurate in all material respects. It is clear that when the Commission establishes a requirement that a licensee generate records to document a particular licensed activity, inherent in that requirement is the expectation that those records will accurately reflect the activities accomplished. In the past, when the Commission has discovered that inaccurate or incomplete records have been developed or maintained, citations have been issued for violation of the underlying recordkeeping requirement. Now that the Commission is adopting a regulation which states a generic requirement for accuracy in information made available to the agency, it is deemed desirable to explicitly refer to information kept in records pursuant to Commission requirements for inspection by the NRC, as well as information submitted to the NRC, since the standard for accuracy and completeness is the same for all information in whatever form it is made

available to the Commission. This explicit statement of the standard of accuracy required for records does not in any way change existing recordkeeping requirements or add to the kind or nature of records expected to be maintained.

Like paragraph (a), paragraph (b) creates no new obligation to report information to the Commission. Rather, it merely codifies in a modified form the "full disclosure" aspects of licensees' and applicants' obligations established by the VEPCO decision. In that decision the Commission recognized its obligation "to promulgate regulations which provide clear, comprehensive guidance to applicants and licensees," but went on to conclude that,

> [T]he fact remains that no specific set of regulations, however carefully drawn, can be expected to cover all possible circumstances. Information may come from unexpected sources or take an unexpected form, but if it is material to the licensing decision and therefore to the public health and safety, it must be passed on to the Commission if we are to perform our task * * *.

VEPCO at 489. Since the initial description of the "full disclosure" requirement in VEPCO, however, reporting obligations for substantial additional categories of significant safety information have been affirmatively established, e.g., 10 CFR 21.21, and 10 CFR 50.72 and 50.73. Both material and reactor licenses contain numerous reporting requirements. Most safety information which a licensee may develop will likely be required to be reported by some specific requirement. Nevertheless, there may be some circumstances where a licensee possesses some residual information which could affect licensed activities but which is not otherwise required to be reported.

Therefore, the rule provides that if a licensee or an applicant identifies information which has significant implications for public health and safety or the common defense and security, it must be reported to the Commission. The rule makes clear that reporting under this section is not required if such reporting would duplicate information already submitted in accordance with other requirements such as 10 CFR 20.402-20.408, 21.21, 50.34, 50.71, 50.72, 50.73, and 73.71.

The purpose of the reporting requirement which is being imposed is to provide clear notice that if any applicant or licensee recognizes it has information with significant health or safety or common defense or security implications, the information must be reported to the NRC notwithstanding the absence of a specific reporting requirement. Submission of a report depends upon the licensee's recognition of the significance of the information.

The codification of a full disclosure requirement in this manner should not result in additional burdens on applicants and licensees. Licensees and applicants will not be required to develop formal programs similar to those prescribed under 10 CFR Part 21 to identify, evaluate, and report information. What is expected is a professional attitude toward safety throughout a licensee's or applicant's organization such that if a person identifies some potential safety information, the information will be freely provided to the appropriate company officials to determine its significance and reportability to the Commission.

While paragraph (b) defers to the licensee's judgment of the significance of information, the licensee's "identification" of the significance of the information need not be in the form of a specific documented decision before a violation of the rule exists for failure to report. An applicant's or licensee's recognition of information as significant could be established by circumstancial evidence such as specific meetings being held to discuss the matter, analyses performed or other internal actions taken to evaluate the matter. In addition, abuse of of a licensee's responsibility under paragraph (b), if not punishable as a violation of paragraph (b), could be addressed by the Commission under its authority to issue orders to modify, suspend or revoke a license. For example, an order would be appropriate where the action of a licensee in not recognizing the significance of the information and failing to report it, together with other relevant facts, raises serious questions about either its competency or its trustworthiness.

Finally, the Commission has decided to exercise its discretion in the application of the term material false statement by limiting use of the term to situations where there is an element of intent. A charge of material false statement is equated by the public and most people in the industry with lying and intention to misled. Yet under the current policy, a material false statement under the Atomic Energy Act can be either an affirmative statement, oral as well as written, or an omission, and can be unintended and inadvertent as well as intentional.

This change recognizes the negative connotations which are associated by the public and the industry with the term material false statement but retains the use of this label as an additional enforcement tool in egregious situations, which will be determined on a case-by-case basis. The Commission expects to use the term rarely because with the adoption of this rule, the Commission will have the mechanism to apply the full range of enforcement sanctions to inaccurate communications or records without reliance on the term material false statement. Consequently, the Commission sees no need to develop a specific definition of the term "material false statement." [1] The Department of Justice supports this approach in view of the potential for confusion from the Commission's use of the term material false statement in its civil context and criminal prosecutions for material false statements under 18 U.S.C. 1001. However, should a violation of the proposed requirement for complete and accurate information be labeled as a material false statement, it is expected that the communication failure will involve, for example, instances (1) where an inaccurate or incomplete written or sworn oral statement is made knowing the statement is inaccurate or incomplete, or with careless disregard for its accuracy or completeness; or (2) where an inaccurate or incomplete unsworn oral statement is made with a clearly demonstrable knowledge of its inaccuracy or incompleteness.

IV. Enforcement Policy

The Commission's existing material false statement policy is currently reflected in the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C (Enforcement Policy). Modifications to this policy to reflect the new rules and the changes to Commission policy announced here are being published concurrently with these new rules.

A violation of the regulations on submitting complete and accurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Prior consultation with the Commission

[1] Any characterization or use which the Commission gives to the term material false statement as used in the Atomic Energy Act of 1954, as amended, is, of course, limited to the Commission's civil enforcement actions and has no legal impact on the meaning given to similar terms and phrases used in other statutes, e.g., 18 U.S.C. 1001, or on the authority of the Department of Justice to prosecute under such statutes. Thus, regardless of what enforcement action NRC may take for a communication failure, the failure may be subject to criminal sanctions.

will continue for those cases in which the staff recommends using the material false statement label. Violations involving inaccurate or incomplete information will be categorized based on the guidance in the Enforcement Policy, Section III (Severity of Violations), new Section VI (Inaccurate and Incomplete Information), and the revised Supplement VII. Consistent with the existing supplement, willful communications failures or communications failures regarding very significant information are categorized at a Severity Level I or II, and other significant communication failures normally will be categorized at a Severity Level III. Less significant failures normally will be categorized at a Severity Level IV or V as appropriate. Guidance on taking enforcement action for incomplete or inaccurate information and the failure to provide significant information identified by a licensee is found in the new Section VI and the revised Supplement VII of the revised Enforcement Policy.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information.[2] Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to such factors as (1) the degree of knowledge that the communicator should have had regarding the matter, in view of his or her position, training, and experience, (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information, (3) the degree of intent or negligence, if any, involved, (4) the formality of the communication, (5) the reasonableness of NRC reliance on the information, (6) the importance of the information which was wrong or not provided, and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or the NRC raising a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available, the initial submittal was promptly corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the intitial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described above.

V. Practical Impacts

Environmental Impact: Categorical Exclusion

With respect to the amendments to 10 CFR Parts 30, 40, 50, 60, 61, 70, 71, and 72, the NRC has determined that the rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). The NRC has also determined that the amendments to 10 CFR Parts 2, 55, 110, and 150 meet the eligibility criteria for the categorical exclusion described in 10 CFR 51.22(c)(1). Accordingly, neither an environmental impact statement nor an environmental assessment has been prepared in connection with the issuance of the rule.

Paperwork Reduction Act Statement

This rule adds a specific information collection requirement that is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements contained in these Regulations have been approved by the Office of Management and Budget; OMB approval Nos. 3150–0017 (Part 30); –0020 (Part 40); –0011 (Part 50); –0018 (Part 55); –0127 (Part 60); –0135 (Part 61); –0009 (Part 70); –0008 (Part 71); –0132 (Part 72); –0032 (Part 150).

Regulatory Analysis

The Commission's current requirement for accuracy and completeness of information provided to the Commission is specified in the adjudicatory decision rendered with respect to an enforcement action taken against Virginia Electric Power Company in 1976. The rule articulates this requirement, which governs the day-to-day interactions between NRC personnel and licensees and applicants, in a regulation issued under the Commission's general authority to establish instructions for the provision of information and reports to the Commission rather than by interpretation of the material false statement provision of section 186 of the Atomic Energy Act in an adjudicatory decision. Codifying this requirement is preferable to continued reliance on the adjudicatory decision as the only statement of the requirement. Codification of the requirement will give the regulated community more explicit and accessible notice of the standards of accuracy expected of it and will give the Commission greater flexibility to

[2] A licensee official means a first line supervisor or above as well as a licensed individual, Radiation Safety Officer, or a person listed on a license as an authorized user of licensed material.

enforce these standards without unnecessarily applying the label material false statement to communications from licensees and applicants. In view of the extensive public comments and the recommendations of the Advisory Committee for Review of the Enforcement Policy received in response to the Commission's request for evaluation of the existing practice and proposed changes to it, it is apparent that this rule is the preferred alternative and the cost entailed in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), and consistent with NRC's Size Standards published December 9, 1985 (50 FR 50241), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The rule, which will affect large and small licensees alike, merely codifies an existing requirement, established through an adjudicatory decision, that all information provided to the Commission relating to licensed activities or maintained pursuant to Commission requirements be complete and accurate in all material respects. In addition, the rule will reduce the existing burden on licensees because the full disclosure aspect of the current judicially imposed requirement has been modified to limit it to that information which the licensee itself has determined has a significant implication for licensed activities.

In the notice of proposed rulemaking, the Commission specifically requested comment on the economic impact of this action on small entities. No comments were received in response to this request.

Backfit Statement

The rule codifies the existing obligations of applicants and licensees to provide information relating to licensed activities which could have significant implications for those activities and to ensure that all information provided to the Commission or maintained pursuant to Commission requirements is complete and accurate in all material respects. The Commission has determined, therefore, that the backfit rule, 10 CFR 50.109, does not apply to the rule.

List of Subjects

10 CFR Part 2

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

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 55

Manpower training programs, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Reporting and recordkeeping requirements.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 30, 40, 50, 55, 60, 61, 70, 71, 72, 110 and 150.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

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

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134,

Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*)

2. In Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions to 10 CFR Part 2, Sections VI., VII. and VIII. are redesignated as Sections VII., VIII. and IX.; and a new Section VI entitled "Inaccurate and Incomplete Information" is added to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

VI. Inaccurate and Incomplete Information

A violation of the regulations on submitting complete and accurate information, whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee normally will be categorized based on the guidance herein, in Section III "Severity of Violations", and in Supplement VII.

The Commission recognizes that oral information may in some situations be *inherently less reliable than written* submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. A licensee official for purposes of application of the Enforcement Policy means a first line supervisor or above as well as a licensed individual, radiation safety officer, or a person listed on a license as an authorized user of licensed material. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to such factors as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience, (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information, (3) the degree of intent or negligence, if any, involved, (4) the formality of the communication, (5) the reasonableness of NRC reliance on the information, (6) the importance of the information which was wrong or not provided, and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described above.

* * * * *

3. In Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions to 10 CFR Part 2, Supplement VII—Severity Categories, is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement VII—Severity Categories

Miscellaneous Matters

A. Severity I—Violations involving for example:

1. Inaccurate or incomplete information [15] which is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information which the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and which is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee; or

5. A knowing and intentional failure to provide the notice required by Part 21.

B. Severity II—Violations involving for example:

1. Inaccurate or incomplete information which is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. Action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or

5. A failure to provide the notice required by Part 21.

[15] In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference also should be made to the guidance in Section VI.

C. Severity III—Violations involving for example:

1. Incomplete or inaccurate information which is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection of a formal request for information;

2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. Failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation'

4. Action by first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or

5. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV—Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance which is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information which the NRC requires be kept by a licensee and which is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation; or

3. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance.

E. Severity V—Violations involving for example:

1. Incomplete or inaccurate information which is provided to the Commission and the incompleteness or inaccuracy is of minor significance;

2. Information which the NRC requires be kept by a licensee which is incomplete or inaccurate and the incompleteness or inaccuracy is of minor significance; or

3. Minor procedural requirements of Part 21.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

4. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 30.3, 30.34(b) and (c), 30.41(a) and (c), and 30.53 are issued under sec 161b., 68 Stat. 948 as amended (42 U.S.C. 2201(b)); and 30.6, 30.9, 30.36, 30.51, 30.52, 30.55 and 30.56(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. Immediately following § 30.8, a new § 30.9 is added to read as follows:

§ 30.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

6. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11(e)(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948 as amended, (42 U.S.C. 2201(b)); and §§ 40.5, 40.9, 40.25(c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. Immediately following § 40.8, a new § 40.9 is added to read as follows:

§ 40.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the license shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

8. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185,

68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939 as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Immediately following § 50.8, a new § 50.9 is added to read as follows:

§ 50.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 55—OPERATORS' LICENSES

10. The authority citation for Part 55 is revised to read as follows:

Authority: Sec. 107, 161, 182, 68 Stat. 939, 948 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97-425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 55.3, 55.21, 55.49, and 55.53 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.9, 55.23, 55.25, and 55.53(f) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. Immediately following § 55.8, a new § 55.9 is added to read as follows:

§ 55.9 Completeness and accuracy of information.

Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

PART 60—DISPOSAL OF HIGH LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES; LICENSING PROCEDURES

12. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233), secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97-425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 60.10, 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

13. Immediately following § 60.9, a new § 60.10 is added to read as follows:

§ 60.10 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

14. The authority citation for Part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5446); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended, (42 U.S.C. 2273); Tables 1 and 2, §§ 61.3, 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); 61.9a, 61.10 through 61.16, 61.24, and 61.80 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

15. Immediately following § 61.9, a new § 61.9a is added to read as follows:

§ 61.9a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two

working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

16. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3) and (h)-(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); §§ 70.7, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57(b) and (d), and 70.58(a)-(g)(3) and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 (U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59 and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

17. Immediately following § 70.8, a new § 70.9 is added to read as follows:

§ 70.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

18. The authority citation for Part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 71.3, 71.43, 71.45, 71.55, 71.63(a) and (b), 71.83, 71.85, 71.87, 71.89, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.6a, 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

19. Immediately following § 71.6, a new § 71.6a is added to read as follows:

§ 71.6a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI)

20. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332).

Section 72.34 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.14, 72.15, 72.17(d), 72.19, 72.33(b)(1), (4), (5), (e), (f), and 72.36(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10, 72.15, 72.17(d), 72.33(c), (d)(1), (2), (e), 72.81, 72.83, 72.84(a), 72.91 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.9a, 72.33(b)(3), (d)(3), (f), 72.35(b), 72.50-72.52, 72.53(a), 72.54(a), 72.55, 72.56, 72.80(c), and 72.84(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

21. Immediately following § 72.9, a new § 72.9a is added to read as follows:

§ 72.9a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or informaion required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two

working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

22. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 110.20–110.29, 110.50, and 110.120–110.129 also issued under secs. 161 b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i)); and §§ 110.7a and 110.53 are also issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

22. Immediately following § 110.7, a new § 110.7a is added to read as follows:

§ 110.7a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

24. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 150.20(b) (2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and 150.16–150.19 and 150.20(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

25. The introductory paragraph of § 150.20(b) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7 (a) through (e), 30.9, 30.14(d) and §§ 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; § 40.7 (a) through (e), § 40.9, and §§ 40.41, 40.51, 40.61, 40.63, inclusive, 40.71 and 40.81 of Part 40 of this chapter; and § 70.7 (a) through (e), § 70.9, and §§ 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and 70.7 of Part 70 of this chapter; and to the provisions of Parts 19, 20, and 71 and Subpart B of Part 34 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Washington, DC this 24th day of December, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-29906 Filed 12-30-87; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 206 and 208

[Docket No. R-0609]

Securities of State Member Banks and Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its regulations issued pursuant to section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78/(i)) (the "1934 Act"). The amendment provides that State member banks required by sections 12(b) and 12(g) of the 1934 Act (15 U.S.C. 78/ (b) and (g)) ("registered State member banks") to file certain information with the Board must do so on the forms prescribed by the Securities and Exchange Commission (the "SEC") for other entities subject to reporting requirements under the 1934 Act. The amendment rescinds the Board's present regulation dealing with disclosures by registered State member banks under the 1934 Act, Regulation F (12 CFR Part 206), and adds the new securities disclosure requirement to Regulation H (12 CFR Part 208), which governs the activities of State member banks generally. The amendment will also permit, but not require, a registered State member bank with no foreign offices and total assets of $150 million or less to substitute the financial statements from its quarterly report of condition filed with the Board (Federal Financial Institutions Examination Council Forms 033 or 034) for the financial statements normally required on SEC Form 10–Q.

DATES: This amendment is effective for all filings submitted after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Walter R. McEwen, Attorney, Legal Division (202/452–3321), Kenneth M. Kinoshita, Attorney, Legal Division (202/452–3721), Rhoger H. Pugh,

Manager, Policy Development Section, Division of Banking Supervision and Regulation (202/452-5883) or Gerald A. Edwards, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452-2741); and for the hearing impaired *only:* Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: State member banks issuing securities that are registered under sections 12(b) or 12(g) of the 1934 Act and certain of their principal shareholders are currently required to file certain reports with the Board under the 1934 Act and the Board's Regulation F, which implements the reporting requirements of the 1934 Act as they apply to State member banks. The purpose of these reports is to provide investors in registered State member bank securities with information on the activities and operations of these banks.

Section 12(i) of the 1934 Act authorizes the Board to promulgate such rules and regulations as may be necessary to implement the provisions of 1934 Act as to State member banks. That section also requires the Board to issue rules and regulations that are substantially similar to those issued by the SEC under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act for entities subject to reporting requirements under those provisions. The reporting requirements adopted by the Board for State member banks are currently codified in Regulation F and have traditionally been substantially identical to the rules and regulations issued by the SEC under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act. Because of the small number of registered State member banks and the few substantive differences between Regulation F and the rules and regulations issued by the SEC under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act, the Board believes that it would be appropriate to replace its securities disclosure regulations with a requirement that State member banks file with the Board the information and forms proscribed by the SEC under the 1934 Act. This amendment would ensure that the Board's securities regulation under section 12(i) of the 1934 Act automatically incorporates any amendments adopted by the SEC under sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act.

The Board has decided to codify this requirement in Regulation H, which applies to the activities of State member banks generally, and to rescind Regulation F. Accordingly, a new § 208.16(a) of Regulation H will provide that registered State member banks required to file reports with the Board under sections 12(b) and 12(g) of the 1934 Act must follow the rules, regulations and forms prescribed by the SEC pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act.

The Board recognizes that this amendment will require registered State member banks to submit audited annual financial statements as required by the SEC's Regulation S-X. The Board notes, however, that 33 of the 36 registered State member banks already submit audited annual financial statements and believes that the value of the independent audit outweighs the burden imposed on those banks which presently do not furnish audited annual financial statements.

The Board originally proposed to allow banks which have no foreign offices and total assets of less than $100 million to elect to substitute the balance sheet and income statement from the quarterly report of condition required to be filed by the bank with the Board under section 9 paragraph 6 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 034) for the quarterly financial statements required in the SEC's Form 10-Q. Comments on the proposed rule suggested that the Board amend the rule to allow banks which have no foreign offices and total assets of $150 million or less to take advantage of this provision. The commenters pointed out that the $150 million figure conforms to the cut-off in the Board's Capital Adequacy Guidelines (12 CFR Part 225, Appendix A). The Board agrees with the commenters and has decided to increase the cut-off for use of this provision to banks with assets of $150 million or less. Accordingly, the final rule also permits banks with assets over $100 million but less than $150 million to elect to file either the balance sheet and income statement required by Form 10-Q or the balance sheet and income statement required by FFIEC Form 033 for those banks.

The basic information disclosed in FFIEC Forms 033 and 034 is substantially similar to that required by SEC Form 10-Q, although the format of the forms differs. Therefore, the Board concludes that no substantive purpose is served by requiring a small registered State member bank to file two forms detailing similar information in different formats.

The amendment permits registered State member banks to make this election only if the net income, total assets and total equity capital reported in financial statements filed on FFIEC Forms 033 or 034 would not differ materially from corresponding amounts in financial statements prepared in accordance with generally accepted accounting principles ("GAAP"). The balance sheet and income statement required by FFIEC Forms 033 and 034 are prepared in accordance with certain Federal bank regulatory reporting standards. The Board concludes, however, that financial statements prepared under regulatory reporting standards and financial statements prepared under GAAP are not likely to be significantly different in banks with less than $150 million in assets. Where the financial statements would be materially different, the banks may not elect to use the financial statements from FFIEC Forms 033 and 034 in lieu of the financial statements required by Form 10-Q.

Regulatory Flexibility Act and Paperwork Reduction Act

The Board will publish its analysis of the impact of this amendment under the Regulatory Flexibility Act of 1980 and the Paperwork Reduction Act of 1980 in a subsequent **Federal Register** notice.

List of Subjects

12 CFR Part 206

Accounting, Confidential business information, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 208

Membership, Banks, Accounting, Confidential business information, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 12(i) of the 1934, the Board amends 12 CFR Parts 206 and 208 as follows:

PART 206—[REMOVED AND RESERVED]

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for Part 208 is revised to read as follows:

Authority: 12 U.S.C. 248, 321-338, 486, 1814, 3907, 3909 and 15 U.S.C. 78*l*(i).

2. Section 208.16 is added to read as follows:

§ 208.16 Reporting requirements for State member banks subject to the Securities Exchange Act of 1934.

(a) *Filing requirements.* Except as otherwise provided in this section, a State member bank the securities of which are subject to registration pursuant to section 12(b) or section 12(g) of the Securities Exchange Act of 1934 (the "1934 Act") (15 U.S.C. 78*l* (b) and (g)) shall comply with the rules, regulations and forms adopted by the Securities and Exchange Commission ("Commission") pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the 1934 Act (15 U.S.C. 78*l*, 78m, 78n(a), (c), (d), (f) and 78p). The term "Commission" as used in those rules and regulations shall with respect to securities issued by State member banks be deemed to refer to the Board unless the context otherwise requires.

(b) *Elections permitted of State member banks with total assets of $150 million or less.* (1) Notwithstanding paragraph (a) of this section or the rules and regulations promulgated by the Commission pursuant to the 1934 Act, a State member bank that has total assets of $150 million or less as of the end of its most recent fiscal year and no foreign offices may elect to substitute for the financial statements required by the Commission's Form 10–Q the balance sheet and income statement from the quarterly report of condition required to be filed by such bank with the Board under section 9 of the Federal Reserve Act (12 U.S.C. 324) (Federal Financial Institutions Examination Council Form 033 or 034).

(2) A State member bank may not elect to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section if the amounts reported for net income, total assets or total equity capital in those statements, which are prepared on the basis of Federal bank regulatory reporting standards, would differ materially from such amounts reported in financial statements prepared in accordance with generally accepted accounting principles ("GAAP").

(3) A State member bank qualifying for and electing to file financial statements from its quarterly report of condition pursuant to paragraph (b)(1) of this section in its form 10–Q shall include earnings per share or net loss per share data prepared in accordance with GAAP and disclose any material contingencies as required by Article 10 of the Commission's Regulation S–X (15 CFR 210.10–01), in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of Form 10–Q.

(c) *Filing instructions, inspection of documents, and nondisclosure of certain information filed.* (1) All papers required to be filed with the Board pursuant to the 1934 Act or regulations thereunder shall be submitted to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(2) No filing fees specified by the Commission's rules shall be paid to the Board.

(3) Copies of the registration statement, definitive proxy solicitation materials, reports and annual reports to shareholders required by this section (exclusive of exhibits) will be available for public inspection at the Board's offices in Washington, DC, as well as at the Federal Reserve Banks of New York, Chicago, and San Francisco and at the Reserve Bank in the district in which the reporting bank is located.

(4) Any person filing any statement, report, or document under the 1934 Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below:

(i) The person shall omit from the statement, report, or document, when it is filed, the portion thereof that the person desires to keep undisclosed (hereinafter called the confidential portion). The person shall indicate at the appropriate place in the statement, report, or document that the confidential portion has been so omitted and filed separately with the Board.

(ii) The person shall file with the copies of the statement, report, or document filed with the Board:

(A) As many copies of the confidential portion, each clearly marked "CONFIDENTIAL TREATMENT", as there are copies of the statement, report, or document filed with the Board. Each copy of the confidential portion shall contain the complete text of the item and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in case the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. All copies of the confidential portion shall be in the same form as the remainder of the statement, report, or document; and

(B) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall (*1*) identify the portion of the statement, report, or document that has been omitted, (*2*) include a statement of the grounds of objection, and (*3*) include the name of each exchange, if any, with which the statement, report, or document is filed. The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "CONFIDENTIAL TREATMENT" and addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551.

(iii) Pending the determination by the Board on the objection filed in accordance with this paragraph, the confidential portion will not be disclosed by the Board.

(iv) If the Board determines that the objection shall be sustained, a notation to that effect will be made at the appropriate place in the statement, report, or document.

(v) If the Board determines that the objection shall not be sustained because disclosure of the confidential portion is in the public interest, a finding and determination to that effect will be entered and notice of the finding and determination will be sent by registered or certified mail to the person.

(vi) If the Board determines that the objection shall not be sustained pursuant to paragraph (c)(4)(v) of this section, the confidential portion shall be made available to the public:

(A) 15 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (c)(4)(v) of this section, provided that the person filing the objection has not previously filed with the Board a written statement that he intends in good faith to seek judicial review of the finding and determination;

(B) 60 days after notice of the Board's determination not to sustain the objection has been given as required by paragraph (c)(4)(v) of this section and the person filing the objection has filed with the Board a written statement that he intends to seek judicial review of the finding and determination but has failed to file a petition for judicial review of the Board's determination; or

(C) Upon final judicial determination, if adverse to the party filing the objection.

(vii) If the confidential portion is made available to the public, a copy thereof shall be attached to each copy of the

statement, report, or document filed with the Board.

By order of the Board of Governors of the Federal Reserve System, December 23, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 29933 Filed 12-30-87; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 350

Disclosure of Financial and Other Information by FDIC-Insured Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (the "FDIC") is adopting a new Part 350 to the FDIC's rules and regulations that requires FDIC-insured state-chartered banks that are not members of the Federal Reserve System and FDIC-insured state-licensed branches of foreign banks to prepare, and make available on request, annual disclosure statements consisting of (1) required financial data comparable to specified schedules in call reports filed for the previous two year-ends, (2) information that the FDIC may require of particular organizations, and (3) other optional information. The first annual disclosure statement required by Part 350 is for 1987 and it must be prepared by March 31, 1988, or the fifth day after an organization's annual report covering the year 1987 is sent to shareholders, whichever occurs first. In place of Call Report data, a bank may use audited financial statements or reports prepared pursuant to other regulations by the bank or a parent one-bank holding company.

EFFECTIVE DATE: February 1, 1988.

ADDRESS: Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: William P. Carley or Robert F. Storch, Planning and Program Development Specialists, Division of Bank Supervision, FDIC, (202) 898-6903.

SUPPLEMENTARY INFORMATION: On June 17, 1987, the Board of Directors of the FDIC approved a proposed new Part 350 to the FDIC's rules and regulations for a 60-day comment period. (52 FR 23554 and 25021, June 23 and July 2, 1987.) Proposed Part 350 was substantially similar to a proposed revision of 12 CFR Part 18 by the Office of the Comptroller of the Currency (the "OCC") that would apply to all national banks. (52 FR 23456, June 22, 1987.) As a result of the two staffs' cooperation in evaluating comments on the respective proposals, this final Part 350 is substantially the same as the OCC's final revision of 12 CFR Part 18.

By adopting this regulation, the FDIC intends to improve public awareness and understanding of the financial condition of individual banks. In FDIC's view, improved financial disclosure should reduce the likelihood of the market or bank customers overreacting to incomplete information. The FDIC believes that the required disclosures will complement its supervisory efforts and enhance public confidence in the banking system.

The FDIC received 125 comment letters on its June 17 proposal. Although certain of those comments resulted in changes, this final rule retains the general framework of that proposal. Organizations subject to the regulation shall notify the general public, and in some instances shareholders, that disclosure statements are available on request. Required disclosures consist of financial reports for the current and preceding years and this data could be photocopied directly from year-end call reports. Also, on a case-by-case basis, the FDIC may require that descriptions of enforcement actions be included in disclosure statements. Finally, the regulation allows, but does not require, the inclusion of management discussions and analyses.

Changes From the Proposal

Based on comments received, this final Part 350 reflects changes from the June proposal.

In some instances the text of the proposal has been rearranged to more closely align the sequence of the provisions in the respective FDIC and OCC final rules. Also, the purpose section has been removed to conform with the style used in other parts of the FDIC's rules and regulations.

As a result of commenters expressing uncertainty about which entities were subject to the proposal, the final regulation adds a section that defines the term "bank" for purposes of Part 350. Also, to avoid misunderstandings in other sections of the regulation, the added section defines the term "Call Report" for purposes of Part 350. (§ 350.2)

The proposal would have required disclosure statements to be available by February 15, except for banks with foreign branches which would have had a March 1 availability date. Many commenters requested postponing the availability dates to make it realistically possible for banks to use options in the proposal to substitute audited financial statements or statements prepared pursuant to the requirements of the Securities Exchange Act of 1934 in place of Call Report data. Because of those comments, the final regulation requires disclosure statements to be available generally by March 31. However, when comparable information is compiled and sent to shareholders in the form of annual reports before March 31, disclosure statements must be available to the public not later than the fifth day after annual reports are sent to shareholders. (§ 350.3(b))

Commenters requested that the regulation specify a date after which an annual disclosure statement would no longer have to be made available. In this regard, the final regulation provides that each year's disclosure statement shall be available until the disclosure statement for the succeeding year is available. (§ 350.3(b))

As proposed, required financial data would have been based on, or comparable to, the contents of call reports filed by domestic banks and no allowance would have been made for the fact that reports filed by insured state-licensed branches of foreign banks are materially different from those of domestic banks. In this connection, commenters suggested that state-licensed branches of foreign banks be exempted from the regulation or that disclosures by such entities be based on reports they presently file. The final regulation provides that required disclosures of financial data by insured state-licensed branches of foreign banks be comparable to financial data filed in specified publicly available schedules in the reports filed by such entities. (§ 350.4(a)(2))

The proposal would not have allowed reports of holding companies to be used in place of reports required of banks. In this regard, commenters argued that in some instances information about a one-bank holding company is, for most intents and purposes, equivalent to information about the subsidiary bank. Accordingly, commenters requested that banks be allowed to use reports of holding companies prepared pursuant to other regulatory requirements to satisfy the proposed requirements. Based on those comments and on the staff's consideration of the cutoff point at which a holding company report would no longer be a reasonable proxy for a report of the subsidiary bank, reports of one-bank holding companies prepared in

accordance with requirements of the Securities and Exchange Commission or Regulation Y of the Federal Reserve System may be used by the bank to satisfy the regulation in instances where no less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's subsidiaries. (§ 350.5(c))

Commenters questioned why the proposed signature and attestation section should apply to disclosure statements that contain audited financial information. In this regard, the intention was to make the requirement applicable only when unaudited financial information (generally Call Report data) is used. Accordingly, the section has been restated to require a signature and attestation only when the financial reports are not accompanied by an auditor's certificate or report. (§ 350.6)

The proposal would have required banks to include announcements of the disclosure statements' availability with notices of annual meetings sent to shareholders. On this point some commenters questioned whether the FDIC intended to originate a requirement for sending notices of meetings to shareholders. One commenter assumed that this was the intention and argued that the FDIC lacks authority to impose such a requirement. Some asked if notices of meetings or announcements of the availability of disclosure statements had to be sent to holding companies that own substantially all outstanding shares of their subsidiary banks. Others asked if announcements of availability were required to be sent to shareholders of bank holding companies. In this regard, neither the proposal nor the final regulation is intended to require that notices of annual meetings be sent to shareholders. To avoid misunderstandings, the final regulation has been restated to provide that for banks that give written notices of their annual meetings, shareholders shall be simultaneously informed that the disclosure statement is available. This means that when written notices of shareholders' meetings are not given, banks are not required to send shareholders announcements of the availability of disclosure statements. The regulation is not applicable to communications sent to shareholders of a bank holding company. (§ 350.7(a))

As proposed, banks would have been required to provide shareholders and the public with an address, telephone number and name or title of the bank employee from whom disclosure statements should be requested. Also, banks would have been required to promptly mail or otherwise make disclosure statements available. On these points, commenters argued that it would be more practical to identify only an address and telephone number to which requests should be directed and to omit the requirement to identify a particular employee by name or title. Other commenters observed the impracticality and additional costs associated with maintaining supplies of disclosure statements at each location of a large branching system in order to satisfy the promptness requirement. Others asked for a definition of "promptly." Based on those comments, the final regulation does not require identifying by name or title an employee from whom requests for disclosure statements should be made. The final regulation retains the promptness requirement and thereby applies a standard of reasonableness to each bank's circumstances. This means a bank has flexibility to adopt a distribution system suitable to its own needs, such as a central mail distribution point as opposed to a stockpile of disclosure statements at each branch, and it is protected against unforeseen events that could temporarily interrupt the supply or distribution of statements. (§ 350.8)

Other Comments

In addition to comments that resulted in changes, the FDIC received other comments on the June proposal.

A small number of commenters argued that the FDIC did not have authority to adopt the proposed regulation in final form because the rule was either an invasion of privacy, contrary to an unidentified provision of the U.S. Constitution, or not consistent with the purpose of FDIC's authority to require publication of call reports. The FDIC has considered those positions but, in view of its authority pursuant to 12 U.S.C. 1817(a)(1) and 1819 "Seventh" and "Tenth," it does not agree.

Slightly more than one-half of the 125 comments that were received said that the proposal should not be adopted because of one or more of the following reasons: The public already has sufficient information. Depositors rely on the strength of FDIC insurance and not on an analysis of bank information. Deposit runs will result from the inability of individuals and the news media to interpret the data correctly.

The FDIC does not accept the unsupported conclusion that the public has sufficient information. As to depositor reliance on FDIC insurance, the preamble to the June proposal noted that many small, *i.e.*, fully insured, depositors are business firms or professional individuals who greatly value and depend on their relationship with banks as a source of continued and uninterrupted credit and banking services. Although fully insured, these depositors have the incentive for analyzing and acting on bank disclosures. The preamble to the proposal also noted that bank management should make use of its option to include analyses and discussion sections to assist readers in attaching the appropriate significance to the various items of financial information and in reaching sound and meaningful conclusions. Also, the preamble drew attention to the fact that banks with securities registered with the Securities and Exchange Commission or with a bank regulatory agency have made public disclosures more comprehensive than those called for in the proposal with no pattern of distorted reporting by the news media.

About one-fifth of the commenters objected to the proposal because it would not extend to all financial institutions. In this regard, the FDIC does not have jurisdiction to impose requirements on savings and loan institutions and credit unions. As to FDIC-insured banks, nonmember and national banks will be subject to either the FDIC's or the OCC's disclosure regulations and the Federal Reserve Board is considering a requirement for disclosures by state member banks. Accordingly, it is likely that essentially all FDIC-insured organizations will be subject to annual disclosure requirements.

The proposal would have required that each disclosure statement contain the disclaimer: "This statement has not been reviewed, or confirmed for accuracy or relevance, by the Federal Deposit Insurance Corporation." On this matter, commenters noted that another of the proposed provisions carried a general prohibition against any bank representing that the FDIC had passed upon the accuracy or completeness of the disclosure statement. In view of that prohibition, the commenters questioned the utility of requiring the inclusion of a disclaimer. Some opined that the disclaimer carried unnecessarily negative connotations. The FDIC has considered these views but has decided to retain the disclaimer requirement because it is probable that some readers will assume that statements prepared in accordance with an agency's requirements have been reviewed or otherwise approved by the agency. In this connection, the FDIC notes that

many public disclosures made pursuant to requirements of the Securities and Exchange Commission have carried similar disclaimers without readers drawing negative connotations.

The proposal asked for comments on: (1) Procedures for monitoring compliance; (2) the possible addition of a requirement for disclosing insider transactions; (3) whether disclosures should be other than annually; (4) the effectiveness of the proposed means of making disclosure statements available; and (5) costs of compliance. About one-fourth of the commenters addressed one or more of these topics.

Consistent with the great majority of relevant comments, the final regulation, like the proposal: (1) Does not prescribe formal compliance procedures but leaves this matter to subsequent review during FDIC bank examinations; (2) does not specifically require disclosure of insider transactions; (3) requires disclosures annually; and (4) provides for furnishing disclosure statements on request following a notice of availability rather than providing disclosure statements automatically to designated groups. On these issues, the FDIC considered but did not accept suggestions that: (1) The FDIC certify the accuracy of bank financial reports before such information is included in disclosure statements; (2) disclosure statements include information on insider loans that are past due or charged off; (3) banks make disclosures quarterly rather than annually; and (4) shareholders receive disclosures automatically whether or not requested.

In regard to costs, some commenters stated that the proposal would impose only insignificant costs. Others addressing this issue stated that the cost of compliance would be excessive. Generally costs were attributed to preparing large numbers of documents that might not be requested. Also, costs were ascribed to the time bank executives would spend explaining the disclosures to large numbers of depositors on an individual basis. The FDIC believes that the five-day response time allowed for furnishing disclosure statements provides an opportunity for banks to devise procedures for preparing disclosure statements on an as requested basis and, consequently, avoid preparing excess documents. As to demands on executives' time, the FDIC notes that management can avoid this result by providing clear and objective analyses and discussions as part of disclosure statements.

Also in regard to costs, commenters suggested that banks be allowed to charge for copies of their disclosure document in some instances and others suggested that banks be allowed to deny requests from competitors, noncustomers, or those who do not state a sufficient reason for obtaining a disclosure statement. The FDIC did not accept these suggestions because they are inconsistent with the purposes of the regulation.

Commenters suggested that the regulation provide its own automatic termination date which would be subject to subsequent extension by the FDIC. Pursuant to the FDIC's existing policy for the development and review of rules and regulations, reviews of FDIC regulations are made periodically to determine whether they should be continued, revised, or eliminated.

In regard to proposed prohibition against omissions of pertinent information, three commenters stated that there is no appropriate frame of reference for identifying information that is pertinent and two opined that the prohibition would make the management and analysis section mandatory rather than optional. On review, the FDIC believes that the prohibition is unambiguous and does not conflict with other provisions. Inasmuch as the disclosure statement is primarily comprised of financial reports, pertinent information relates to the relevance and reliability of such reports. Also, the prohibition does not override the optional nature of a management discussion and analysis. However, when optional material is included, the prohibition against omissions ensures that such material will be candid.

Other comments of one to five in number that were evaluated and not adopted would have: Made lobby posters optional; required notice by mail to all bank customers and shareholders; had the FDIC publish all of its administrative orders; provided FDIC credit to all customers of failed banks; made disclosures of income statements by small or agricultural banks optional; directed requesters to obtain disclosure documents from the FDIC rather than from banks; required rather than allowed disclosure statements to contain a management discussion and analysis; deleted the possibility of providing an analysis and discussion by management; allowed banks to publish examination ratings or required the FDIC to publish such ratings; substituted summaries of agency-prepared uniform bank performance reports for reports prepared by banks; required the public to make written requests for disclosure statements and allow banks 15 days to respond; inserted a statement in Part 350 that the regulation does not create a private right of action; required disclosures of all enforcement actions, FDIC ratings pursuant to the Community Reinvestment Act and information concerning the pricing of consumer products; required financial reports to be prepared pursuant to generally accepted accounting principles; and required the publication of summary condition reports in local newspapers rather than providing disclosure statements on request.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605, the requirements of 5 U.S.C. 603 and 604 for initial and final regulatory analyses do not apply to the adoption of Part 350 because the Board of Directors of the FDIC certified on June 17, 1987, that the regulation, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirements for the collection of information contained in Part 350 have been approved by the Officer of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 350

Banks, Banking, Depositors, Disclosure, Financial information, Shareholders.

Final Regulation

For the reasons set out in the preamble, Title 12, Chapter III, Subchapter B of the Code of Federal Regulations, is amended by adding a new Part 350 as set forth below.

PART 350—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY FDIC-INSURED STATE NONMEMBER BANKS

Sec.
350.1 Scope.
350.2 Definitions.
350.3 Requirement for annual disclosure statement.
350.4 Contents of annual disclosure statement.
350.5 Alternative annual disclosure statements.
350.6 Signature and attestation.
350.7 Notice and availability.
350.8 Delivery.
350.9 Disclosure of examination reports.
350.10 Prohibited conduct and penalties.
350.11 Safe harbor provision.
350.12 Disclosure required by applicable securities law or regulations.

Authority: 12 U.S.C. 1817(a)(1), 1819 "Seventh" and "Tenth".

§ 350.1 Scope.

This part applies to FDIC-insured state-chartered banks that are not

members of the Federal Reserve System, and to FDIC-Insured state-licensed branches of foreign banks.

§ 350.2 Definitions.

(a) *Bank.* For purposes of this part, the term "bank" means an FDIC-insured state-chartered organization that is not a member of the Federal Reserve System, and an FDIC-insured state-licensed branch of a foreign bank.

(b) *Call Report.* For purposes of this part, the term "Call Report" means the report filed by a bank pursuant to 12 U.S.C. 1817(a)(1).

§ 350.3 Requirement for annual disclosure statement.

(a) *Contents.* Each bank shall prepare and make available on request an annual disclosure statement, beginning with the year 1987. The statement shall contain information required by § 350.4(a) and § 350.4(b) of this part and may include other information that bank management believes appropriate, as provided in § 350.4(c).

(b) *Availability.* A bank shall make its annual disclosure statement available to requesters beginning not later than the following March 31 or, if the bank mails an annual report to its shareholders, beginning not later than five days after the mailing of such reports, whichever occurs first. A bank shall continually make a disclosure statement available until the disclosure statement for the succeeding year becomes available.

§ 350.4 Contents of annual disclosure statement.

(a) *Financial reports.* The annual disclosure statement for any year shall reflect a fair presentation of the bank's financial condition at the end of that year and the preceding year and, except for state-licensed branches of foreign banks, the results of operations for each such year. The annual disclosure statement may, at the option of bank management, consist of the bank's entire Call Report, or applicable portions thereof, for the relevant dates and periods. At a minimum, the statement must contain information comparable to that provided in the following Call Report schedules:

(1) For insured state-chartered organizations that are not members of the Federal Reserve System:

(i) Schedule RC (Balance Sheet);

(ii) Schedule RC-N (Past Due and Nonaccrual Loans and Leases—column A covering loans and leases past due 30 through 89 days and still accruing and Memorandum item 1 need not be included);

(iii) Schedule RI (Income Statement);

(iv) Schedule RI-A (Changes in Equity Capital—commercial banks, or Changes in Net Worth—savings banks); and

(v) Schedule RI-B (Charge-Offs and Recoveries and Changes in Allowance for Loan and Lease Losses—commercial banks, or Charge-Offs, Recoveries, and Changes in Allowance for Loan and Lease Losses—savings banks). (Part I of the commercial bank Schedule RI-B covering specified types of loans and breakdowns by types of loans by savings banks may be omitted).

(2) For insured state-licensed branches of foreign banks:

(i) Schedule RAL (Assets and Liabilities);

(ii) Schedule E (Deposit Liabilities and Credit Balances); and

(iii) Schedule P (Other Borrowed Money).

(b) *Other required information.* The annual disclosure statement shall include such other information as the FDIC may require of a particular bank. This could include disclosure of enforcement actions where the FDIC deems it in the public interest to do so.

(c) *Optional information.* The bank may, at its option, provide additional information. Such disclosures could include information which bank management deems important to an evaluation of the overall condition of the bank. Information which management might consider adding includes, but is not limited to, a discussion of the financial data; pertinent information relating to mergers and acquisitions; the existence of and facts relating to regulatory enforcement actions; business plans; and material changes in balance sheet and income statement items.

(d) *Disclaimer.* The following legend shall be included in the annual disclosure statement to assure the public that the FDIC has not reviewed the information contained therein: "This statement has not been reviewed, or confirmed for accuracy or relevance, by the Federal Deposit Insurance Corporation."

§ 350.5 Alternative annual disclosure statements.

The requirements of § 350.4(a) may be satisfied:

(a) *In the case of a bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934,* by the bank's annual report to security holders for meetings at which directors are to be elected (see 12 CFR 335.203) or the bank's annual report on Form F-2 (see 12 CFR 335.312);

(b) *In the case of a bank with independently audited financial statements,* by copies of the audited financial statements and the certificate or report of the independent accountant to the extent that such statements contain information comparable to that specified in § 350.4(a); and

(c) *In the case of a bank subsidiary of a one-bank holding company,* by an annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission or by sections in the holding company's consolidated financial statements on Form FR Y-9C pursuant to Regulation Y of the Federal Reserve Board (12 CFR Part 225) that are comparable to the Call Report schedules enumerated in § 350.4(a)(1) of this part, provided that in either case not less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's consolidated subsidiaries.

§ 350.6 Signature and attestation.

A duly authorized officer of the bank shall sign the annual disclosure statement and shall attest to the correctness of the information contained in the statement if the financial reports are not accompanied by a certificate or report of an independent accountant.

§ 350.7 Notice and availability.

(a) *Shareholders.* If the bank provides written notice of the annual meeting of shareholders, the bank shall include with, or as part of, that notice an announcement that the bank's annual disclosure statement will be sent to the shareholder either automatically or upon request. For disclosure statements available on request, the announcement shall indicate at a minimum an address and telephone number to which requests may be directed. The first copy of the annual disclosure statement shall be provided to a shareholder without charge.

(b) *Customers and the general public.* In the lobby of its main office and each branch, the bank shall at all times display a notice that the annual disclosure statement may be obtained from the bank. The notice shall include at a minimum an address and telephone number of which requests should be directed. The first copy of the annual disclosure statement shall be provided to a requester free of charge.

§ 350.8 Delivery.

Each bank shall, after receiving a request for an annual disclosure statement, promptly mail or otherwise furnish a statement to the requester.

§ 350.9 Disclosure of examination reports.

Except as permitted under specific provisions of the FDIC's regulations (12 CFR Part 309), a bank may not disclose any report of examination or report of supervisory activity or any portion thereof prepared by the FDIC. The bank also shall not make any representation concerning such report or the findings therein.

§ 350.10 Prohibited conduct and penalties.

(a) *Misrepresentations.* No officer, director, employee, agent, or other person participating in the affairs of a bank, shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of pertinent or required information in the annual disclosure statement; or

(2) Represent that the FDIC, or any employee thereof, has reviewed, or confirmed the accuracy or relevance of the disclosure statement.

(b) *Participating persons.* For purposes of this part, a person "participating in the affairs of a bank" shall include (but not be limited to) any person who provides information contained in, or directly or indirectly assists in the preparation of, the annual disclosure statement.

(c) *Enforcement actions.* Conduct that violates paragraph (a) of this section may constitute an unsafe or unsound banking practice or otherwise serve as a basis for an enforcement action by the FDIC.

§ 350.11 Safe harbor provision.

The provisions of § 350.10 shall not apply unless it is shown that the information disclosed was included without a reasonable basis or other than in good faith.

§ 350.12 Disclosure required by applicable securities law or regulations.

The requirements of this part are not intended to replace or relieve any disclosure required to be made under applicable securities law or regulations.

(Approved by the Office of Management and Budget under control number OMB 3064-0090)

By order of the Board of Directors. Dated at Washington, DC, this 17th day of December 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-29884 Filed 12-30-87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 524

[No. 87-1309]

Operations of the Banks

Dated: December 22, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulation pertaining to charitable donations by the Federal Home Loan Banks ("Banks"). First, the Board is raising the limit placed upon an individual Bank's charitable contributions to any one organization in any given calendar year from $1,000 to $5,000. In addition, the Board is raising the permissible aggregate contributions that a Bank may give in charitable contributions in any given calendar year from $5,000 to $25,000.

EFFECTIVE DATE: The regulation is effective December 31, 1987.

FOR FURTHER INFORMATION CONTACT: William Carey, Director, Bank Liaison Division, Office of District Banks, (202) 377-6656; or Charles J. Szlenker, Attorney, Office of General Counsel, (202) 377-6664, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board, by Resolution No. 75-892, dated October 1, 1975, permitted Banks to make charitable donations within reasonable limits (49 FR 46302, 12 CFR 524.11). The Board found that charitable donations, within reasonable limits, would further the corporate interests of the Banks. Thie amendment recognizes the inflationary effect that the intervening twelve years have had on the original "reasonable" limits of $1,000 for each individual contribution and $5,000 for the aggregate total annual contributions permitted by a Bank. By today's dollar standards, the Board finds that $5,000 is a reasonable limit for charitable contributions to any one organization, and $25,000 is a reasonable limit for the aggregate total annual charitable contributions that a Bank, in its discretion, finds to be in its corporate interest to make.

Pursuant to 12 CFR 508.11 and 508.14 the Board finds that this amendment makes no substantial change in the Board's policy regardng charitable donations by Banks. Under the current regulations a Bank may, with prior Board approval, contribute more than $1,000 to a single charitable entity or exceed the annual cap of $5,000. This amendment will merely facilitate Bank contributions of more than $1,000 to each charity and more than $5,000 in annual charitable contributions.

The Board finds that this regulation is to be effective immediately upon publication in the **Federal Register** because it relieves a previous restriction. Consequently, the Board finds that public notice is not required, and the 30-day delay of the effective date of this amendment is also unnecessary.

List of Subjects in 12 CFR Part 524

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Board hereby amends Part 524, Subchapter B, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 524—OPERATIONS OF THE BANKS

1. The authority citation for Part 524 is revised to read as follows:

Authority: Sec. 10, 47 Stat. 732, as amended (12 U.S.C. 1430); sec. 12, 47 Stat. 735, as amended (12 U.S.C. 1432); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1843-48 Comp., p. 1071.

2. Revise § 524.11 to read as follows:

§ 524.11 Donations.

A Bank may contribute to charitable organizations provided that in any calendar year donations do not exceed $5,000 to any one orgnization or $25,000 in total. Each donation shall be approved by the Bank's board of directors. Exceptions shall be made only with prior approval of the Director or Assistant Director, Office of District Banks.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-29931 Filed 12-30-87; 8:45 am]

BILLING CODE 6720-01-M

12 CFR PART 584

[No. 87-1270]

Holding Company Indebtedness

Date: December 18, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; request for comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head

of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), is amending its regulation governing the amount of debt incurred by certain types of savings and loan holding companies: (1) To incorporate a 60-day limit, imposed by the Competitive Equality Banking Act of 1987 ("CEBA"), on the processing of completed debt applications and (2) to expand the delegated authority of the Supervisory Agents to approve or deny most debt applications and administer the new time limit on review. The Board is also seeking comment on ways in which holding company debt procedures may be further streamlined through expanded use of regulatory preapprovals or exemptions or changes in the criteria for granting preapprovals or exemptions.

DATES: The rule becomes effective on December 31, 1987. Comments on regulatory preapprovals or exemptions must be received on or before February 29, 1988.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Richard L. Little, Associate General Counsel, (202) 377-6447, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Robyn Dennis, Financial Analyst, (202) 778-2660, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 19th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

Under section 408(g) of the National Housing Act ("Act") (12 U.S.C. 1730a(g) (1982 and Supp. I 1983) and § 584.6 of the Regulations for Savings and Loan Holding Companies ("Regulations") (12 CFR 584.6 (1987)), without prior written FSLIC approval, no savings and loan holding company ("holding company"), nor any subsidiary that is not an insured institution ("non-thrift subsidiary"), may incur any debt that, aggregated with all debt outstanding, would exceed 15 percent of consolidated net worth. By statute, debt incurred by a diversified holding company or any non-thrift subsidiary is entirely exempt from this restriction. 12 U.S.C. 1730a(g)(2)(A). Moreover, by regulation, the Board has preapproved debt issued in certain contexts and has exempted certain other types of debt from the computation with respect to 15 percent of consolidated net worth. 12 CFR 584.6(b) and (c).

For debt that is neither exempt nor preapproved, the necessary FSLIC approval can be secured only through submission of an application on a prescribed form. *Id.* 584.6(d). Section 410(b) of the CEBA (101 Stat. 620) added a new subparagraph (7) to section 408(g) of the Act to the effect that any completed debt application will be deemed approved unless the Corporation issues a notice of approval or disapproval within 60 days of the date of which the application is filed.

To implement new section 408(g)(7) of the Act, the Board is revising paragraph (f) of § 584.6 of the Regulations to incorporate both the basic statutory time limit on agency review and procedures for determining the date from which the review period will run. Since the new time-frame applies only to applications that are "completed," with respect to completeness the regulatory procedures allow 30 calendar days for review of an initial application, or any material amendment, and 15 calendar days for review of any additional information. By the close of the initial review period, a notification that the application is deemed completed or that additional information is required must be issued or the application will be treated as completed.

Excluded entirely from the term "completed application" are those debt applications filed in conjunction with any holding company application subject to Part 574 of the Regulations (12 CFR Part 574), which governs acquisitions of control of insured institutions and holding companies. In cases in which debt is incurred in connection with an acquisition, review of the debt forms an integral part of consideration of the financial resources and future prospects of the acquiror, and the Board's practice has been to consider the proposed incurrence of debt as part of the acquisition transaction taken as a whole. Also, although applications under Part 574 are not subject to the recently adopted general guidelines on processing (52 FR 39064 (Oct. 20, 1987)), Part 574 contains internal processing deadlines to ensure that decisions will be rendered without undue delay.

For applications deemed completed as of the end of the initial 30 day review period, the date of filing of a completed application for purposes of computing the 60-day overall review period will revert to the date of receipt of the application. In cases in which additional information is required, the date of filing of a completed application will be the date of receipt of information sufficient to deem the application completed. Failure by an applicant to respond completely to a request for additional information within 30 calendar days will be treated as a withdrawal of the application. With respect to the procedures regarding additional information, it is the Board's expectation that, under all but the most extraordinary circumstances, only one request is to be issued for any given application.

In conjunction with implementation of the new review procedures, the Board has also decided to add a new paragraph (g) to § 584.6 to delegate all of the FSLIC's authority to take action with respect to debt applications that do not raise any significant issues of law or policy to Supervisory Agents ("SAs") who are presidents of Federal Home Loan Banks. Historically, administration of the debt control provisions of the Act has not been controversial. Even prior to passage of CEBA, the Board had been considering delegation of its debt control authority to the SAs as the most feasible means of accelerating the decision-making process. By eliminating review at the Washington level for most applications, the delegations should help achieve the significant reductions in processing time mandated by the recent statutory amendments. For applications that might require action at the Washington level, new paragraph (g) also establishes a procedure for referrals to the Office of Regulatory Policy, Oversight and Supervision.

Finally, for purposes of further streamlining the debt approval process, the Board is seeking comments on ways in which agency review of the incurrence of debt can be eliminated entirely. Specifically, the Board is interested in circumstances under which existing types of regulatory preapprovals or exemptions could be expanded or the standards by which they are granted might be changed to accommodate larger classes or types of transactions.

B. Notice and Comment Considerations

The Board finds that, in connection with adoption of this rule, observance of the notice and comment procedures, prescribed by 5 U.S.C. 553(b) (1982) and 12 CFR 508.11 and 508.12 (1987) is unnecessary. The amendment constitutes adoption of a rule of agency organization, procedure or practice. Accordingly, the exception set forth in paragraph (A) of section 553(b) of Title 5 of the United States Code applies to adoption of the amendment.

C. Effective Date Considerations

This rule is effective for applications filed after December 31, 1987. Since the substantive statutory amendment being implemented went into effect on August 10, 1987, the Board finds that the full thirty-day delay of effective date following publication of the rule is unnecessary pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14.

List of Subjects in 12 CFR Part 584

Holding companies, Savings and loan associations, Securities.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 584, Subchapter F, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

1. The authority citation for Part 584 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 584.6 by revising paragraph (d); by revising the heading and the text of paragraph (f); and by adding a new paragraph (g) to read as follows.

§ 584.6 Holding company indebtedness.

* * * * *

(d) *Filing of applications.* Applications for prior written approval of the Corporation for the issuance, sale, renewal, or guarantee of any debt security, or the assumption of any debt, shall be filed with the Corporation in the form prescribed in paragraph (e) of § 584.10 of this subchapter. Applications shall be addressed to the Supervisory Agent of the district in which the principal office of the subsidiary insured institution which conducts the principal savings and loan or savings bank business of such holding company is located.

* * * * *

(f) *Time limit on consideration of applications.* (1) Any completed application filed under this section shall be deemed to be approved as of the end of the 60-day period beginning on the date such application was filed, as provided in paragraph (f) (3)(ii) or (3)(iii) of this section, unless the Corporation issues a notice of approval or disapproval of the application before the end of such period.

(2) For purposes of this paragraph (f), the term "completed application" shall mean an application that contains all the information required by the form prescribed in paragraph (e) of § 584.10 of this subchapter, as determined by the Corporation or its delegate, but shall not include any such application that is filed in conjunction with any application subject to Part 574 of this subchapter.

(3)(i) Within 30 calendar days of receipt of an application filed under this section, or 15 calendar days of receipt of information furnished pursuant to a written request by the Corporation, the Corporation shall notify an applicant in writing either that the application is deemed completed or that additional information is required, *Provided That,* failure by the Corporation to notify an applicant in writing within the time period specified in this paragraph (f) shall constitute a determination that the application is completed.

(ii) If an application is deemed completed within 30 calendar days after receipt of an initial application, the application will be treated as filed on the date of receipt of the initial application.

(iii) If an application is deemed completed within 15 calendar days of receipt of information furnished pursuant to a written request by the Corporation, the application will be treated as filed on the date of receipt of information sufficient to deem the application completed.

(iv) Failure by an applicant to respond completely to a request by the Corporation for additional information within 30 calendar days of the date of such request shall be deemed to constitute withdrawal of the application.

(g) *Delegations of authority.* (1) The Supervisory Agent, as defined in § 583.5(a) of this subchapter, is authorized to:

(i) Issue notices of approval or disapproval for any application filed under this section in accordance with the standards contained in paragraph (e) of this section, provided that no notice may be issued if the application raises a significant issue of law or policy;

(ii) Condition approval of any such application upon agreement in writing that no dividends in excess of 50 percent of net income per year on a cumulative basis shall be paid by any subsidiary institution to its savings and loan holding company or any other affiliate as defined in § 583.15 of this part, except upon waiver by the Supervisory Agent;

(iii) Take any actions on behalf of the Corporation contemplated under paragraph (f) of this section including determining that an application is deemed completed and issuing a notice thereof, requesting additional information and determining the appropriate date of filing.

(2)(i) In cases in which the Supervisory Agent believes an application may raise a significant issue of law or policy, within 30 calendar days of receipt of the application, the Supervisory Agent shall transmit a copy of the application to the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") in Washington.

(ii) If, within 10 calendar days of receipt of the copy referred to in paragraph (g)(2)(i) of this section, ORPOS fails to notify the Supervisory Agent that the application presents a significant issue of law or policy, the Supervisory Agent shall continue to process the application as provided in paragraph (f) of this section.

(iii) If ORPOS notifies the Supervisory Agent within the time period specified in paragraph (g)(2)(ii) of this section that the application presents a significant issue of law or policy, ORPOS will be responsible for processing the application for decision by the Corporation as provided in paragraph (f) of this section.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-29864 Filed 12-30-87; 8:45 am]

BILLING CODE 6720-01-W

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Freedom of Information Act; Implementing Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This notice sets forth the revisions to the Department of Agriculture's regulations (7 CFR Part 1, Subpart A) implementing the Freedom of Information Act (FOIA). The regulations as proposed were published in the **Federal Register** on July 28, 1987, at 52 FR 28149.

The revisions to those regulations are the result of comments received in the Department during the public comment period and are intended to clarify the guidelines for assisting the public in obtaining access to Department records, and for assessing fees. The **"SUPPLEMENTARY INFORMATION"** section

below provides a detailed explanation of the revisions.

EFFECTIVE DATE: The regulations become effective February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Milton Sloane, U.S. Department of Agriculture, Office of Governmental and Public Affairs, Office of Information, Special Programs Division, Washington, DC 20250; (202) 447-8164.

SUPPLEMENTARY INFORMATION: This rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations) nor will these regulations cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

Following is a description of the comments made and the actions taken as the result of those comments.

I. Analysis of Comments

A total of eight comment letters was postmarked or received within the comment period. Comments were received from the following:

- National Broiler Council
- The Reporters Committee for Freedom of the Press
- Sierra Club Legal Defense Fund, Inc.
- Region 1 of the Forest Service, USDA
- Region 10 of the Forest Service, USDA
- National office of the Forest Service, USDA
- Farmers Home Administration, USDA
- Office of Personnel, USDA

1. Policy (proposed § 1.2(a)). One commenter inquired whether the notification referred to in the proposed section need be in writing. Another commenter suggested that it should be.

Section 1.2(a) has been amended to require written notification, to be consistent with § 1.14 (a) and (d) of this subpart.

2. Requests for records (proposed § 1.6). This section generated four comments.

(a) One commenter suggested that proposed § 1.6(d) be amended to provide clearer guidance on an agency's responsibility with regard to oral requests.

Section 1.6(d) is, for the most part, discretionary. The section merely points out that an agency may, if it chooses, and at its sole discretion, accept an oral request for agency records. If the agency does so, however, and "the requester is dissatisfied with the response, the agency official involved shall advise the requester to submit a written request * * *." Section 1.6(d) remains as proposed.

(b) One commenter suggested that § 1.6(e) be amended to provide for appeal rights for requesters who are denied documents.

Section 1.6(e) already provides such appeal rights. The right to appeal a denial also is stated in § 1.8(a)(3) of this subpart.

(c) One commenter suggested that, where appropriate, agencies should be allowed under § 1.6(f) to deal with each other in forwarding information requiring review by another agency, directly to that other agency.

The purpose of § 1.6(f) is to expedite the processing of requests submitted to the Department by getting them into the proper hands. The process outlined in § 1.6(f) is not intended to act as a hindrance. USDA agencies have long been encouraged to collaborate and to coordinate their actions in responding to requests that cut across agency lines, to the greatest extent practicable. In light of that fact, no change to the proposed section was deemed necessary.

(d) One commenter inquired about the date of receipt for requests referred under § 1.6(g) by the central processing unit.

The date of receipt is as stated in § 1.12 of this subpart.

3. Aggregating requests (proposed § 1.7). One commenter suggested that for purposes of aggregating requests agencies consider the relationship between the subject matter of the requests.

Implicit in the whole concept of determining if requests have been made for the purpose of avoiding the payment of fees, is whether the requests relate in any manner to the same topic. No change was made to the proposed section.

4. Agency response to requests for records (proposed § 1.8). This section generated two comments:

(a) One commenter questioned the relationship between § 1.8(a) and § 1.8(f). The commenter asked if the two sections required separate letters.

Proposed § 1.8(f) is an extension of, and an elaboration on, proposed § 1.8(a) to make clearer the administrative procedures involved concerning a denial of documents. After reviewing the section, the Department believes that § 1.8(f) might be more effective if it immediately followed § 1.8(a). Proposed § 1.8(f), therefore, has been modified slightly, and redesignated as § 1.8(b). All other proposed subsections under § 1.8 have been redesignated accordingly.

(b) One commenter asked when the response time begins for requests forwarded under proposed § 1.8(b) (subsequently redesignated as § 1.8(c)) to or from other Federal agencies.

For requests forwarded from USDA, the response time will begin as stated by the agency to which the request was referred. For requests forwarded to USDA, the response time will begin as stated in § 1.12 of this subpart.

5. Handling information from a private business (proposed § 1.11). One commenter urged USDA to make clear that the notification procedures must be performed within the time limits of the Act. Time limits are provided by the Act and USDA regulations at §§ 1.2(a) and 1.8. Implicit within these sections is the USDA policy to meet these time limits to the fullest extent. Where they cannot be met, §§ 1.14 and 1.15 provide guidance. The Department perceives no need to provide further guidance in § 1.11.

6. Failure to meet administrative deadlines (proposed § 1.15). One commenter urged that the section be deleted on the ground that it promotes apathy in the handling of requests.

It is the USDA view that in spite of the noblest objectives of the Act and the implementing regulations of USDA, there are occasionally instances whereby a request cannot be processed within the prescribed timeframes. When those situations occur, USDA believes it is helpful to have some guidance on how agencies should proceed, notwithstanding the fact that the requester may have exhausted his or her adminisrative remedies and can take the matter directly to court. Deleting the section will not ensure that all requests are processed within the required time periods. It will, however, help ensure that agencies operate with due diligence. Section 1.15 remains as proposed.

7. Exemptions and discretionary release (proposed § 1.17(b)). One commenter asked that the term "in the public interest" be defined. The term is defined to mean a decision by an agency after conducting a balancing test that the benefit to the public in releasing exempt documents outweighs any harm likely to result from disclosure. Proposed § 1.17 has been amended to elaborate on the term.

8. Annual report (proposed § 1.18(a)(6)). One commenter asked how an agency can annually report on the total amount of fees collected when the fees are paid to the U.S. Treasury.

As is pointed out elsewhere in this analysis, fees are not paid directly by requesters to the U.S. Treasury, but should only be made payable to the U.S. Treasury. All fees owed by requesters should be sent directly to the agency requesting payment.

9. Compilation of new records (proposed § 1.19). One commenter suggested that a statement be added regarding the provision of documents in a particular format.

Agencies are under no obligation to provide requested records in any special format. It is the opinion of USDA that the reformatting of information to satisfy a person's request is tantamount to "creating a new record" which agencies are not required to do. As § 1.19 points out, however, agencies may elect to compile a new record to fulfill a request if the action is deemed to be in the public interest or in the interest of USDA. Section 1.19 remains as proposed.

10. Instances in which fees will not be charged (proposed section 3, Appendix A). This section generated the following comments:

(a) One commenter suggested that section 3(a) of Appendix A be reworded to avoid any misinterpretation in determining for which of the elements listed in the section there would be no charge. The commenter felt the elements could be viewed as being exclusive of each other.

Since the intent is that no charge should be made for either the duplication or the search time, the word "either" has been added before the listed elements.

(b) One commenter asked how agencies can determine when the cost of collecting a fee would be equal to or greater than the fee itself.

Agencies do not have to make that determination. For USDA, the figure has already been determined to be $25.00. Reference to that threshold was made in the notice of proposed rulemaking—and continues in this final rule—in the section dealing with "Fee waivers and reductions," section 6(a)(4) of Appendix A. To underscore that threshold, § 3(b) of Appendix A is amended by the addition of a second sentence.

(c) One commenter suggested that a statement be added to note that no charge can be made for postage costs to mail requested records.

Section 3(c) of Appendix A has been amended to make clear that no charge will be made for ordinary postage costs. However, as provided in section 2 of Appendix A, special postage costs such as express mail may be charged.

11. Fees for records and related services (proposed section 4, Appendix A). This section produced two comments.

(a) One commenter requested that the word "page" in section 4(a) of Appendix A be more clearly defined.

Section 4(a) of Appendix A has been amended to indicate that the per-page cost is for each individual side of a sheet. That is to say that one sheet equals two pages.

(b) One commenter asked for the definition of a "homogeneous class of personnel," referenced in section 4(d)(2) of Appendix A.

A homogeneous class of personnel, for purposes of conducting manual searches, and where more than one individual is involved, is a group of employees of like rank, grade, pay, or position. A heterogeneous class of personnel is a group of employees of unlike rank, grade, pay, or position. If a heterogeneous class of personnel is involved in a search, then the search shall be charged for at the salary rate of the individuals. Section 4(d)(2), Appendix A, is amended to include this definition.

12. Levels of fees for each category of requesters (proposed section 5(c)(2), Appendix A). One commenter urged that the definition of the term "news" be deleted on the basis that it would deprive certain media representatives of benefits.

While USDA understands that there may be instances in which requests from the media may not come within the definition of "news," it believes that it is complying with the intent of Congress in limiting the benefit as proposed. Accordingly, only those requests that are for information that is about current events or that would be of current interest to the public will receive the benefits accorded to requests from the media.

Section 5(a)(2) of Appendix A remains as proposed.

13. Fee waivers and reductions (proposed section 6, Appendix A). This section generated three comments.

(a) One commenter suggested that proposed section 6(a)(1) of Appendix A be deleted to eliminate restrictions on the granting of fee waivers. The commenter also said that the proposed rule fails to make a statement on whether a request from the news media is a commercial-use request.

USDA disagrees with the statement. Section 5(c) of Appendix A, last sentence, notes that no request in the news media category can be made for a commercial use. After considering the commenter's entire comments, the Department has decided to let section 6(a)(1) of Appendix A remain as proposed.

(b) One commenter stated that section 6(a)(1) of Appendix A does not specify the weight that is to be given to each of the six enumerated factors in making a fee waiver determination, whether all of the factors need to be satisfied in order to obtain a fee waiver, or whether any single factor is dispositive of the fee waiver determination. The commenter said the section provides no guidance on whether a request qualifies for a fee waiver or only for a fee reduction. The commenter also urged that the word "general" be stricken from in front of the word "public" in section 6(a)(1)(iii), and that section 6(a)(1)(i) be reworded to allow for disclosure of information under a fee waiver or reduction, regardless of subject matter.

The six factors the commenter referenced have been the subject of much concern and controversy since first being issued by the Department of Justice. In fact, some Federal agencies have opted not to adopt them. USDA, however, has elected to adopt generally the six elements in an effort to provide some direction in deciding whether to grant a fee waiver or reduction, and in the absence of any superior guidance. It is USDA's opinion that the factors are of equal weight, and that any may be controlling in determining whether a fee waiver or reduction request may be granted.

Section 6(a)(1) in no way is meant to impede the granting of fee waiver or reduction requests, but to serve as an aid in the attempt to determine whether a request is primarily in the commercial interest of the requester, or may be eligible for a fee waiver or reduction because disclosure of requested records is considered to be in the public interest.

It may do well to point out that in spite of the best guidance, the decision as to whether to grant a fee waiver or reduction is—as it always has been—a judgment call. It is the opinion of USDA that it would be impossible to describe beforehand all of the circumstances in which a request would be eligible for a fee waiver and to do likewise for all circumstances in which a request would qualify for a fee reduction. USDA does not share the concern or belief that the language of section 6(a)(1) will result in disregard for the public's interest in some particular requested documents, or to a requester's reasons that a fee waiver or reduction should be granted on the basis that the information is in the public interest. Requesters who deserve a fee waiver or reduction will continue to receive it.

No change was made as the result of the commenter's remarks on the overall language of section 6(a)(1), Appendix A.

(c) One commenter asked whether section 6(a)(3)(iii) of Appendix A was meant to include environmental groups.

The provision is exclusive only to the extent that fee waivers and reductions may not be granted where it is determined that payment of the full fee

by entities other than those described would be in the interest of the program involved.

14. Payments of fees and charges (proposed section 8, Appendix A). This section generated three comments.

(a) One commenter questioned the process, as the result of the wording under section 8(a) of Appendix A, of billing for and collecting fees under the Act.

To clarify the intent of the section, and to avoid complicating the fee collection process, the word "collected" under the proposed section has been changed to "billed for * * *."

(b) One commenter raised a question under section 8(b) of Appendix A about how agencies are to process payments, and to know whether a bill has been paid, if fees assessed a requester are to be made payable and sent to the U.S. Treasury.

Although all payments made by check, draft, or money order are to be made payable to the Treasury of the United States, the payments should be sent to an office of the agency that requested payment.

(c) One commenter stated that the advance-payment provision under section 8(c) of Appendix A interferes with the agency's prompt delivery—and the media's timely receipt—of information.

The advance-payment provision applies only to requests that exceed $250.00 in fees. It is doubtful the provision will have any effect on the news media, since most, if not all, of the fees associated with news media requests are routinely waived. The section remains as proposed.

II. Other Comments

One commenter agreed in general with the thrust of the proposed rule, and in particular with § 1.11, "Handling information from a private business."

One commenter sought clarification of the phrase "mutually convenient" in the context of inspection of records (proposed § 1.8(e)). Another commenter sought clarification of the term "legal or policy issues" in the context of services for which no charge could be made (proposed section 3(c), Appendix A).

The USDA believes that the words should be given their ordinary meaning and are clear enough. No amendment was made to the affected sections.

III. Other Changes

Two other changes have been made to the proposed regulations:

The mailing address listed for the Forest Service in proposed section 12(a) of Appendix A has been changed. The new address is Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

Proposed § 1.22 has been amended to show the Hearing Clerk's office is part of the Office of Administrative Law Judges, and not the Office of Information Resources Management.

List of Subjects in 7 CFR Part 1

Freedom of information.

Accordingly, 7 CFR Part 1, Subpart A is revised to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec.
1.1 Purpose and scope.
1.2 Policy.
1.3 Agency implementing regulations.
1.4 Implementing regulations for the Office of the Secretary.
1.5 Public access to certain materials.
1.6 Requests for records.
1.7 Aggregating requests.
1.8 Agency response to requests for records.
1.9 Search services.
1.10 Review services.
1.11 Handling information from a private business.
1.12 Date of receipt of requests or appeals.
1.13 Appeals.
1.14 Extension of administrative deadlines.
1.15 Failure to meet administrative deadlines.
1.16 Fee schedule.
1.17 Exemptions and discretionary release.
1.18 Annual report.
1.19 Compilation of new records.
1.20 Authentication.
1.21 Compulsory process.
1.22 Records in formal adjudication proceedings.
1.23 Preservation of records.

Appendix A—Fee Schedule

Authority: 5 U.S.C. 301 and 552. Appendix A also issued under 7 U.S.C. 2244; 31 U.S.C. 9701, and 7 CFR 2.75(a)(6)(xiii).

Subpart A—Official Records

§ 1.1 Purpose and scope.

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act (FOIA), 5 U.S.C. 552, pursuant to which official records may be obtained by any person. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in § 1.3, "Agency implementing regulations") for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Governmental and Public Affairs. The Office of Governmental and Public Affairs has the primary administrative responsibility for the FOIA in the Department of Agriculture (USDA). The term "agency" or "agencies" is used throughout this subpart to include both USDA program agencies and staff offices.

§ 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals for agency documents, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(B). An agency shall notify a requester in writing whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as Appendix A of this subpart, with regard to the charging of fees for providing copies of documents and related services to requesters.

§ 1.3 Agency implementing regulations.

(a) Each agency of the Department shall promulgate regulations setting forth the following:

(1) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by § 1.5 to be made available for public inspection and copying;

(2) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements thereto which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b);

(3) The title(s) and mailing address(es) of the official(s) of the agency who is/are authorized to receive requests for records submitted in accordance with § 1.6(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(i) Extend the 10-day administrative deadline for reply pursuant to § 1.14;

(ii) Make discretionary releases pursuant to § 1.17(b); and

(iii) Make determinations regarding the charging of fees pursuant to Appendix A of this subpart;

(4) The title and mailing address of the official of the agency who is authorized to receive appeals submitted in accordance with § 1.6(e) and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(i) Extend the 20-day administrative deadline for reply pursuant to § 1.14 (to

the extent the maximum extension authorized by § 1.14(c) was not used with regard to the initial request);

(ii) Make discretionary releases pursuant to § 1.17(b); and

(iii) Make determinations regarding the charging of fees pursuant to Appendix A of this subpart; and

(5) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

§ 1.4 Implementing regulations for the Office of the Secretary.

(a) For the Office of the Secretary and for the Office of Governmental and Public Affairs, the information required by § 1.3 is as follows:

(1) Records available for public inspection and copying may be obtained in Room 536–A, Administration Building, USDA, Washington, DC 20250 during the hours of 9:00 a.m. to 5:00 p.m.;

(2) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b) will also be available in Room 536–A, Administration Building, USDA, Washington, DC 20250 during the hours of 9:00 a.m. to 5:00 p.m.;

(3) The person authorized to receive FOIA requests and to determine whether to grant or deny such requests is the Director of Information, Office of Governmental and Public Affairs, USDA, Washington, DC 20250;

(4) The official authorized to receive appeals from denials of FOIA requests and to detemine whether to grant or deny such appeals is the Assistant Secretary for Governmental and Public Affairs, USDA, Washington, DC 20250.

(b) The organization and functions of the Office of the Secretary and the Office of Governmental and Public Affairs (OGPA) is as follows:

(1) The Office of the Secretary provides the overall policy guidance and direction of the activities of the Department of Agriculture. Overall policy statements and announcements are made from this office.

(2) The Office of the Secretary consists of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other staff members.

(3) In the absence of the Secretary and the Deputy Secretary, responsibility for the operation of the Department of Agriculture is as delegated at 7 CFR Part 2, Subpart A.

(4) The Office of Governmental and Public Affairs provides policy direction, review, and coordination of all information programs of the Department of Agriculture. The Office is assigned responsibility for maintaining the flow of information and providing liaison between the Department of Agriculture and the Congress, the mass communication media, State and local governments, and the public.

(5) OGPA is headed by the Assistant Secretary for Governmental and Public Affairs. In the Assistant Secretary's absence, the agency is headed by the Assistant Secretary's designee.

(6) OGPA consists of three offices: The Office of Information, Office of Congressional Relations, and the Office of Intergovernmental Affairs. Each of the offices is headed by a director.

(i) The Office of Information is responsible for maintaining the flow of information and providing the liaison between USDA and the mass communication media and the public at large. The office directs and coordinates public affairs work with the various USDA agencies and has final review of all national news releases, broadcast materials, publications, visuals, and other information materials involving Departmental policy. The office provides leadership and facilities in the production of radio and video tapes, film, still photography, exhibits, and other design materials. The office provides Departmental coordination of responses under the Freedom of Information Act and the Privacy Act.

(ii) The Office of Congressional Relations is responsible for liaison with the Congress and the White House on legislative matters of concerns to USDA and the public.

(iii) The Office of Intergovernmental Affairs is responsible for liaison with State Departments of Agriculture and other State and local government agencies interested in agricultural programs and policies.

§ 1.5 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2), each agency within the Department shall make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) Each agency of the Department shall also maintain and make available current indexes providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967, and required by paragraph (a) of this section to be made available or published. Each agency shall publish and make available for distribution copies of such indexes and supplements thereto at least quarterly, unless it determines by notice published in the **Federal Register** that publication would be unnecessary and impracticable. After issuance of such Notice, the agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

§ 1.6 Requests for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by the agency. The requester may in his or her petition ask for a fee waiver if there is likely to be a charge for the requested information. To inspect or obtain copies of records of the Office of the Secretary or the Office of Governmental and Public Affairs, requesters should submit their requests to the Director of Information, Office of Governmental and Public Affairs, U.S. Department of Agriculture, Washington, DC 20250. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether that Act is specifically mentioned. To facilitate processing of a request, the phrase "FOIA REQUEST" should be placed in capital letters on the front of the envelope.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, etc., which may help identify the records. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) If an agency determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date or receipt" in such instances, for purposes of § 1.12(a), shall be the date of receipt of the amended or clarified request.

(d) Nothing in this subpart shall be interpreted to preclude an agency from honoring an oral request for information, but, if the requester is dissatisfied with the response, the agency official

involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request for purposes of § 1.12(a) shall be the date of receipt of the written request. For recordkeeping purposes, an agency responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records or a fee waiver, made under this subpart, is denied, the person making the request shall have the right to appeal the denial. Requesters also may appeal agency determinations of a requester's status for purposes of fee levels under section 5 of Appendix A. All appeals must be in writing and addressed to the official designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

(f) Requests that are nonagency-specific, i.e., are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency, or which are sent to the wrong agency of USDA, should be forwarded to the Department's central processing unit for FOIA in the Office of Governmental and Public Affairs, Office of Information, Special Programs Division, U.S. Department of Agriculture, Washington, DC 20250.

(g) The central processing unit will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency (agencies). The unit will also, where necessary, notify the requester of the referral and of the name of each agency to which the request has been referred.

(h) Each agency shall develop and maintain a record of all written and oral requests and appeals received in that agency, which shall include, in addition to any other information, the name of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the exemption(s) for making any denials, and the amount of fees associated with the request or appeal.

§ 1.7 Aggregating requests.

When an agency reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element which may be considered in determining whether such a belief would be reasonable is the time period in which the requests have occurred.

§ 1.8 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records or a fee waiver is submitted in accordance with § 1.6(a) shall inform the requester of its determination concerning that request within 10 days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.14. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If it grants only a portion of the request, it shall treat the portion not granted as a denial. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and of the following:

(1) The reasons for the denial;

(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) In the event the records requested contain some portions which are exempt from mandatory disclosure and others which are not, the official responding to the request shall insure that all nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption or exemptions which are applicable.

(c) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the agency has no knowledge of requested records or if no records exist, the agency shall notify the requester of that fact.

(d) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which an appeal of a denial is submitted in accordance with § 1.6(e) shall inform the requester of its determination concerning that appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by § 1.14, of its date of receipt. If the agency determines to grant the appeal, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If it grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(e) If, in compliance with the request, a charge is to be made in accordance with section 8 of Appendix A of this subpart, agencies shall inform the requester of the fee amount and of the basis for the charge. Agencies may, in accordance with section 8 of Appendix A of this subpart, require payment of the entire fee, or a portion thereof, or full payment of a delinquent fee plus any applicable interest, before it provides the requested records. In instances where a requester refuses to remit payment in advance, an agency may likewise refuse to process the request with written notice to that effect forwarded to the requester. The "date of receipt" of a request for which advance payment has been required shall be the date that payment is received.

(f) In the event compliance with the request involves inspection of records by the requester rather than the forwarding of copies, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(g) Whenever duplication fees, or search fees for unsuccessful searches (see section 4(f) of Appendix A), are anticipated to exceed $25.00, and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, agencies shall notify the requester of the amount of the anticipated fee. Similarly, as a matter of policy, where an extensive and therefore costly successful search is anticipated, agencies also should notify requesters of the anticipated fees. The notification shall offer the requester the opportunity to confer with agency personnel to reform the request to meet the requester's needs at a lower fee. In appropriate cases, an advance deposit in accordance with section 8 of Appendix A may be required.

§ 1.9 Search services.

(a) Search services are services of agency personnel—clerical or supervisory/professional salary level—used in trying to find the records sought by the requester. They include time spent examining records for the purpose of finding information which is within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

(b) Because of the nature of the Department's business and records, the normal location of a record in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing a reasonable specific description of the record.

(c) "Search" is distinguished, however, from "review" of material to determine whether materials are exempt from disclosure.

§ 1.10 Review services.

(a) Review services are services by agency personnel—clerical or supervisory/professional—in examining documents located in response to a request that is for a commercial use (as specified in section 6 of Appendix A) to determine whether any portion of any document located is permitted to be withheld.

(b) Review services include processing any documents for disclosure, e.g., doing all that is necessary to excise exempt portions and otherwise prepare documents for release.

(c) "Review" does not include time spent resolving general legal or policy issues regarding the application of exemptions.

§ 1.11 Handling information from a private business.

(a) The USDA is responsible for making the final determination with regard to the disclosure or nondisclosure of information submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is privileged or confidential business information, the policy of USDA is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to any decision to disclose the information. Whenever a request (including any "demand" as defined in § 1.21) is received in USDA for information which has been submitted by a business, all agencies of the Department shall:

(1) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed or, on the other hand, that the information is not exempt by law from disclosure);

(2) Notify the requester of the need to inform the submitter of a request for submitted business information;

(3) Afford business information submitters time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA;

(4) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention; and

(5) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 1.12 Date of receipt of requests or appeals.

(a) The date of receipt of a request or appeal, which contains the phrase "FOIA REQUEST" or "FOIA APPEAL" and is addressed in accordance with applicable agency regulations, shall be the date it is received in the office responsible for the administrative processing of FOIA requests or appeals.

(b) The date of receipt of a request or appeal which is hand-delivered to the address specified in agency regulations shall be the date of such hand-delivery.

(c) The date of receipt of a request or appeal which does not comply with paragraphs (a) or (b) of this section shall be the date it is received by the official designated in agency regulations to make the applicable determination.

§ 1.13 Appeals.

(a) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(b) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, Research and Operations Division, Office of the General Counsel. When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel.

(c) The Assistant General Counsel shall promptly review the matter (including necessary consultation with the Department of Justice and coordination with the Office of Governmental and Public Affairs) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension thereof.

§ 1.14 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section, either of the administrative deadlines prescribed in § 1.8 may be extended by an authorized agency official. Written notice of the extension shall be sent to the requester within the applicable deadline, setting forth the reasons for such extension and the date a determination is expected to be dispatched. In no event shall the extension exceed a total of 10 working days.

(b) As used in this section, "unusual circumstances" shall be limited to the following:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein. (Note: consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Governmental and Public Affairs, or the Department of Justice is not a basis for extension under this section.)

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement should be confirmed in writing and should specify clearly the total time agreed upon.

§ 1.15 Failure to meet administrative deadlines.

In the event an agency fails to meet either of the administrative deadlines set forth in § 1.8, plus any extension authorized by § 1.14, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 552(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as if it had been reached within the applicable deadline.

§ 1.16 Fee schedule.

Pursuant to § 2.75 of this title, the Director, Office of Finance and Management, is delegated authority to promulgate regulations providing a uniform schedule of fees applicable to all agencies of the Department regarding requests for records under this subpart, following public notice and comment. (See Appendix A of this subpart.) Any amendments thereto will be made pursuant to notice and opportunity for comment. Said regulations provide for recovery of direct costs for document search, duplication, and review. The regulations provide that documents may be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest based upon criteria set forth in section 6 of Appendix A.

§ 1.17 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Except where disclosure is specifically prohibited by Executive Order, statute, or applicable regulations, an agency may release records exempt from mandatory disclosure under 5 U.S.C. 552(b) whenever it determines that such disclosure whould be in the public interest. Such a record is considered to be in the public interest if the benefit to the public in releasing the document outweighs any harm likely to result from disclosure.

§ 1.18 Annual report.

(a) Each agency of the Department shall compile the following information for each calendar year:

(1) The number of determinations made by such agency not to comply with initial requests for records made to it under § 1.6(a), and the reasons for each such determination;

(2) The number of appeals made by persons under § 1.8(d), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The name and title or position of each person responsible for the denial of records requested under this subpart and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by the agency regarding this subpart;

(6) The total amount of fees collected by the agency for making records available under this subpart; and

(7) Such other information as indicates efforts to administer fully this subpart.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding calendar year into a report and submit this report to the Director of Information, Office of Governmental and Public Affairs, by February 1 of each year.

(c) The Director of Information shall combine the reports from the various agencies within USDA into a Departmental report, and shall arrange for submission of this report to the President of the Senate and the Speaker of the House of Representatives by March 1 of each year in accordance with 5 U.S.C. 552(d).

§ 1.19 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency compile a new record in order to fulfill a request for records. Such compilation may be undertaken voluntarily if the agency determines this action to be in the public interest or the interest of USDA.

§ 1.20 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk may authenticate copies of documents in the records of the Hearing Clerk.

§ 1.21 Compulsory process.

(a)(1) In any case where it is sought by subpoena, order, or other compulsory process (hereinafter in this section referred to as a "demand") to require the production or disclosure of any record or material which is exempt from disclosure under 5 U.S.C. 552(b) or information related thereto acquired by an employee of this Department in the performance of his or her official duties, the matter shall be referred to an official authorized by agency regulations to make releases pursuant to § 1.17(b). For the Office of the Secretary and for the Office of Governmental and Public Affairs, this official is the Deputy Assistant Secretary for Governmental and Public Affairs.

(2) Such official may authorize release. However, if such official determines that it would be improper to comply with the demand, the official shall refer it to the agency head. The agency head may authorize release; however, if the agency head concurs with the initial conclusion, the matter shall be referred to the Secretary through the General Counsel for final determination.

(3) If the Secretary determines that the records, material, or information should not be produced, or if no final determination has been made, the employee shall be notified not to produce or disclose the records. The employee who appears in answer to the demand shall respectfully decline to produce or disclose the records, material, or information demanded on the ground that the disclosure is prohibited by this section. The employee shall provide the court or other authority with a copy of this subpart and a copy (when available) of the Secretary's determination, and shall respectfully request the court or other authority to withdraw or stay the demand.

(b)(1) Whenever a demand of the type described in paragraph (a) of this section is made upon an employee of this Department not authorized to make releases pursuant to § 1.17(b), by a court or other authority while he/she is appearing before, or is otherwise in the presence of the court or other authority, the employee, or other appropriate Government official or attorney acting on behalf of the employee, shall:

(i) Immediately inform the court or other authority that this section prohibits the employee from producing

or disclosing the information or material demanded; and

(ii) Offer to refer the demand for the prompt consideration of authorized officials, providing the court or other authority a copy of this subpart respectfully and requesting that the demand be stayed pending his/her receipt of appropriate instructions concerning the demand.

(2) If the employee is authorized to make a release pursuant to § 1.17(b), but determines that such release would be improper, the employee shall offer to refer the demand for the prompt consideration of the agency head and/or Secretary and shall otherwise comply with paragraph (b)(1)(ii) of this section.

(c) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraph (a) or (b) of this section pending the receipt by the employee of instructions or directions, or if the court or other authority rules adversely on any assertion made in conformity with the provisions of this subpart, the employee upon whom the demand has been made may tender the records, material, or information demanded with a request they be held in camera until an appeal can be taken from the adverse ruling.

§ 1.22 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Administrative Law Judges, U.S. Department of Agriculture, Washington, DC 20250, and shall be made available to the public.

§ 1.23 Preservation of records.

Agencies shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and to the General Records Schedule. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

Appendix A—Fee Schedule

Section 1. General.

This schedule sets forth fees to be charged for providing copies of documents—including photographic reproductions, microfilm, maps and mosaics, and related services—under the Freedom of Information Act (FOIA). Records and related services are available at the locations specified by agencies in their FOIA implementing regulations. The fees set forth in this schedule are applicable to all agencies of the Department of Agriculture, and are based upon guidelines prescribed by the Office of Management and Budget (OMB) issued at 52 FR 10012 (March 27, 1987). No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting services under the Freedom of Information Act.

Section 2. Types of services for which fees may be charged.

Subject to the criteria set forth in section 5, fees may be assessed under the Freedom of Information Act on all requests involving such services as document search, duplication, and review. Fees may also be charged in situations involving special service to a request, such as in certify that records requested are true copies, or in sending records by special methods such as express mail, etc. For services not covered by the FOIA or by this schedule, agencies may set their own fees in accordance with applicable law, or costs incurred will be assessed the requester at the actual cost to the Government. For example, where records are required to be shipped from one office to another by commercial carrier in order to timely answer a request, the actual freight charge will be assessed the requester.

Section 3. Instances in which fees will not be charged.

(a) Except for requests seeking documents for a commercial use (as specified below in section 5), no charge shall be made for either: (1) The first 100 pages of duplicated information (8½" x 14 " or smaller-size paper); or (2) The first two hours of manual search time, or the equivalent value of computer search time as defined in section 4(e).

(b) Also, no charge shall be made—even to commercial use requesters—if the cost of collecting a fee would be equal to or greater than the fee itself. For USDA, this figure has been calculated to be $25.00.

(c) In addition, fees may not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records. No charge shall be made for normal postage costs.

(d) Documents shall also be furnished without charge under the following conditions:

(1) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number;

(2) When members of the public provide their own copying equipment, in which case no copying free will be charged (although search and review fees may still be assessed); or

(3) When any notices, decisions, orders, or other materials are required by law to be served on a party in any proceeding or matter before any Department agency.

Section 4. Fees for records and related services.

(a) The fee for photocopies of pages 8½" x 14" or smaller shall be $0.20 per page (per individual side of sheet).

(b) The fee for photocopies larger than 8½" x 14" shall be $0.50 per linear foot of the longest side of the copy.

(c) The fee for other forms of duplicated information, such as microform, audio-visual materials, or machine-readable documentation (i.e., magnetic tape or disk), shall be the actual direct cost of producing the document(s).

(d) Manual searches shall be charged for in one of the two following manners in the given order:

(1) When feasible, at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay; or

(2) Where a homogeneous class of personnel is used exclusively, at the rate of $10.00 per hour for clerical time, and $20.00 per hour for supervisory or professional time. Charges should be computed to the nearest quarter hour required for the search. A homogeneous class of personnel, for purposes of conducting manual searches and where more than one individual is involved, is a group of employees of like rank, grade, pay or position. A heterogeneous class of personnel is a group of employees of unlike rank, grade, pay, or position. If a heterogeneous class of personnel is involved in a search then the search shall be charged for at the salary rate of the individuals.

(e) Mainframe computer searches and services shall be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed. Where the rate has not been established, the rate shall be $27.00 per minute. Searches using computers other than mainframes shall be charged for at the manual search rate.

(1) Other rates are published and may be examined at the following places:

Fort Collins Computer Center Users Manual Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colo. 80521.

National Finance Center, Cost, Productivity & Analysis Section, U.S. Department of Agriculture, 13800 Old Gentilly Road, New Orleans, La. 70129.

Kansas City Computer Center Users Manual Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, MO. 64141.

Washington Computer Center Users Handbook: Washington Computer Center, U.S. Department of Agriculture, Room S-100, South Building, 12th Street and Independence Avenue, SW., Washington, DC 20250.

St. Louis Computer Center, U.S. Department of Agriculture, 1520 Market Street, St. Louis, MO. 63103.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

(h) The fee for Certifications shall be $5.00 each; Authentications under Department Seal (including aerial photographs), $10.00 each.

(i) All other costs incurred by USDA agencies will be assessed the requester at the actual cost to the Government.

(j) The fees specified in paragraphs (a) through (g) of this section apply to all requests for services under the FOIA, as amended (5 U.S.C. 552), unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to section 6. No higher fees or charges in addition to those provided for in this schedule may be charged for services under the FOIA.

(k) The fees specified in paragraphs (h) and (i) of this section and in section 17 of this schedule apply to requests for services other than those subject to the FOIA. The authority for establishment of these fees is at 31 U.S.C. 9701 (formerly 31 U.S.C. 483a) and other applicable laws.

(l) Except as provided in section 11 of this appendix, for services not subject to the FOIA, and not covered by paragraph (h) of this section, agencies may set their own fees in accordance with applicable law.

Section 5. Levels of fees for each category of requesters.

Under the FOIA, as amended, there are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each category:

(a) Commercial use requesters—For commercial use requesters, agencies shall assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to the free search time or duplication referenced in section 3(a). Agencies may recover the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) In determining whether a requester properly belongs in this category, agencies must determine whether the requester will put the documents to a commercial use. Where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification from the requester.

(b) Educational and non-commercial scientific institution requesters—Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(1) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) The term "non-commercial scientific institution" refers to institution that is not operated on a "commercial" (see section 5(a)(1)) basis, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(c) Requesters who are representatives of the news media—Fees for this category of requesters shall also be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for providing search or review services. Requests in this category must not be made for a commercial use.

(1) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term "news" means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(d) All other requesters—Fees for requesters who do not fit into any of the above categories shall be assessed for the full reasonable direct cost of searching for and duplicating documents that are responsive to a request. No charge, however, shall be made to requesters in this category for: (1) The first 100 duplicated pages; or (2) the first two hours of manual search time, or the equivalent value of computer search time as defined in section 4(e).

Section 6. Fee waivers and reductions.

(a) Agencies shall waive or reduce fees on requests for information if disclosure of the information is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.

(1) In determining when fees shall be waived or reduced, agencies should consider the following six factors:

(i) The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(2) An agency may, in its discretion, waive or reduce fees associated with a request for disclosure, regardless of whether a waiver or reduction has been requested, if the agency determines that disclosure will primarily benefit the general public.

(3) Agencies may also waive or reduce fees under the following conditions:

(i) Where the furnishings of information or a service without charge or at a reduced rate is an appropriate courtesy to a foreign country or international organization, or where comparable fees are set on a reciprocal basis with a foreign country or an international organization;

(ii) Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare; or

(iii) Where it is determined that payment of the full fee by a State or local government or nonprofit group would not be in the interest of the program involved.

(4) Fees shall be waived, however, without discretion in all circumstances where the amount of the fee is $25.00 or less.

Section 7. Restrictions regarding copies.

(a) Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

(b) Single or multiple copies of transcripts, provided to the Department under a reporting service contract, may be obtained by the public from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public, but no other charge may be added.

Section 8. Payments of fees and charges.

(a) Payments should be billed for to the fullest extent possible at the time the requested materials are furnished. Payments

should be made by requesters within 30 days of the date of the billing.

(b) Payments shall be made by check, draft, or money order made payable to the Treasury of the United States, although payments may be made in cash, particularly where services are performed in response to a visit to a Department office. All payments should be sent to the address indicated by the agency responding to the request.

(c) Where the estimated fees to be charged exceed $250.00, agencies may require an advance payment of an amount up to the full estimated charges (but not less than 50 percent) from the requester before any of the requested materials are reproduced.

(d) In instances where a requester has previously failed to pay a fee, an agency may require the requester to pay the full amount owed, plus any applicable interest as provided below, as well as the full estimated fee associated with any new request before the agency begins to process that new or subsequent request.

Section 9. Interest charges.

On requests that result in fees being assessed, agencies may begin levying interest charges on an upaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C., and will accrue from the date of the billing.

Section 10. Effect of the Debt Collection Act on fees.

In attempting to collect fees levied under the FOIA, agencies shall abide by the provisions of 31 U.S.C. 3701, 3711–3719, in disclosing information to consumer reporting agencies and in the use of collection agencies, where appropriate, to encourage payment.

Section 11. Photographic reproductions, microfilm, mosaic and maps.

Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproduction as prescribed in this schedule.

Section 12. Agencies which furnish photographic reproductions.

(a) Aerial photographic reproductions. The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS), APFO, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

Soil Conservation Service (SCS), USDA, Cartographic Division, Washington, DC 20250, or Cartographic Facility in nearest SCS Technical Service Center.

(b) Other photographic reproductions. Other types of reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service (ASCS) (Address above).

Forest Service (FS), USDA, P.O. Box 96090, Washington, DC 20090–6090, or nearest Forest Service Regional Office. Office of Governmental and Public Affairs, USDA, Photography Division, Room 4407 South Building, Washington, DC 20250. Soil Conservation Service, USDA, Information Division, Audio Visual Branch, Washington, DC 20250.

National Agricultural Library, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, MD 20705.

Section 13. Circumstances under which photographic reproductions may be provided free.

Reproductions may be furnished free at the discretion of the agency, if it determines this action to be in the public interest, to:

(a) Press, radio, television, and newsreel representatives for dissemination to the general public.

(b) Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

(c) Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

Section 14. Loans.

Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

Section 15. Sales of positive prints under government contracts.

The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and others cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

Section 16. Procedure for handling orders.

In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

Section 17. Reproduction prices.

The prices for reproductions listed here are for the most generally requested items.

(a) *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only: Reproduction of electrostatic, microfilm, and microfiche copy—$5.00 for the first 10 pages or fraction thereof, and $3.00 for each additional 10 pages or fraction thereof. Duplication of NAL-owned microfilm—$10.00 per reel. Duplication of NAL-owned microfiche—$5.00 for the first fiche, and $0.50 for each additional fiche. Charges for manual and automated data base searches for bibliographic or other research information will be made in accordance with section 4, paragraphs (c)-(e) of this fee schedule. The contract rate charged by the commercial source to the National Agricultural Library for computer services is available at the National Agricultural Library, Room 111, Information Access Division, USDA, Beltsville, Maryland 20705 (301–344–3834).

(b) *General photographic reproductions.* Minimum charge $1 per order. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work and unit	Price
1. Black and white line negatives:	
4 by 5 (each	$6.00
8 by 10 (each)	8.50
11 by 14 (each)	11.00
2. Black and white continuous tone negatives:	
4 by 5 (each)	8.50
8 by 10 (each)	11.00
3. Black and white enlargements: 8 by 10 and smaller (each)	6.50
11 by 14 (each)	11.00
Larger sizes and quantities	(1)
4. Black and white slides:	
2 x 2 cardboard mounted (from copy negative) (each)	4.00
Blue ozalid slides (each)	5.00
5. Color slides: (2 x 2 cardboard mounted):	
Duplicate color slides:	
Display quality (each) (Display color slides are slides copied from 35mm color slides only)	.65
Repro quality (each)	(1)
Original color slides (from flat copy) (each)	6.50
6. Color enlargements and transparencies: 4 by 5 and larger	(1)
7. Slide sets:	
1 to 50 frames	14.50
51 to 60 frames	16.50
61 to 75 frames	18.50
76 to 95 frames	21.50
96 to 105 frames	23.00
106 to 130 frames (Prices include printed narrative guide)	26.50
8. Cassettes: (for the corresponding slide sets above)	3.00

[1] By quotation.

(c) *General aerial photographic reproductions.* There is no minimum charge on general aerial photography orders. The prices for various types of aerial photographic reproductions are set forth below. Size measurements refer to the approximate size in inches of the paper required to produce the print.

Size	Price each
1. Black-and white contact prints:	
10 × 10 paper	$3.00
10 × 10 Diapositive (film)	10.00
10 × 10 Copy negative	4.00
2. Aerial photo index sheets:	
20 × 24 RC (resin coated base) paper	5.00
24 × 36 Ozalid	4.00
Microfilm (photo indexes):	
Aperture cards	1.00
Microfiche	2.00

Size	Price each	
	RC paper	Film positive transparency
3. Black and white enlargements (projection prints):		
12 × 12	$8.00	$12.00
17 × 17	10.00	14.00
20 × 20	11.00	
24 × 24	12.00	20.00
30 × 30	18.00	25.00
38 × 38	25.00	35.00
4. Reproductions from color negative:		
10 × 10 contact	4.00	15.00
12 × 12 enlargement	20.00	
20 × 20 enlargement	25.00	
24 × 24 enlargement	30.00	
30 × 30 enlargement	40.00	
38 × 38 enlargement	45.00	

Size	Price each	
	RC paper	Color film positive transparency
5. Reproductions from color positive transparencies (natural) color or color infrared):		
10 × 10 contact	$8.00	$12.00
12 × 12 enlargement	25.00	
20 × 20 enlargement	30.00	
24 × 24 enlargement	35.00	
30 × 30 enlargement	45.00	
38 × 38 enlargement	50.00	

Aerial photographic reproduction from National High Altitude Photography (NHAP) Program. There is no minimum charge on NHAP aerial photography orders. The prices for various types of aerial photographic reproductions are set forth below. Size measurements refer to the appropriate size in inches of the paper required to produce the Phoprint.

Size	Price each
1. Black and white contact prints:	
10 × 10 paper	$6.00
10 × 10 diapositive	15.00
10 × 10 negative	8.00
2. Aerial photo index sheets:	
20 × 24 RC (resin coated base paper)	5.00
24 × 36 Ozalid	4.00
Microfilm (photo indexes):	
Aperture Cards	1.00
Microfiche	2.00

Size	Price each	
	RC paper	Film positive transparency
3. Black and white enlargements (projection prints):		
12 × 12	$14.00	$22.00
17 × 10	17.00	24.00
20 × 20	18.00	
24 × 24	20.00	30.00
30 × 30	27.00	35.00
38 × 38	33.00	45.00

Size	Price each	
	RC paper	Color film positive transparency
4. Reproductions from color positive transparencies:		
10 × 10 contact	$16.00	$24.00
12 × 12 enlargements	40.00	
20 × 20 enlargements	45.00	
24 × 24 enlargements	49.00	
30 × 30 enlargements	58.00	
38 × 38 enlargements	65.00	

(e) *Special need.* For special needs not covered above, persons desiring aerial photographic reproductions should contact the agency listed in section 12(a) or the Departmental aerial photography coordinator, Aerial Photography Field Office, USDA-ASCS, 2222 West, 2300 South, P.O. Box 30010, Salt Lake City, Utah 84130.

(f) *Audio and videotape reproductions.* For reproductions of audio-videotapes, requesters must supply their own recording tape, and will be assessed a fee of $25.00 an hour for copying work requested. There is a one-hour minimum charge. Payment is required at the time video or audiotapes are accepted by the requester.

Dated: December 24, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-30040 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 86-ASO-5]

Alteration of Jet Route J-89 Between Lakeland, FL and Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns J-89 between Lakeland, FL, and Atlanta, GA. This action provides improved en route navigation for pilots, thereby aiding them in maintaining course, and increases system capacity by permitting a reduction in the minimum en route altitude.

EFFECTIVE DATE: 0901 UTC, March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On August 13, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign J-89 between Lakeland, FL, and Atlanta, GA (51 FR 28957). J-89 is presently aligned as a direct route between these VORTAC's. However, due to the excessive distance, aircraft are required to maintain a high minimum en route flight level. The proposed realignment of J-89 over Valdosta, GA, which is midway betwen Lakeland and Atlanta, permits lower minimum usable flight levels and would increase flight level availability for use on that route segment. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the description of J-89 has been changed because the Valdosta, GA, VORTAC radial for J-89 did not pass FAA's flight check. In order to maintain the required route alignment, Cawly, FL, Intersection, which is over the Valdosta VORTAC, has been added to the description of J-89. Except for the above and editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns J-89 between Lakeland, FL, and Atlanta, GA. This action provides improved en route navigation for pilots, thereby aiding them in maintaining course, and increases system capacity by permitting a reduction in the minimum en route altitude.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–89 [Amended]

By removing the words "From Lakeland, FL; via Atlanta, GA;" and by substituting the words "From INT of Taylor, FL, 175° and Valdosta, GA, 156° radials; Valdosta; Atlanta, GA;"

Issued in Washington, DC, on December 17, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–29976 Filed 12–30–87; 8:45 am]

BILLING CODE 4910–13–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment notifies the public of a change in the interest rate applicable to late premium payments and employer liability underpayments and overpayments beginning January 1, 1988. The interest rate is established by the Internal Revenue Service and is computed quarterly. This amendment is needed to notify pension plan administrators of the new interest rate.

DATE: Effective January 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202)–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from on-going plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate.

Section 6601(a) of the Code imposes interest on the underpayment of taxes at the "underpayment rate established under section 6621." Section 6621(a)(2) prescribes this rate: The sum of the short-term Federal rate (average interest rate on Federal securities with a maturity of three years or less) plus three percentage points. This rate is computed quarterly by the Internal Revenue Service.

On December 3, 1987, the Internal Revenue Service announced that for the calendar quarter beginning January 1, 1988, the interest charged on the underpayment of taxes will be at the rate of 11 percent. Accordingly, Appendix A to 29 CFR Part 2610 and Appendix A to 29 CFR Part 2622 are being amended to set forth this rate for the period beginning on January 1, 1988. This rate will be in effect for at least the three-month period ending on March 31, 1988, and will continue in effect after that time if the Internal Revenue Service, in its next quarterly review, determines that no change is needed.

The appendices to 29 CFR Part 2610 and 29 CFR Part 2622 do not prescribe the interest rates under these regulations; the rates prescribed by those parts are the rates under section 6601(a) of the Code. The appendices merely collect and republish the rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that neither of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, and Small businesses.

In consideration of the foregoing, Appendix A to Part 2610 and Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 11005, Pub. L. 99–272, 100 Stat. 82, 240.

2. Appendix A to Part 2610 is amended by revising the October 1, 1987, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
. . .	. . .	. . .
Oct. 1, 1987	Dec. 31, 1987	10
Jan. 1, 1988		11

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

3. The authority citation for Part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 11011, 11016, Pub. L. 99–272, 100 Stat. 253, 268.

4. Appendix A to Part 2622 is amended by revising the October 1, 1987, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * *	* * *	
Oct. 1, 1987	Dec. 31, 1987	10
Jan. 1, 1988		11

Issued in Washington, DC, the 23rd day of December, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–29889 Filed 12–30–87; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from January 1, 1988, to March 31, 1988.

DATE: Effective January 1, 1988.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 8¾ percent, which will be effective from January 1, 1988, through March 31, 1988. This rate is the same rate as the one in effect for the last quarter of 1987. See 52 FR 36759 (October 1, 1987). This rate is based on the prime rate in effect on December 15, 1987.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A—[Amended]

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From	To	Date of quotation	Rate (percent)
* * *	* * *	* * *	
01/01/88	03/31/88	12/15/87	8.75

Issued at Washington, DC, on this 23rd day of December, 1987.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 87–29888 Filed 12–30–87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of an Amendment to the Kansas Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment submitted by the State of Kansas as a

modification to its permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This amendment consists of revisions to the Kansas program concerning the applicability of SMCRA to the extraction of coal incidental to the extraction of other minerals and the establishment of a schedule for contemporaneous reclamation. OSMRE published a notice in the **Federal Register** on September 16, 1987 (52 FR 34930), announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended October 16, 1987. A public hearing was not held because no one requested to testify.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations. Therefore, the Director is approving the amendment.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background of the Kansas Program

The Kansas program was conditionally approved by the Secretary of the Interior on January 21, 1981. Information pertinent to the general background and revisions 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 Kansas program can be found in the January 21, 1981 **Federal Register** (46 FR 5892). Subsequent actions concerning the conditions of approval and program amendments may be found at 30 CFR 916.10, 916.12, 916.15, 916.16 and 916.20.

II. Submission of Proposed Amendment

By letter dated August 5, 1987, the State of Kansas submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consists of a proposed modification of Kansas' statute concerning the applicability of SMCRA to the extraction of coal incidental to the extraction of other minerals, and modification of Kansas' regulations concerning the establishment of schedules for contemporaneous reclamation.

The September 16, 1987 **Federal Register** (52 FR 34930) announced receipt of the proposed amendment and invited public comment on its adequacy.

III. Directors Findings

Finding 1

Kansas is amending its statute at Kansas Statutes Annotated (K.S.A.) 49-431 to include the activity of extraction of coal incidental to the extraction of other minerals as being exempt from the provision of the Kansas Mined-Land Conservation and Reclamation Act. Specifically it defines this activity as "the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purpose of commercial use or sale." This language parallels that of section 701(28)(A) of SMCRA.

Finding 2

Kansas is amending its regulations at Kansas Administrative Regulations (K.A.R.) 47-9-1, incorporating by reference part of 30 CFR 816.100 to include the language "The regulatory authority may establish schedules that define contemporaneous reclamation." This language parallels the Federal regulations and had been inadvertently omitted from a previous regulatory revision.

Finding 3

Kansas is amending its regulations at K.A.R. 47-9-1, expanding the incorporation by reference of part of 30 CFR 816.102 to include a schedule for backfilling and grading. This action places into the regulations the schedule that had been the formal policy of the Kansas Mined-Land Conservation and Reclamation Board (MLCRB). The schedule reads "Absent a regulatory authority approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four (4) spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge." This amendment involves provisions that lack a Federal counterpart. In 30 CFR 816.100, however, the regulatory authority is given the authority to establish schedules that define contemporaneous reclamation. The schedule for backfilling and grading, as proposed by Kansas, is well defined for monitoring by the State.

Finding 4

Kansas is amending its regulations at K.A.R. 47-9-1, expanding the incorporation by reference of part of 30 CFR 816.22 to include a schedule for topsoil redistribution. This action places into the regulations the schedule that had been the formal policy of the MLCRB. The schedule reads "Absent a regulatory authority approved schedule for soil material distribution, topsoil materials removed under paragraph (1) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that—." This amendment involves provisions that lack a Federal counterpart. In 30 CFR 816.100, however, the regulatory authority is given the authority to establish schedules that define contemporaneous reclamation. The schedule for topsoil redistribution, as proposed by Kansas, is well defined for monitoring by the State.

Pursuant to SMCRA and Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendments submitted by Kansas on August 5, 1987 are no less stringent than SMCRA and no less effective than the Federal regulations.

IV. Public Comments

The public comment period announced in the September 16, 1987 **Federal Register** (52 FR 34930) ended October 16, 1987. No public comments were received. Since no one made a request to present testimony at the scheduled public hearing, none was held. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal and State agencies. Responses were received from the U.S. Soil Conservation Service (SCS) and the U.S. Environmental Protection Agency (EPA).

The following discussion summarizes all comments received. EPA concurred that the proposed amendments to the Kansas program demonstrate the legal authority, administrative capability, and technical conformity to OSMRE regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). The SCS provided a reminder that SCS specifications require a cover crop on stockpiled material when left standing longer than 30 days. The SCS comment was noted as being correct, although it has no effect on this particular amendment.

V. Director's Decision

Based upon the findings, the Director is approving the amendment as submitted on August 5, 1987 and is amending Part 916 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Requirements

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 on this rulemaking.

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

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE 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, this action is exempt from preparation of a regulatory impact analysis statement and 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 that require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

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

Dated: December 23, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

30 CFR Part 916 is amended as follows:

PART 916—KANSAS

1. The authority citation of Part 916 continues to read as follows:

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

2. 30 CFR 916.15 is amended by adding paragraph (g) as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendments submitted to OSMRE on August 5, 1987 are approved effective December 31, 1987.

(1) Revisions to the Kansas Statutes Annotated in Chapter 49—Act not applicable to extraction of coal in certain circumstances 49–431.

(2) Revisions to the Kansas Administrative Regulations in Chapter 47, Article 9—47–9–1 Incorporation by reference 816.100 Contemporaneous Reclamation, 816.102 Backfilling and Grading-General, 816.22 Topsoil Redistribution.

[FR Doc. 87–29958 Filed 12–30–87; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Approval of Amendments to the Kentucky Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of amendments submitted by the Commonwealth of Kentucky to modify its permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted in response to requirements codified at 30 CFR 917.16(d), and pertain to stream buffer zones and backfilling and grading of underground mine face-up areas.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky, 40504; Telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky State Program

Information concerning the general background on the Kentucky program submission and the approval process, as well as the Secretary's findings, the disposition of comments and an explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified in 30 CFR 917.11, 917.15, 917.16 and 917.17. Information on the amendments discussed in this notice can be found in the March 27, 1987 **Federal Register** (52 FR 9890).

II. Discussion of Proposed Amendments

On February 27, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky program pertaining to stream buffer zones and backfilling and grading (Administrative Record No. KY–730). The revisions were intended to address the requirements at 30 CFR 917.16(d) that Kentucky submit proposed amendments "to provide that in addition to the limitations imposed by 405 KAR 16:080 section 2(3) and 405 KAR 18:080 section 2(3), no exemptions to channel restoration requirements for intermittent and perennial streams shall be approved unless the NREPC finds that the environmental resources of the stream will not be adversely affected;" and, to delete 405 KAR 18:190 section 2(8)(c) and 405 KAR 18:190 section 2(9), which would have allowed incomplete elimination of a highwall if elimination of the highwall was not required in the approved permit.

On March 27, 1987, OSMRE announced receipt of the proposed amendments and the opportunity for public comment and a public hearing, in the **Federal Register** (52 FR 9890). The public hearing scheduled for April 21, 1987, was not held because no one requested an opportunity to testify. The public comment period closed April 27, 1987.

On June 11, 1987, OSMRE sent a letter to Kentucky noting some concerns with the proposed amendments and offering an opportunity for Kentucky to submit additional modification or explanation of its rules, to address these concerns. On July 10, 1987, Kentucky submitted modified amendments along with additional explanation (Administrative Record No. KY–743).

On July 29, 1987, OSMRE reopened the comment period for a period of fifteen days ending August 13, 1987, to allow opportunity for public comment on the revised version of the amendments.

III. Director's Findings

Stream Buffer Zones

1. In response to the requirements at 30 CFR 917.16(d)(1), Kentucky has amended its rules at 405 KAR 16:060 and 18:060 Section 11 subsection (1) to provide that the NREPC may authorize mining closer than 100 feet to, or

through, intermittent or perennial streams, only upon findings: that the mining activities will not cause or contribute to the violation of applicable water quality standards or cause significant detrimental effects on water quantity or quality and other valuable environmental resources of the stream; and that diversions will comply with 405 KAR 16.080 or 18:080. Subsection (2) is amended to require that the area that is not to be disturbed shall be designated a buffer zone, adequately shown in the permit application, and marked by the permittee in accordance with Kentucky's requirements for signs and markers. Subsection (3) provides that all information required by NREPC to make the findings required by subsection (1) shall be submitted in the permit application in the prescribed manner. Subsection (4) establishes the applicability of the amended sections.

In a letter to Kentucky dated June 11, 1987, OSMRE expressed concern that the term "long-term" was used to modify "detrimental effects" and that "valuable" modified "environmental resources" in the proposed provisions. The Federal rules at 30 CFR 816.57(a)(1) and 817.57(a)(1) do not contain these modifiers. In its July 10, 1987, response to OSMRE's letter, Kentucky modified the proposed amendments to delete "long term" from proposed revisions and explained that the modifier "valuable" was retained to indicate that zero degradation was not required. Kentucky pointed out that the preamble to the Federal rules indicated that OSMRE recognized some disturbance to the environment would be necessary and that mining operations "would be permissible as long as environmental protection will be afforded to those streams with more significant environmental resources" (48 FR 30313, June 30, 1983). Kentucky also explained that its forthcoming regulations pertaining to fish and wildlife would further clarify which environmental resources are considered to be "valuable".

The Director accepts these changes and explanations and finds that the proposed Kentucky rules are no less effective than the Federal rules in 30 CFR 816.57 and 817.57, and that the amendment satisfactorily addresses the requirement at 30 CFR 917.16(d)(1).

Backfilling and Grading

2. Kentucky has amended 405 KAR 18:190 Section 2 paragraphs (8)(c) and (9) in response to the required amendment in 30 CFR 917.16(d)(2). Kentucky has deleted the previously proposed language and has replaced it with new language, which the Director finds consistent with the Federal requirements in SMCRA section 516 and the Federal rules at 30 CFR 817.106(a) as discussed below.

Kentucky has added language at 405 KAR 18:190 paragraph 2(8)(c) to allow incomplete elimination of face-up areas and similar cut slopes on underground mining operations pursuant to subsection (9). Subsection (9) allows face-up areas and similar cut slopes created prior to the effective date of SMCRA and continuing into permanent program regulation, to be backfilled and graded in accordance with the Kentucky regulations for backfilling and grading of remined areas (at 405 KAR 18:190 Section 5). The Kentucky rules for backfilling and grading remined areas roughly parallel the Federal requirements in 30 CFR 817.106. Under these amended provisions, pre-SMCRA face-up areas and similar cut slopes would be eliminated to the maximum extent technically practicable using all reasonably available spoil, and graded to a slope compatible with the approved postmining land use with a 1.3 long-term static factor of safety and with at least 4 feet of cover on exposed coal seams. Highwall remnants must be stable and not pose a hazard to public health or safety or the environment.

Approval of these provisions will provide equitable treatment for pre-SMCRA mines which have operated continuously since before the effective date of SMCRA. Approval will afford the same variance from approximate original contour requirements as is provided in 30 CFR 817.106 for remining sites where operation of a pre-SMCRA mine has been interrupted and mining was begun again at the sites after the effective date of the Act.

These amended Kentucky provisions address the situation of attempting to reclaim face-up entry areas which are created prior to the passage of SMCRA. Many of these underground mines have been in existence for many years and the earthen material necessary to eliminate the face-up entry is either no longer available or has been completely revegetated and its handling and use would cause new environmental damage and disruption. This problem is unique to underground mines where highwall areas do not move with the coal removal operations (as with surface mines) but exist in a static state for many years. The problem is not encountered in surface mines where post-SMCRA operations are continually creating new highwall rather than extracting coal from pre-SMCRA highwall areas.

In passing the Surface Mining Control and Reclamation Act of 1977, Congress dealt with the surface impacts of underground and surface extraction of coal in a generally similar manner, but did provide for important differences. Congress affirmatively established certain performance standards applicable to underground mines in section 516 of SMCRA, and incorporated others by reference. One of the performance standards incorporated by reference under section 516(b)(10) is that of highwall elimination. However, section 516(b)(10) also charges that "the Secretary shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining." The District Court recognized in *In Re: Permanent Surface Mining Regulation Litigation* (D.D.C., Civil Action No. 79–1144, May 1980) that one of the distinct differences between surface and underground mines was the length of time for mine operation. The difference is apparent in the present instance since surface mines which continued to disturb new highwall after the effective date of the Act were not required to eliminate highwalls created within the same operation before the effective date of the Act. The Director is exercising his authority, as the Secretary's designee, to consider these distinct differences between surface and underground mining as provided in SMCRA section 516(b)(10) in approving Kentucky's program amendment. Approval of this program amendment constitutes a modification pursuant to section 516(b)(10) of the Federal regulatory requirement that there be complete elimination of face-up areas, in these limited circumstances. Exercise of this authority establishes the Federal requirement for the State of Kentucky.

IV. Public Comments

None of the agencies invited to comment on the proposed Kentucky rules offered comments.

In response to the request for public comments, comments were received from Thomas FitzGerald on behalf of the Kentucky Resources Council and from Bill K. Caylor on behalf of the Kentucky Coal Association.

Stream Buffer Zones

Mr. FitzGerald stated that protections from environmental impacts on streams and stream buffer zones should not be limited to "significant long-term detrimental effects" but should consider short-term effects and any adverse

effects on water quality and quantity and environmental values.

Kentucky has amended its rules to delete the qualifier "long-term." The Director does not agree that the qualifier "significant" must also be deleted, since the preamble to the Federal rules at 30 CFR 816.57(a) and 817.57(a) recognizes that some disturbance to the environment would be necessary and permissible "as long as environmental protection will be afforded to those streams with more significant environmental resources" (48 FR 30312, June 30, 1983).

Mr. FitzGerald also objected to the use of the word "valuable" to modify environmental resources in 405 KAR 16:060 and 18:060 section 11(1)c. Kentucky has explained in its July 10, 1987, submission that its intention in using the word "valuable" is to distinguish between zero degradation standards and those which would protect resources having value or significance. The Director has found that in light of Kentucky's explanation and the preamble discussion to the Federal rules (48 FR 30312) the Kentucky rules are no less effective than the Federal rules.

Backfilling and Grading

Mr. FitzGerald requested that OSMRE reject Kentucky's proposed amendment at 405 KAR 18:190 concerning backfilling and grading of face-up areas and similar cut slopes created prior to the effective date of SMCRA. Mr. FitzGerald stated that "the variance procedure which allows for less than complete highwall elimination absent a specific variance for post-mining land use would be the remaining provisions of 30 CFR 817.106." He stated that this variance would only be available for mining operations on previously mined areas, and that the Kentucky rule would allow the variance on a mine begun before SMCRA and continuing under permit into the permanent program.

Mr. FitzGerald said that Kentucky's proposal would go beyond existing authority by allowing an operation to avoid responsibility for complete highwall elimination when the highwall was created by that operation. He said that such an exemption from highwall elimination would sanction improper spoil disposal. Mr. FitzGerald said there is no authority under SMCRA for this variance.

Mr. Caylor (Kentucky Coal Association) favored approval of the provision proposed in the Kentucky amendment for a variance from the requirement of complete highwall elimination for pre-SMCRA underground mine areas. Mr. Caylor stated that there is no basis for treating mines which have operated continuously since before SMCRA, differently from those which were abandoned before SMCRA and reopened after SMCRA. He stated that rejection of the Kentucky amendment would penalize an operator who continued to operate past May 3, 1978, since, if the operator had closed down on May 3 and reopened May 4, 1978, the operator would have been able to obtain a variance.

Mr. Caylor also stated that in *In Re: Surface Mining Regulation Litigation* 452 F. Supp 327, 339 (D.D.C. 1978) "the District Court of the District of Columbia held that absent an explicit and unmistakable command to the contrary," the provisions of SMCRA would not have retroactive application; the court therefore struck down OSMRE's interim requirement for reconstruction of pre-existing facilities.

Mr. Caylor also stated that in the same court's 1984 decision in *In Re: Permanent Surface Mining Regulation Litigation* No. 79–1144 (D.D.C. July 6, 1984), the court held that Congress did not intend for the grading and highwall elimination requirements of SMCRA section 515(b)(3) to encompass existing highwalls. Mr. Caylor continued that "moreover, the Act directs OSM to consider the distinct difference between surface and underground coal mines" and that one obvious distinction which was recognized by the court in *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. February 26, 1980) is the duration of an underground mine.

As addressed in the "Findings" above, the Director has found that the Kentucky amendment is consistent with the Federal requirements. The Director, while approving this amendment, disagrees with certain points in the arguments of both commenters.

While Mr. FitzGerald's assertion that the variance which allows for less than complete highwall elimination found at 30 CFR 817.106 applies to remining operations on previously mined areas (as defined at 30 CFR 701.5), is true, the Director disagrees that SMCRA provides no authority for the variance proposed by Kentucky. As explained in Finding 2 above, the Director is exercising his authority pursuant to SMCRA section 516(b)(10) to consider the distinct differences between surface and underground mining in approving Kentucky's amendment. In exercising this authority, the Director is establishing the Federal requirement for this limited circumstance for the State of Kentucky. The Director disagrees that approval of this amendment would sanction improper spoil disposal. In the limited circumstances to which the variance provided by this amendment would apply, spoil disposal was complete before passage of SMCRA. This amendment would not change spoil disposal requirements for areas disturbed after passage of the Act.

Mr. Caylor's arguments are jurisdictional in nature. That is, if the application of the provisions of SMCRA to these existing face-up areas on currently operating mines is retroactive, then the Secretary has no jurisdiction to require either complete or partial elimination. The Director, however, disagrees with Mr. Caylor's interpretation of Judge Flannery's 1978 and 1984 decisions. In the 1978 decision, Judge Flannery did not require operators to dismantle pre-existing structures and facilities to meet the specific design criteria of the regulations. However, the Judge emphasized that the *performance standards* must be met and if the structures and facilities did not meet those performance standards they must be reconstructed. Judge Flannery's opinion does not apply retroactivity principles to the application of performance standards to a pre-existing status where the operation continues. In the 1984 decision, Judge Flannery addresed the situation of an orphaned highwall. The issue was whether the Secretary could allow less than total highwall elimination when an operator proposed to remine the area by auger methods. The court did not hold that the grading and highwall elimination requirements of SMCRA did not encompass existing highwalls but rather that "this limited exception [created by regulation] is not contrary to the Act." 1984 opinion at 29. In order for the Secretary to make the limited exception approved by the court, he must have jurisdiction under SMCRA over the subject matter.

The Secretary has jurisdiction under Title V over pre-existing face-up areas and similar cuts of underground mines which continued in operation after the passage of SMCRA. The Director, as the Secretary's designee, is asserting jurisdiction over this category of highwalls. In exercising that jurisdiction, the Director is adopting a modification, pursuant to the authority in section 516(b)(10), to the requirement of total face-up elimination. The basis for that modification is set out in Part III Findings, above.

V. Director's Decision

The Director, based on the above findings, is approving the Kentucky amendments in 405 KAR 16:060, 405 KAR 18:060 and 405 KAR 18:190

submitted on February 27, 1987 as modified on July 10, 1987. The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision.

The Director is also removing the requirements at 30 CFR 917.16(d) that Kentucky submit amendments to its rules to address identified deficiencies.

VI. Additional Determinations

1. Compliance With the National Environmental Policy Act.

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE 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 OSMRE 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 require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

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

Date: December 23, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

30 CFR Part 917 is amended as follows:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

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

2. 30 CFR 917.15 is amended by adding a new paragraph (y) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(y) The following amendments to the Kentucky Administrative Regulations (KAR) submitted to OSMRE on February 27, 1987, as modified on July 10, 1987, are approved effective December 31, 1987: amendments to 405 KAR 16:060 section 11, 405 KAR 18:060 Section 11 and 405 KAR 18:190 Section 2.

§ 917.16 [Amended]

3. 30 CFR 917.16 is amended by removing paragraph (d).

[FR Doc. 87-29957 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 926

Approval of Amendment to the Montana Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment submitted by the State of Montana as a modification to its permanent regulatory program (hereinafter referred to as the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, Montana Legislature House Bill No. 230 (H.B. 230), consists of revisions to the Montana Strip and Underground Mine Reclamation Act, addressing requirements for remining, coal processing, permit applications, and permit fees.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East B Street, Room 2128, Casper, Wyoming 82601-1918; Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background

Information concerning the general background on the permanent program, general background on the State program approval process, general background on the Montana program submission, Secretary's findings, disposition of public comments, and the Secretary's decision of conditional approval can be found in the February 11, 1982, **Federal Register** (47 FR 6268). Subsequent conditions of approval and program amendments are identified at 30 CFR 926.15.

II. Submission of Amendment

On April 23, 1987, Montana submitted to OSMRE for review proposed amendment H.B. 230 addressing remining, coal processing, permit applications, and permit fees for surface mining operations.

The May 21, 1987 **Federal Register** (52 FR 19171) announced receipt of the proposed amendment and invited public comment on their adequacy. Since no one requested a public hearing, none was held. The comment period for this submittal closed June 22, 1987.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Montana Strip and Underground Mine Reclamation Act submitted by Montana on April 23, 1987. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than Federal rules. These revisions contain language similar to the corresponding Federal rules, concern non-substantive wording changes, or involve provisions which lack a Federal counterpart and which do not adversely affect other aspects of the program. The Director may require changes in the future as a result of his ongoing review of the Montana program in light of Federal regulatory revisions and court decisions.

Section 1

Montana has amended Section 82-4-203 of the Montana Code Annotated (MCA)—Definitions, by adding new definitions for "Coal Preparation", "Coal Preparation Plant", and "Remining" to this section. The existing definitions for "Operation", "Operator", and "Strip mining" were expanded to reflect the newly added terms.

Section 82-4-203(8) Coal Preparation. Montana proposes to define coal preparation to mean the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation. The term excludes processes for converting coal to another energy source. It also excludes coal processing for other than commercial purposes. Montana clarified that its term commercial purposes was included in the statutory language to assure that research coal preparation plants would clearly be excluded from the need for a permit under the State requirements. The Federal regulatory

program does not address the regulation of coal preparation activities in terms of commercial or noncommercial purposes as does the proposed Montana amendment.

Under SMCRA the regulation of coal preparation activities originates from the definition of "surface coal mining operation" at section 701(28)(A). A surface coal mining operation is defined to include activities conducted on the surface of lands in connection with a coal mine. The section goes on to list numerous activities including "chemical or physical processing, and the cleaning, concentrating, or other processing or preparation," of coal which, when conducted *in connection with* a coal mine, are subject to regulation under SMCRA.

While coal preparation activities are usually conducted at the mine site, they also occur at a preparation plant not located at a mine site. To ensure that such off-site coal preparation is regulated, OSMRE includes permitting requirements for off-site preparation plants at 30 CFR 785.21 and performance standards for plants not located within the permit area of a mine at 30 CFR Part 827.

In the preamble to the revised definition of the term "surface coal mining operation" at 30 CFR 700.5 (48 FR 20393, May 5, 1983), OSMRE states that the phrase "in connection with" should be interpreted broadly, although not so broadly as to include facilities operated solely in connection with the end user of the coal. The preamble states further that OSMRE will treat all facilities which handle coal as either operating in connection with a mine or an end user. Examples of facilities operating in connection with a mine include those receiving a significant proportion of their coal from a mine, and those having an economic relationship with a mine or any other type of integration with a mine.

As such, OSMRE interprets Montana's exclusion of coal processing for other than commercial purposes from the definition of "coal preparation" to mean that the definition does not apply to activities associated with an end user, and that any coal preparation activities conducted in connection with a mine will not be excluded from the new definition. Decisions concerning the regulatory status of coal preparation outside the permit area of a specific mine must be made on a case-by-case basis. However, that decision must not be based solely on whether the coal preparation activities are commercial in nature, but whether the activity is in connection with a specific mine. Therefore, based upon the above interpretation, OSMRE finds the Montana definition of "coal preparation" to be no less stringent than section 701(28)(A) of SMCRA and no less effective than the Federal regulations. OSMRE will monitor the State's implementation of this amendment during the oversight process.

Section 82-4-203(9) Coal Preparation Plant. Montana proposes to define a coal preparation plant as a commercial facility where coal is subject to coal preparation. The Director is approving this definition provided that Montana's implementation of the amendment is consistent with the interpretation discussed in section 82-4-203(8) above. OSMRE will monitor the State's implementation of this amendment during the oversight process.

Section 82-4-203(28) Remining. Montana proposes to define remining to mean conducting surface coal mining and reclamation operations that affect previously mined areas, such as the recovery of minerals from existing gob and tailings piles. The Director finds this definition to be consistent with SMCRA and no less effective than the Federal regulations at 30 CFR 701.5.

Section 2

Montana has amended Section 82-4-222 MCA—Permit Application, by inclusion of subsection (h) which requires the applicant to state whether the applicant has a record of outstanding reclamation fees with the Federal coal regulatory authority. The Director finds this amendment to be no less effective than the Federal regulations at 30 CFR 773.15(c)(7) and consistent with SMCRA.

Section 3

Section 82-4-223 MCA—Permit Fee and Security Bond, requires that an application fee be paid before the permit required in this part is issued. Montana has increased the amount of this required fee from $50 to $100. The Director finds this amendment to be consistent with Section 507(a) of SMCRA.

Section 4

Montana has added this new section on extension of authority to insure that the Montana Department of State Lands or the Board of Land Commissioners has the authority to make rules on the subject of the provisions of the Montana Strip and Underground Mine Reclamation Act. The Director finds this amendment no less stringent than section 201(c) of SMCRA.

IV. Public Comments

The Director solicited public comment on the proposed amendment in the May 21, 1987 **Federal Register** (52 FR 19171). No comments were received by the close of the comment period June 22, 1987.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies. One comment was received from the National Park Service. The National Park Service was concerned that Section 82-4-221 MCA—Mining Permit Required, was being removed from Montana's law. In Montana's formal amendment submittal, it appeared that Section 82-4-221 MCA—Mining Permit Required, had been stricken from its law. This was an error and was not the State's intent. Montana made no changes to Section 82-4-221 with this amendment.

V. Director's Decision

The Director, based on the above findings, is approving the amendment to the Montana Strip and Underground Mine Reclamation Act as submitted by Montana on April 23, 1987.

VI. Procedural Requirements

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 on this rulemaking.

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

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE 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, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that, for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), this rule will not have a significant economic effect on a substantial number of small entities. 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 require

approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

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

Arthur W. Abbs,

Acting Deputy Director, Operations and Technical Services.

Date: December 24, 1987.

30 CFR Part 926 is amended as follows:

PART 926—MONTANA

1. The authority citation for Part 926 is revised to read as follows:

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

2. 30 CFR 926.15 is amended by adding new paragraph (g) as follows:

§ 926.15 Approval of amendments to State regulatory program.

* * * * *

(g) The following amendment to the Montana permanent regulatory program, as submitted to OSMRE on April 23, 1987, is approved effective December 31, 1987. Section 82-4-203 MCA, concerning definitions of coal preparation, coal preparation plant, operation, operator, remaining, the strip mining; Section 82-4-222 MCA, inclusion of records of outstanding reclamation fees in a permit application; Section 82-4-223 MCA, permit application fee and extension of authority.

[FR Doc. 87-29954 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 946

Approval of Amendment to Virginia Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments alter provisions of Virginia's alternative bonding program.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendment

By letter dated June 15, 1987 (Administrative Record No. VA 627), Virginia submitted proposed amendments (H.B. 883, Chapter 468 of the 1987 Acts of the Assembly) to section 45.1-270 of the Coal Surface Mining Control and Reclamation Act of 1979 (the Virginia Act). The amendments alter certain provisions of Virginia's alternative bonding program, the Surface Coal Mining Reclamation Fund (the fund), and add additional requirements and provisions affecting fund participants, as discussed below.

Section 45.1-270.4 has been revised to increase the fund balance level at which the collection of reclamation taxes ceases from $1,000,000 to $2,000,000, and to require that participating operators resume payment of reclamation taxes 30 days following the end of any calendar quarter in which the fund balance falls below $1,750,000, rather than $750,000 as previously provided. The revised statute also requires that, when computing the fund's balance, all potential obligations for which cost estimates have been prepared be deducted from the fund's assets regardless of whether actual expenditures have occurred. Any adjustments for expenditures which are lower than the corresponding estimates shall be made in the calendar quarter in which the final expenditure from the fund to reclaim the site is made.

Section 45.1-270.5:1 has been added to allow Virginia to file a civil action to compel permittees participating in the fund to perform the reclamation work in full compliance with the Virginia program in the event of forfeiture.

Section 45.1-270.6B has been added to allow Virginia to file a motion for judgment in any court of competent jurisdiction against the permittee to recover all monies expended from the fund to accomplish reclamation on a forfeited site.

Section 45.1-270.3:1 has been added to provide that, once a site bonded under the fund has been in temporary cessation for six months, no extension of the temporary cessation in excess of nine months shall be approved under section 480-03-19.816.131 or 480.03.817.131 of the Virginia Coal Surface Mining Reclamation Regulations unless the permittee either reclaims the site to the point where the site-specific bond is adequate to complete reclamation or submits additional bond.

OSMRE announced receipt of the proposed amendments in the July 28, 1987 **Federal Register** (52 FR 28166-28167) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, the Director finds that the amendments submitted by Virginia on June 15, 1987, do not alter the basis on which the Commonwealth's alternative bonding system was approved on September 21, 1982 (47 FR 41556-41558), and that they are therefore not inconsistent with the Federal regulations at 30 CFR 800.11(e), which require that any alternative bonding system assure that the regulatory authority will have available sufficient monies to complete the reclamation plan for any area which may be in default at any time and that the system provide a substantial economic incentive for the permittee to comply with all reclamation provisions. The Director finds that the revisions to sections 45.1-270.4 and 45.1-270.6 of the Code of Virginia and the additions of section 45.1-270.3:1 and section 45.1-270.5:1 will enhance the system's ability to meet these requirements by increasing the bond or amount of reclamation required for operations in a lengthy period of temporary cessation, raising the maximum and minimum levels of the fund for purposes of tax collection, providing for the deduction of all potential obligations regardless of expenditures when computing the final balance, granting the Commonwealth the authority to file civil actions to compel permittees participating in the fund to perform reclamation in full compliance with the Virginia program in the event of forfeiture, and granting Virginia the authority to file for a motion for judgment in the courts against the permittee to recover all monies expended from the fund to accomplish reclamation on a forfeited site.

IV. Public Comment

There were no comments received before or after August 27, 1987, the closing date of the public comment period announced by the Director in the July 28, 1987 **Federal Register** (52 FR 28166–28167). Since no one requested an opportunity to testify at a public hearing, the hearing scheduled in that notice was cancelled.

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i), the Director also provided various Federal agencies the opportunity to comment on the proposed amendment. The Environmental Protection Agency and the Department of Energy both responded that they had no comments. No other agencies provided a response.

V. Director's Decision

The Director is approving the changes in Virginia's program as submitted June 15, 1987, and is amending 30 CFR Part 946 to reflect approval of these amendments. This final rule is being made effective retroactively to July 1, 1987, to coincide with the date of the State legislation containing these amendments.

VI. Procedural Determinations

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 on this rulemaking.

2. Compliance With Executive Order 12291 Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE 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, this action is exempt from preparation of a Regulatory Impact Analysis and review by OMB.

3. Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). 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.

4. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 946

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

Date: December 23, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 946—VIRGINIA

30 CFR Part 946 is amended as follows:

1. The authority citation for Part 946 continues to read as follows:

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

2. In § 946.15, a new paragraph (u) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(u) The following amendments to the Virginia program, as contained in H.B. 883, Chapter 468 of the 1987 Virginia Acts of Assembly and as submitted to OSMRE by letter dated June 15, 1987, are approved effective July 1, 1987: Revisions and additions to the Code of Virginia at section 45.1–270.3:1 requiring additional reclamation or bond for permits bonded under the fund and under temporary cessation for an extended period of time; section 45.1–270.4 raising the maintenance levels of the fund and requiring consideration of all potential obligations when computing the fund balance; section 45.1–270.5:1 allowing Virginia to file a civil action to compel reclamation by the permittee in the event of forfeiture under the fund; and section 45.1–270.6B allowing Virginia to file for judgment to recover monies expended from the fund.

[FR Doc. 87–29956 Filed 12–30–87; 8:45 am]

BILLING CODE 4310-05-N

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30 CFR Part 946

Approval of Amendment to Virginia Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment will allow the use of personal checks as a method of payment for entry fees to the Surface Coal Mining Reclamation Fund, Virginia's alternative bonding program.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Submission of Amendment

By letter dated July 2, 1987 (Administrative Record No. VA 633), Virginia proposed to amend section 480–03–19.801.12(a) of the Virginia Coal Surface Mining Reclamation Regulations to allow applicants for participation in the Surface Coal Mining Reclamation Fund (Virigina's alternative bonding program) to pay the entrance fee by personal check.

OSMRE announced receipt of the proposed amendment in the August 4, 1987 **Federal Register** (52 FR 28849–28850) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, the Director finds that the amendment submitted by Virginia on July 2, 1987, does not alter the basis on which the Commonwealth's alternative bonding system was approved on September 21, 1982 (47 FR 41556–41558) and that it is therefore not inconsistent with the Federal requirements for alternative bonding systems as set forth at 30 CFR 800.11(e). The Federal regulations do not address entrance fees or methods of payment.

IV. Public Comment

There were no comments received before or after September 3, 1987, the closing date for the public comment period announced by the Director in the August 4, 1987 **Federal Register** (FR 52 28849–28850). Since no one requested an opportunity to testify at a public hearing, the hearing scheduled in that notice was canceled.

Pursuant to the section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i), the Director also provided various Federal agencies the opportunity to comment on the proposed amendment. The Environmental Protection Agency, the Department of Energy and the Bureau of Mines responded that they had no comments. No other agencies provided a response.

V. Director's Decision

The Director is approving the changes in Virginia's program as submitted July 2, 1987, and is amending 30 CFR Part 946 to reflect this approval. This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

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 on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE 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, this action is exempt from preparation of a Regulatory Impact Analysis and 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 require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

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

Date: December 23, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

Title 30, Code of Federal Regulations, is amended as follows:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

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

2. In § 946.15, a new paragraph (v) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(v) The following amendment to the Virginia permanent regulatory program, as submitted by letter dated July 2, 1987, is approved effective December 31, 1987: Revisions to the Virginia Coal Surface Mining Reclamation Regulations at section 480–03–19.801.12(a) to allow the use of personal checks as one method for paying entrance fees to Virginia's Surface Coal Mining Reclamation Fund.

[FR Doc. 87–29955 Filed 12–30–87; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–87–44]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Martin County, the Coast Guard is changing the regulations governing the Jensen Beach and Ernest Lyons drawbridges in Martin County by permitting the number of openings to be limited during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: On October 2, 1987, the Coast Guard published proposed rule (52 FR 36961) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated October 16, 1987. In each notice, interested persons were given until November 16, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

59 comments were received generally in support of the proposed regulations including 2 petitions with 61 signatures. Many commenters complained about vessels which request openings merely to clear outriggers and antennae. The requirement to lower these appurtenances is contained in 33 CFR 117.11. Several commenters asked that signs stating the bridge opening times be placed along both the waterway and the highway. Waterway signs are addressed by 33 CFR 117.55. Posting of highway signs is not within the Coast Guard's jurisdiction, but the suggestion will be passed to the Florida Department of Transportation. One commentor expressed concern for movement of emergency vehicles when the bridge is open for navigation. This is addressed in 33 CFR 117.31. Some commenters suggested that a limit be placed on the number of vessels allowed to pass through an open bridge to avoid extended openings. This is not considered a safe navigational practice. 33 CFR 117.9 addresses unnecessary delays in the opening and closure of the draw. Several commenters asked that the regulations be implemented year-round. Available highway traffic and bridge opening data do not support the need for year-round regulations. No objections were received from navigation interests, however 2 commenters stated the regulations should be temporary, contingent on replacement of the drawbridges by high level fixed bridges within 2 years. The Coast Guard offers no comment on this proposal since replacement of these bridges goes beyond the scope of these regulations. After careful consideration of all comments, the Coast Guard has determined the final rule will be

unchanged from the proposed rule published on October 2, 1987.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the 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. We conclude this because the regulations exempt tugs with tows. Since the economic 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 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.261(o) and (p) are added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(o) *Jensen Beach (SR 707a) bridge, mile 981.4 at Stuart.* The draw shall open on signal, except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour.

(p) *Ernest Lyons (SR A1A) bridge, mile 984.9 at Stuart.* The draw shall open on signal, except that, from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour.

* * * * *

Dated: December 22, 1987.

M.J. O'Brien,

Acting Captain, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 87-30026 Filed 12-30-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3309-7]

Approval and Promulgation of Air Quality Implementation Plans; States of Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont; Stack Height Reviews

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving declarations by Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont that recent revisions to EPA's stack height regulations do not necessitate revisions to State Implementation Plans (SIPs) in those states. Each state was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that these states have satisfied their obligations under Section 406 of the Clean Air Act to review their SIPs with respect to EPA's revised stack height regulations.

EFFECTIVE DATE: This action will be effective on February 1, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of each state's submission are available for public inspection at its respective office, as follows: the Connecticut Department of Environmental Protection, Air Compliance Unit, State Office Building, Hartford, CT 06115; the Massachusetts Department of Environmental Quality Engineering, Eighth Floor, One Winter Street, Boston, MA 02108; the New Hampshire Air Resources Division, 64 N. Main St., Concord, NH 03302; the Rhode Island Department of Environmental Management, Division of Air and Hazardous Materials, Room 204, 45 Davis St., Providence, RI 02908; and the Vermont Agency of Environmental Conservation, 103 South Main St., Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Stephen S. Perkins, (617) 565-3221; FTS 835-3221.

SUPPLEMENTARY INFORMATION: On June 12, 1987 (52 FR 22501), EPA published a notice of proposed rulemaking for declarations by Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont that recent revisions to EPA's stack height regulations do not necessitate revisions to State Implementation Plans (SIPs) in those states.

Pursuant to section 406(d)(2)(B) of the Clean Air Act (the Act), upon revision of EPA's stack height regulations, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs.

State Submissions

EPA received reviews submitted by Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont. The Connecticut review was submitted on February 21, 1986; the Massachusetts review on April 9, 1986; the New Hampshire review on March 26, 1986; the Rhode Island review on March 27, 1986; and the Vermont review on March 21, 1986. Additional material was submitted by Connecticut on May 27, 1986; by Massachusetts on June 24, 1986; and by New Hampshire on July 25, 1986.

Each state concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. Massachusetts, New Hampshire, Rhode Island and Vermont have provided letters committing to interpret their stack height rules consistent with EPA's July 8, 1985 revisions. Connecticut's rules will be reviewed as part of a formal revision to its new source review program. Each state also found that no existing emission limitations have been affected by stack height credits greater than GEP or any other prohibited dispersion techniques. A discussion of each state's findings is presented in the Notice of Proposed Rulemaking (52 FR 22501) and so will not be restated here. EPA did not receive any public comments on the Notice of Proposed Rulemaking.

EPA Review

EPA reviewed each state's submission and concurs with the conclusion that no SIP revisions are necessary as a result of EPA's revised stack height regulations. The stack height rules of Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont

apply to all new sources and modifications as required in 40 CFR 51.164, as well as existing sources as required in 40 CFR 51.118. This means that these rules apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. EPA has determined that the commitment letters regarding the interpretation of the stack height rules for Massachusetts, New Hampshire, Rhode Island and Vermont are consistent with EPA's requirements for GEP sack height and dispersion techniques as revised on July 8, 1985. As mentioned above, Connecticut's rules will be formally reviewed as part of a forthcoming revision to its new source review program. Thus Massachusetts, New Hampshire, Rhode Island, and Vermont have met their obligations under section 406 of the Act. Connecticut has met its obligations with respect to the review of emission limits but has not yet with respect to the new source review portion. Future rulemaking on Connecticut's new source review rules will satisfy this remaining obligation.

EPA's detailed review and approval of the technical support submitted by each state is contained in a Technical Support Document which summarizes the states' findings for each inventoried source. This document is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this notice.

EPA is adding the documented reviews and letters regarding interpretation of stack height language to the appropriate SIP as additional material. This will ensure a clear record of each state's actions and intentions in these matters.

Final Action

EPA is approving declarations by Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont that recent revisions to EPA's stack height regulations do not necessitate SIP revisions in those states. EPA is also approving commitments by Massachusetts, New Hampshire, Rhode Island and Vermont to interpret their stack height rules consistent with the revised EPA stack height regulations.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 29, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subject in 40 CFR Part 52

Air pollution control, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the States of Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont was approved by the Director of the Federal Register on July 1, 1982.

Date: December 22, 1987.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.383 is added to Subpart H to read as follows:

§ 52.383 Stack height review.

The State of Connecticut has declared to the satisfaction of EPA that no existing emission limitations have been affected by stack height credits greater than good engineering practice or any other prohibited dispersion techniques as defined on EPA's stack height regulations as revised on July 8, 1985. Such declarations were submitted to EPA on February 21, 1986 and May 27, 1986.

3. Section 52.1169 is added to Subpart W to read as follows:

§ 52.1169 Stack height review.

The Commonwealth of Massachusetts has declared to the satisfaction of EPA that no existing emission limitations have been affected by stack height credits greater than good engineering practice or any other prohibited dispersion technique as defined in EPA's stack height regulations, as revised on July 8, 1985. This declaration was submitted to EPA on April 8, 1986. The Commonwealth has further declared in a letter from Bruce K. Maillet, dated June 24, 1986, that, "[A]s part of our new source review activities under the Massachusetts SIP and our delegated PSD authority, the Department of Environmental Quality Engineering will follow EPA's stack height regulations, as revised in the **Federal Register** on July 8, 1985 (50 FR 27892)." Thus, the Commonwealth has satisfactorily demonstrated that its regulations meet 40 CFR 51.118 and 51.164.

4. Section 52.1532 is added to Subpart EE to read as follows:

§ 52.1532 Stack height review

The State of New Hampshire has declared to the satisfaction of EPA that no existing emission limitations have been affected by stack height credits greater than good engineering practice or any other prohibited dispersion technique as defined in EPA's stack height regulations, as revised on July 8, 1985. This declaration was submitted to EPA on March 21, 1986. The State has further declared in a letter from Dennis Lunderville, dated July 25, 1986, that, "As part of our new source review activities under the New Hampshire SIP and our delegated PSD authority, the New Hampshire Air Resources Agency will follow EPA's stack height regulation as revised in the **Federal Register** on July 8, 1985 (50 FR 27892)." Thus, New Hampshire has satisfactorily demonstrated that its regulations meet 40 CFR 51.118 and 51.164.

5. Section 52.2085 is added to Subpart OO to read as follows:

§ 52.2085 Stack height review.

The State of Rhode Island has declared to the satisfaction of EPA that no existing emission limitations have been affected by stack height credits greater than good engineering practice or any other prohibited dispersion technique as defined in EPA's stack height regulations, as revised on July 8, 1985. Such declarations were submitted to EPA on March 27, 1986. The State has further declared, in letters from Thomas D. Getz, dated October 15, 1985 and March 27, 1986, that "[R]hode Island will use the 8 July 1985 revised height regulations in administering Section 9.18 of its new source review regulations." Thus, Rhode Island has satisfactorily demonstrated that its regulations meet 40 CFR 51.118 and 51.164.

6. Section 52.2384 is added to Subpart UU to read as follows:

§ 52.2384 Stack height review.

The State of Vermont has declared to the satisfaction of EPA that no existing emission limitations have been affected by stack height credits greater than good engineering practice or any other prohibited dispersion techniques as defined in EPA's stack height regulations, as revised on July 8, 1985. This declaration was submitted to EPA on March 21, 1986. The State has further declared in a letter from Harold T. Garabedian, dated March 21, 1986, that, "[T]he State concludes that our present rule 5–502(4)(d) is adequate to insure that new emission sources will not be able to use credits from modeling ambient impacts at greater than 'good engineering practice' stack height or

from using 'other dispersion techniques." Thus, Vermont has satisfactorily demonstrated that its regulations meet 40 CFR 51.118 and 51.164.

[FR Doc. 87-30005 Filed 12-30-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[Region II Docket No. 68; FRL-3307-9]

Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for the State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule announces the Environmental Protection Agency's (EPA) final action on a request from the State of New Jersey to revise the air quality designation with respect to sulfur dioxide of a part of Warren County, located in the Northeast Pennsylvania—Upper Delaware Valley Interstate Air Quality Control Region. Such designations are required by section 107(d) of the Clean Air Act and may be revised from time to time at the request of a state. EPA has reviewed the results of mathematical air modeling studies made by the State and others and has concluded on the basis of these results that violations of the short-term ambient sulfur dioxide standards are expected on certain sections of elevated terrain within Warren County. Therefore, EPA is approving New Jersey's request. The effect of this action is, therefore, to redesignate a part of Warren County from "better than national standards" to "does not meet standards" with respect to sulfur dioxide.

The redesignated area includes all of the Townships of Harmony, Oxford, White and the Town of Belvidere, the extreme southern portion of Liberty Township, and the extreme western portion of Mansfield Township.

EFFECTIVE DATE: This action is effective on February 1, 1988.

ADDRESSES: All correspondence, comments and other written submissions pertaining to this action, including documents referenced in this notice, are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Air Programs Branch, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 1005, New York, New York 10278, Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278, (212-264-2517).

SUPPLEMENTARY INFORMATION:

I. Background

Section 107(d) of the Clean Air Act, 42 U.S.C. 7407(d), directs each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the state. It further provides that EPA is to promulgate the list with such modification as EPA deems necessary. Before EPA changes a state's list, however, it must consult with the state. EPA received such designations from the states and subsequently promulgated them on March 3, 1978 (43 FR 8962). Section 107(d)(5) provides that a state from time-to-time may revise and resubmit its designations "as appropriate," and that EPA is to consider and promulgate the revisions with such changes as EPA concludes are necessary after consultation with the state.

On April 30 and June 26, 1986 the New Jersey Department of Environmental Protection (NJDEP) submitted a request to revise the air quality designation for parts of Warren County from "better than national standards" with respect to sulfur dioxide to "does not meet standards." The modeling techniques used in the demonstration supporting this action are based on modeling guidelines in place at the time that analysis was performed i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time revisions to modeling guidance have been promulgated by EPA (51 FR 32176) September 9, 1986. Because the modeling analysis was completed prior to publication of the revised (1986) guidance, EPA accepts the analysis for purposes of this proceeding. Application of the revised (1986) modeling guidance, however, would not have any substantive effect on the technical analysis supporting this redesignation. In the October 29, 1986 issue of the **Federal Register** (51 FR 39550), EPA advised the public that, based on the evidence contained in the technical material submitted by the State and from other modeling studies, it was proposing to approve the requested redesignation. The reader is referred to the October 29, 1986, notice for a detailed description of the State's submittal and EPA's review.

I. Public Comments

A. Introduction

During the public comment period established by its October 29, 1986 proposal, EPA received five letters addressing three principal issues. Some individuals sent more than one letter. After the close of the comment period, 10 additional letters were received. While these 10 comments were received late, most of the significant comments raised are included in the five letters received during the comment period, and they have been included in the docket. Consequently, these comments are responded to in today's notice or in the accompanying technical support document.

B. Response to Comments

1. Technical Issues

Comment: The use of modeling for the redesignation of air quality to nonattainment is inappropriate.

Comment: Monitoring data and not modeling should be used for the purpose of redesignation.

Response: According to section 171(2) of the Clean Air Act, "The term 'nonattainment data' means, for any air pollutant area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant." Further, an April 21, 1983 memo from Sheldon Meyers, the then Director of EPA's Office of Air Quality Planning and Standards, summarizes EPA's policy on designations of air quality according to section 107 of the Clean Air Act. This memo states:

> In most SO_2 cases monitoring data alone will not be sufficient for areas dominated by point sources. A small number of ambient monitors is not representative of the air quality for the entire area. Dispersion modeling, employing the legally enforceable SO_2 SIP limits, will generally be necessary to evaluate comprehensively the sources' impacts as well as to identify the areas of highest concentrations. If either the modeling or monitoring indicates that SO_2 air quality standards are being violated, the area should remain nonattainment.

With respect to this policy memo, EPA maintains that the use of modeling data for designation purposes is supported by both the Clean Air Act and various court decisions. (See *Republic Steel Corp.* v. *Costle*, 621 F.2d 797, (6th Cir., 1980), *PPG Industries, Inc.* v. *Costle*, 630

F.2d 462, (6th Cir., 1980) and *Wisconsin Electric Power Co.* v. *Costle*, Cases Nos. 80–2734 and 82–1724, (7th Cir., 1983)).

With respect to today's action, the area proposed to be redesignated is topographically very complex. It is dominated by individual point sources and, therefore, concentrations would be expected to vary considerably over small distances. Modeling is especially important for emissions of gaseous sulfur dioxide from dominant sources such as those located in the area under consideration. Air monitoring data is available from only two monitors in the region, a number inadequate to determine the sulfur dioxide compliance status throughout the area in question and modeling is used to supplement the monitoring data. For further discussion, the reader is referred to the comment and response concerning the results from the two monitoring stations.

Comment: Modeling used for the redesignation is inaccurate and overpredicts concentrations.

Response: In addition to analyzing the area using modeling techniques contained in EPA's 1978 guideline, the area under consideration was also modeled using complex terrain screening models as recommended by EPA's "Guideline on Air Quality Models (Revised)," July 1986. This guideline and the models that it references have been subject to public hearing and extensive public review with opportunity for comment. The models used as a basis for today's action were developed by EPA. The models are designed to avoid underprediction of actual concentrations in order to protect the ambient air quality standards in complex terrain. Their tendency, in some instances, to overpredict concentrations was considered during the public review process for EPA's "Guidelines on Air Quality Models (Revised)" [See 51 FR 32176 (September 9, 1986)].

However, it should be noted that the majority of Warren County modeling analyses predicted sulfur dioxide concentrations that exceed the 24-hour and 3-hour ambient air quality standards by an average factor of between 3 and 4, and one analysis predicted violations up to a factor of 12. Therefore, even if the models significantly overpredicted concentrations in this instance, there still remains a high expectation that violations of air quality standards are occurring.

Comment: EPA should use the monitoring data to evaluate the model prior to acting on any requests for redesignation.

Response: As discussed previously, EPA has concluded that monitoring data alone is not sufficient to determine the attainment status of Warren County. In addition, EPA does not believe it would be appropriate to delay acting upon New Jersey's request for, at a minimum, the 18 months necessary to complete a model evaluation study which would confirm the technical findings. EPA has already had preliminary discussions with representatives of New Jersey, Pennsylvania and the Pennsylvania Power and Light Company (PP&L) who are developing a model evaluation study to confirm the technical findings to date. The results of this study could support the use of a new refined model which could more precisely define ambient sulfur dioxide levels in the Warren County area. Because such information is not currently available, it cannot be used to support today's rulemaking. Once available, it could lead to further action by EPA in the future.

Comment: The Pennsylvania Power and Light Company (PP&L) has conducted a more refined modeling analysis using the LAPPES model. This analysis demonstrates compliance with all ambient air quality standards.

Response: Even though this analysis was submitted after the close of the comment period, EPA has reviewed it. The model is not contained in either EPA's "Guideline on Air Quality Models" (1978) or EPA's "Guideline on Air Quality Models (Revised)", July 1986, because it has not been demonstrated to be an acceptable modeling technique. As such, PP&L's analysis requires further evaluation for technical adequacy, through a model evaluation study. EPA does not believe it would be appropriate to delay acting upon the State's request until such time as the LAPPES model could be evaluated under EPA-approved procedures. As noted previously, such a study would take a minimum of 18 months to complete.

Comment: EPA is ignoring the results from two "hotspot" sulfur dioxide monitoring stations located in the area proposed for nonattainment.

Response: EPA has examined the data collected at these two sites and has determined that monitoring information is insufficient to determine compliance with air quality standards. It is EPA's general policy that air quality designations for sulfur dioxide not be based on air monitoring data alone. While exceptions are sometimes made, it would not be appropriate to do so here. Section 11 of EPA's "Guideline on Air Quality Models (Revised)," July 1986, contains several prerequisites for the development of a program for use of monitored data in lieu of modeling results. The two monitoring sites and the data collected from them are substantially deficient with regard to these prerequisites. Most importantly, the monitoring referred to by the commenter does not constitute the comprehensive network envisioned by the Guideline in terms of the location of monitoring sites and the coverage of the area. The Guideline states that "the number of monitors required is a function of the problem being considered. The source configuration, terrain configuration and meteorological variations have an impact on the number and placement of monitors. Decisions can only be made on a case-by-case basis." In this case, there is a broad range of all three of these factors: (1) A significant number of contributing sources, (2) a full spectrum of topographic features and complexities, and (3) a wide variety of meteorological conditions. To adequately address these factors it is evident that a substantial network of air quality monitors is needed, if the data from such monitors are to be used in lieu of model estimates.

Additionally, the data that do exist, while indicating that the NAAQS were attained during the data collection period at those locations, present ambiguities which preclude determining the attainment status during periods when sources are operating at allowable emissions. First, the data represent the actual (unknown) emissions from the several sources contributing to the ambient levels during the collection period and not ambient levels which would occur had the sources been operating at allowable emissions. Second, the data represent a composite contribution of sulfur dioxide emissions from several sources in the area and information is not available to perform the analyses required to establish the emission limit culpability of the several contributing sources. In addition, also in regard to establishing source culpability, it should be noted that one of the stacks at the PP&L facility may exceed the Good Engineering Practice (GEP) stack height as described in EPA's stack height regulations (51 FR 27892 (July 8, 1985)). If the stack exceeds GEP height it would call into question the validity of the ambient monitoring data being collected. Such data would be affected by the excess dispersion afforded by that portion of the stack which exceeds GEP. Under section 123 of the Clean Air Act, excess stack height cannot be considered in an air quality demonstration of compliance with national ambient air quality standards. Finally, as mentioned above, EPA maintains that if either modeling or

monitoring indicates that sulfur dioxide standards are being violated, the area should be nonattainment and that use of modeling data for designation purposes is supported by both the Clean Air Act and several court decisions.

Comment: Redesignation to nonattainment conflicts with previous Prevention of Significant Deterioration (PSD) permit findings for modifications made to the Hoffman-La Roche plant in Warren County, New Jersey.

Response: The PSD permit referred to was issued by EPA for nitrogen oxides only. The modifications did not cause a major increase in sulfur dioxide emissions and, therefore, the PSD permit did not contain any findings regarding attainment of sulfur dioxide standards in the area.

2. Reason for Redesignation

Comment: The air quality redesignation is being proposed only to allow construction of a new source of sulfur dioxide emissions.

Response: As a general matter, section 107(d)(5) of the Clean Air Act grants states broad discretion to revise their air quality designations from time to time "as appropriate." Thus, states have leeway in choosing the proper regulatory regime by which to address air quality problems. In this case, New Jersey has chosen to adopt a nonattainment designation to address modeled sulfur dioxide exceedances in Warren County. The screening model data presented here are adequate to conclude that sulfur dioxide levels are likely to be in excess of national standards. Furthermore, section 107(d)(5) gives EPA the power to modify a state's designation only to the extent "necessary," thereby establishing a deferential standard for EPA disposition of a state choice. Here, EPA lacks a sufficient basis to say that modification or rejection of the nonattainment designation is necessary. If, as noted above, a more refined model is found to be appropriate for the area and that model shows that violations are not occurring, then the state will be free to seek yet another change in the status of the area or otherwise to adjust its regulatory regime or SIP planning as appropriate.

EPA is working with other parties who are developing a model evaluation study. When this is completed, the technical findings will be reassessed. EPA wishes to emphasize that although the use of these screening model results is deemed adequate to support redesignation under the circumstances of this case, that data may not be adequate for certain other regulatory purposes. Today's action addresses requirements of the Clean Air Act under section 107 and is not intended to express an opinion regarding EPA's requirements under Part D or the requirements for interstate pollution abatement under section 126.

Regarding New Jersey's purposes in seeking redesignation, it is EPA's understanding that an important factor was New Jersey's desire to facilitate construction and operation of Warren County's resource recovery facility (RRF) pending further refinement and clarification of air quality concerns in the area. Under the PSD rules previously applicable in Warren County, the RRF probably could not have been permitted, because it would result in a small, but nevertheless significant, addition to the modeled sulfur dioxide violations in Warren County, and because offsetting reductions in other sulfur dioxide emissions were unavailable. However, in recognition of the environmental benefits which RRFs can provide, the New Jersey rules applicable in designated nonattainment areas provide that RRFs may be constructed under certain circumstances even if offsets are unavailable. [N.J. Admin. Code Title 7, Ch. 27, §18.5]; see also 40 CFR Part 51, Appendix S, IV.B. Under these rules the RRF will be required to install state-of-the-art sulfur and particulate matter air pollution control equipment. Redesignation will allow this and other qualifying projects locating in the newly designated area to proceed. However, as noted above, EPA is approving New Jersey's request because it satisfies the statutory criteria.

3. Interstate Impacts

Comment: The data relied on by EPA significantly overpredicts ambient concentrations. Thus, EPA cannot approve this redesignation request because approval is tantamount to enforcing a more stringent state standard upon another state.

Response: As explained above, EPA believes that available modeling data predict violations of the sulfur dioxide NAAQS. The redesignation will initiate a process which may lead to the review of existing sulfur dioxide emission limitations for sources within and impacting the Warren County area as they relate to attainment and maintenance of the NAAQS for sulfur dioxide. However, the air quality standards in question here are the national standards set by EPA, not any "more stringent state standard." In any event, emission limits are not the subject of today's action and do not have a direct bearing on EPA's current approval of New Jersey's redesignation request. If the appropriate regulatory agencies determine that the emission limits of sources impacting on Warren County need to be revised, that process will be subject to public notice and comment at some future time. In this regard, as noted above, today's action is not intended to prejudge the adequacy of currently available modeling data as a basis for revision of existing emissions limitations. At this time EPA believes that any further regulatory action can await the results of the model evaluation study or other more conclusive data if the study proceeds expeditiously and its results are available within a reasonable period of time. The EPA further believes that a formal agreement among the parties to complete these efforts should be in place and submitted to the EPA July 1, 1988. The agreement shall contain, but not be limited to, the following items:

1. A network design for ambient sulfur dixoide monitoring and meteorological data for the purposes of model comparison and performance evaluation.

2. A protocol for the model comparison and performance evaluation.

3. Dates by which (a) the network will be in operation, (b) data collection will be complete, (c) data analysis will be complete, (d) the protocol will be executed and the appropriate model determined, (e) the model will be applied to establish emission limitations, and, (f) the State will promulgate sulfur dioxide emission limitations and submit an SIP revision to the EPA.

It should also be noted that to the extent corrective action is necessary, this need would exist independent of whether New Jersey chose to address the problem through the redesignation process.

III. Conclusion

EPA is today approving a redesignation request submitted by the State of New Jersey. The request has been found to meet the requirements of sections 107 and 301 of the Clean Air Act and applicable EPA guidelines.

The areas being redesignated from "better than national standards" to "does not meet national standards" for sulfur dioxide are the Town of Belvidere, the entire Townships of Harmony, White, and Oxford, the portion of Liberty Township south of the Universal Transverse Mercator Grid System (UTM) coordinate N4522 and that portion of Mansfield Township west of UTM coordinate E505. Warren

County is located in the northwestern part of New Jersey in the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region.

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

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

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Dated: December 22, 1987.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 81—[AMENDED]

40 CFR Part 81, Subpart C, is amended as follows:

Subpart C—New Jersey

Authority: 42 U.S.C. 7401–7642.

1. The authority citation for Part 81 continues to read as follows:

2. Section 81.331 is amended by revising the entry for the Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR in the sulfur dioxide attainment status designation table "New Jersey—SO_2" to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR:				
The Township of Harmony	X	X		
The Township of White	X	X		
The Township of Oxford	X	X		
The Township of Belvidere	X	X		
Portions of Liberty Township	X	X		
Portions of Mansfield Township	X	X		
Remainder of AQCR	X	X		X

* * * * *

[FR Doc. 87–29899 Filed 12–30–87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-36145C; FRL 3310-7]

Interim Policy for Sulfiting Agents on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment and extension of policy statement.

SUMMARY: This document announces that EPA is modifying and extending its interim policy regarding the use of sulfiting agents on grapes through December 31, 1988.

EPA is still evaluating the comments received on the various alternatives provided in the revised interim policy. Because action is required now to enable the grape industry to continue marketing grapes without disruption, EPA has decided to extend certification for another year. Alternatives to certification have not been ruled out, but additional time is needed to resolve the issues they present. These issues, as well as the content and operation of certification programs, will be the topics of meetings to be held in early 1988 with sister agencies, affected states, growers, and other interested parties.

EFFECTIVE DATE: December 28, 1987.

FOR FURTHER INFORMATION CONTACT: By Mail: Walter C. Francis, Disinfectants Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 711, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-6909

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 31, 1986 (51 FR 47240), EPA announced an interim policy requiring that each foreign or domestic shipper have an acceptable certification program to ensure that residues of sulfites (determined as sulfur dioxide) on treated grapes were below the current level of detection under the modified Monier-Williams procedure, i.e., less than 10 parts per million (ppm), when the grapes were offered for entry into the United States or were otherwise introduced into interstate commerce.

EPA's action was prompted by an announcement by the Food and Drug Administration (FDA) in the **Federal Register** of July 9, 1986 (51 FR 25021), that the use of sulfiting agents as preservatives on raw fruits and vegetables served or sold to consumers was no longer deemed to be generally recognized as safe (GRAS) because some individuals experience severe allergic reactions to sulfite residues on food. FDA's action did not affect the use of sulfiting agents as a fungicide on grapes because this pesticidal use is under EPA's jurisdiction.

In light of FDA's action, and because EPA no longer regards the use of sulfiting agents on grapes as if it were GRAS (for the reasons set forth by FDA with regard to preservative uses), and has not established a tolerance for sulfite residues in or on grapes, EPA adopted the measures specified in the December 31, 1986 notice to protect sulfite-sensitive individuals until a tolerance or some other appropriate clearance could be established. The interim measures were effective December 31, 1986, and were intended to permit shipment of sulfite-treated grapes for 1 year.

The interim policy was amended on August 26, 1987 (52 FR 32128), to permit tagging of individual bunches of grapes or placarding at the retail point of sale of sulfite-treated grapes in lieu of certification that grapes do not contain detectable sulfite residues. The interim policy, as amended, expires December 31, 1987.

This action was taken because information developed by the California table grape industry, and verified by FDA through its enforcement of the California certification program, indicated significant cost and logistical difficulties associated with the 1987 California certification program. Furthermore, evidence developed by the California table grape industry at that time indicated that repeated sulfite treatment during long-term storage of grapes might result in sulfur dioxide residues in or on the grapes that would be detectable (10 ppm or higher).

In its August 26, 1987 notice, EPA requested comments on the interim policy and a proposed extension of this policy until May 1989. Comments were due October 26, 1987. On October 26, 1987, EPA extended the comment period until November 9, 1987 (52 FR 39917). EPA received 271 timely comments on its interim policy and the proposed extension of this policy until May 1989.

II. Extending Policy With Modifications

Sulfiting agents have been used for many years as a fungicide on grapes. Use of sulfites enables the American public to have a year-round grape supply. There has not been sufficient time since FDA's 1986 announcement, however, to develop data necessary to establish a tolerance or to develop alternatives to sulfites. At this time, sulfite use is essential to the domestic and import grape industry.

At the same time, the use of sulfites on grapes presents a risk to sulfite-sensitive individuals, a small segment of the American population. EPA believes that the use of sulfiting agents with appropriate controls will not present an unreasonable risk to this sensitive population.

Pending establishment of a tolerance or development of a sulfite alternative, EPA believes that continuation of an interim policy is appropriate to protect consumers and allow the continued use of sulfites. Based on a preliminary analysis and consideration of comments and based on discussions with FDA, EPA is modifying and extending its interim policy concerning the use of sulfiting agents on grapes: From January 1, 1988 through December 3, 1988, importers and domestic producers who ship sulfite-treated grapes must certify that the grapes do not contain detectable residues of sulfite (determined as sulfur dioxide). Sulfite residues on grapes must be below the current level of detection under the modified Monier-Williams procedure, i.e., less than 10 ppm, when the grapes are offered for entry into the United States or are otherwise introduced into interstate commerce. Grapes that are not covered by an approved certification program or that bear detectable sulfite residues will be considered adulterated and subject to legal action.

Shipping containers of both foreign and domestic grapes must be labeled in accordance with the provisions of section 403(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 343(1), which requires shipping containers to be labeled when a raw agricultural commodity has received postharvest pesticide treatment.

Grapes picked and packed prior to January 1, 1988 will remain subject to EPA's August 26, 1987 policy requiring shippers to certify that residues of sulfite on grapes are less than 10 ppm or to use placards or stem tags. When stem tags are used, forty percent of the bunches of grapes in each shipping carton must be tagged.

Under the EPA policy for 1988, certification programs must be approved by the Federal government (FDA with assistance from EPA). Because of FDA and EPA resource limitations, certification programs will not be considered unless growers in a significant geographic area, i.e., a given country or state, organize and commit to a single certification program. In addition, model certification programs for use by growers will be provided by FDA. Again, to conserve resources and achieve maximum consistency, EPA and FDA will pursue use of model programs to the extent possible. EPA and FDA will work with importers, growers and States to develop programs that place stringent quality assurance responsibilities on importers and growers and that share monitoring responsibilities with State agencies.

EPA believes that the Federal government, State agencies, and the grape industry must share both the responsibility and the cost of protecting sulfite-sensitive individuals while at the same time maintaining the viability of the grape industry and allowing a year-round supply of grapes. EPA believes that the course of action set forth in this notice is only the first step in the effort to resolve further the issues raised by sulfite-treated grapes and EPA's August 26, 1987 policy statement. During 1988, the appropriate Federal and State agencies, growers and other interested parties must work together to ensure that a tolerance for sulfites is established, or that an alternative to sulfites is developed, as soon as possible. In addition, EPA is continuing to consider comments received in response to its August 26, 1987 policy and the Agency will work with FDA and others to determine whether any option other than certification (including tagging) might be implemented during the upcoming shipping season. Issues which need to be addressed include program effectiveness, ease of enforcement, and adequacy of consumer protection. EPA is committed to making decisions on other options early in 1988.

Dated: December 28, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-30107 Filed 12-30-87; 8:45 am]

BILLING CODE 6050-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 1003

Medicare and Medicaid Programs; Fraud and Abuse; Revisions to the Civil Money Penalty Statute of Limitations

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Final rule.

SUMMARY: This final rule implements section 3(b) of Pub. L. 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, by expressly adding a new statutorily mandated statute of limitations that is to be applied to the civil money penalty (CMP) law. Specifically, this rule provides that no action may be initiated under the CMP provisions later than 6 years after the date the claim has been represented. This new 6-year statute of limitations replaces the 5-year "regulations of limitations" currently set forth in regulations.

DATES: Effective date: This regulation is effective on December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Legislation, Regulations and Public Affairs Staff, (202) 472-5270.

SUPPLEMENTARY INFORMATION:

I. Background

When originally enacted in 1981, the civil money penalties law contained no statute of limitations governing the time in which actions under it must be brought. This lack of such an express limitations period was a matter of concern to both the Department and the

provider community which felt that failure to include limitations on a time period could result in unfairness in cases where the passage of time could impair a respondent's ability to defend an action due, for example, to lack of memory on the part of witnesses or the loss of documentation.

In an attempt to address these concerns, in 1983 the Department promulgated a "regulation of limitations" that specifically established a 5-year limitations period for governing CMP actions. This regulatory limitations period was designed to comport with 28 U.S.C 2462, which sets a 5-year limitation period on any "action, suit, or proceeding for the enforcement of any civil fine, penalty or forfeiture."

Those regulations at 42 CFR 1003.132 currently provide that "no action under this part shall be entertained unless commenced pursuant to § 1003.109(a) of this part, within 5 years from the date on which the right of action accrued."

II. Provisions of the Regulation

Section 3(b) of Pub. L. 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, adds an express 6-year statute of limitations to the CMP law. As a result, we are amending 42 CFR 1003.132 to indicate that the OIG is not permitted to initiate an action under the CMP provisions later than 6 years after a claim has been presented. This 6-year period is consistent with the limitation period set forth in the False Claims Act, 31 U.S.C. 3731.

III. Waiver of Proposed Rulemaking

In enacting section 3(b) of Pub. L. 100-93, Congress set forth a clear approach for addressing the CMP statute of limitations. Since this aspect of the law is explicit in its requirements, with no room for policy discretion on our part, we believe it is impractical and unnecessary in this instance to publish a notice of proposed rulemaking and request public comments before issuing final regulations.

IV. Impact Analysis

Executive Order 12291

We have determined that this regulation does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Under those criteria, a rule is classified as major if it would have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry or a geographic region; or cause significant adverse effects on business or employment. As this rule is expected to have no such impact on any of these criteria, no impact analysis is required.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612), we prepare a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The law on which this regulation is based is specific in nature, and provides no leeway or alternatives in its implementation. The revision to the limitation period is to effect all CMP actions and does not effect a particular provider segment. Therefore, the Secretary certifies that a regulatory flexibility analysis is not required for this rulemaking.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare Penalties.

TITLE 42—PUBLIC HEALTH

A. 42 CFR Chapter V, Part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 1003 continues to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1320a-7a, 1395u(j) and 1395u(k)).

2. Section 1003.132 is revised to read as follows:

§ 1003.132 Limitations.

No action under this part shall be entertained unless commenced, pursuant to § 1003.109(a) of this part, within six years from the date on which the claim was presented.

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program; and No. 13.744, Medicare—Supplementary Medical Insurance Program)

Dated: December 2, 1987.

Bryan Mitchell,

Acting Inspector General, Department of Health and Human Services.

Otis R. Bowen,

Secretary.

Approved: December 10, 1987.

[FR Doc. 87-29973 Filed 12-30-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Petition for Modification; Terminal Equipment Line Power To Operate Continuity of Output Functions; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission issued an erratum to correct errors appearing in the text of revisions to § 68.318(b)(1) of the rule set forth in *Report and Order*, CC Docket 86-423, 52 FR 43077 (November 9, 1987).

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Domestic Facilities Division, Common Carrier Bureau (202) 634-1832.

SUPPLEMENTARY INFORMATION:

In its *Erratum*, DA 87-1813, released December 18, 1987 the Commission corrected errors appearing in its revised § 68.318(b)(1). Specifically, the sentence is revised § 68.318(b)(1) introductory text of the rules which read "With 60 mA between the transmit and receive pairs, the voltage drop between the transmit pairs shall not exceed 67 Volts." was corrected to read: "With 60 mA between the transmit and receive pairs, the voltage drop between the transmit and receive pairs shall not exceed 67 Volts." That portion of the sentence in revised § 68.318(b)(1) introductory text which began "The keep alive signal inserted when the pulse density drops to low * * *" was corrected to read "The keep alive signal inserted when the pulse density drops to low * * *"

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87-29812 Filed 12-30-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 245, and 252

[DAR Case 86-178]

Department of Defense Federal Acquisition Regulation Supplement; Acquisition of Foreign Machine Tools

AGENCY: Department of Defense (DoD).

ACTION: Amendments to interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has amended the

interim rule published in the **Federal Register** on April 16, 1987 (52 FR 12389) presently in effect, which pertains to the acquisition of foreign machine tools. The original interim rule amended Defense Federal Acquisition Regulation Supplement (DFARS) sections 225.7000 and 225.7001, added new sections 225.7008 and 245.106 and added a new clause at 252.245-7000, Acquisiton of Foreign Machine Tools. The original interim rule implemented the restrictions in the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99-500, section 9118). This amendment clarifies that the statutory restrictions also apply to procurements of machine tools directly by the Government for its own use.

This amendment to the interim rule accomplishes four objectives:

a. It transfers the coverage published in the original interim rule at 252.245-7000 to 252.225-7023.

b. It modifies the clause to require an agreement by the contractor that the machine tools delivered under the contract shall be of U.S. or Canadian origin.

c. It adds an additional test for "country of origin" to the test for "cost of components" as applied to machine tools in order to be consistent with the intent of other similar tests used in Buy American Act clauses and with the implementing directives issued by DoD.

d. It modifies the Buy American Act clause prescriptions at 225.109 and 225.407 to permit the use of the new clause at 252.225-7023 to satisfy all Buy American Act requirements when machine tools are the sole item being procured on a solicitation.

DATES: *Effective Date:* February 1, 1988 (effective for contracts resulting from solicitations issued after February 1, 1988). Comments must be received on or before February 29, 1988.

ADDRESS: Comments should be submitted in writing to Mr. Owen Green, Acting Executive Secretary, DAR Council, OASD (P&L)DASD(P)DARS, c/o Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 86-178 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, Acting Executive Secretary, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9118 of the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99-500) prohibited the use of FY 87 funds for the acquisition of certain machine tools not manufactured in the United States or Canada. The coverage has been revised and moved to Part 225.

B. Regulatory Flexibility Act Information

The interim rule does not appear to have a significant economic impact on a substantial number of small entities. When the original interim rule was published, at 52 FR 12390, 16 April 1987, no comments were received concerning the Regulatory Flexibility Act statement that there would not be a significant impact on a substantial number of small entities. This rule affects only those contractors who supply to the Government machine tools not manufactured in the United States or Canada. For these reasons, an initial regulatory flexibility analysis has not been prepared. Comments from small businesses and other interested parties are invited. Comments concerning the affected DoD FAR Supplement Subpart will also be considered in accordance with section 610 of the Regulatory Flexibility Act. Such comments must be submitted separately and cite DAR Case 87-610D in correspondence.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require approval of OMB under 44 U.S.C. 3501 *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation.

List of Subjects in 48 CFR Parts 225, 245, and 252

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 225, 245, and 252 is amended as set forth below:

1. The authority citation for 48 CFR Parts 225, 245, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

225.109 [Amended]

2. Section 225.109 is amended by changing the period to a comma at the end of paragraph (a) (S-70) and by adding the phrase "unless the solicitation is solely for machine tools (see 225.7008(d))."; and by changing the period to a comma at the end of the first sentence of paragraph (d) (S-70) and by adding the phrase "unless the solicitation is solely for machine tools (see 225.7008(d))."

225.407 [Amended]

3. Section 225.407 is amended by changing the period to a comma at the end of paragraph (a)(1) and by adding the phrase "unless the solicitation is solely for machine tools (see 225.7008(d))."; and by changing the period to a comma at the end of the first sentence of paragraph (a)(2) and by adding the phrase "unless the solicitation is solely for machine tools (see 225.7008(d))."

225.7008 [Amended]

4. Section 225.7008 is amended by revising paragraphs (b), (c), and (d); and by removing paragraph (e), to read as follows:

225.7008 Restriction on acquisition of machine tools.

* * * * *

(b) When adequate domestic supplies of the classifications of machine tools set forth in 225.7001 are not available to meet the Department of Defense requirements on a timely basis, the procurement restriction may be waived by the Head of the Agency responsible for the procurement on a case-by-case basis. This authority may not be redelegated. Requests for waivers will contain a full explanation of the facts supporting the waiver and will be submitted in accordance with Departmental procedures.

(c) A machine tool shall be considered to be of United States or Canadian origin, if it is manufactured in the United States or Canada and the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free entry certificate may be issued).

(d) The clause at 252.225-7023, "Restriction on Acquisition of Foreign Machine Tools," shall be inserted, in full text, in all solicitations and contracts that obligate FY 87 funds for machine tools. When machine tools are the only items being procured, do not include any of the clauses at 252.225-7000, 252.225-7001, 252.225-7005, 252.225-7006. If machine tools are not the only items being procured, include the clauses at 252.225-7000, 252.225-7001, 252.225-7005, 252.225-7006.

PART 245—GOVERNMENT PROPERTY

Subpart 245.1—[Removed]

5. Subpart 245.1 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.225-7023 is added to read as follows:

252.225-7023 Restriction on acquisition of foreign machine tools.

As prescribed in 225.7008(d), insert the following clause.

Restriction on Acquisition of Foreign Machine Tools (Dec. 1987)

(a) This procurement concerns the acquisition of certain machine tools title to which will vest in the Government and which are subject to a statutory origin restriction.

(b) The Contractor agrees that those machine tools within the following Federal Supply Classifications (FSCs), to be delivered as end items under this contract, shall be of United States or Canadian origin: FSCs 3408, 3410-3419, 3426, 3433, 3441-3443, 3446, 3448, 3460 and 3461.

(c) For the purposes of this clause, a machine tool shall be considered to be of United States or Canadian origin if, (i) it is manufactured in the United States or Canada and (ii) the cost of its components manufactured in the United States or Canada exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end item and duty (whether or not a duty-free entry certificate may be issued).

(End of clause)

252.245-7000 [Removed]

7. Section 252.245-7000 is removed.

[FR Doc. 87-29927 Filed 12-30-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 70605-7141]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for Spanish mackerel from the Atlantic migratory group. The Acting Director, Southeast Region, NMFS, has determined that the commercial allocation of 2.36 million pounds will be reached on December 28, 1987. This closure is necessary to protect the overfished Spanish mackerel resource.

EFFECTIVE DATES: Closure is effective at 0001 hours, local time, December 29, 1987, until 2400 hours, local time, March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP), as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR Part 642. Amendment 2 to the FMP, which went into effect on June 30, 1987 (52 FR 23836, June 25, 1987), established separate allocations for the Gulf and Atlantic migratory groups of Spanish mackerel. Regulations effective June 30, 1987, implemented catch limits recommended by the Councils for the Atlantic migratory group for the fishing year (April 1, 1987, through March 31, 1988). Those regulations set the commercial allocation at 2.36 million pounds (52 FR 25012, July 2, 1987, corrected at 52 FR 33594, September 4, 1987). Until March 31, as specified in § 642.29, the management area for the Atlantic migratory group of Spanish mackerel extends from the Virginia/North Carolina boundary (36° 33'00.8" N. latitude) south to the Dade/Monroe County, Florida boundary (25°20.4' N. latitude).

The Secretary is required under § 642.22 to close any segment of the Spanish mackerel fishery when its allocation has been reached or is projected to be reached by publishing a notice in the **Federal Register**. The Acting Regional Director had determined that the allocation of 2.36 million pounds for the Atlantic migratory group of Spanish mackerel will be reached on December 28, 1987. Hence, the commercial fishery for the Atlantic migratory of group Spanish mackerel is closed effective 0001 hours, local time, December 29, 1987. The closure will remain in effect through March 31, 1988, the end of the fishing year.

The Acting Regional Director previously determined that the recreational allocation of 0.74 million pounds for the Atlantic migratory group of Spanish mackerel was reached on September 18, 1987. The recreational bag limit for Spanish mackerel from the Atlantic migratory group was reduced to zero on September 19, 1987 (52 FR 35720, September 23, 1987).

With closure of the commercial fishery, all commercial and recreational fisheries in the EEZ for the Atlantic migratory group of Spanish mackerel are closed through March 31, 1988. During the closure, Spanish mackerel for the Atlantic migratory group may not be harvested from or possessed in the EEZ, and may not be purchased, bartered, traded, or sold. The latter prohibition does not apply to trade in Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 28, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 87-30046 Filed 12-28-87; 4:27 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 251
Thursday, December 31, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Expenses and Assessment Rate for Marketing Order Covering California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 932 for the 1988 fiscal year established for that order. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by January 11, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 932 [7 CFR Part 932] regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

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

There are approximately seven handlers of California olives under this marketing order, and approximately 1,390 olive producers in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $100,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. Most, but not all, of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

Each marketing order administered by the Department of Agriculture requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the cost of goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The California Olive Committee unanimously recommended 1988 fiscal year expenditures of $1,620,350 and an assessment rate of $23.92 per ton of assessable olives shipped under M.O. 932. In comparison, 1987 fiscal year budgeted expenditures were $1,862,400 and the assessment rate was $20.03. Major expenditure categories in the 1988 budget are $430,250 for program administration, $50,000 for production research, $540,000 for consumer advertising, $494,000 for food service advertising, and $106,100 for trade relations. Assessment income for 1988 is expected to total $1,370,350 based on shipments of 57,300 tons of olives. The committee also unanimously recommended that excess 1987 assessments (about $77,993) be placed in its reserve, resulting in a reserve well within the maximum authorized under the order. Committee reserves and other available funds are expected to amount to $391,468 on December 31, 1987, and will be available to cover the anticipated $250,000 deficit in assessment income for 1988.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the olive program need to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives, California.

For the reasons set forth in the preamble, it is proposed that § 932.222 be added as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 932 continues to read as follows:

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

2. New § 932.222, is added to read as follows:

§ 932.222 Expenses and assessment rate.

Expenses of $1,620,350 by the California Olive Committee are authorized, and an assessment rate of $23.92 per ton of assessable olives is established, for the fiscal year ending December 31, 1988. Unexpended funds from the 1987 fiscal year may be carried over as a reserve.

Dated: December 24, 1987.

Robert C. Keeney,

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

[FR Doc. 87–29960 Filed 12–30–87; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Chapter XVII, REA Regulations, Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50–6 (D–806), Specifications and Drawings for Underground Electric Distribution. This bulletin provides standard underground electric system construction drawings and specifications that REA electric borrowers may use without REA review of each specific project. The primary changes being proposed consist of: (1) Inclusion of standard drawings for the installation of jacketed cable; (2) renumbering of riser pole drawings so the drawing number will be somewhat descriptive of the type of structure specified; (3) inclusion of several guide drawings which would provide "helpful hints" to accomplish various procedures; (4) elimination of such obsolete items as submersible and direct-buried transformers and sectionalizers and pole-type transformers installed in pad-mounted enclosures; and (5) several changes to conform to the latest edition of the National Electrical Safety Code.

DATE: Public comments must be received by REA no later than February 29, 1988.

ADDRESS: Submit written comments to the Director, Electric Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Dedman, Electrical Engineer, Electric Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 382–9091. A copy of the proposed revised bulletin and the Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option are available from Mr. Dedman at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), REA proposed to revise 7 CFR Chapter XVII, REA Regulations, Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50–6 (D–806), Specifications and Drawings for Underground Electric Distribution.

This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This 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 (3) result in significant adverse effects on competition, employment investment or productivity, and, therefore, has been determined to be "not major."

REA has concluded that promulgation of this rule will not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This proposed regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). 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 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule **Federal Register** notice related to 7 Part CFR Part 3015, Subpart V, in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Background

REA maintains a system of bulletins that contains construction standards and specifications for materials and equipment which are applicable to electric system facilities constructed by REA electric borrowers in accordance with the REA loan contract. These standards and specifications contain standard construction units and material items and equipment units commonly used in REA electric and telephone borrowers' systems.

REA bulletin 50–6 (D–806), Specifications and Drawings for Underground Electric Distribution, provides standard underground electric system construction drawings and specifications that REA electric borrowers may use without REA review of each specific project.

Bulletin 50–6 (D–806) was last revised in 1975. In the past 12 years many dramatic changes have been made in the material, equipment, and construction methods used in the underground electric distribution industry. There is a need in the rural electric industry for certain types of underground distribution facilities which did not exist or were not used by borrowers in 1975. A prime example of a product which borrowers did not use is jacketed underground cable. The severe corrosion of bare concentric neutral wires and the damage to cable insulation caused by contact of unjacketed cable with moist earth makes the use of jacketed cable necessary. The proposed revision of Bulletin 50–6 (D–806) includes drawings for practical and effective techniques for installation and grounding of jacketed cable.

The proposed changes would be accomplished by adding several new construction drawings, revising some drawings included in the present edition of the bulletin, and deleting some present drawings. The resulting bulletin would be a complete specification with which REA electric borrowers could construct their rural underground electric distribution systems using state-of-the-art material, equipment, and construciton methods.

The effect of the proposed revision would be a modernization of the drawings and specifications to include the material, equipment, and construction methods presently needed in the rural underground electric distribution industry. The long-term cost of owning and operating underground

electric distribution facilities by the borrowers would decrease. The use of present-day material, equipment and construction methods as proposed in this revision would result in underground systems with longer service life and better reliability.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards, Incorporation by Reference.

In view of the above, REA hereby proposes to amend 7 CFR Part 1736 as follows:

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

In § 1736.97, paragraph (b) is amended by revising the entry for Bulletin 50–6 (D–806) to read as follows:

§ 1736.97 Incorporation by reference of electric standards and specifications.

* * * * *

(b) List of Bulletins.

* * * * *

Bulletin 50–6 (D–806), Specifications and Drawings for Underground Electric Distribution (Effective Date).

* * * * *

Dated: December 22, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87–29969 Filed 12–30–87; 8:45 am]

BILLING CODE 3410–15–M

Food Safety and Inspection Service

9 CFR Parts 304, 305, 306, 308, 309, 310, 313, 317, 318, 320, 325, 329, 335, 350, 351, 352, 354, 355, 362, and 381

[Docket No. 87–004R]

Regulatory Review of Enforcement-Related Regulations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments; regulatory review; reopening of comment period.

SUMMARY: On August 31, 1987, the Food Safety and Inspection Service (FSIS) published a notice and request for comments to assist Agency personnel in completing a review of its enforcement-related regulations promulgated under the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Agricultural Marketing Act of 1946. FSIS is undertaking a regulatory review of its enforcement-related regulations pursuant to Executive Order 12291 and the Regulatory Flexibility Act. FSIS has received a request from the American Meat Institute to extend the comment period to allow more time to conduct further research on specific items of concern that are included in the review and to submit comments. The comment period closed on October 30, 1987. In response to this request, the Agency has determined that it will reopen the comment period for an additional 60 days.

DATE: Comments must be received on or before February 29, 1988.

ADDRESS: Written comments should be sent in duplicate to the Policy Office, ATTN: Ms. Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Any person desiring an opportunity for an oral presentation of views should make such request to Mr. G. Edward McEvoy, Director, Planning Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3317, so that arrangements may be made for such views to be presented. A transcript will be made of all oral presentations.

FOR FURTHER INFORMATION CONTACT: Mr. G. Edward McEvoy, Director, Planning Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3317.

SUPPLEMENTARY INFORMATION: On August 31, 1987, the Food Safety and Inspection Service (FSIS) published a notice and request for comments in the **Federal Register** (52 FR 32802) to solicit comments to assist Agency personnel in completing its review, pursuant to Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 601), of its existing enforcement-related regulations, which have been adopted to implement the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*).

FSIS has received a request from the American Meat Institute to extend the comment period to allow more time to conduct further research on specific items of concern that are included in the review and to submit comments. The comment period closed on October 30, 1987. In response to this request, FSIS has determined there is sufficient justification for reopening the comment period for an additional 60 days.

Done at Washington, DC on: December 28, 1987.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87–29962 Filed 12–30–87; 8:45 am]

BILLING CODE 3410–DM–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission(NRC) is proposing to amend its physical protection and security personnel performance regulations for fuel facilities possessing formula quantities of strategic special nuclear material (SSNM) to a level equivalent to the protection in place at comparable Department of Energy (DOE) fuel facilities. The proposed changes have been prompted by a determination that physical protection measures at these fuel facilities should be enhanced based on a recent study which compared NRC's security requirements for SSNM with DOE's recently upgraded security system. The changes are also supported by findings from reviews of safeguards event reports, Regulatory Effectiveness Reviews during (RERs), licensing actions, and inspection reports. The amendments would provide greater assurance that physical protection measures at these fuel facilities can provide the capability to protect against the design basis threat.

DATE: The comment period expires on March 30, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street NW., Washington, DC, between 7:30 a.m. and 4:15 p.m. Copies of any comments received will be available for examination and copying at the

Commission's Public Document Room at 1717 H Street NW., Washington, DC. NUREG/CR-4250 is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC. This report may be purchased from the U.S. Government Printing Office (GPO) by calling 202-275-2060 or by writing the GPO, P.O. Box 37082, Washington, DC 20013-7082. It may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra D. Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-492-3773; or Mr. C. K. Nulsen, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-427-4246.

SUPPLEMENTARY INFORMATION:

Background

In 1974, a national goal was established that weapons-usable material, whether in the licensed or license-exempt sector, should receive fully adequate and essentially comparable levels of protection. The objective of providing comparable protection for SSNM was iterated in a number of subsequent communications by the National Security Council, Energy Research and Development Administration (now DOE), Department of Defense, and NRC. In consonance with this objective, reviews were conducted periodically by joint NRC/DOE comparability review teams. The findings from the most recent review (1986) indicated that DOE has placed increased emphasis on guard weaponry, training, and tactical response exercises and has upgraded some physical security measures. To maintain comparability with DOE as well as to respond to recent NRC security reviews, the NRC is proposing to amend its physical protection regulations for licensed fuel facilities possessing formula quantities of SSNM. These amendments will provide greater assurance that security systems and security force capabilities at these facilities are comparable to those used by DOE. A remaining comparability issue relates to the use of deadly force by licensee guards. This issue is being addressed separately and is not covered by these amendments.

The security force improvements that are addressed by these proposed amendments are in the general areas of training exercises for security force personnel, weapons qualification, weapons requirements for the proposed Tactical Response Team (TRT), and guard skills. Strengthened physical protection measures are also addressed by these proposed amendments and include double physical barriers at the perimeter of the protected area, use of armed guards at material access area (MAA) portals, and vehicle barriers at the perimeter of the protected area. Actions in the following specific areas are proposed: (1) Security system performance evaluation through tactical response exercises, (2) night firing qualification for guards using all assigned weapons, (3) search of 100 percent of entering personnel and packages, (4) posting of armed guards at MAA control points, (5) providing two separate physical personnel barriers around the protected area, and (6) revision of the design basis threat at these fuel facilities to include land vehicle use by adversaries attempting to commit theft and the provision of counter measures to prevent forcibly vehicle entry into the protected area.

On July 5, 1977, the Commission published for public comment (42 FR 34130) proposed amendments to the Commission's regulations to impose strengthened physical security requirements protecting against theft of SSNM. Extensive comments on the proposed rule were received and considered, resulting in substantial revisions in the final rule which was published on November 28, 1979 (44 FR 68184). Since the rule was adopted, the need for upgraded safeguards requirements has been identified through the NRC/DOE comparability reviews, analysis of safeguards event reports, Regulatory Effectiveness Reviews (RERs), licensing actions, and inspection reports. The proposed amendments would augment and amend that rule. They are discussed as follows.

1. Performance Evaluation Through Tactical Response Exercises, Tactical Response Teams (TRT), and Guard Force Weaponry

It is proposed that affected licensees be required to conduct tactical response exercises on a quarterly basis. These quarterly exercises could be short in duration, would have at least one exercise per guard shift and be cumulatively representative of various lighting conditions during a 24-hour day. At least two of these quarterly exercises for each shift would include force-on-force scenarios. It is also proposed that there be an additional, more extensive annual exercise which would also include force-on-force scenarios to be observed by NRC representatives. The exercises are intended to demonstrate the guard force state of readiness and not to be viewed in terms of pass or fail. They should indicate whether additional training or security system improvements are required. Successful tactical exercises would provide greater assurance that security force capabilities can protect against the design basis threat.

The proposed amendments also call for the formation of a designated Tactical Response Team (TRT) which would be provided with individually assigned upgraded weaponry and have a distinctive different item of uniform from the guard force (e.g., cap, armband, etc.). It was recommended, as a result of the NRC reviews, that the establishment of a TRT be made in conjunction with new requirements for security system performance evaluation through tactical response exercises. Requiring a TRT, which replaces the general requirement for an armed response force, adds greater specificity to the responsibility of providing immediate response to potential adversary actions. Creation of the TRT is expected to provide a more highly motivated, professional, and effective organization to respond to and prevent forceful attempts to remove SSNM from licensee sites.

It is proposed that the TRT be armed with 9mm semiautomatic pistols and shoulder fired response weapons with at least one member of the TRT carrying a .30 caliber of 7.62mm rifle. The requirement for a heavier rifle, which was recommended by the NRC/DOE Comparability Review Team to be implemented in conjunction with the requirement for tactical exercises, is intended to provide additional effectiveness against the design basis threat, which has now been revised to include the use of land vehicles. The proposed amendments require TRT members to carry 9mm semiautomatic pistols. Many major city law enforcement agency police officers, particularly SWAT team members, and the U.S. military are shifting from revolvers to semiautomatic pistols in order to take advantage of sustained fire capability. The number of recent police upgrades nationwide responds to increased encounters with adversaries using more sophisticated weapons. Some DOE TRT members are already armed with 9mm semiautomatic pistols, and there is an indication that DOE is considering arming all TRT members with 9mm semiautomatic pistols. The

NRC, after conducting a literature review and talking with various agencies in regard to their rationale for converting from revolvers to semiautomatic handguns, is including in the proposed amendments a requirement for TRT members only (not other security force personnel) to be armed with 9mm semiautomatic pistols.

2. Weapons Qualification

Revisions to weapons qualification requirements are proposed which would provide for night firing qualification and annual requalification. These would replace the current requirement for night familiarization firing only. Specified courses for night firing qualification and annual requalifications would be added as requirements for all assigned weapons and weapons used during a tactical response.

3. Personnel, Package, and Material Entrance Search

The proposed amendments would require search of 100 percent of entering personnel and packages with the exception of those delivery and inspection activities specifically designated by licensees and approved by the Commission. Bona fide Federal, State, and local law enforcement personnel on official duty may be exempted from search requirements.

Presently, only random searches are required of licensee employees who possess an NRC or DOE access authorization and their hand-carried packages. Present requirements also require only random search or other than hand-carried packages and material. Under the proposed amendments, present exemptions would continue for Commission-approved delivery and inspection activities specifically designated by the licensee to be carried out within material access, vital, or protected areas for reasons of safety, security, or operational necessity.

4. Armed Guards at MAA Control Points

The proposed amendments would require that armed guards be stationed at MAA entry/exit control points. Some facilities have already adopted this practice of stationing armed guards instead of unarmed watchmen at these points as part of their overall security program. The stationing of armed guards is expected to strengthen deterrence against intrusion and enhance responsiveness to adversaries.

5. Protected Area Physical Barriers

The perimeter of the protected area of fuel facilities possessing formula quantities of SSNM would be required to have a double physical personnel barrier. The two barriers would be constructed and installed to ensure the ability to assess an attempted penetration of the protected area perimeter at the time of the occurrence and to delay attempts at unauthorized exit from the protected area. The present intrusion detection systems required by NRC will be placed between these two barriers.

6. Design Basis Threat and Vehicle Barriers

A change is being proposed to the present design basis threat contained in 10 CFR 73.1(a)(2) to include use of land vehicles by potential adversaries attempting to commit a theft of SSNM. The change would recognize the possible use of land vehicles for the breaching of perimeter barriers and transporting adversary personnel and their equipment. The NRC considers this change in design basis threat to be a necessary measure reflecting possible use of land vehicles by potential adversaries.

This change in the design basis threat will require installation or modification of barriers at or near the protected area boundary for vehicle denial purposes. The barriers may be constructed of any materials and structures that have been demonstrated to be effective in denying entry to land vehicles. Information on types of structures, their installation, and their response to penetration may be found in "Vehicle Barriers: Emphasis on Natural Features," NUREG/CR-4250, July, 1985; "Security Vehicle Barriers," (SAND 84-2593), November, 1985; and "An Effective Perimeter Barrier Resulting From a Fence and Sensor Combination," (SAND 83-2359), December, 1983. Additional information on the barrier characteristics themselves may be found in the Barrier Technology Handbook (SAND 77-0777) April, 1978. SAND refers to Sandia National Laboratories, Albuquerque, NM 87185.

The Commission is particularly interested in public comments on the security benefits of a second fence and would like suggestions for cost effective alternatives to such a fence that might achieve protection of SSNM at least comparable to that at DOE facilities. The Commission also requests public comment on the requirement for use of a 9mm weapon by Tactical Response Team members and on whether the final choice of weapons should be left to the licensee.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The proposed amendments will affect neither the safety of operation nor the routine release of or exposure to radioactivity from fuel facilities possessing formula quantities of SSNM. Their only intent is to provide greater protection against the revised design basis threat and thus reduce the risks of theft of SSNM from these facilities. Of the six measures proposed, three have no identifiable environmental impact; namely, initiation of security system performance evaluations through tactical team exercises, night firing qualification of guards using all assigned weapons and posting of armed guards at MAA control points. The 100 percent search of entering personnel and packages would require installation of additional walk-through detection equipment which likely would require construction activities to expand or modify the existing building in which this equipment is located. The requirement regarding protected area personnel barriers would necessitate construction, on the licensee's property, of a second barrier. Finally, the installation of measures to prevent forcible vehicle entry would likely require the deployment of vehicle barriers which would be installed on the licensee's property at or near the protected area boundary at points accessible to vehicles. These construction activities at four current licensee sites and at any sites of future fuel facility licensees who require possession of formula quantities of SSNM are considered to have a minor impact on the environment and support a finding that the proposed amendment involves no significant environmental impact. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. Single copies of the environmental assessment and finding of no significant impact are available from Dr. Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773.

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 Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555. Single copies of the analysis may be obtained from C. K. Nulsen, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4246.

Regulatory Flexibility Certification

Based on the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that if promulgated, this rule will not have a significant economic impact upon a substantial number of small entitles. The proposed rule would affect four licensees who operate fuel facilities possessing formula quantities of SSNM under 10 CFR Parts 70 and 73. They are GA Technologies Inc., La Jolla, California; Nuclear Fuel Services, Erwin, Tennessee; Babcock & Wilcox, Lynchburg, Virginia; and United Nuclear Corporation, Uncasville, Connecticut. The companies that own these plants are dominant in their service areas and do not fall within the scope of the definition of small entities set forth in section 605(b) of the Regulatory Flexibility Act of 1980 or within the definition of Small Business size standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

As this rule would affect only fuel facilities, a backfit analysis is not required.

List of Subjects in 10 CFR Part 73

Hazardous materials-transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for CFR Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.37(f) is also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399 and sec. 161i, 68 Stat. 949 (42 U.S.C. 2201(i)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B), and (h), 73.55(h)(2) and (4)(iii)(B), 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 73.1, paragraph (a)(2)(i) is revised to read as follows:

§ 73.1 Purpose and scope.

(a) * * *

(2) *Theft or diversion of formula quantities of strategic special nuclear material.*

(i) A determined, violent, external assault, attack by stealth, or deceptive actions by a small group with the following attributes, assistance, and equipment.

(A) Well-trained (including military training and skills) and dedicated individuals;

(B) Inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both;

(C) Suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system;

(E) Land vehicles used for transporting personnel and their hand-carried equipment; and

(F) The ability to operate as two or more teams.

* * * * *

3. In § 73.2, revise the introductory text; remove paragraph (a) and all alphabetical designators and place all definitions in alphabetical sequence; insert new definition, "Tactical Response Team," in proper alphabetical sequence; and revise paragraph (1) of the definition for "Physical Barrier" to read as follows:

§ 73.2 Definitions

Terms defined in Parts 50 and 70 of this chapter have the same meaning when used in this part. As used in this part:

* * * * *

"Physical Barrier" means:

(1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30° and 45° from the vertical, with an overall height of not less than eight feet, including the barbed topping.

* * * * *

"Tactical Response Team" means the primary response force for each shift which can be identified by a distinctive difference in items of uniform, armed with specified individual response weapons, and whose other duties permit immediate response.

* * * * *

4. In § 73.46, paragraphs (b)(3)(i), (b)(4), (b)(6), (c)(1), (d)(4) through (6), (d)(9), and (h)(3) are revised and paragraphs (b)(7) through (9) are added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(b) Security organization.

* * * * *

(3) * * *

(i) Written security procedures which document the structure of the security organization and which detail the duties of the Tactical Response Team, guards, watchmen, and other individuals responsible for security. The licensee shall retain a copy of the current procedures as record until the Commission terminates the license for which they were developed and, if any portion of the procedures is superseded, retain the superseded material for three years after each change; and

* * * * *

(4) The licensee may not permit an individual to act as a guard, watchman, Tactical Response Team member, or other member of the security organization unless the individual has been trained, equipped, and qualified to

perform each assigned security job duty in accordance with Appendix B of this part, "General Criteria for Security Personnel", and for guards and Tactical Response Team members in accordance with paragraphs (b)(6) and (b)(7) of this section. Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each guard, watchman, Tactical Response Team member, or other member of the security organization, whether a licensee or contractor employee, shall requalify in accordance with Appendix B of this part, and for guards and Tactical Response Team members in accordance with paragraph (b)(7) of this section at least every 12 months. The licensee shall document the results of the qualification and requalification. The licensee shall retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification.

* * * * *

(6) Guards shall be armed with handguns, as described in Appendix B of this part. Tactical Response Team members shall be armed with 9mm semiautomatic pistols and an individually assigned weapon, either a shotgun or semiautomatic rifle, as described in Appendix B to this part. One member of the Tactical Response Team shall carry, as an individually assigned weapon, a .30 caliber or 7.62mm rifle.

(7) In addition to the qualification criteria of Appendix B of this part, guards and Tactical Response Team members shall qualify and requalify annually for night firing, using revolvers, semiautomatic pistols, semiautomatic rifles, shotguns, and, if assigned, a .30 caliber or 7.62mm rifle. The licensee or the licensee's agent shall document the results of weapons qualification and requalification for night firing. The licensee shall retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification.

(8) In addition to the training requirements contained in Appendix B of this part, Tactical Response Team members and guards who are eligible to be members of the Tactical Response Team shall successfully complete training in response tactics. The licensee shall document the completion of training. The licensee shall retain the documentation of training as a record for three years after training is completed.

(9) The licensee shall conduct Tactical Response Team and Guard exercises to demonstrate the security force effectiveness to perform response and contingency plan responsibilities and to demonstrate individual skills in assigned team duties. These exercises must be scheduled at least quarterly for each shift. Two of these quarterly exercises for each shift must be force-on-force. The licensee shall use these exercises to demonstrate response capabilities to attempts to steal strategic special nuclear material. The licensee shall conduct one annual full-scale force-on-force exercise to demonstrate overall security system performance and shall arrange for NRC to observe this exercise. The licensee shall document the results of these exercises. The licensee shall retain the documentation of each exercise as a record for three years after each exercise is completed.

(c) *Physical barrier subsystems.* (1) Vital equipment must be located only within a vital area, and strategic special nuclear material must be stored or processed only in a material access area. Both vital areas and material access areas must be located within a protected area so that access to vital equipment and to strategic special nuclear material requires passage through at least three physical barriers. The perimeter of the protected area must be provided with two separated physical barriers with an intrusion detection system placed between the two. The inner barrier must be positioned and constructed to enhance assessment of penetration attempts. The perimeter of the protected area must also incorporate features and structures which prevent forcible vehicle entry as well as delay attempts at unauthorized exit from the protected area. More than one vital area or material access area may be located within a single protected area.

* * * * *

(d) *Access control subsystems and procedures.*

* * * * *

(4)(i) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals for firearms, explosives, and incendiary devices must be made and authorization must be checked at these points except for bona fide Federal, State, and local enforcement personnel on official duty and United States Department of Energy couriers engaged in the transport of special nuclear material. The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of detection equipment capable of detecting both firearms and explosives. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within a structure, with bullet resisting walls, doors, ceiling, floor, and windows.

(ii) When the licensee has cause to suspect that an individual is attempting to introduce firearms, explosives, or incendiary devices into protected areas, the licensee shall conduct a physical pat-down search of that individual. Whenever firearms or explosives detection equipment at a portal is out of service or not operating satisfactorily, the licensee shall conduct a physical pat-down search of all persons who would otherwise have been subject to search using the equipment.

(5) At the point of personnel and vehicle access into a protected area, all hand-carried packages shall be searched for firearms, explosives, and incendiary devices.

(6) All packages and material for delivery into the protected area must be checked for proper identification and authorization and searched for firearms, explosives, and incendiary devices prior to admittance into the protected area, except those of bona fide Federal, State, and local law enforcement personnel on official duty and those Commission-approved delivery and inspection activities specifically designated by the licensee to be carried out within material access, vital, or protected areas for reasons of safety, security, or operational necessity.

* * * * *

(9) The licensee shall control all points of personnel and vehicle access to material areas, vital areas, and controlled access areas. At least two armed guards trained in accordance with the provisions contained in paragraph (b)(7) of this section and Appendix B of this part shall be posted at each material access area control point. Identification and authorization of personnel and vehicles must be verified at the material access area control points. Prior to entry into a material access area, packages must be searched for firearms, explosives, and incendiary devices. All vehicles, materials and packages, including trash, wastes, tools, and equipment exiting from a material access area must be searched for concealed strategic special nuclear material by a team of at least two individuals who are not authorized access to that material access area. Each individual exiting a material

access area shall undergo at least two separate searches for concealed strategic special nuclear material. For individuals exiting an area that contains only alloyed or encapsulated strategic special nuclear material, the second search may be conducted in a random manner.

* * * * *

(h) *Contingency and response plans and procedures.*

* * * * *

(3) A Tactical Response Team consisting of a minimum of five (5) guards must be available at the facility to fulfill assessment and response requirements. In addition a force of guards or armed response personnel also must be available to provide assistance as necessary. The size and availability of the additional force must be determined on the basis of site-specific considerations that could affect the ability of the total onsite response force to engage and impede the adversary force until offsite assistance arrives. The reason for determining the total number and availability of onsite armed response personnel must be included in the physical protection plans submitted to the Commission for approval.

* * * * *

Dated at Washington, DC, this 23rd day of December, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-29905 Filed 12-30-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-87-11]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, February 29, 1988.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on December 16, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
25277	Long Island Pilots Assn.	Petitioner seeks to reduce the size of the regulatory airport radar service area (ARSA) to approximately a 5-mile radius inner core and a 7-mile radius outer core north of the south shore of Long Island. This ARSA requires only two-way radio communication to enter or operate in the ARSA. Denied: October 30, 1987.

[FR Doc. 87-29974 Filed 12-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASO-19]

Proposed Revision of Transition Area; Fitzgerald, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Fitzgerald, Georgia, Transition Area by correcting the geographic position latitude/longitude coordinates for the Fitzgerald Municipal Airport increasing the radius area from 5 to 6.5 miles around the airport to accommodate corporate-type aircraft, and revising the arrival area extension for two new standard instrument approach procedures (SIAP's) being developed for the airport. The existing on-airport nondirectional radio beacon (NDB) will be relocated off-airport and a new NDB SIAP is planned. The NDB will also serve as the final approach fix for a new localizer SIAP under development.

DATES: Comments must be received on or before January 27, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 87-ASO-19, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to

participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASO-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fitzgerald, Georgia, Transition Area. This action will provide additional controlled airspace in the vicinity of the Fitzgerald Municipal Airport and along the final approach courses of two new instrument approach procedures currently under development. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fitzgerald, Georgia (Revised)

That airspace extending upward from 700' above the surface within a 6.5-mile radius of Fitzgerald Municipal Airport (lat. 31°40'59"N., long. 83°16'09"W.); within 3.5 miles each side of the 192° bearing from Fitzgerald NDB (lat. 31°36'46"N., long. 83°17'27"W.), extending from the 6.5-mile radius area to 11.5 miles south of the NDB excluding that portion that coincides with the Tifton, Georgia, Transition Area.

Issued in East Point, Georgia, on December 15, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87-29975 Filed 12-30-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 252

[Docket No. R-87-1361; FR-2256]

Full Insurance and Coinsurance of Mortgages Covering Nursing Homes and Similar Projects

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend 24 CFR Part 232 to implement HUD's statutory authority to insure the purchase or refinancing of existing HUD-insured nursing homes, intermediate care facilities and board and care homes. It would also add a new 24 CFR Part 252 to authorize a program of coinsurance for nursing homes, intermediate care facilities and board and care homes. In general, the new coinsurance program follows the full insurance nursing homes program with coinsurance aspects based on the coinsurance programs now applicable to multifamily housing projects. There are, however, some significant differences—including a change in the coinsurance loss sharing ratio.

DATE: *Comment due date:* February 29, 1988.

ADDRESS: Communications concerning this proposed rule should be identified by the above docket number and title and comments should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Copies of written views or comments will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 307 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) amended the National Housing Act by adding a new Section 244 entitled, "Coinsurance." Section 244 authorizes the Secretary of Housing and Urban Development to insure, under any provision of title II of the National

Housing Act, any mortgage otherwise eligible under that title, pursuant to a Coinsurance Contract that provides that the lender (1) assume a percentage of any loss (and share in Mortgage Insurance Premium income) and (2) carry out (subject to audit and review requirements) such delegated processing functions as the Secretary approves.

The Department has previously undertaken a number of coinsurance initiatives under the section 244 authority and is currently operating three coinsurance programs. Regulations issued on February 12, 1976 (41 FR 6446) added a new Part 204 in title 24 of the CFR that initiated a program of coinsurance for one-to-four family dwellings insured under section 203 of the National Housing Act. Regulations originally issued on July 2, 1980 (45 FR 45117) added a new Part 255 that authorized a program of "Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects." Part 255 permits qualified lending instiutions to coinsure and perform delegated processing on mortgage loans on existing multifamily projects using sections 207 and 223(f) of the National Housing Act as the insuring authorities. It was extensively amended on March 31, 1982 (47 FR 13519), May 25, 1983 (48 FR 23399), and June 24, 1985 (50 FR 25924).

A new Part 251 was added on August 9, 1984 (49 FR 32023) as a companion to Part 255. It authorizes a program of coinsurance for newly constructed or substantially rehabilitated multifamily projects insured under section 221(d)(3) or section 221(d)(4) of the National Housing Act. Part 251, along with current Part 255, is available to HUD-approved private lenders and State Housing Finance Agencies; both programs are in operation and very active.

The Department has moved forward in implementing multifamily coinsurance based on a general policy of delegating to participating FHA lenders those processing and underwriting functions that lenders are capable of performing in accordance with HUD criteria, but without HUD staff involvement. Based on the Department's successful experience with Parts 251 and 255, it is now extending the coinsurance concept to another currently active multifamily full insurance program—section 232 for nursing homes, intermediate care facilities and board and care homes.

The addition of this proposed Part 252 will result in a comprehensive HUD policy with respect to delegated processing. For the lender groups now eligible to coinsure section 223(f) and/or section 221(d) mortgages, it offers a coinsurance vehicle for also financing nursing homes and similar facilities now eligible only under section 232 full insurance. For the most part, this new Part 252 does not differ in substance from 24 CFR Part 232 (full insurance nursing homes), except for the addition of provisions to allow for coinsurance for the purchase or refinancing of existing HUD-insured nursing homes and similar facilities. It has, however, been reorganized and rewritten to follow the format and "plain English" style of Parts 251 and 255. All coinsurance programs share the same coinsurance policy framework, one in which lenders agree to share the insurance risk and in return are permitted to perform underwriting and servicing functions with minimal Federal involvement.

In this proposed Part 252, the requirements concerning property eligibility, mortgage terms and cost limits, eligibility and regulation of mortgagors, insurance of advances, inspections and cost certification primarily track similar requirements found in the section 232 full insurance program. With respect to lender eligibility and contract rights, Part 252 draws upon the existing Parts 251 and 255 coinsurance provisions with some significant revisions which are discussed below. There are similar provisions with respect to authorization of full or partial reinsurance at the lender's option; acquisition and sale of properties by the lender (not HUD) after default; restrictions on the assignment of coinsured mortgages to other lenders; lender obligation to bear a deductible of 5 percent of unpaid mortgage balance at default; and HUD guarantees to GNMA providing protection against coinsurance losses.

There are significant revisions with respect to the following items:

(1) The provisions for Sound Capital Resources would be revised to require:

(a) Net worth of not less than $1,500,000, which may include an unconditional and irrevocable firm letter of credit of not more than $500,000 from a supervised financial institution with assets of not less than $100,000,000 (the latter figure unchanged from the 221(d)/223(f) requirement);

(b) Liquid assets of $1,500,000 which may include an unconditional and irrevocable firm letter of credit up to $500,000 from a supervised financial institution with assets of not less than $100,000,000 (increased from the 221(d)/223(f) $500,000 liquid asset requirement); and

(c) An additional one dollar in liquid assets for each 200 dollars of outstanding principal indebtedness of a lender's coinsured mortgages (increased from the 221(d)/223(f) one dollar for each 300 dollars requirement).

(2) Under the existing coinsurance provisions, when a lender disposes of a project through a competitive bid procedure, the amount which may be deducted for purposes of calculating the insurance claims payment is the sales price of the property, even if this price is lower than the property's appraised value. This would be revised to base the deduction on the higher of the sales price or the appraised value as is now done in negotiated sale situations.

(3) The current HUD claims settlement of 85 percent of loss (72.25 percent if the lender carries reinsurance at more than 50 percent or at the maximum permitted by State law) would be revised to provide HUD settlement at 75 percent of loss (or 62.25 percent for reinsurance). A corresponding change would be made to share mortgage insurance premiums on a basis of 70 percent to HUD and 30 percent to the Lender.

Inclusion of nursing homes, intermediate care facilities and board and care facilities under the coinsurance umbrella will provide an additional tool for delivering these types of facilities to house the nation's increasing elderly population. At the same time, the risk to the FHA Insurance Fund will be reduced in comparison to full insurance through the coinsurance loss-sharing formula. In drafting this proposal, demonstrated need, licensure, enforcement and other State or Federal requirements were taken into account.

This rulemaking also expands the nursing homes program to include mortgage insurance under both full insurance and coinsurance for the purchase or refinancing of existing HUD-insured nursing homes, intermediate care facilities and board and care homes.

Comments are requested from interested persons on any aspect of this rule. The comment period will provide the mortgage lending industry an adequate opportunity to make its views known, and the comments will be considered as due consultation with the industry as required by section 244(c) of the National Housing Act.

Description of Proposed Rule

The rule HUD is proposing consists of two parts. First, a new subpart E is added to 24 CFR Part 232—Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, and Board and Care Homes—to implement HUD's authority to offer full insurance of purchases or refinancings covering currently insured projects under that

part. Second, the rule would establish a new program of coinsurance of mortgages covering newly constructed, substantially rehabilitated or currently insured nursing homes, intermediate care facilities and board and care homes. What follows is a section-by-section description pointing out the relationship of each of these parts to the existing regulatory framework of the CFR into which it will fit.

New Subpart E to 24 CFR Part 232

This subpart consists of six sections. Section 232.901 states that notwithstanding the otherwise applicable requirement that mortgages insured under Part 232 cover only newly constructed or substantially rehabilitated Projects, a mortgage insured under this subpart may be executed in connection with the purchase or refinancing of presently insured Projects pursuant to section 223(f) of the National Housing Act. Section 232.902 describes what is meant by an existing Project and distinguishes such projects from those which are "substantially rehabilitated." Section 232.903 sets forth maximum insurable mortgage amounts. Its provisions are similiar to those found in § 255.203. Section 232.904 sets a mortgage term of not less than 10 nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the project. This requirement is similar to that in the existing multifamily coinsurance program (see § 255.205). Section 232.905 exempts mortgages insured under this new Subpart E from the otherwise applicable labor standards and prevailing wage requirements found in §§ 232.70–232.74. A similar provision is contained in Part 255 (see § 255.209). Section 232.906 sets forth processing and commitment procedures. It is based upon § 207.32a(a) (1), (2), (3) and (4) in title 24 of the CFR. Section 207.32(a) authorizes full FHA insurance for the purchase or refinancing of existing multifamily housing projects.

New Part 252 to Title 24 of the CFR

As was noted earlier in this Preamble, this proposed new coinsurance program follows the existing full insurance nursing homes program and tracks existing coinsurance provisions found in 24 CFR Parts 251 and 255 with some significant coinsurance revisions. The revisions being proposed are limited to this new program. They provide that nursing home coinsurance will have more conservative terms and conditions than those applicable to multifamily housing coinsurance. Until experience is gained in this new area for coinsurance, the Department considers it desirable to move forward with a fair degree of caution, given the single-purpose nature of facilities covered by this regulation and the related remarketing uncertainty which could directly affect claims against HUD. The coinsurance revisions HUD is proposing for this rule are as follows:

(1) Revise the Sound Capital Resources Requirements

The current requirements for Sound Capital Resources may be inadequate to cover the coinsuring lender's portion of potential losses. This view is supported by the fact that some current coinsuring lenders are establishing their own additional loan loss reserves for the multifamily coinsurance programs which do not have the additional concerns associated with the nursing homes program (see § 252.102).

(2) Revise the Procedure Where the Lender Must Dispose of a Project

Using the higher of the sales price or the appraised value in calculating the claim for insurance benefits, regardless of whether the disposal is through a negotiated sale or a competitive bid, reduces FHA's exposure to losses, especially in light of the remarketing uncertainty of these single-purpose facilities (see § 252.822(f)).

(3) Provide Claims Settlements at a Basic 75 Percent of Loss Ratio

This change will also reduce FHA's exposure to losses under the Coinsurance program and give lenders additional incentive to underwrite this type of project with care (see § 252.820). At the same time, we would allow Lenders to retain 30 percent of the mortgagor insurance premium, while remitting 70 percent to HUD. (*See* §§ 252.801 and 252.802)

Description of the New Part 252 Showing How the Current Part 232 Nursing Home Program Would Fit Into the Part 251 and 255 Coinsurance Structure

Subpart A—General Provisions

§ 252.1 Purpose and scope.

Coinsurance provisions comparable to those in §§ 251.1 and 255.1 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.2 Coinsurance contract.

Provisions comparable to §§ 251.2 and 255.2 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§252.3 Definitions.

The definitions in Part 251 of "Builder's and Sponsor's Profit and Risk Allowances", "Builder-seller Mortgagor", "Cooperative Mortgagor", "General Mortgagor", "Investor-sponsor Mortgagor", "Limited Distribution Mortgagor", "Nonprofit mortgagor", and Sponsor's Profit and Risk Allowance", contained in Parts 251 and 255 would not be used in this section.

The definitions in Parts 251 and 255 of "Coinsured Mortgage", "Distribution", "Firm Commitment", "Sound Capital Resources", and "Substantial Rehabilitation" are adopted for use in this section except that the $6500 per dwelling unit requirement for "substantial rehabilitation" is deleted as inapplicable to the types of projects covered in the new Part 252.

Definitions of "Nursing Home", "intermediate Care Facility" "Board and care home", "Project", and "State" would be added in this section. They are the same as the definitions used in Part 232 full insurance program.

§ 252.4 Effect of amendments.

Provisions comparable to §§ 251.4 and 255.4 would apply to mortgages coinsured under the new part. [The comparable Part 232 section is § 232.96.]

Subpart B—Lender Requirements

§ 252.101 Eligible lender

Provisions comparable to §§ 251.101 and 255.101 would apply to mortgages coinsured under the new part. [The comparable Part 232 section is § 232.1)(c).]

§ 252.102 Review and approval as coinsuring lender.

Except for the Sound Capital Resources Requirement, provisions comparable to §§ 251.102 and 255.102 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

Under this new provision, liquid assets of $1,500,000 (rather than $500,000) would be required to meet the Sound Capital Resources requirement. Also, an additional one dollar in liquid assets would be required for each $200 (rather than $300) in outstanding principal indebtedness of a lender's coinsured mortgages.

§ 252.103 Duration of approval.

Provisions comparable to §§ 252.103 and 255.103 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.104 Withdrawal of approval.

Provisions comparabel to §§ 251.104 and 255.104 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.105 Delegation of servicing.

Provisions comparable to §§ 251.105 and 255.105 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.106 Assignment of coinsured mortgages.

Provisions comparable to §§ 251.106 and 255.106 would apply to mortgages coinsured under the new part. [No comparable Part 232 section but 232 does reference back to Part 207. See §§ 232.251 and 207.261.]

§ 252.107 Reinsurance.

Provisions comparable to §§ 251.107 and 255.107 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.108 Pledging and other security arrangements.

Provisions comparable to §§ 251.108 and 255.108 would apply to mortgages coinsured under the new part. [No comparable Part 232 section but 232 does reference back to Part 207 See §§ 232.151 and 207.161.]

Subpart C—Program Requirements

§ 252.201 Eligible project.

Paragraph (a) of this section generally would track the existing § 232.39. However, the Department is seeking public comment on alternative versions of this paragraph as it relates to occupancy density requirements for Board and Care homes. Alternative A of the rule text provisions for a maximum ration of four persons per bedroom and per full bathroom in the facilty. Alternative B would offer this four-person per bedroom and per bathroom as a suggested norm, but it would only be the rule in those States where specific standards, as promulgated under section 1616(e) of the Social Security Act, did not exist. Where State standards were in place, Alternative B would defer to the State requirement. The standards "established by the Commissioner" referred to in this paragraph will include handbook provisions for such standards as are necessary to establish the appropriateness of the facility for coinsurance under this part. These standards will cover such areas as construction standards (e.g., State and local codes and minimum health and safety requirements in the absence of acceptable local codes as contained in the HUD Minimum Property Standards for Housing, Handbook 4910.1); underwriting standards (e.g., project financial feasibility including the source and use of different types of incomes); locational standards (e.g., accessibility of related services); facilities requirements (e.g., emergency call equipment congregate dining recreational space or board and care facilities); commercial space limitations; mixed use occupance standards; and founder fee prohibitions. The Department invites public comment on the appropriateness of the examples of standards listed above and on additional areas where standards may be needed.

(b) Provisions comparable to §§ 251.201(b) and 255.201(b) would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

(c) Provisions comparable to §§ 251.201(c) and 255.201(c) would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

(d) Provisions comparable to §§ 251.201(d) and 255.201(d) would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

(e) Provisions comparable to §§ 251.201(e) and 255.201(e) would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.202 Eligible mortgagors.

This section would track the existing § 232.20.

§ 252.203 Maximum mortgage limitations.

(a) In general, the mortgage would involve a principal obligation not in excess of 90 percent of the lender's estimate of the value of the property or project, including equipment to be used in its operation, when the proposed improvements are completed and the equipment is installed. [This paragraph is based upon § 232.30.]

(b) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct a project without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in paragraph (a) the Commissioner may permit the principal obligation of mortgages to be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum otherwise allowable under paragraph (a) of this section by more than one-half thereof. [This paragraph is based upon § 232.31.]

(c) In addition to the limits of paragraphs (a) and (b), additional limits would apply to projects to be substantially rehabilitated. [The additional limits track those set forth in § 232.32.]

(d) [This paragraph is based upon § 232.33. It deals with the valuation of leasehold estates. Closest comparable coinsurance sections are §§ 251.203(b) and 255.203(b).]

§ 252.204 Maximum interest rate.

Provisions comparable to §§ 251.204 and 255.204 would apply to mortgages coinsured under the new part. [The comparable Part 232 is § 232.29.]

§ 252.205 Term of the mortgage.

Provisions comparable to §§ 251.205 and 255.205 would apply to mortgages coinsured under the new part. [The comparable Part 232 is § 232.27.]

§ 252.206 Lenders fees and premiums.

Provisions comparable to §§ 251.206 and 255.206 would apply to mortgages coinsured under the new part. [The comparable Part 232 is §§ 232.29 and 232.12.]

§ 252.207 Coinsurance of mortgages in lender's portfolio.

Generally, the provisions of §§ 251.207 and 255.207 would apply to mortgages coinsured under the new part. The only difference is that mortgages in which no equity is removed would not be subject to the one fourth limitation of paragraph (a)(2).

§ 252.208 Nondiscrimination in occupant eligibility and employment.

Paragraphs (a), (b) and (c) of this section are based upon § 232.34. Paragraphs (d), (e) and (f) are based upon §§ 251.208 (c), (d) and (e) and 255.208 (c), (d) and (e).

§ 252.209 Labor standards and prevailing wage requirements.

With the exception of mortgages coinsured under Subpart J, the provisions of § 251.209 would be applicable to mortgages coinsured under the new part. [The comparable Part 232 sections are §§ 232.70 through 232.74.]

Subpart D—Processing and Commitment

§ 252.301 Processing and development responsibilities.

Provisions comparable to §§ 251.301 and 255.301 would be applicable to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.302 Processing and commitment.

Provisions comparable to §§ 251.302 and 255.302 would be applicable to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.303 Certification by State agency.

The new part adds a section to the basic Part 251 structure. It is based upon the current § 232.6 and sets forth the State certification requirements contained in Part 232.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

§ 252.401 Insurance of advances or insurance upon completion; applicability of requirements.

Provisions comparable to §§ 251.401 and 255.401 would apply to mortgages coinsured under the new part. [No comparable Part 232 section.]

§ 252.402 Insurance of advances.

Provisions comparable to §§ 251.402 and 255.402 would apply to mortgages coinsured under the new part. [The comparable Part 232 provision for paragraph (a) of this section is § 232.61; for paragraph (b) of this section it is § 232.55; for paragraph (c) it is § 232.57; and for paragraph (d) it is § 232.56.]

§ 252.403 Insurance upon completion.

Provisions comparable to §§ 251.403 and 255.403 would apply to mortgages coinsured under the new part. [The closest comparable Part 232 provision is § 232.50(a)(3).]

§ 252.404 Requirements applicable to both insurance of advances and insurance upon completion cases.

Provisions comparable to §§ 251.404 and 255.404 would apply to mortgages coinsured under the new part. [Comparable Part 232 provisions for each paragraph of this section are as follows:

(a) Section 232.56 is closest comparable, (b) no comparable provision, (c)(1) § 232.80, (c)(2) § 232.80, (c)(3) § 232.82, (c)(4) § 232.83, (d)(1) § 232.85(a), (d)(2) §§ 232.84, 232.85, (e) § 232.85, (f) § 232.86, (g) § 232.87, (h) § 232.91, (i) § 232.92.

§ 252.405 Lender review of mortgage amount.

Provisions comparable to §§ 251.405 and 255.405 would apply to mortgages coinsured under the new part. [Closest comparable Part 232 provision is § 232.89.]

§ 252.406 Application of net income received before beginning of amortization.

Provisions comparable to §§ 251.406 and 255.406 would apply to mortgages coinsured under the new part. [Comparable Part 232 provision is § 232.62.]

§ 251.407 Endorsement by Commissioner.

Provisions comparable to §§ 251.407 and 255.407 would aply to mortgages coinsured under the new part. [No comparable Part 232 provision.]

Subpart F—Mortgage and Closing Requirements

§ 252.501 Mortgage requirements—real estate.

Provisions comparable to §§ 251.501 and 255.501 would apply. [Comparable Part 232 section is § 232.25a.]

§ 252.502 Title.

Provisions comparable to §§ 251.502 and 255.502 would apply. [Comparable Part 232 sections are §§ 232.595 and 232.600.]

§ 252.503 Mortgage provisions.

Except for paragraphs (i), (j) and (k), provisions comparable to §§ 251.503 and 255.503 would apply. The new paragraph 503(i) is based upon §232.37 and relates to prepayment privileges and prepayment charges for the various categories of project covered in the new part, and allows a prepayment lock-out and penalty as agreed upon between the mortgagor and the coinsuring lender consistent with HUD requirements. This differs from § 232.37 where the mortgagor may prepay up to 15 percent in any calendar year without penalty. Paragraph (j) relating to late charges, is the same as § 232.38a. Paragraph (k), on retaining property for residential purposes, is deleted.

§ 252.504 Mortgage lien and other obligations.

This section is based upon § 232.26.

§ 252.505 Regulatory agreement.

Provisions comparable to §§ 251.505 and 255.505 would apply. [Comparable Part 232 provision is §232.45.]

§ 252.506 Other closing documents.

Provisions comparable to §§ 251.506 and 255.506 would apply. [No comparable Part 232 provision.]

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

§ 252.601 Requirements applicable to all projects.

Provisions comparable to §§ 251.601 and 255.601 would apply. [Closest comparable Part 232 sections are §§ 232.20 and 232.13a.]

Subpart H—Program Requirements Relating to Project Operation

Part 232 is silent concerning the various operating requirements set forth in Subpart H of our current coinsurance programs except for a general grant of regulatory authority provided the Commissioner in § 232.45. With respect to this new coinsurance program, the following express operating requirements found in Parts 251 and 255 will apply.

§ 252.701 General.

Provisions comparable to §§ 251.701 and 255.701 would apply to mortgages coinsured under the new part.

§ 252.702 Reserve for replacements and general operating reserve.

(a) Provisions comparable to paragraph (a) of §§ 251.702 and 255.702 would apply to mortgages coinsured under the new part.

(b) [Reserved]

(c) Provisions comparable to paragraph (c) of §§ 251.702 and 255.702 would apply to mortgages coinsured under the new part. [No comparable Part 232 provision.]

§ 252.703 Rents and charges.

The mortgagor will determine rents and charges taking into account facilities and services offered by the Project.

§ 252.704 Use of project funds.

Provisions comparable to §§ 251.704 and 255.704 would apply to mortgages coinsured under the new part.

§ 252.705 Distribution and residual receipts.

(a) Provisions comparable to paragraph (a) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(b) Provisions comparable to paragraph (b) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(c) [Reserved]

(d) [Reserved]

(e) Provisions comparable to paragraph (e) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(f) Provisions comparable to paragraph (f) of §§ 251.705 and 255.705 would apply to mortgages coinsured under the new part.

(g) Provisions comparable to paragraph (g) of §§251.705 and 255.705 would apply to mortgages coinsured under the new part.

§ 252.706 Project management.

(a) Provisions comparable to paragraphs (a) through (h) of §§ 251.706 and 255.706 would apply to mortgages coinsured under the new part. The remaining paragraphs of that section would not apply.

Subpart I—Contract Rights and Obligations

In part 232, the subject matter of Subpart I is covered by a reference back to a similar subpart in Part 207. In developing the Part 251 and 255 coinsurance programs, the Department considered what modifications in "Contract Rights and Obligations" as found in Part 207, would be needed for coinsurance and promulgated them as a Subpart I in both parts. In this new Part 252, the Department has incorporated the existing coinsurance Subpart I with the following major exceptions.

(1) The coinsurance share ratios found in §§ 251.820 and 255.820 (85 percent of loss—72.25 percent if the lender carries the maximum allowable reinsurance) are changed to a basic 75 percent of loss ratio. With reinsurance the new ratio would be 62.25 percent (see new § 252.820).

(2) The provisions in §§ 251.822(f)(1) and (2) and 255.822(f)(1) and (2), relating to amounts deductible where the lender must dispose of the project, are changed to require a deduction equal to the higher of the sales price or the appraised value of the property in every case (see new § 252.822(f)).

(3) Insurance benefits will be paid in cash unless the lender files a written request for payment in debentures (see § 252.819).

Subpart J—Coinsurance of Mortgages Covering Existing Projects

This subpart consists of six sections similar in sequence and substance to those found in the new Subpart E to 24 CFR Part 232 which was described above.

Procedural Requirements

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under HUD section 232 full insurance has not demonstrated any substantial impact on small entities. The new coinsurance program would supplement and be carried out in coordination with this full insurance program.

This rule was listed as item H-32-86 [Sequence Number 953] in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Flexibility Act.

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

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB control numbers, when assigned will be announced by separate publication in the **Federal Register.**

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

The catalog of Federal Domestic Assistance program number is 14.129.

List of Subjects

24 CFR Part 232

Fire prevention; Health facilities, Mortgage insurance, Nursing homes, Intermediate care facilities, Board and care homes.

24 CFR Part 252

Mortgage insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

Accordingly, 24 CFR Part 232 is proposed to be amended and a new Part 252 is proposed to be added to title 24 of the CFR as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 is revised to read as follows:

Authority: Secs. 211, 232 and 244, National Housing Act (12 U.S.C. 1715b, 1715w, and 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart E—Insurance of Mortgages Covering Existing Projects

Sec.
232.901 Mortgages covering existing insured projects are eligible for insurance.
232.902 Eligible project.
232.903 Maximum mortgage limitations.
232.904 Term of the mortgage.
232.905 Labor standards and prevailing wage requirements.
232.906 Processing and commitment.

2. 24 CFR Part 232 is amended by adding at the end thereof a new subpart E to read as follows:

Subpart E—Insurance of Mortgages Covering Existing Projects

§ 232.901 Mortgages covering existing insured projects are eligible for insurance.

Notwithstanding the generally applicable requirement that mortgages insured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for insurance, a mortgage executed in connection with the purchase or refinancing of an existing Project covered by a mortgage insured by the Commissioner may be insured under this subpart pursuant to section 223(f) of the Act. A mortgage insured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

§ 232.902 Eligible project.

(a) Existing Projects covered by a mortgage insured under section 232 of the Act (with such repairs and improvements as are determined by the Commissioner to be necessary) are eligible for insurance under this subpart. The Project must not require substantial rehabilitation as defined in paragraph (b) of this section and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for insurance. In addition, the Project must have attained sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service

and reserve fund for replacement requirements) as determined by the Commissioner, before endorsement of the Project for insurance; alternatively, the mortgagor must provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the Commissioner.

(b) "Substantial rehabilitation" consists of repairs, replacements, improvements and additions:

(1) The cost of which exceeds the greater of fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

(i) Roof structures;

(ii) Ceiling, wall, or floor structures;

(iii) Foundations;

(iv) Plumbing systems;

(v) Heating and air conditioning systems;

(vi) Electrical systems.

§ 232.903 Maximum mortgage limitations.

Notwithstanding the maximum mortgage limitations set forth in § 232.30, a mortgage within the limits set forth in this section shall be eligible for insurance under this subpart.

(a) *Value limit.* The mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the Commissioners estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The Commissioner's estimate of value shall result from consideration of (1) estimated market value of the Project by capitalization, (2) estimated market value of the Project by direct sales comparison, and (3) total estimated replacement cost of the Project. In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the Commissioner) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The coinsured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for debt service shall be determined by reducing the Commissioner's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the insured mortgage (*i.e.*, without a change of ownership or with the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the insured mortgage), the maximum mortgage amount must not exceed the greater of:

(1) Seventy percent (70%) of the Commissioner's estimate of value of the Project, or

(2) The cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(i) The amount required to pay off the existing indebtedness;

(ii) The amount of the initial deposit for the reserve fund for replacements;

(iii) Reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 232.15;

(iv) The estimated repair costs, if any;

(v) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisitions as determined by the Commissioner. The cost of acquisition shall consist of the following items, to the extent that each item (except for paragraph (d)(1) of this section) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price is indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgagee fees under § 232.15;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

§ 232.904 Term of the mortgage.

Notwithstanding the provisions of § 232.27, a mortgage insured under this subpart must have a maturity satisfactory to the Commissioner which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for insurance.

§ 232.905 Labor standards and prevailing wage requirements.

The provisions of §§ 232.70–232.74 of this part shall not apply to mortgages insured under commitments issued in accordance with this subpart.

§ 232.906 Processing and commitment.

Notwithstanding the provisions of §§ 232.5, 232.10 and 232.12 of this part, a mortgage insured under this subpart shall meet the following application's commitment, inspection and fee requirements.

(a) *Application.* An application for a conditional or firm commitment for insurance of a mortgage on a Project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD office on an FHA approved form. No application shall be considered unless accompanied by the exhibits required by the form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of the improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completing of specified repairs and improvements after endorsement.

(b) *Application fee—conditional commitment.* An application-commitment fee of $2 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of $3 per thousand dollars of the requested mortgage amount to be insured less the amount of any fee previously received for a conditional commitment.

(d) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee of up to one percent (1%)

of the cost of the repairs and improvements maybe charged by the Commissioner.

3. Title 24 of the Code of Federal Regulations is amended by adding a new Part 252, to read as follows:

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

Subpart A—General Provisions

Sec.
252.1 Purpose and scope.
252.2 Coinsurance contract.
252.3 Definitions.
252.4 Effect of amendments.

Subpart B—Lender Requirements

252.101 Eligible lender.
252.102 Review and approval as coinsuring lender.
252.103 Duration of approval.
252.104 Withdrawal of approval.
252.105 Delegation of servicing.
252.106 Assignment of and participation in coinsured mortgages.
252.107 Reinsurance.
252.108 Pledging and other security arrangements.

Subpart C—Program Requirements

252.201 Eligible project.
252.202 Eligible mortgagors.
252.203 Maximum mortgage limitations.
252.204 Maximum interest rate.
252.205 Term of the mortgage.
252.206 Lender's fees and premiums.
252.207 Coinsurance of mortgages in lender's portfolio.
252.208 Nondiscrimination in housing and employment.
252.209 Labor standards and prevailing wage requirements.

Subpart D—Processing and Commitment

252.301 Processing and development responsibilities.
252.302 Processing and commitment.
252.303 Required certificates.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

252.401 Insurance of advances or insurance upon completion; applicability of requirements.
252.402 Insurance of advances.
252.403 Insurance upon completion.
252.404 Requirements applicable to both insurance of advances and insurance upon completion cases.
252.405 Lender review of mortgage amount.
252.406 Application of net income received before beginning of amortization.
252.407 Endorsement by the Commissioner.

Subpart F—Mortgage and Closing Requirements

252.501 Mortgage requirements—real estate.
252.502 Title.
252.503 Mortgage and note provisions.
252.504 Mortgage lien and other obligations.
252.505 Regulatory agreement.
252.506 Other closing documents.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

252.601 Requirements applicable to all projects.

Subpart H—Program Requirements Relating to Project Operation

252.701 General.
252.702 Reserve for replacements and general operating reserve.
252.703 Rents and charges.
252.704 Use of project funds.
252.705 Distributions and residual receipts.
252.706 Project management.

Subpart I—Contract Rights and Obligations

Mortgage Insurance Premiums

252.801 MIP in insurance of advances cases.
252.802 MIP in insurance upon completion cases.
252.803 Duration and method of payment of MIP.
252.804 Pro-rata refund of annual MIP.
252.805 Late charges—MIP.
252.806 [Reserved]

Delinquency and Default Under the Mortgage

252.807 Notice of delinquency.
252.808 Definition of default.
252.809 Date of default.
252.810 Notice of default.
252.811 Financial relief to cure a default.
252.812 Reinstatement of a defaulted mortgage.

Termination

252.813 Termination of coinsurance contract.
252.814 Notice and date of termination by Commissioner.

Claim Procedure and Payment of Insurance Benefits

252.815 Notice of election to acquire property and file a claim.
252.816 Acquisition of property.
252.817 Deed-in-lieu of foreclosure.
252.818 Disposition of property and application for insurance benefits.
252.819 Method of payment.
252.820 Amount of payment.
252.821 Items included in payment.
252.822 Items deducted from payment.
252.823 [Reserved]

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

252.824 Indemnification of GNMA.
252.825 Withdrawal of lender approval.
252.826 HUD recourse against lender-issuer.
252.827 GNMA right to assignment.
252.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

Subpart J—Coinsurance of Mortgages Covering Existing Projects

252.901 Mortgages covering existing insured projects eligible for coinsurance.
252.902 Eligible project.
252.903 Maximum mortgage limitations.
252.904 Terms of the mortgage.
252.905 Labor standards and prevailing wage requirements.
252.906 Processing and commitment.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)), sec. 211, National Housing Act, 12 U.S.C. 1715(b), and sec. 244, National Housing Act, 12 U.S.C. 1715z(9).

Subpart A—General Provisions

§ 252.1 Purpose and scope.

(a) Section 307 of the Housing and community Development Act of 1974 amended the National Housing Act (the Act) by adding a new section 244 entitled, "Coinsurance". Section 244 authorizes the Department to insure, under a Coinsurance Contract, any Mortgage otherwise eligible for insurance under Title II of the Act. The Coinsurance Contract provides that the approved lender,

(1) Assume a percentage of any loss, and

(2) Carry out (subject to monitoring), underwriting, commitment, property disposition and other functions that the Federal Housing Commissioner (Commissioner) approves.

(b) HUD expects that the sharing of risk and the assumption by the lender of major processing functions under Coinsurance will reduce processing time and HUD staff burden, and increase lender involvement in all phases of the HUD Mortgage insurance process.

(c) Section 244(c) of the Act permits the Secretary to coinsure Mortgages only if the Secretary determines, after due consultation with the mortgage lending industry, that Coinsurance will not disrupt the Mortgage market or reduce the availability of Mortgage credit to borrowers who depend upon full mortgage insurance provided under the Act. HUD has invited, and will continue to invite, through formal public comment procedures and otherwise, the Mortgage lending industry and other interested parties to make their view known on these issues. Issuance of this Part 252 (and any later amendment to it) for effect will mean that no adverse effects are reasonably predictable at the time of issuance. However, the Department will continue to monitor the effects of Coinsurance and will welcome the submission of evidence that shows that disruption of the housing or Mortgage market or reductions in Mortgage credit are occurring (or will occur) as a result of the Coinsurance program.

(d) This part provides for the Coinsurance of Mortgages under section 232 of the Act, which covers nursing homes, intermediate care facilities and board and care homes. With the exception of mortgages coinsured under

Subpart J of this part, Projects covered by a coinsured mortgage under this part must be newly constructed or substantially rehabilitated.

(e) No full insurance authorized under any provision of the Act will be withdrawn, denied, or delayed because of the availability of Coinsurance under this part.

(f)(1) If the Commissioner determines that Coinsurance under this part is having an adverse effect on the availability of Mortgage credit to older and declining neighborhoods or to purchasers of older and lower cost housing, the Commissioner will discontinue the program after due notice. In such a case, no further Coinsurance applciations will be accepted nor will any further commitments under the program be authorized.

(2) If the Commissioner determines that coinsurance under this part is disrupting (or will disrupt) the market for projects under this part and related facilities or mortgage markets, or is adversely impacting (or will adversely impact other federally insured projects in a market area, the Commissioner will modify, suspend, or discontinue coinsurance activities in such area after due notice.

(g) Neither the Coinsuring lender nor the Mortgagor shall have any vested or other right in the General Insurance Fund.

§ 252.2 Coinsurance contract.

The Contract of Coinsurance is the agreement between the lender and the Commissioner to coinsure a Mortgage under this part. It is evidenced by an endorsement on the Mortgage note by the Commissioner, or by the Commissioner's authorized Departmental representative, and includes the terms, conditions and provisions of this part.

§ 252.3 Definitions.

(a) "Act" means the National Housing Act, as amended.

(b) "Board and Care Homes" means a proprietary residential facility, or a residential facility owned by a private nonprofit corporation or association, providing room, board and continuous protective oversight, which facility is regulated by a State in accordance with section 161(6)(e) of the Social Security Act. Said facility will be located in a State that, at the time an application is made for coinsurance under this part, has demonstrated to the coinsuring lender that it is in compliance with the provisions of section 161(6)(e). Continuous protective oversight involves a range of activities or services, which services might include such services for relatively independent occupants as awareness on the part of management and staff of an occupant's condition and whereabouts and the ability to intervene in the event of crisis, or for relatively dependent occupants, such services as supervision of nutrition or medication, assistance as necessary with activities of daily living, such as bathing, dressing, shopping, or eating, or a twenty-four hour responsibility for the welfare of the occupant. Continuous protective oversight is not limited to the above activities, nor must it include the examples given.

(c) "Coinsured mortgage" means a Mortgage concerning which the risk of loss is shared by the lender and the Commissioner. The coinsurance is evidenced by an endorsement of the mortgage note by the Commissioner or by the Commissioner's authorized representative.

(d) "Distribution" means the withdrawal of any cash or asset of the Project, excluding outlays for:

(1) Any payment due under the Mortgage or regulatory agreement.

(2) Reasonable expenses necessary for proper operation and maintenance of the Project; and

(3) Repayment of advances from the owner, when such repayments are authorized by the Commissioner.

(e) "Firm commitment" means the commitment from the lender to the Mortgagor that contains final determinations by the lender of the maximum insurable Mortgage, which determination is based upon complete working drawings, specifications and cost estimates, and is prepared in a manner specified by the Commissioner. The Firm Commitment may not be issued for longer than sixty days, by which time the Project must be initially endorsed for insurance of advanced cases, or construction started for insurance upon completion cases. The Firm Commitment may be extended by the lender as provided in § 252.4.

(f) "Intermediate Care Facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, or if there is no State law providing for such licensing and regulation, then by the municipality or other political subdivision in which the facility is located. The facility will provide for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services. The term also includes additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(g) "Mortgage" means a first lien on real estate and other property commonly given to secure either advances on real estate or the unpaid balance of the purchase price of real estate under the laws of the jurisdiction in which the real estate is located. "Mortgage" includes any credit instrument(s) secured by the real estate.

(h) "Mortgage Insurance Premium" (MIP) means the mortgage insurance premium collected under §§ 252.801 and 252.802 of this part.

(i) "Mortgagor" means the original borrower under a Mortgage and its successors, and any assigns approved by the Commissioner.

(j) "Nonprofit mortgagor" means an entity that is organized for reasons other than financial gain and that the lender finds is not controlled or directed by persons or firms seeking to derive financial gain from it. The operation of a Nonprofit Mortgagor must be regulated under Federal or State law, and by the lender by means of a regulatory agreement.

(k) "Nursing Home" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, or a municipality or other political subdivision in which the facility is located. The facility will also provide for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services. In all such facilities, the nursing care and medical services must be prescribed by or performed under the general direction of persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(l) "Project" means a Nursing Home, Intermediate Care Facility or Board and Care Home, or any combination of Nursing Home, Intermediate Care Facility, or Board and Care Home approved by the lender under provisions of this subpart. A Project includes the land on which it is situated and, subject to standards established by the Commissioner, a Project may include,

(1) Such additional facilities as may be authorized by the lender for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day and

(2) Such major movable equipment as may be authorized by the lender as necessary for the operation of the Project.

(m) "Proprietary mortgagor" means an owner that is profit motivated, and may be a corporation, partnership, trust, individual, or any other qualified legal entity.

(n) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(o) "Substantial rehabilitation" consists of repairs, replacements, and improvements and additions:

(1) The cost of which exceeds the greater of fifteen percent (15%) of the Project's value after completion of all repairs, replacements, improvements, and additions, or

(2) That involve the replacement of more than one major building component. For purposes of this definition, the term major building component includes:

(i) Roof structures;

(ii) Ceiling, wall, or floor structures;

(iii) Foundations;

(iv) Plumbing systems;

(v) Heating and air conditioning systems;

(vi) Electrical systems.

(p) "Sound capital resources" means the excess of the coinsuring lender's assets (minus any valuation allowances) over its liabilities (generally referred to as its net worth), plus allowed letters of credit. Net worth includes paid-in capital stock, surplus reserves, undistributed earnings and any other unencumbered resources of the coinsuring lender. Sound capital resources may include (up to the limit specified in § 252.102(b) (2)) an unconditional and irrevocable firm letter of credit from a supervised financial institution with assets of not less than $100,000,000. For purposes of determining sound capital resources, a loss reserve established to cover coinsurance liability under this part that is treated as a liability in the lender's balance sheets may be deemed a capital item rather than a liability.

(q) "Surplus cash" means any unrestricted cash remaining after:

(1) The payment of: (i) All sums due or currently required to be paid under the terms of the Mortgage coinsured by the Commissioner;

(ii) All amounts required to be deposited in any replacement or operating reserve; and

(iii) All other obligations of the Project, unless funds for payment are set aside or deferral of payment has been approved by the lender; and

(2) The segregation and recording of an amount equal to: (i) The aggregate of any special funds required to be maintained by the Project; and

(ii) The Project's total liability for patient or resident security deposits.

In computing Surplus Cash, the Mortgagor must follow any administrative requirements prescribed by the Commissioner.

§ 252.4 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments will not adversely affect the interests of a lender under a Contract of Coinsurance on any Mortgage already coinsured or on any Mortgage to be coinsured on which the lender has already issued a firm commitment to insure, provided the Mortgage is initially endorsed (insurance of advances) or construction starts (insurance upon completion) within 60 days after issuance of the Firm Commitment. The 60 days will run from the date of the original issuance of the Firm Commitment or from the date of any amendment, reissuance, or extension of a commitment that occurred before the effective date of the amendment of the regulation.

Subpart B—Lender Requirements

§ 252.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.3 through 203.6, or 203.7(c); and (b) meets the requirements of § 252.102. A lender approved as a coinsuring lender under the provisions of 24 CFR Part 255 may be approved for coinsurance for the purchase or refinancing of Nursing Homes, Intermediate Care Facilities or Board and Care Homes only if the lender has also been approved as a coinsuring lender under provisions of this part.

§ 252.102 Review and approval as coinsuring lender.

The Commissioner will review an applicant lender's technical staff and procedures before granting approval as a coinsuring lender under this part. This review, which may include an on-site review of the lender's operations, will establish the adequacy of technical staff, processing procedures, development and management oversight, mortgage servicing, and any disposition functions.

(a) A fee of $5,000 is charged for each application for approval as a coinsuring lender. This fee will not be refunded once the application has been determined acceptable for initial review.

(b) An applicant lender must submit:

(1) A written opinion of its counsel that it has the necessary powers to participate in the coinsurance program under this part.

(2) Evidence acceptable to the Commissioner of Sound Capital Resources of not less than $1,500,000, in liquid funds. Up to $500,000 of the Sound Capital Resources may be met by an unconditional and irrevocable firm letter of credit. The lender must agree that, for the period of the coinsurance, it will maintain the basic Sound Capital Resources requirement and an additional one dollar of liquid assets for each 200 dollars of outstanding principal indebtedness on mortgages it has coinsured under this part.

(3) Evidence acceptable to the Commissioner that:

(1) The lender has the operating procedures, internal management controls, and technical staff (under contract or in its own employ) necessary to discharge full Mortgage underwriting, oversight, servicing, management, property repair and disposition, and other functions. It must employ adequate staff to monitor contract work and make final underwriting conclusions.

(ii) The lender has technical staff in its own employ who are experienced in the operation/management of Nursing Homes, Intermediate Care Facilities and Board and Care Homes, and are experienced in analyzing the certificates required under the provisions of § 252.303 of this part, and are experienced in analyzing reimbursement for Nursing Homes, Intermediate Care Facilities and Board and Care Homes under all Federal or State funded programs and other third party payors.

(4) A statement agreeing to notify HUD of any changes in its operating procedures and principal staff and to make no changes that are inconsistent with this part.

(5) The lender's most recent detailed audit report of its financial records, supplemented as the Commissioner may require. The audit must be made by an independent certified public accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970.

(6) A statement agreeing to file annual audits similar to those described in paragraph (a)(5) of this section, and annual reports on its processing and commitment activities, coinsured loan portfolio and loan servicing activities. The annual audits and reports must be prepared in formats acceptable to the Commissioner and submitted within the time limits established by the Commissioner.

(7) A statement agreeing to auditing by the Commissioner, the HUD Inspector General, and the Comptroller General of the United States with respect to its activities under this part. For this purpose, the Commissioner, the HUD Inspector General, the Comptroller General and their authorized agents shall have access to the financial records of the lender.

(8) A statement agreeing to comply with the provisions of Title VIII of the Civil Rights Act of 1968 as amended, the Equal Credit Opportunity Act, Executive Order 11063 as amended, and other Federal laws and regulations issued under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(9) A statement agreeing to retain all its legal obligations under this part, if it delegates servicing functions, as provided in § 252.105.

(10) A statement agreeing to abide by all applicable requirements issued by the Commissioner for performing the lender's functions under this part.

§ 255.103 Duration of approval.

Initial approval as a coinsuring lender will continue in force until one of the following occurs:

(a) Expiration of the Secretary's authority to coinsure under this part. A temporary lapse in this authority will not terminate the lender's approved coinsurer status or affect outstanding firm commitments or coinsurance in force. However, lenders are responsible for suspending issuance, extension, or reopening of commitments during these periods.

(b) Suspension or withdrawal of approval under § 252.104.

§ 252.104 Withdrawal of approval.

(a) Approval as a coinsuring lender under this part may be withdrawn or suspended for any of the following causes:

(1) Failure to maintain satisfactory Sound Capital Resources;

(2) Failure to discharge its responsibilities under any regulatory agreement, coinsurance contract, or administrative procedures issued by the Commissioner under this part;

(3) Payment by the lender, in any insurance transaction, of any fee, kickback, or other consideration, directly or indirectly, to any person who has received any consideration from another person for services related to the transaction; however, compensation may be paid for the actual performance of services approved by the Commissioner;

(4) Submission of a false, fraudulent or incomplete report to HUD or the incurring of any indebtedness to HUD for which no satisfactory repayment plan or agreement is in effect;

(5) Failure to pay any amount owed to a holder of securities guaranteed by the Government National Mortgage Association (GNMA) and backed by a coinsured loan;

(6) Assigning a Coinsured Mortgage to an entity that is not a HUD-approved coinsuring lender;

(7) Other reasons the Commissioner determines to be justified in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

(8) Failure to comply with the provisions of Executive Order 11063 as amended, the Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968, as amended, and regulations issued under these authorities with respect to the lending, investing of funds in mortgages, or the lender's activities as a coinsuring lender under this part.

(b) HUD may place a mortgagee on probation for a specified period of time for the purpose of evaluating the mortgagee's compliance with the requirements of the coinsurance program. During the probation period the mortgagee may continue to issue commitments for insurance, subject to conditions required by HUD. Such conditions may include, but are not limited to, submission of the processing to HUD for its approval before issuance of the commitment.

(c) Coinsuring lenders will be notified in writing by the Commissioner, or designee, when a probation, suspension or withdrawal action is taken. The notice will specifically state the cause, effect, the duration of the action. Lenders must comply with the conditions of the notice immediately, but may request an informal hearing on the action within 10 working days of receipt of the notice. The hearing shall be held by the Commissioner or designee. The lender shall be given the opportunity to be heard within 10 days of receipt of the request and may be represented by counsel. The Commissioner or designee will notify the lender in writing of the results of the hearing within 10 working days of the hearing and receipt of any materials. A decision to withdraw, suspend, or continue probation following a hearing constitutes final agency action.

(d) Probation, withdrawal or suspension of approval as a coinsuring lender will not affect any coinsurance or commitments in effect at the time of the probation, withdrawal or suspension of approval.

(e) Serious misconduct or noncompliance with the requirements of the coinsurance program may also result in action against coinsurance lenders in accordance with Part 24 of this title or by action of the Mortgagee Review Board in accordance with Part 25 of this title.

§ 252.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6, or § 203.7(c) of this chapter, and the coinsuring lender retains its obligations under this part.

(b) The lender must inform HUD of any delegation of servicing on a form prescribed by the Commissioner.

(c) If HUD considers the servicer's performance to be unsatisfactory, HUD may require the lender to cancel the servicing agreement after giving the lender a 30-day written notice.

§ 252.106 Assignment of and participation in coinsured mortgages.

(a) A lender may assign a Coinsured Mortgage to another lender if the following requirements are satisfied:

(1) The assignee is a HUD-approved coinsuring lender;

(2) The lender shows, to the satisfaction of the Commissioner, good cause for the assignment;

(3) The Commissioner finds that the assignment is for good cause and that there will be no disavantage to HUD; and

(4) The Commissioner gives prior written approval for the assignment and any risk allocation between the assignor and assignee.

(b) The lender must inform HUD in a form prescribed by the Commissioner following the assignment of any Coinsured Mortgage. The lender will not be relieved of its obligation to pay mortgage insurance premiums until HUD has received this notice.

(c) Transfer of partial interest under participating agreement.

(1) A partial interest in a Coinsured Mortgage shall be held by an approved coinsuring lender, which shall (for purposes of this paragraph) be transferble without obtaining the approval of the Commissioner under a participation agreement or arrangement, if the following conditions are met:

(i) The Coinsured Mortgage shall be held by an approved coinsuring lender, which shall (for purposes of this

paragraph) be referred to as the "principal lender;"

(ii) A participation or partial interest in a Coinsured Mortgage shall be issued to and held by:

(A) A lender approved by the Commissioner or

(B) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which the principal lender determines has lawful authority to acquire a partial interest in a Coinsured Mortgage under the conditions set forth in this paragraph;

(iii) The participation agreement or arrangement shall provide that the principal lender shall remain the lender of record under the Contract of Coinsurance and that the Commissioner shall have no obligation to recognize or do business with any other party except the lender of record with respect to the rights, benefits, and obligations of the lender under the Contract of Coinsurance.

(2) No notice of any sale or transfer of a participating or partial interest is required unless the Coinsured Mortgage is transferred in its entirety to a new principal lender on the publis records.

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose:

(i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgages;

(ii) Whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and

(iii) That no insurance fund administered by HUD will pay benefits to protect against any risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(d) Government National Mortgage Association requirements: (1) If the Coinsured Mortgage is used to back securities guaranteed by the Government National Mortgage Insurance association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

§ 252.107 Reinsurance.

(a) The lender may reinsure its potential loss with respect to a particular Project. Reinsurance may be obtained for:

(1) Up to and including 50 percent of its risk;

(2) Above 50 percent; or

(3) That percentage of its risk that equals the maximum amount the reinsurer is authorized by State law to reinsure.

(b) The effect of reinsurance on the insurance benefits payable by the Commissioner is governed by § 252.820.

(c) Any reinsurance policy must name the Commissioner as contingent beneficiary where default by the lender compels the Commissioner under § 252.824 to reimburse the Government National Mortgage Association for the amount that the GNMA had to pay securities holders as a result of the lender's default in payment, subject to the ceilings provided in § 252.824.

§ 252.108 Pledging and other security arrangements.

A lender may pledge the beneficial interests in a Coinsured Mortgage as security under the terms of a reunsurance contract, trust indenture, third party gurantee agreement, or similar financing arrangement directly related to the coinsurance transaction, subject to the following conditions:

(a) The lender must retain legal title to the note and the Mortgage, subject to the security interest created, unless the title is otherwise transferred in accordance with § 252.106. Legal title to the note and Mortgage may not, at any time, be held by other than a coinsuring lender approved by the Commissioner.

(b) The Commissioner will have no obligation to recognize or deal with anyone other than the coinsuring lender of record of any successor to the lender's title to the Mortgage and mortgage note with respect to the rights, benefits, and obligations of the coinsuring lender.

(c) The Mortgagor will have no obligation to recognize or deal with anyone other than the coinsuring lender or an approved coinsuring lender succeeding to title to the Mortgage or Mortgage note, or to such other person or entity servicing the Mortgage loan under § 252.105, except that the mortgagor may be directed to make payments under the Mortgage and the Mortgage note to a successor lender or to one or more custodial accounts.

(d) A lender may not pledge the beneficial interests of Coinsured Mortgages backing Government National Mortgage Association (GNMA) Construction or Project Loan Certificates except as authorized by GNMA.

Subpart C—Program Requirements

§ 252.201 Eligible project.

(a) Except as provided in Subpart J, to be eligible for coinsurance under this part a Project must be newly constructed or substantially rehabilitated. A Project must conform to standards established by the Commissioner, including limitations on commercial space, and comply with all applicable zoning or deed restrictions, and applicable building and other government regulations.

(1) If a nursing home or intermediate care facility, a Project shall consist of not fewer than 20 beds after completion of the construction or rehabilitation. The nursing home or intermediate care beds will be clearly designated and separate from any board and care beds in the facility.

[Alternative A]

(2) If a board and care home, a Project shall contain not fewer than five residential one-bedroom or efficiency accommodations after completion of the construction or substantial rehabilitation. A maximum of four persons per full bathroom shall be permitted in each board and care home. Group dining facilities shall be available. Kitchen facilities are not required in each accommodation. Only one to four person occupancy will be permitted in each bedroom accommodation. A board and care home owner must also meet State and local occupancy requirements permitting fewer than four persons per accommodation. The board and care beds will be clearly designated and separate from any nursing home or intermediate care beds in the facility.

[Alternative B]

(2) If a board and care home, a Project shall contain not fewer than five residential one-bedroom or efficiency accommodations after completion of the construction or substantial rehabilitation. Unless State or local standards, as provided by requirements designated under section 1616 of the Social Security Act otherwise indicate, a maximum ratio of four persons per full bathroom and four person occupancy in each bedroom accommodation shall be permitted in each board and care home. Group dining facilities shall be available. Kitchen facilities are not

required in each accommodation. A board and care home owner must also meet State and local occupancy requirements permitting fewer than four persons per accommodation. The board and care beds will be clearly designated and separate from any nursing home or intermediate care beds in the facility.

(b) The Commissioner must review all projects proposed for coinsurance under this part for compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities as set forth in Part 50 of this title.

(c) No insurance will be made available under this part for any building located in an area identified by the Federal Emergency Management Agency (FEMA) as having special hazards unless

(1) The jurisdiction in which the project is located in participating in the National Flood Insurance Program and is subject to 44 CFR Parts 59 through 79 or

(2) Less than a year has passed since FEMA notification regarding such hazards, and flood insurance is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) No insurance will be made available under this part with respect to a property within the Coastal Barriers Resources Systems established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

(e) Wherever applicable, projects under this part must comply with the National Historic Preservation Act (16 U.S.C. 470).

§ 252.202 Eligible mortgagors.

Nonprofit and proprietary mortgagors approved by the coinsuring lender in accordance with standards established by the Commissioner are eligible under this part. The mortgagor must possess the legal powers necessary and incidental to operating the Project except where it leases the Project to a qualified operator, in which case the lessee shall be approved by the coinsuring lender and must possess the legal powers necessary and incidental to operating the Project.

§ 252.203 Maximum mortgage limitations.

The coinsured mortgage shall involve a principal obligation not in excess of ninety percent (90%) of the coinsured lender's estimate of the value of the Project, including major movable equipment to be used in its operation, when the proposed improvements are completed and the equipment is installed.

(a) A coinsured mortgage covering a Project to be substantially rehabilitated shall also be subject to the following limitations:

(1) Where the Project is owned by the mortgagor in unencumbered fee simple, or is subject to existing indebtedness to be refinanced by part of the proceeds of the coinsured mortgage, the maximum coinsured mortgage may not exceed the lesser of

(i) The sum of the cost of rehabilitation plus the existing indebtedness or

(ii) Ninety percent of the estimated Project value after completion of rehabilitation, and installation of major movable equipment.

(2) Where the Project is to be acquired and the purchase price to be financed with part of the proceeds of the coinsured mortgage, the maximum coinsured mortgage may not exceed the lesser of

(i) The sum of the cost of rehabilitation plus the purchase price of the Project or

(ii) Ninety percent of the value of the Project after rehabilitation.

(b) Where the coinsured mortgage covers a leasehold estate rather than a fee simple estate, the value of the Project shall include the value of the leasehold estate, as determined by the lender, which shall in all cases be less than the value or replacement cost of the Project in fee simple.

§ 252.204 Maximum interest rate.

The interest rate in a commitment to coinsure, including a commitment for Mortgage increase, shall be at such rate as may be agreed upon by the Mortgagor and the coinsuring lender at the time the commitment is issued. The interest rate may be increased or decreased only after reprocessing and issuance of an amended commitment. The interest rate may not be increased after initial endorsement (insurance of advances) or start of construction (insurance upon completion), except that where a Mortgage increase is requested, processed, and approved, a higher rater may be applied to the amount of the increase only.

§ 252.205 Term of the mortgage.

The Mortgage term may not exceed 40 years from the date of first payment to principal or 75 percent of the lender's estimate of the project's remaining economic life.

§ 252.206 Lender's fees and premiums.

(a) The lender may collect from the mortgagor, and include in the coinsured mortgage, an application fee, financing fee, permanent placement fee, and inspection fee. These fees may not exceed the maximums approved by the Commissioner. The lender may collect additional fees, approved by the Commissioner, that are outside the coinsured mortgage and that must be disclosed at initial endorsement (insurance of advances) or endorsement (insurance upon completion). In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under section 232 of the Act.

(b) The coinsuring lender may collect a lender's premium of up to .25 percent per year of the average outstanding principal balance of the Mortgage (without regard to delinquent payments or prepayments) beginning not earlier than 12 months after the date of initial endorsement (insurance of advances) or the date of endorsement (insurance upon completion). This premium will be for the account of the lender or an insurer of the lender.

§ 252.207 Coinsurance of mortgages in lender's portfolio.

(a) Coinsurance under this part is available for Mortgages that the lender (or a related entity) already holds in its own portfolio only if:

(1) The loan is current and has not been in default, modification, or forbearance at any time during the two years preceding the submission of the application to the lender.

(2) Refinancing of portfolio loans makes up no more than one-fourth of the total number of loans the lender presents for endorsement for coinsurance during any 12-month period; and

(3) The entire loan transaction is reviewed and approved by the Commissioner (in his or her discretion) before any commitment is issued.

(b) The following loans will not be subject to the one-fourth limitation in paragraph (a)(2) of this section:

(1) Mortgages insured by HUD under its full insurance programs; and

(2) Mortgages in which the lender's sole investment is servicing.

(3) Mortgages in which no equity is removed.

§ 252.208 Nondiscrimination in housing and employment.

The mortgagor shall certify to the lender and to the Commissioner that, as long as the mortgage is coinsured under this part:

(a) Neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the

mortgage to any person because of race, color, sex, religion, or national origin;

(b) Any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed;

(c) Civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification;

(d) It will comply with title VIII of the Civil Rights Act of 1968, as amended, and implementing regulations and adminstrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin; administer the Project and related activities to further fair housing in an affirmative manner; and comply with State and local fair housing laws;

(e) It will comply with Executive Order 11063 and implementing regulations and administrative procedures that prohibit discrimination because of race, color, religion (creed), sex, or national origin in housing and related facilities provided with Federal financial assistance; and

(f) It will not discriminate because of race, color, religion, sex, or national origin against any employee or applicant for employment. Provisions to this effect, and, in addition, the provisions of Executive Order 12246 and 41 CFR Chapter 60, where appropriate, will apply to any contract or subcontract for project repairs and improvements over the life of the mortgage.

(g) Marketing will be done in accordance with the HUD-approved Fair Housing Marketing Plan.

§ 252.209 Labor standards and prevailing wage requirements.

With the exception of mortgages coinsured under Subpart J of this part, the following labor standards and prevailing wage requirements shall be applicable to Mortgages coinsured under this part. The Commissioner shall assure compliance with those standards and requirements and the lender must obtain, evaluate, and submit any information or certifications required by the Commissioner to assist the Commissioner in carrying out this function.

(a) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project to be constructed or Substantially Rehabilitated under this part shall comply with all applicable labor standards and provisions of 29 CFR Parts 1, 3 and 5, issued by the Secretary of Labor.

(b) *Ineligible advances.* No advance under the Mortgage shall be eligible for coinsurance after the lender determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to 29 CFR 5.12, issued by the Secretary of Labor.

(c) *Wage certificate.* No advance under any Mortgage shall be coinsured under this part unless there is filed with the application for the advance, and no mortgage shall be coinsured under this part unless there is filed with the Commissioner after completion of the construction or Substantial Rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or Project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor before the beginning of construction and after the date of filing of the application for insurance.

(d) *Waiver of compliance with contract requirements—nonprofit mortgagors.* In the case of a nonprofit mortgagor, the Commissioner may waive the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction or rehabilitation of the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and where the Commissioner determines that full credit has been received by the mortgagor for any amounts saved through such donated services.

Subpart D—Processing and Commitment

§ 252.301 Processing and development responsibilities.

(a) The lender is responsible for the performance of all functions under this part, including acceptance and review of applications, issuance of commitments, inspections and closings, except those functions specified in paragraphs (b), (d) and (e) of this section.

(b) Certain functions are retained by the Commissioner. The lender must submit any information or certifications required by the Commissioner to permit determinations of compliance with requirements concerning:

(1) Previous participation of the principals of the Mortgagor, general contractor, consultant, and management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218;

(2) Environmental impact under the National Environmental Policy Act of 1969 and related laws and authorities set forth in 24 CFR Part 50;

(3) Equal opportunity considerations in the development and operation of the proposed project in accordance with the provisions of Executive Order 11063, as amended, the Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968, as amended, and regulations issued under these authorities.

(4) The National Historic Preservation Act, 16 U.S.C. 470, where applicable.

(c) The lender must also submit any information required by the Commissioner for tracking or monitoring purposes.

(d) The Commissioner's authorized Departmental representative must endorse the Mortgage for coinsurance.

(e) With the exception of mortgages coinsured under Subpart J of this part, the Commissioner retains responsibility for enforcement of labor standards and prevailing wage requirements set out in § 252.209. The Commissioner will perform all functions under § 252.209 except that he may delegate to the lender information collection (e.g., payroll review and routine interviews) or other routine administration and enforcement functions, subject to monitoring by the Commissioner.

§ 252.302 Processing and commitment.

(a) After acceptance of an application for a commitment to coinsure, the lender will determine the maximum coinsurable Mortgage, review plans and specifications for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) The lender may issue a Firm Commitment to coinsure after completion of its review and after receipt of written evidence from the Commissioner of:

(1) The acceptability of the Project in the areas of responsibility retained by

the Commissioner under § 252.301(b), and

(2) Completion of any case review requirements of the Commissioner that are part of its lender approval process.

(c) Subject to standards established by the Commissioner, the lender is responsible for extending commitments assuring commitments are updated when appropriate, and amending commitments. The lender may also reopen commitments within 90 days of the expiration of an earlier commitment, reconsider previously rejected applications, and may charge a reopening or reexamination fee acceptable to the Commissioner.

§ 252.303 Required certificates.

(a) *Nursing Homes and Intermediate Care Facilities.* Every application for coinsurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which the project is or will be located, designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(1) There is need for the project.

(2) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(3) The prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

(b) *Board and Care Homes.* (1) Every application for insurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1616(e) of the Social Security Act.

(2) If any additional certificates or licenses are required by the appropriate State agency, copies of those documents must also be provided to the coinsuring lender.

Subpart E—Insurance of Advances; Insurance Upon Completion; Construction Period

§ 252.401 Insurance of advances or insurance upon completion; applicability of requirements.

Either insurance of advances or insurance upon completion procedures may be used under this part. In insurance upon completion cases, only the permanent loan is coinsured and a single endorsement is required after satisfactory completion of construction or Substantial Rehabilitation. In insurance of advance cases, progress payments approved by the lender are also coinsured and both an initial and final endorsement on the Mortgage are required. The requirements of §§ 252.404 through 252.406 apply in either case and the Mortgage and other closing documents must meet the requirements of Subpart F.

§ 252.402 Insurance of advances.

(a) *Financial Requirements.* (1) Before initial endorsement, the Mortgage (other than a Nonprofit Mortgagor) must make a working capital deposit of two percent of the face amount of the Mortgage. The deposit must be made to the lender or be controlled by the lender in a depository acceptable to it. Unless the Commissioner approves exceptions, this deposit may be used only for equipping and rent-up of the project and, during construction, for allocation by the lender to accruals for taxes, ground rents, MIP, property insurance premiums, and assessments required by the terms of the Mortgage.

(2) Before initial endorsement, the Mortgagor must deposit with the lender cash that the lender deems sufficient, when added to the proceeds of the insured Mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organizational expenses incident to construction of the project. This cash will be held by the lender under an appropriate agreement. The agreement will require all cash held to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, before the advance of any Mortgage money. If all or part of the funds required under this paragraph (a)(2) are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, Mortgage proceeds may, with the prior written approval of the Commissioner, be advanced before the full disbursement of the grant or loan funds, to pay cost of work, material or other charges and expenses. However, if any portion of these funds is to be provided by the Mortgagor, that portion must be disbursed in full before the disbursement of the Mortgage proceeds.

(3) Charges to be paid by the Mortgagor in connection with the financing that are in excess of the initial service charge and that are acceptable to the Commissioner must be deposited with the lender in cash at or before initial endorsement. Alternatively, a note, in a form prescribed by the Commissioner, may be accepted by the lender. The note must evidence the obligations of a party other than the Mortgagor and may not be secured by the assets of the Mortgagor entity.

(4) The lender must require assurance of completion of offsite public utilities and streets. (An exception is made where a public body has agreed to install offsite improvements without cost to the Mortgagor and this agreement is acceptable to the lender.) The assurance must be either a cash escrow deposit or the retention by the lender at inital closing of a specified amount of the Mortgage proceeds allocated to land in the project analysis. If a cash escrow is used, it must be deposited with the lender or a depository designated by the lender. The lender may also require a surety bond.

(5) The lender may accept, in lieu of a cash deposit required by paragraphs (a)(1), (3) and (4) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. If all or part of the funds required under paragraph (a)(2) of this section are to be provided through a grant or loan from a Federal, State or local governmental agency or instrumentality, the lender may accept for the portion so provided, in lieu of a cash deposit required by paragraph (a)(2) of this section, either an unconditional irrevocable letter of credit issued to the lender by a banking institution or an agreement, as described in § 207.19(c)(7) of this chapter, entered into by HUD, the governmental agency or instrumentality, the Mortgagor and the lender. The lender of record may not be issuer of any letter of credit referred to in this paragraph (a)(5) without the prior written consent of the Commissioner. If a demand under a letter of credit referred to in this paragraph is not immediately met, the lender must provide cash equivalent to the undrawn balance under the letter of credit.

(b) *Building loan agreement.* Before initial endorsement, the lender and Mortgagor must execute a building loan agreement in a form approved by the Commissioner. This agreement sets out the terms and conditions under which progress payments may be advanced during construction. To be covered by coinsurance, each progress payment must be approved by the lender and must contain a certificate that the prevailing wage requirements of § 252.209 have been met.

(c) *Insured advances of components stored off-site.* The provisions of 24 CFR 221.541a apply to projects coinsured under this part; except that the lender

performs the functions otherwise performed by the Commissioner.

(d) *Assurance of completion.* (1) The Mortgagor must furnish assurance of completion of the Project. The lender may establish more stringent criteria, but, at minimum, must require assurance by bonds issued by a surety company acceptable to the Commissioner for payment and performance each in the amount of 100 percent of the estimated construction or rehabilitation cost, or a completion assurance agreement secured by a cash deposit in the amount of 15 percent (or 25 percent where the structure contains an elevator and is four stories or more) of the amount of the estimated construction or rehabilitation cost. An unconditional and irrevocable letter of credit may be substituted for this cash deposit under the same terms and conditions as provided in paragraph (a)(5) of this section.

(2) Alternatively, where the estimated cost of construction or rehabilitation is $500,000 or less, the lender may accept assurance of completion in the form of a personal indemnity agreement executed by the controlling principals of the general contractor.

§ 252.403 Insurance upon completion.

A commitment to coinsure upon completion prescribes a designated period during which the Mortgagor must start construction or Substantial Rehabilitation. If construction or rehabilitation is started as required, the commitment will be valid for an additional period no longer than the lender's estimate of the construction period plus six months, except as extended as provided § 252.302(c).

§ 252.404 Requirements applicable to both insurance of advances and insurance upon completion cases.

(a) *Latent defects escrow.* (1) In insurance upon completion cases, the Mortgagor must make a cash escrow deposit at endorsement of two and one-half percent of the principal amount of the mortgage, or provide a surety bond of 10 percent of the lender's estimate of the cost of construction or Substantial Rehabilitation, as a latent defects escrow. An unconditional and irrevocable letter of credit may be substituted for this cash escrow deposit under the same terms and conditions as provided in § 252.402(a)(5). This escrow must be retained by the lender for 15 months after substantial completion.

(2) In insurance of advances cases, if a completion assurance agreement referred to in § 252.402(d) was used at initial endorsement, an amount equal to two and one-half percent of the construction contract must be retained in case or a letter of credit for a period of 15 months following substantial completion as a lanten defects escrow.

(b) *Inspections during construction.* The lender must inspect projects under this part at such times during construction or Substantial Rehabilitation as the lender determines, within standards established by the Commissioner. The inspections must be conducted to assure compliance with the contract documents.

(c) *Cost certification requirements—Mortgagor.* (1) Before initial endorsement (insurance of advances) or start of construction (insurance upon completion) the Mortgagor and the lender must enter into an agreement satisfactory to the Commissioner that precludes any excess of Mortgage proceeds over statutory and regulatory limitations. In this agreement, the Mortgagor must also disclose its relationship with the builder, including any collateral agreement, and agree to:

(i) Enter into a construction contract that

(A) Complies with requirement of § 221.548 of the chapter (as to whether the contract should be lump sum or cost-plus) and

(B) Is approved by the lender and acceptable to the Commissioner as to form and content;

(ii) Execute a certificate of actual costs when all physical improvements are complete; and

(iii) Reduce the Moratgage if necessary in accordance with § 252.405

(2) The provisions of paragraph (c)(1) of this section relating to disclosure and the requirement of a construction contract do not apply where the Mortgagor and the general contractor are one and the same.

(3) If the Mortgagor, the general contractor, or their officers, directors, or stockholders have any interest, financial or otherwise, as defined by the Commissioner, in any subcontractor, material supplier, or equipment lessor, the Mortgagor must disclose the identity of interest before start of construction. The lender may approve the use of a subcontractor, material supplier or equipment lessor having an identity of interest if the amounts paid to that entity do not exceed the rate prevailing in the locality for similar types of labor and materials.

(4) The Mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, must be submitted to the lender when the improvements are completed to the satisfaction of the lender and before final endorsement (or before endorsement in the case of insurance upon completion). The certificate must show the actual cost to the Mortgagor of:

(i) The cost-plus construction contract or the lump sum construction contract or the cost of the construction of the Project where the Mortgagor and the general contractor are one and the same and no construction contract is executed;

(ii) The architect's fee;

(iii) The offsite public utilities and streets not included in § 252.402(a)(4) of this part.

(iv) The organizational and legal expenses;

(v) In cases where a cost-plus contract is used, any BSPRA or SPRA, if applicable; and

(vi) Other items of expense approved by the Commission.

(d) *Cost certification requirements-general contractor.* (1) Where a cost-plus form of contract is used, the Mortgagor must also submit to the lender a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract, exclusive of the builder's fee;

(2) Where there is cost-plus contract and the lender determines that an identity of interest (as defined by the Commissioner) exists between the Mortgagor or general contractor or any of their officers, directors, stockholders, or partners and any subcontractor, material supplier, or equipment lessor, the lender may require the Mortgagor to submit a certification by the subcontractor, material supplier, or equipment lessor, as to the actual costs paid for labor, materials, subcontractors and overhead. This certification must be in a form prescribed by the Commissioner.

(e) *Exclusions.* The certifications required by paragraphs (c)(4) and (d) of this section may not include any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the Mortgagor or any of their officers, directors, stockholder or partners.

(f) *Records.* The Mortgagor must maintain adequate records of all costs of any construction or other cost items that do not represent work under the general contract and, in the case of a lump sum contract, must require the builder to keep similar records and, if requested by the lender or the Commissioner, must make these records (including any collateral agreements) available for examination, including examination by the Inspector General of HUD or the Comptroller General.

(g) *Certificate of public accountant.* In all Projects exceeding 40 units, cost certifications must be supported by an audit of the cost certification statement and accompanying financial statements by an independent Certified Public Accountant or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision on or before December 31, 1970. The audit must include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent necessary to verify that they present fairly the actual costs.

(h) *Requisites of agreement and certification.* Any agreement, statement or certification required by this section must specifically state that it has been prepared for the purpose of influencing an official action of the Commissioner and may be relied upon by the Commissioner and the lender as true.

(i) *Cost certification incontestable.* Upon the lender's approval of the Mortgagor's certification, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the Mortgagor.

§ 252.405 Lender review of mortgage amount.

When the cost certifications submitted under § 252.404 are reviewed and approved by the lender, the lender must determine, in accordance with standards set by the Commissioner, whether a mortgage reduction is necessary and whether any requests for a mortgage increase are approvable.

§ 252.406 Application of net income received before beginning of amortization.

(a) If prior to the beginning of amortization, net income, as defined by the Commissioner, is received as a result of the operation of the Project, such net income, to the extent determined by the Commissioner, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset construction costs approved by the lender.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement.

(b) The provisions of paragraph (a) of this section shall not be applicable to a mortgagor that is a private nonprofit corporation or association.

§ 252.407 Endorsement by the Commissioner.

Before start of construction in insurance of advanced cases, and in all cases after completion of construction or Substantial Rehabilitation and completion of the lender's review of the Mortgage amount, the lender will hold a closing and submit required documentation to the Commission's authorized Department representative for coinsurance of the Mortgage by endorsement of the Mortgage note. The note must identify the section of the regulations under which the Mortgage is coinsured, the percentage of risk assumed by the lender and the Commissioner, and the date of coinsurance, i.e., the date of HUD endorsement of the Project Mortgage. The lender's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 252.301(b) and any additional documents and information required by the Commissioner's administrative procedures.

Subpart F—Mortgage and Closing Requirements

§ 252.501 Mortgage requirements—real estate.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 252.3(n).

(a) The mortgage must be on real estate held:

(1) In fee simple; or

(2) Under a lease for not less than 99 years which is renewable; or

(3) Under a lease having a period of not less than 55 years to run from the date the mortgage is executed; or

(4) Under a lease executed by a government agency, an Indian, an Indian tribe, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such a lease, provided that the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property must be held by an eligible Mortgagor and must, at the time the mortgage is coinsured, be free and clear of other liens except those approved by the lender in accordance with § 252.504.

§ 252.502 Title.

(a) *Eligibility of title.* In order for the mortgaged property to be eligible for insurance, the coinsuring lender shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for the record. The title evidenced shall be examined by the lender and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

(b) *Title evidence.* Before coinsurance of the mortgage, the coinsuring lender shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (b)(1) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b)(2), (3), or (4) of this section, as the coinsuring lender may require. Any survey, policy of title insurance, or evidence of title required under this subsection shall be furnished without expenses to the Commissioner. The types of evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Ubran Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to, the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experiences in the examination of titles.

(3) A torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State of Territory therof.

§ 252.503 Mortgaage and note provisions.

(a) The Mortgage and note must be executed on a form approved by the Commissioner for use in the jurisdiction in which the property is located. The form must not be changed without prior written approval of the Commissioner.

(b) The Mortgage must be executed by an eligible Mortgagor.

(c) The Mortgage must be first lien on property that conforms with property standards prescribed by the Commissioner.

(d) The note must provide for equal monthly payments of interest and principal due on the first day of each month in accordance with a level annuity amortization plan agreed to by

the Mortgagor and lender and acceptable to the Commissioner.

(e) The lender will determine the date of first payment to principal. The lapse of time between completion of the project and beginning of amortization must not be longer than the lender determines, in accordance with standards established by the Commissioner, to be necessary to obtain sustaining occupancy.

(f)(1) The Mortgage must provide that all monthly payments made by the Mortgagor to the lender be added together into a single payment made by the Mortgagor on each monthly payment date. The lender must apply payments received from the Mortgagor or for the account of the Mortgagor to the following items in the order listed:

(i) MIP under Contract of Coinsurance;

(ii) Ground rents, taxes, special assessments, and fire and other hazard insurnace premiums;

(iii) Interest on the Mortgage; and

(iv) Principal on the Mortgage.

(2) Any deficiency in the amount of the aggregate monthly payment required under paragraph (f)(1) of this section will constitute a fiscal default. The Mortgage will further provide for a grace period of 30 days within which time the default must be made good.

(g) The Mortgage must provide for payments by the Mortgagor to the lender, on each monthly payment date, of an amount sufficient to accumulate the next annual MIP one payment period before the MIP is due. These payments will continue only as long as the Contract of Coinsurance is in effect.

(h) The Mortgage must provide for equal monthly payments sufficient to pay any ground rents, estimated taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month before these items become due. The Mortgage must also make provision for adjustments in case the estimated amount of any of these items differs from amounts actually payable by the Mortgagor.

(i) Partial or full prepayment of the mortgage subject to the following standards and restrictions.

(1) *Proprietary facilities.* In the case of the mortgagor operating a proprietary facility, the following provisions shall be applicable:

(i) *Prepayment privilege.* Except as otherwise provided in paragraph (3), the mortgagor may prepay the mortgage in whole or in part upon any interest payment date after giving to the lender 30 days' notice in writing in advance of its intention to so prepay.

(ii) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of perpayment of principal as may be agreed upon between the mortgator and the coinsuring lender, in accordance with standards adopted by the Commissioner. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(2) *Nonprofit facility.* In the case of a facility operated by a nonprofit corporation or association, the following provisions shall be applicable:

(i) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained as he may prescribe.

(ii) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balances as recast over the remaining portion of the original mortgage term.

(iii) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that prior to maturity and with the approval of the Commissioner, partial prepayment may be made after 30 days' written notice to the mortgagee on any principal payment date. A reasonable charge may be allowed as agreed upon between the mortgagor and the mortgagee in accordance with standards adopted by the Commissioner.

(3) *Prepayment of bond-financed mortgages.* Where the mortgage is given to secure a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and repayment penalty charge acceptable to the lender as to terms, amount, and conditions in accordance with standards adopted by the Commissioner.

(j) The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment of interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

(k) [Reserved]

(l) The mortgage must contain a covenant, acceptable to the Commissioner, that binds the mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the Commissioner or the lender. The amount must comply with the coinsurance clause applicable to the location and character of the property, but may not be less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage must be in the amount estimated by the lender after completion of the project. A standard mortgagee clause making loss payable to the lender and the Commissioner as their interests may appear must be included in the mortgage. The lender is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. If the mortgagor does not obtain the required insurance, the lender must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the Coinsurance Contract is in force.

§ 252.504 Mortgage lien and other obligations.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is a first lien upon and covers the entire Project, including the equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed, and the equipment financed with mortgage proceeds, are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the lender in accordance with standards established by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the Project or the purchase of the equipment financed with mortgage proceeds.

§ 252.505 Regulatory agreement.

The lender and the Mortgagor must execute a regulatory agreement in a form acceptable to the Commissioner. The regulatory agreement must require the Mortgagor to comply with the requirements of Subparts G and H and other applicable provisions of this part for as long as the Commissioner coinsures the Mortgage. In the regulatory agreement, the lender may regulate the Mortgagor on other matters if the Commissioner determines that the additional lender controls or

requirements do not conflict with the requirements of this part or requirements contained in the administrative instructions issued under this part.

§ 252.506 Other closing documents.

The lender will require execution of such other closing documents as the Commissioner may require.

Subpart G—Requirements Relating to Structure of Mortgagor Entity and Transfers of Ownership Interest

§ 252.601 Requirements applicable to all projects.

(a) The Mortgagor may issue shares of capital stock, partnership participations or beneficial certificates of interest, as applicable, only if the number and form approved by the lender.

(b) The Mortgagor must comply with the Commissioner's administrative procedures for previous participation clearance and Transfers of Physical Assets before conveying, assigning or transferring any ownership interest in the project or any beneficial interest in any trust holding title to the project.

(c) The Mortgagor must obtain the Commissioner's and the lender's written approval before:

(1) Conveying, assigning, transferring, encumbering or disposing of any legal interest in the project, including rents and security deposits:

(2) Engaging, except for natural persons, in any business or activity, including the operation of any other project, or incurring any liability or obligation not in connection with the project.

(d) The mortgagor may not resign or withdraw from the Project until the lender has approved a substitute Mortgagor.

Subpart H—Program Requirements Relating to Project Operation

§ 252.701 General.

In order to be eligible for the benefit of coinsured financing under this part, the Mortgagor must agree to be regulated and restricted by the lender with respect to the ongoing operation of the project as set forth in this subpart.

§ 252.702 Reserve for replacements and general operating reserve.

(a) The Mortgagor must establish and maintain a reserve for replacements which will be held and administered by the lender. The Mortgagor must accumulate, maintain and use this reserve, and the lender must administer this reserve, only as provided in the regulatory agreement and the Commissioner's administrative procedures.

(b) [Reserved]

(c) To the extent consistent with the project's liquidity needs, money placed in a reserve for replacements must be invested in United States Treasury securities, securities issued by a Federal agency, or deposits that are insured by an agency of the Federal government.

§ 252.703 Rents and charges.

The mortgagor will determine rents and charges taking into a account facilities and services offered by the Project.

§ 252.704 Use of project funds.

(a) The Mortgagor must deposit all rents and other receipts of the project in the name of the project in accounts that are fully insured as to principal by an agency of the Federal government. Project funds in excess of these needed to meet short-term project operating expenses may be invested in accordance with the administrative instructions of the Commissioner.

(b) The Mortgagor may use project funds only for:

(1) Payment of Mortgage obligations;

(2) Payment of reasonable expenses necessary to the proper operations and maintenance of the project;

(3) Deposits to the reserve for replacements and other required reserves;

(4) Repayment of Mortgagor advances authorized by the Commissioner's administrative procedures.

(5) Distributions of Surplus Cash permitted under § 252.705;

(c) The Mortgagor may not use project funds to liquidate liabilities related to the construction of the project, other than the Coinsurance Mortgage, unless the lender authorized this use in accordance with the Commissioner's administrative procedures.

(d) The Mortgagor must deposit and maintain resident's security deposits in a trust account separate and apart from all other funds of the Project. The trust account must be held in the name of the Project and the balance in the account must at all times equal or exceed the Project's liability for resident's security deposits. The owner must comply with any State or local laws regarding investment of security deposits and the Distribution of interest or other income earned thereon. Any earnings received from the investment of security deposits must accrue to the benefit of the Project or the Project residents.

§ 252.705 Distributions and residual receipts.

(a) The Mortgagor may make, receive or retain Distributions only as provided in this section. The Mortgagor must compute Surplus Cash and Distributions in accordance with the Commissioner's administrative requirements.

(1) Distributions may be paid only from Surplus Cash that exists as of the end of a semiannual or annual fiscal period.

(2) Initial Distributions may be paid only after construction has been completed and the Mortgagor has submitted the cost certifications required by § 252.402.

(3) No distribution may be paid from borrowed funds, or when payments due under the note, Mortgage, or regulatory agreement have not been made.

(b) If any of the conditions listed below applies, the Mortgagor may distribute Surplus Cash only after obtaining the lender's written approval to do so;

(1) The Mortgagor has not satisfactorily responded to any lender on HUD on-site review report, annual financial statement correspondence or any other correspondence that requires the Mortgagor to implement corrective action, and that was received at least 30 days before the end of the fiscal period for which the Surplus Cash computation is made;

(2) The lender determines and gives the owner written notification that the project has significant uncorrected physical deficiencies; or

(3) There is a convenant, default (as defined in § 252.806(b) under the provisions of the Mortgage or the regulatory agreement.

(c) [Reserved]

(d) [Reserved]

(e) Residual Receipts must at all times remain under the control of the lender. The lender must administer the Residual Receipts account in accordance with the Commissioner's administrative requirements.

(f) The lender must invest Residual Receipts in accordance with the administrative requirements of the Commissioner. All earnings on these investments must be added to the Residual Receipts account unless other disposition of such earnings has been approved by the Commissioner, or by the lender in accordance with the Commissioner's administrative requirements.

(g) When the contract of coinsurance is terminated any funds remaining in the Residual Receipts account must be distributed in accordance with the

Commissioner's administrative requirements.

§ 252.706 Project management.

The Mortgagor must:

(a) Provide for management satisfactory to the lender and the Commissioner, execute a management contract that meets the requirements of the Commissioner, and deliver to the lender such certifications and information regarding project management as the Commissioner and lender may require.

(b) Maintain the project in good repair and condition and promptly complete necessary repairs and maintenance as required by the lender.

(c) Assure that all project expenses are reasonable in amount and necessary to the operation of the project.

(d) Obtain the lender's and the Commissioner's written approval before undertaking self-management, contracting for management services, or paying (or incurring any obligation to pay) fees for management services.

(e) Establish and maintain the Project's books, accounts and records in accordance with the Commissioner's and lender's administrative requirements. Books and accounts must be maintained for such periods of time as the Commissioner may prescribe.

(f) Permit the lender, the Commissioner, the HUD Inspector General, the Comptroller General of the United States, or their authorized agents to inspect the project's property, equipment, buildings, plans, offices apparatus, devices, books, accounting records, contracts, and documents during reasonable business hours. This right to inspect extends to the records of the Mortgagor, as well as to the records of any companies with which the Mortgagor has an identity of interest, as defined in the regulatory agreement.

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 31, 1970.

(h) Upon request, furnish the lender with operating budgets; occupancy, accounting and other reports; properly certified copies of minutes of meetings of the directors, officers, shareholders, or beneficiaries of the Mortgagor entity; and specific answers to questions raised from time to time by the lender relative to income, assets, liabilities, expenses, operation, and condition of the project. The Mortgagor must furnish a response to the lender's or HUD's on-site review reports and written inquiries regarding annual or monthly financial statements no later than 30 days after receipt of the lender's report or inquiries.

(i) In renting units adhere to the civil rights and equal opportunity requirements set forth in § 252.208.

Subpart I—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 252.801 MIP in insurance of advances cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before the initial endorsement of the Mortgage for coinsurance, the lender must collect a MIP from the Mortgagor equal to one percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of initial endorsement, the lender must, before each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, collect from the Mortgagor an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Before the first principal payment, the lender must collect from the Mortgagor an amount equal to 0.5 percent of the average outstanding principal balance of the Mortgage for the year following the first principal payment.

(4) Beginning with the first principal payment and continuing until the Coinsurance Contract terminates, the lender must collect and place in escrow monthly MIP sufficient to accumulate 0.5 percent of the average principal that will be outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(5) The MIP required under paragraphs (a)(1) and (2) of this section may be included in the Mortgage. The Mortgagor must pay the MIP required under paragraphs (a)(3) and (4) of this section from its own funds.

(b) *Payment of MIP by the lender.* (1) At initial endorsement, the lender must pay to the Commissioner an initial MIP equal to .65 percent of the original amount of the Mortgage.

(2) If the date of the first principal payment is more than one year after the date of the initial endorsement, the lender must, on each anniversary of the date of initial endorsement that occurs more than 30 days before the first principal payment, pay to the Commissioner an additional MIP equal to 0.5 percent of the original Mortgage amount.

(3) Following final endorsement, the Commissioner will adjust the MIP so that it equals .65 percent per year of the average outstanding principal balance for the year following the date of initial endorsement plus 0.5 percent per year of the average outstanding principal balance for the period from the first anniversary of initial endorsement to the date of the first principal payment. If the adjusted amount is less than the amount previously paid by the lender, the Commissioner will refund the excess amount to the lender for application to the mortgagor's account.

(4) On the date of the first principal payment and each year thereafter on the anniversary of the date on which the first principal payment was due, and continuing until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.35 percent of the average outstanding principal balance of the mortgage for the 12 months following the date the premium becomes payable. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 252.804.

§ 252.802 MIP in insurance upon completion cases.

(a) *Amount of MIP to be collected from the Mortgagor.* (1) Before endorsement of the Mortgage for coinsurance, the lender must collect from the Mortgagor a MIP equal to 0.5 percent per year of the average outstanding principal balance of the Coinsured Mortgage from the date of the endorsement to one year after the due date of the first payment to principal.

(2) For each year thereafter, the lender must collect from the Mortgagor monthly MIP sufficient to accumulate and place in escrow 0.5 percent of the average principal balance outstanding during the upcoming year. No adjustments may be made for delinquent payments or prepayments on the Mortgage except as provided in § 252.804.

(b) *Payment of MIP by the lender.* (1) At endorsement, the lender must pay to the Commissioner an initial MIP equal to 0.5 percent of the face amount of the Mortgage. Following endorsement, the Commissioner will adjust the initial MIP so that it equals 0.5 percent per year of the average outstanding balance of the

Mortgage from the date of endorsement to one year after the due date of the first payment to principal. If this adjusted amount is more than the amount paid by the lender at endorsement, the Commissioner will bill the lender for the difference. If the adjusted amount is lower than the amount paid by the lender at endorsement, the Commissioner will refund the excess amount to the lender for application to the Mortgagor's account.

(2) Beginning on the anniversary of the date on which the first principal payment was due and continuing annually thereafter until the Coinsurance Contract is terminated, the lender must pay to the Commissioner a MIP equal to 0.35 percent of the average outstanding principal balance for the 12 months following the date the premium becomes available. The average outstanding principal balance is computed using the project's amortization schedule. No adjustments may be made for delinquent payments or Mortgage prepayments except as provided in § 252.804.

§ 252.803 Duration and method of payment of MIP.

(a) MIP payments must continue annually until one of the following occurs:

(1) The Mortgage is paid in full;

(2) A deed to the lender is filed for record; or

(3) The Contract of Coinsurance is otherwise terminated with the consent of the Commissioner.

(b) The lender may pay any MIP required under this part in cash or debentures.

§ 252.804 Pro-rata refund of annual MIP.

If the Coinsurance Contract is terminated by prepayment in full or by termination with the consent of the Commissioner after the due date of the first annual MIP, the Commissioner will refund any MIP paid for the period after the effective date of the termination of insurance. The refund will be mailed to the lender for credit to the Mortgagor's account. In computing the pro rata portion of the annual MIP, the date of termination of coinsurance will be the last day of the month in which the Mortgage is prepaid or the Commissioner receives a termination request. No refund will be made if insurance was terminated because of a default or if termination occurs before the date the first annual MIP is due.

§ 252.805 Late charges—MIP.

(a) If the Commissioner receives a MIP payment more than 15 days after the later of the billing date or due date, the lender must pay a late charge of four percent of the amount due.

(b) If the Commissioner receives a MIP payment more than 30 days after the later of the billing date or due date, the lender must pay both the four percent late charge and interest. Interest will be charged from the later of the billing date or the due date at a rate set in comformity with the Treasury Fiscal Requirements Manual.

§ 252.806 [Reserved]

Delinquency and Default Under the Mortgage

§252.807 Notice of delinquency.

If the lender has not received the Mortgagor's monthly Mortgage payment by the 16th day of the month in which the payment is due, the lender must give the Commissioner and the mortgagor written notice of the delinquency. This notice must include the information required by the Commissioner's administrative procedures. The lender must mail this notice in time for it to be received by the Commissioner by the 20th day of that month.

§ 252.808 Definition of default.

(a) A monetary default exists when the Mortgagor fails to make any payment due under the Mortgage.

(b) A covenant default exists when the Mortgagor fails to perform any other covenant under the provisions of the Mortgage or the regulatory agreement, which is incorporated in the Mortgage. A lender becomes eligible for insurance benefits on the basis of a covenant default only after the lender has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

§ 252.809 Date of default.

For purposes of this subpart, the date of default is:

(a) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(b) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

§ 252.810 Notice of default.

If a default (as defined in § 252.808) continues for a period of 30 days, the lender must notify the Commissioner within 30 days thereafter, unless the default is cured. Unless waived by the Commissioner, the lender must submit this notice monthly on a form prescribed by the Commissioner until the default has been cured, the lender has acquired title to the property, or the coinsurance contract has been terminated.

§ 252.811 Financial relief to cure a default.

(a) To reinstate a defaulted Mortgage, the lender may use one or more of the forms of financial relief described in this section. The lender's efforts to cure a default will not result in a curtailment of interest as provided by § 252.821(b) in any subsequent claim for insurance benefits, if the lender complies with the conditions set forth in this section and the notice requirements set forth in §§ 252.810 and 252.815. The lender must service delinquent loans in accordance with the Commissioner's administrative requirements.

(1) Temporary adjustment of Mortgage payments. Without obtaining the Commissioner's approval, the lender may agree to hold the Mortgage in default and temporarily adjust payments, if a temporary payment plan meets the conditions listed below. The lender may approve a payment plan that does not meet all of these conditions only after obtaining the Commissioner's written approval.

(i) The temporary payment plan will last no longer than 18 months.

(ii) Payments will be set at less than the debt service and escrows required by the Mortgage for no more than six months.

(iii) The plan requires the Mortgagor to pay a specific dollar amount each month toward the Mortgage delinquency, but also gives the lender the right (subject to the Commissioner's administrative requirements) to require that the Mortgagor also apply any net operating income to the Mortgage delinquency.

(iv) The Plan requires the Mortgagor to furnish the lender monthly accounting reports until the Mortgage is reinstated.

(v) The Mortgagor agrees that, even if the project is current under the terms of a temporary payment plan, no distributions will be paid until the Mortgage itself has been brought current and the Mortgagor has complied with all terms of the temporary payment plan and any broader reinstatement plan, including the completion of any maintenance work or management initiatives.

(2) Withdrawal from the reserve for replacements. If the Mortgage is more than 25 days delinquent, the lender may withdraw reserve funds without prior Commissioner approval to pay up to one month's debt service and Mortgage escrows. The lender must obtain the Commissioner's written approval for withdrawals that, individually or

cumulatively over a 12-month period, would exceed one month's Mortgage payment.

(3) Suspension of deposits to the reserve for replacements. The lender may suspend up to six months' reserve deposits for up to six months during any 36 month period. The lender must obtain the Commissioner's written approval for suspensions in excess of six months during any 36-month period.

(4) Recasting the Mortgage. The lender may recase delinquent principal and interest over the remaining Mortgage term so long as the sum of the outstanding principal balance of the Mortgage and the delinquency being recast does not exceed the original Mortgage amount, and the lender obtains the Commissioner's written approval before executing an agreement permanently modifying the terms of the Mortgage.

(b) For any project comprising a GNMA pool, the lender-issuer must continue to pay the securities holders the full amount of scheduled payments due under the securities, even if the lender does not collect the full amount from the Mortgagor.

§ 252.812 Reinstatement of a defaulted mortgage.

If the Mortgagor cures the default before the completion of any foreclosure proceedings, the insurance will continue as if a default had not occurred. The mortgagor must pay all reasonable expenses that the lender incurs in connection with the foreclosure proceedings. The lender must give written notice of reinstatement to the Commissioner.

Termination

§ 252.813 Termination of coinsurance contract.

(a) The Contract of Coinsurance will terminate if any of the following occurs:

(1) The Mortgage is paid in full;

(2) The lender acquires the Mortgaged property and notifies the Commissioner that it will not make a claim for insurance benefits;

(3) The Mortgagor redeems the property after foreclosure;

(4) A party other than the lender acquires the property at a foreclosure sale;

(5) The Mortgagor and lender jointly request termination and the Commissioner grants approval; or

(6) The lender or its successors or assigns commit fraud or make a material misrepresentation to the Commissioner with respect to the Contract of Coinsurance on the Mortgage.

(b) The Contract of Coinsurance may, at the option of the Commissioner, be terminated in the event of the assignment or transfer of interest of a Coinsured Mortgage which does not meet the requirements of §252.106.

(c) When the Coinsurance Contract is terminated, all of the rights and obligations of the Mortgagor and the lender, including the obligation to pay MIP, will terminate.

§ 252.814 Notice and date of termination by Commissioner.

The Commissioner will notify the lender that the contract of coinsurance on a Mortgage has been terminated and will establish the effective date of the termination. The termination date will be the last day of the month in which any one of the events specified in § 252.813 occurs.

Claim Procedure and Payment of Insurance Benefits

§ 252.815 Notice of election to acquire property and file a claim.

Unless the Commissioner has given the lender a written extension, the lender must notify the Commissioner of its election to acquire the property and its intention to file a claim for insurance benefits within 75 days of the date of default. The Commissioner will approve an extension of the 75-day deadline if the Commissioner determines that

(a) The lender and the Mortgagor are diligently pursuing reinstatement of the Mortgage, and

(b) Reinstatement of the Mortgage and resolution of the problems that led to the default are feasible.

§ 252.816 Acquisition of property.

Unless the Commissioner has given the lender a written extension, within 30 days after submitting the notice required by § 252.815, the lender must institute action either to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure. The lender must exercise reasonable diligence in pursuing this action, and must promptly report to the Commissioner any developments that might delay the completion of acquisition. During the period that the lender controls the property, it must adhere to the Commissioner's requirements for project management, as set forth in the regulatory agreement and the Commissioner's administrative procedures.

§ 252.817 Deed-in-lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the lender may acquire the property by voluntary conveyance from the Mortgagor. The lender may accept a deed-in-lieu of foreclosure if:

(a) The Mortgage is in default at the time the deed is excuted and delivered;

(b) The credit instrument is cancelled and surrendered to the Mortgagor;

(c) The Mortgage of record is satisfied as a part of the consideration for the conveyance; and

(d) The deed from the Mortgagor conveys marketable title and contains a convenant that warrants against the acts of the grantor and all claims by, through, or under the grantor.

§ 252.818 Disposition of property and application for insurance benefits.

(a) After the acquisition of marketable title to the property, the lender must obtain two appraisals of the property performed by independent appraisers. The lender must select the appraisers from a panel approved by the Commissioner. The appraisals must estimate the market value of the property, as of the date of acquisition, for its highest and best use. The higher of the two appraisal values shall be deemed the appraisal value for purposes of this subpart.

(b) After the lender sells the property, or after the end of 12 months from the date of acquisition of title, whichever occurs first, the lender may file a claim for any insurance benefits to which it is entitled under § 252.820. The lender must file the claim no later than 15 days after the sale, or expiration of the 12-month period, whichever is applicable, or Mortgage interest will be curtailed in accordance with § 252.821(b).

(c) The lender must file the claim on a form approved by the Commissioner and must state the sales price and the income and expenses incurred in connection with the acquisition, repair, operation, and sale of the property. The lender must also submit evidence in support of the claim, as prescribed by the Commissioner, including the appraisals required by paragraph (a) of this section, and ledger records and documentation for all accounts relating to the Mortgage transaction.

(d) If the property has not been disposed of at the time of the lender's request for payment, the lender must use the higher of the two appraised values of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales price.

§ 252.819 Method of payment.

The Commissioner will pay insurance benefits in cash, unless the lender files a written request for payment in debentures. If the lender requests debentures, all of the provisions of 24 CFR 207.259(e) will apply.

§ 252.820 Amount of payment.

(a) The basis for the computation of insurance benefits will be:

(1) The principal balance of the Mortgage unpaid as of the date of the institution of foreclosure proceedings or the date of acquisition of the property by deed-in-lieu of foreclosure;

(2) Plus all items set forth in § 252.821;

(3) Less all items set forth in § 252.822.

(b) The Commissioner will pay insurance benefits equal to 75 percent of the amount computed under paragraph (a) of this section if the lender—

(1) Has obtained no insurance of its coinsurance risk,

(2) Has insured 50 percent or less of its coinsurance risk or

(3) Is a State Housing Agency eligible as a lender under § 203.7(c) of this chapter that obtained reinsurance from an authorized public mortgage insurer for any portion or all of its coinsurance risk, where the Commissioner finds an identity of interest exists between the State Housing Agency and the public mortgage insurer.

(c) The Commissioner will pay insurance benefits equal to 62.25 percent of the amount computed under paragraph (a) of this section if the lender has obtained insurance for either more than 50 percent of its coinsurance risk or that portion of its coinsurance risk that equals the maximum amount that the insurer is authorized to insure.

(d) This paragraph sets forth the amount of coinsurance benefits to be paid when the amount of reinsurance obtained by the lender changes. If reinsurance is increased after initial or final endorsement, HUD's insurance benefits will be reduced accordingly. HUD's insurance benefits will not be increased if reinsurance is reduced or cancelled after final endorsement.

§ 252.821 Items included in payment.

In computing insurance benefits, the following items will be added to the amount described in § 252.820(a)(1):

(a) The amount of all payments that the lender made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage;

(2) Fire and hazard insurance on the property; and

(3) Any Mortgage insurance premiums paid after the date of default. However, HUD will not reimburse the lender for any interest, late charge or other penalties imposed because of the lender's failure to make the required payments when due.

(b) An amount equivalent to Mortgage interest on the unpaid principal balance of the Mortgage on the date the lender initiated foreclosure proceedings or on the date the lender acquired title to the property through deed-in-lieu of foreclosure. This interest will be payable from the date of default to the date of payment of the insurance benefits. However, if the lender fails to meet any of the requirements of §§ 252.810, 252.815, 252.816, or 252.818(b), within the specified time (including any permissible extension of time), the accrual of interest allowance on the cash payment will be curtailed by the number of days by which the required action was late.

(c) An amount not in excess of two-thirds of the costs actually paid by the lender and approved by the Commissioner of acquiring the property. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(d) Reasonable payments that the lender made from its own funds and not from project income for:

(1) Ordinary and necessary preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD minimum property standards, those required by local law, and additional repairs that HUD specifically approved in advance; and

(3) Ordinary and necessary expenses in connection with the sale of the property.

§ 252.822 Items deducted from payment.

In computing insurance benefits, the following items will be deducted from the amount described in § 252.820(a)(1):

(a) An amount equal to five percent of the outstanding principal balance of the Mortgage on the date the lender instituted foreclosure proceedings or acquired title to the property through deed-in-lieu of foreclosure;

(b) All amounts received by the lender on account of the Mortgage after the institution of foreclosure proceedings or the acquisition of the property through deed-in-lieu of foreclosure after default, and any other reimbursement to the lender, other than under the Coinsurance Contract;

(c) All cash or funds related to the mortgaged property that the lender holds (or to which it is entitled) including deposits and escrows made for the account of the Mortgagor. However, for any Mortgage comprising a GNMA pool, this deduction must exclude any funds in the lender-issuer's custodial accounts and collateral funding a GNMA Deposit Agreement relating to the lender-issuer loss exposure during the GNMA Indemnity Period;

(d) The amount of any undrawn balance under a letter of credit that the lender accepted in lieu of a cash deposit for an escrow agreement;

(e) Any net income from the Mortgaged property that the lender received after the date of default;

(f) The proceeds from the sale of the project or the appraised value of the project as provided in § 252.818, as follows:

(1) If the lender disposes of the Project through a negotiated sale or through a competitive bid procedure approved by the Commissioner, the amount deducted will be the higher of the sales price or the appraised value;

(2) If the lender has not disposed of the project within 12 months from the date of acquisition, the amount deducted will be the appraised value; and

(g) Any and all claims that the lender has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from cancelled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

§ 252.823 [Reserved]

Remedies for Default by a Lender-Issuer Under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities Program

§ 252.824 Indemnification of GNMA.

(a) If, after the Commissioner pays a coinsurance claim, the lender-issuer fails to pay the full amount owed to a holder of securities guaranteed by GNMA and backed by a coinsured loan, the Commissioner will reimburse the Association for the amount the Association must pay securities holders as a result of the lender's default in payment.

(b) This amount will not exceed 25 percent or 37.75 percent (whichever is appropriate) of the amount computed under § 252.820, plus the amount referenced in § 252.822(a). The Commissioner will make payment in cash. After payment by the Commissioner, the lender-issuer will have no claim against the Commissioner for any such funds.

§ 252.825 Withdrawal of lender approval.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured

Mortgage, the Commissioner may request that the Mortgage Review Board withdraw approval of the lender-issuer as HUD-approved Mortgage, under the provisions of Part 25 of this title.

§ 252.826 HUD recourse against lender-issuer.

If the Commissioner is required to make payments to GNMA because of the lender-issuer's failure to pay any amount owed to a holder of GNMA securities backed by a Coinsured Mortgage, the lender-issuer will be liable for reimbursing the Commissioner for the payments.

§ 252.827 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right, notwithstanding the requirements of § 252.106, to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer or to itself.

(a)(1) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers.

(2) If GNMA rejects all offers or no offers are received, GNMA will have the right to perfect an assignment of the Mortgage to itself.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR Part 221. Any future insurance claim by GNMA or any assignment of the fully insured Mortgage will be governed by the appropriate provisions of 24 CFR Part 221, except that any payment will be made in cash instead of debentures.

§ 252.828 GNMA right to claim coinsurance benefits after lender-issuer's acquisition of title.

(a) If, as a result of a default by a lender-issuer on its obligations under the GNMA Mortgage-Backed Securities (MBS) program, GNMA must pay any amount owed to a securities holder, GNMA as substitute lender-issuer shall be entitled to file a claim for and to receive coinsurance benefits in accordance with this subpart. GNMA may file a claim with the Commissioner immediately upon its declaration of the lender-issuer's default under the GNMA MBS program, if the defaulting lender-issuer has acquired legal title to property previously covered by a coinsured mortgage ("coinsured property") but has not received coinsurance benefits under this subpart, and if the defaulting lender-issuer cannot or will not convey legal title to the coinsured property to GNMA. Such a claim may be filed by GNMA notwithstanding the requirements of § 252.818(b) that claims be submitted after the sale of the coinsured property or the expiration of 12 months from the acquisition of title. The claim shall be based upon property appraisals obtained by the lender-issuer at the time of acquisition of title, or, in the absence of such appraisals, upon appraisals obtained by GNMA after default of the lender-issuer. The lender-issuer will have no claim against the Commissioner for any payment pursuant to this section.

(b) If, as a result of the lender-issuer's default, the full amount paid by GNMA to one or more securities holders exceeds the amount of coinsurance benefits paid by the Commissioner to GNMA under paragraph (a) with respect to the Coinsured Mortgage that backed the securities, then the Commissioner shall reimburse GNMA for such additional amount in accordance with § 252.824(b).

(c) For any Coinsured Mortgage that is to be included in a GNMA MBS pool, GNMA shall obtain an assignment by contract of any future right of the lender-issuer to collect coinsurance benefits on the Coinsured Mortgage following the lender-issuer's acquisition of legal title to the underlying coinsurance property on behalf of securities holders and GNMA. Such assignment shall become effective upon default by any lender-issuer after its acquisition of legal title to the coinsured property.

(d) If the lender-issuer is unable or unwilling to transfer legal title to the coinsured property promptly to GNMA, GNMA shall take all necessary and appropriate action to obtain legal title to it. Upon receipt of legal title, GNMA shall convey the coinsured property to the Commissioner. In the event GNMA cannot acquire legal title, GNMA shall transfer to the Commissioner any other rights or interests it possesses in the coinsured property.

(e) GNMA shall reimburse the Commissioner in an amount not to exceed the amount of any payment by the Commissioner to GNMA under paragraph (a) of this section if the Commissioner is required to pay coinsurance proceeds under this subpart to any party other than GNMA with respect to the Coinsured Mortgage.

Subpart J—Coinsurance of Mortgages Covering Existing Projects

§ 252.901 Mortgages covering existing insured projects eligible for coinsurance.

Notwithstanding the generally applicable requirement that mortgages coinsured under this part be limited to Projects to be constructed or substantially rehabilitated after commitment for coinsurance, a mortgage executed in connection with the purchase or refinancing of an exsiting Project covered by a mortgage insured by the Commissioner may be coinsured under this subpart pursuant to section 223(f) of the Act. A mortgage coinsured pursuant to this subpart shall meet all other requirements of this part except as expressly modified by this subpart.

§ 252.902 Eligible project.

(a) Notwithstanding the requirements set forth in § 252.201, existing Projects covered by a mortgage insured by the Commissioner (with such repairs and improvements as are determined by the lender to be necessary) are eligible for coinsurance under this subpart. The Project must not require substantial rehabilitation as defined in § 252.3 and three years must have elapsed from the date of completion of construction or substantial rehabilitation of the Project, or from the beginning of occupancy, whichever is later, to the date of application for coinsurance. In addition:

(b) The Project must presently be at sustaining occupancy (occupancy that would produce income sufficient to pay operating expenses, annual debt service and reserve fund for replacement requirements) as determined by the coinsuring lender, before endorsement of the Project for coinsurance; alternatively, the mortgagor must

provide an operating deficit fund at the time of endorsement for coinsurance, in an amount, and under an agreement, approved by the coinsuring lender in accordance with standards established by the Commissioner.

§ 252.903 Maximum mortgage limitations.

Notwithstanding the maximum mortgage limitations set forth in § 252.203, a mortgage within the limits set forth in this section shall be eligible for coinsurance under this subpart.

(a) *Value limit.* The coinsured mortgage shall involve a principal obligation of not in excess of eighty-five percent (85%) of the coinsuring lender's estimate of the value of the Project, including major movable equipment to be used in its operation and any repairs and improvements. The coinsuring lender's estimate of value shall result from consideration of (1) estimated market value of the Project by capitalization, (2) estimated market value of the Project by direct sales comparison, and (3) total estimated replacement cost of the Project. In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the lender) which shall in all cases be less than the value of the property in fee simple.

(b) *Debt service limit.* The coinsured mortgage shall involve a principal obligation not in excess of the amount that could be amortized by eighty-five percent (85%) of net projected Project income available for payment of debt service. Net projected Project income available for payment of debt service shall be determined by reducing the coinsuring lender's estimated gross income for the Project by a vacancy and collection loss factor and by the cost of all estimated operating expenses, including deposits to the reserve for replacements and taxes.

(c) *Project to be refinanced—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be refinanced by the coinsured mortgage (*i.e.*, without a change of ownership or with the Project sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller with the purchase to be financed with the coinsured mortgage), then the maximum mortgage amount must not exceed the greater of:

(1) Seventy percent (70%) of the coinsuring lender's estimate of value of the Project, or

(2) The cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the coinsuring lender:

(i) The amount required to pay off the existing indebtedness;

(ii) The amount of the initial deposit for the reserve fund for replacements;

(iii) Reasonable and customary legal, organizational, title, and recording expenses, including lender fees under § 252.206;

(iv) The estimated repair costs, if any;

(v) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(d) *Project to be acquired—additional limit.* In addition to meeting the requirements of paragraphs (a) and (b) of this section, if the Project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum amount must not exceed eighty-five percent (85%) of the cost of acquisition as determined by the Commissioner. The cost of acquisition shall consist of the following items, to the extent that each item (except for item numbered (1)) is paid by the purchaser separately from the purchase price. The eligibility and amounts of these items must be determined in accordance with standards established by the Commissioner.

(1) Purchase price as indicated in the purchase agreement;

(2) An amount for the initial deposit to the reserve fund for replacements;

(3) Reasonable and customary legal, organizational, title, and recording expenses, including mortgagee fees under § 255.206;

(4) The estimated repair cost, if any;

(5) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

§ 252.904 Term of the mortgage.

Notwithstanding the provisions of § 252.205, a mortgage coinsured under this subpart must have a maturity satisfactory to the coinsuring lender, which is not less than 10 years, nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The term of the mortgage will begin on the first day of the second month following the date of endorsement of the mortgage for coinsurance.

§ 252.905 Labor standards and prevailing wage requirements.

The provisions of § 252.209 and paragraph 252.301(e) of this part shall not apply to mortgages coinsured under commitments issued in accordance with this subpart.

§ 252.906 Processing and commitment.

Except where otherwise specified in this section, the provisions of § 252.302 shall not apply to mortgages coinsured under this subpart.

(a) After acceptance of an application for a commitment to coinsure, the coinsuring lender will determine the maximum coinsurable Mortgage, review any list of repairs for compliance with HUD standards, determine the acceptability of the proposed management agent, and make other determinations necessary to assure acceptability of the proposed Project. The lender must make these determinations in the manner prescribed by the Commissioner.

(b) Paragraph (b) of § 252.302 applies to mortgages coinsured under this subpart.

(c) Paragraph (c) of § 252.302 applies to mortgages coinsured under this subpart.

(d) An application may be made for a commitment that provides for the coinsurance of the mortgage after completion of repairs and improvements or for a commitment that provides, in accordance with standards established by the Commissioner, for the completion of specified repairs and improvements after endorsement.

Date: December 1, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87-29863 Filed 12-30-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-10-87]

Allocation of Interest Expense Among Expenditures; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the allocation of interest expense for purposes of applying the limitations on passive activity losses and credits, investment interest, and personal interest.

DATES: The public hearing will be held on Tuesday, March 1, 1988, beginning at 10:00 a.m. Outlines of oral comments

must be delivered or mailed by Tuesday, February 16, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-10-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marcia Evans of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations and the amendments thereto under the following sections of the Internal Revenue Code of 1986: sections 469 (relating to the limitation on passive activity losses and credits) and 163(h) (relating to the disallowance of deductions for personal interest) and amended section 163(d) (relating to the limitation on investment interest). The proposed regulations appeared in the **Federal Register** for Thursday, July 2, 1987 (52 FR 25036).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than February 16, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Robert A. Bley,

Executive Assistant to Director, Legislation and Regulations Division.

[FR Doc. 87-30032 Filed 12-30-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Policies and Actions With Regard to Subsistence Taking of Migratory Birds in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed policy statement.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) published a Notice of Intent in the May 19, 1986, **Federal Register** (51 FR 18349) to propose rules governing subsistence hunting of migratory birds in Alaska. This action was undertaken on the basis of a U.S. District Court ruling that, until the Secretary established subsistence hunting regulations under the 1978 Fish and Wildlife Improvement Act, Alaska Natives could take migratory birds for food at any time under the terms of the 1925 Alaska Game Law. On October 9, 1987, the U.S. Court of Appeals for the Ninth Circuit reversed the District Court.

In view of this court decision, the Service will not proceed with the rulemaking announced in the May 19, 1986, Notice of Intent. The Service has developed a policy for enforcement of the closed season under the Migratory Bird Treaty Act (MBTA) with emphasis on protecting species and populations known to be seriously reduced in numbers and most in need of protection. This policy is published in this Notice for public comment. The Service also plans to consult with Native groups and other affected and interested parties prior to implementation of this policy this spring.

DATES: Comments must be received on or before February 29, 1988.

ADDRESS: Comments may be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. Telephone: (907) 786-3545.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Assistant Regional Director, Refuges and Wildlife (907) 786-3545; or R. David Purinton, Assistant Regional Director, Division of Law Enforcement (907) 786-3311.

SUPPLEMENTARY INFORMATION: Since 1984, subsistence harvest of four species of geese that nest in the Yukon-Kuskokwim Delta region of western Alaska has been managed pursuant to cooperative plans (the Yukon-Kuskokwim Delta Goose Management Plan) signed by representatives of the Service, the Alaska Department of Fish and Game, Alaska Natives, and the California Department of Fish and Game. The legality of these plans was challenged in *Alaska Fish and Wildlife Federation and Outdoor Council, Inc. v. Jantzen*, No. J84-013 CIV (D.Alaska), on the grounds that they violated the Migratory Bird Treaty Act. On January 24, 1986, the U.S. District Court for Alaska ruled that the 1925 Alaska Game Law, rather than the MBTA, governed subsistance hunting for migratory birds in Alaska and that, until the Secretary of the Interior adopted regulations under section 3(h)(2) of the Fish and Wildlife Improvement Act of 1978 (Improvement Act), 16 U.S.C. 712(1), Alaska Natives were allowed by the Alaska Game Law to take migratory waterfowl at any time when "in need of food and other sufficient food is not available." Section 3(h)(2) of the Improvement Act authorizes the Secretary to issue regulations permitting subsistence hunting of migratory birds in accordance with the various migratory bird treaties.

Based on the January 1986 District Court ruling and on section 3(h)(2) of the Improvement Act, the Service published a Notice of Intent in the May 19, 1986, **Federal Register** (51 FR 18349) to propose rules governing subsistence harvest of migratory birds in Alaska. The Service initially proposed to adopt final rules by the spring of 1987. In order to provide increased opportunity for public participation in developing the regulations, the date for adoption of final rules subsequently was changed to spring of 1988. On October 9, 1987, however, the U.S. Court of Appeals for the Ninth Circuit reversed the January 24, 1986, District Court ruling upon which this rulemaking was premised.

The Service will take the following actions:

1. *Subsistence Hunting Regulations.* In light of the Ninth Circuit opinion the Service will not proceed with and hereby terminates the rulemaking on subsistence hunting of migratory birds announced to the public on May 19, 1986.

2. *Yukon-Kuskokwim Delta Goose Management Plan.* The Service views management agreements, such as the Yukon-Kuskokwim Delta Goose Management Plan, as an important element in the conservation of geese that nest in western Alaska. The Service accordingly intends to enter into a new management plan that contains provisions relative to cooperative efforts to achieve Arctic goose population objectives, cooperative information and education efforts, communications and other aspects benefiting the cooperative management of affected species. The Service anticipates that the Plan will

continue to apply to cackling Canada geese, emperor geese, Pacific white-fronted geese, and Pacific brant. As in the past, the Service will develop the 1988 Goose Management Plan in conjunction with the parties.

3. *Closed Season Enforcement Policy in Alaska.* The Service has developed the following enforcement policy with regard to hunting in Alaska during the closed season. This is preceded by a brief discussion of the relevant factors taken into account when drafting this policy.

The MBTA prohibits the taking of migratory birds in the United States except as permitted by regulations published by the Service. The MBTA further requires that the regulations must be consistent with the provisions of the Canadian Treaty. Accordingly, the Service publishes regulations annually that establish open seasons and bag limits for migratory game birds within the September 1 to March 10 period provided by the Canadian Treaty. Except in Alaska, the Service has always strictly enforced the prohibitions against taking migratory birds during closed seasons, that is, during those times of year outside the hunting seasons established in the annual hunting regulations. Because of the following special circumstances in Alaska, these closed season provisions generally have not been strictly enforced.

(a) The Canadian Treaty makes specific exceptions to the prohibition against taking migratory birds during closed seasons that apply to Alaska. It provides that Indians may take at anytime scoters for food and it permits Eskimos and Indians to take, at any season, auks, auklets, guillemots, murres, and puffins and their eggs for food and clothing.

(b) The Service by regulation (50 CFR 20.132) permits any person in Alaska to take snowy owls and cormorants and their eggs at any time for food and clothing. This regulation was established when owls and cormorants were added to the list of birds protected under the migratory bird treaty with Mexico (in 1972) and thereby were covered by the provisions of the MBTA. The regulation was in response to a well-established customary and traditional use of snowy owls and cormorants in Alaska.

(c) The Service has recognized for many years that residents of certain rural areas in Alaska depend on waterfowl and some other migratory birds as customary and traditional sources of food, primarily in spring and early summer. Because of this long established dependence, prohibitions on taking during the closed season generally have not been strictly enforced provided that the birds were taken in a nonwasteful manner and were used for food.

Historically the taking of waterfowl and other migratory birds for subsistence purposes in Alaska does not appear to have had a significant adverse impact on the populations from which the birds were taken. In recent years, however, the levels of taking, in Alaska and elsewhere, in combination with other factors, such as nest predation by foxes, have caused drastic declines in some populations of birds. This has been particularly apparent in populations of four species of geese that nest primarily on the Yukon-Kuskokwim Delta. In an effort to address this problem the Service joined with other parties in the Yukon-Kuskokwim Delta Goose Management Plan which included provisions covering subsistence hunting during the closed season. As discussed previously, the Service now intends to negotiate a new management agreement that is supportive of its enforcement policy.

Closed Season Enforcement Policy in Alaska

Service enforcement efforts in Alaska during the closed season will be concentrated on violations that have the most serious impact on the resource. Special attention will be given to the protection of cackling Canada geese, emperor geese, Pacific white-fronted geese, and Pacific brant, the species presently covered by the Yukon-Kuskokwim Delta Goose Management Plan. The Service will also give priority to protecting waterfowl from the following illegal actions regardless of where they may occur:

—Taking cackling Canada and emperor geese at any time;
—Taking Pacific white-fronted geese or brant during the nesting, brood rearing, and flightless periods;
—Taking the eggs of any of the above four species of geese;
—Taking other waterfowl (ducks, geese, and swans) during the nesting, brood rearing, and molting periods except as specifically permitted by law;
—Taking eggs of waterfowl (ducks, geese, and swans); and
—Using charter or private aircraft for the purpose of hunting migratory birds, including the use of aircraft for transportation to or from the hunting area of for shipping or transporting migratory birds.

Finally, the Service recognizes that unforseen emergency situations can occur in rural Alaska where food is unavailable and no means of transportation or other opportunitites exist to obtain food. Regardless of the prohibitions outlined above, the taking of migratory birds in such situations in limited numbers to provide emergency food will not be referred to the United States Attorney for prosecution.

Comments Solicited

The Service wishes to provide opportunity for public review and comment to the maximum extent possible. Accordingly, the public is invited to comment on the matters discussed in this Notice. Any comment received within 60 days from the date of publication of this Notice will be considered in further developing and implementing an enforcement policy and developing more detailed proposals for management of the four species of Arctic nesting geese discussed above on the Yukon-Kuskowim Delta and elsewhere in the State of Alaska.

Date: December 17, 1987.

Steve Robinson,

Acting Director, U. S. Fish and Wildlife Service.

[FR Doc. 87-29806 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50219-7272]

North Pacific Fur Seals—Pribilof Island Population; Designation as Depleted

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

ACTION: Reopening of the comment period on the proposed rule.

SUMMARY: The NMFS is reopening the public comment period on the proposed rule designating the Pribilof Island population of North Pacific fur seals as depleted under the Marine Mammal Protection Act. Comments are requested on new information concerning possible changes in the carrying capacity of the Bering Sea ecosystem.

DATE: Comments must be received by February 29, 1988.

ADDRESS: Nancy Foster, Director, Office of Protected Resources (F/PR), NMFS, NOAA, Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202-673-5351.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1986 (51 FR 47155), a proposed rule was published to add the Pribilof Island population of North Pacific fur seals to the list of depleted species at 50 CFR 216.15. At the request of a number of Native Alaskan and subsistence interest groups and their representatives, a public meeting was held in Anchorage, Alaska, on January 21, 1987 to accept oral comments on the proposed rule. An extension of the public comment period was granted to accommodate the special needs of rural Alaskans (52 FR 4365, February 11, 1987). Comments were received and accepted through March 30, 1987.

On September 1, 1987, NMFS received a petition regarding this rulemaking from the St. Paul Aleut Community and the Pribilof Aleut Sealing Commission. The petition requested a reopening of the record, an environmental impact statement, and adjudicatory hearing, peer review; and a contribution to a Bering Sea scientific conference. NMFS determined that no useful purpose would be served by delaying this rulemaking to further consider potential impacts of the nondiscretionary depletion designation and denied the petition on September 28, 1987. Copies of the petition and the NMFS response may be obtained by writing to the address listed above.

The Northwest and Alaska Fisheries Center (NWAFC), NMFS, Seattle, Washington, has raised serious questions regarding the scientific basis for the proposed depletion designation. A depletion designation for this population depends, in part, on the assumption, discussed in the preamble to the proposed rule (51 FR 47156), that the carrying capacity of the Bering Sea and North Pacific Ocean for fur seals has probably not changed significantly since peak numbers of animals were observed during the 1940s–1950s. The following additional scientific information has been provided by the NWAFC to counter this assumption.

Additional Scientific Information

The following information refers to the claim that the carrying capacity of Pribilof Island fur seals has not changed since the 1940s-early 1950s. Presented in Figures 1 through 5 are biomass trends for red king crab and several species of groundfish for the eastern Bering Sea. While data displayed in these figures do not go back to the 1940s, they do indicate that important components of the Bering Sea ecosystem have undergone dramatic change during the 1970s and first part of the 1980s. Changes shown in these figures have been attributed to natural environmental variation, as opposed to fishery related causes (Bakkala 1987; Major and Wilderbuer 1987). While no definitive quantitative statements can be made about the carrying capacity of this ecosystem, these date provide evidence which indicates that the Bering Sea ecosystem is dynamic. This characteristic suggests that the carrying capacity may not have been constant.

Changes in environmental conditions suggested above may also have affected fur seals, and perhaps other marine mammal stocks. If current carrying capacity differs significantly from that associated with the 1940s-early 1950s, the approach of using the fur seal population level determined for this time period as a definition of carrying capacity is inappropriate.

It is important to note that attendees at the 1983 fur seal workshop concluded that a reliable measurement of the current carrying capacity for fur seals does not exist: "Given the available data and analyses, it is not possible to clearly determine whether the Pribilof fur seal population is currently at, above, or below carrying capacity levels; whether carrying capacity has changed significantly in the last two or three decades; or whether the observed population decline is due to declining carrying capacity, increased mortality, or some combination of both." (Fowler 1986).

Since this time new evidence has been published that the North Pacific carrying capacity has changed over the past 20 years (Venrich, et al. 1987). In their article, a significant increase in chlorophyll a, an index of phytoplankton biomass, was correlated with decreased sea surface temperatures and more active winter storminess, which has been documented for vigorous winters during the 1980–1985 period. Studies conducted by the National Marine Mammal Laboratory (York, unpublished, 1985) suggest that mortality of young fur seals (first 5 years of age) increased with decreases in coastal sea surface temperatures in the North Pacific, south of the Bering Sea (50°N), during the same period as the results reported in SCIENCE. Hard evidence to correlate the kind of findings in York (1985 ms) and Venrick et al. (1987) are not available; however, they suggest one plausible mechanism, a trend in storm activity, through which the carrying capacity for fur seals might be affected. Copies of the following references may be obtained by writing to the address listed above:

References

Bakkala, R.G. (ed.). 1987. Condition of groundfish resources of the Eastern Bering Sea and Aleutian Islands Region in 1987. NWAFC. Unpublished Rpt. Submitted to the International North Pacific Fisheries Commission, October 1987. 187 pp.

Fowler, C.W. (ed.) 1986. Report of the Workshop on the Status of Northern Fur Seals on the Pribilof Islands, Alaska, November 14–16, 1983. NWAFC Processed Rpt. 86–01. 50 pp.

Major, R.L. and P.K. Wilderbuer (eds.). 1987. Condition of groundfish resources in the Gulf of Alaska Region as assessed in 1987. NWAFC. Unpublished Rpt. Submitted to the International North Pacific Fisheries Commission, October 1987. 228 pp.

Venrick, E.L., J.A. McGowan, D.R. Cayan and T.L. Hayward. 1987. Climate and chlorophyll a: long-term trends in the Central North Pacific Ocean. SCIENCE 238:70–72.

York, A. 1985 ms. Forecast of 1985 harvest on St. Paul Island. Unpublished manuscript submitted as a background paper to the 28th Annual Meeting of the North Pacific Fur Seal Commission, Tokyo, Japan, April, 1985. 23 pp.

Date: December 18, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

BILLING CODE 3510-22-M

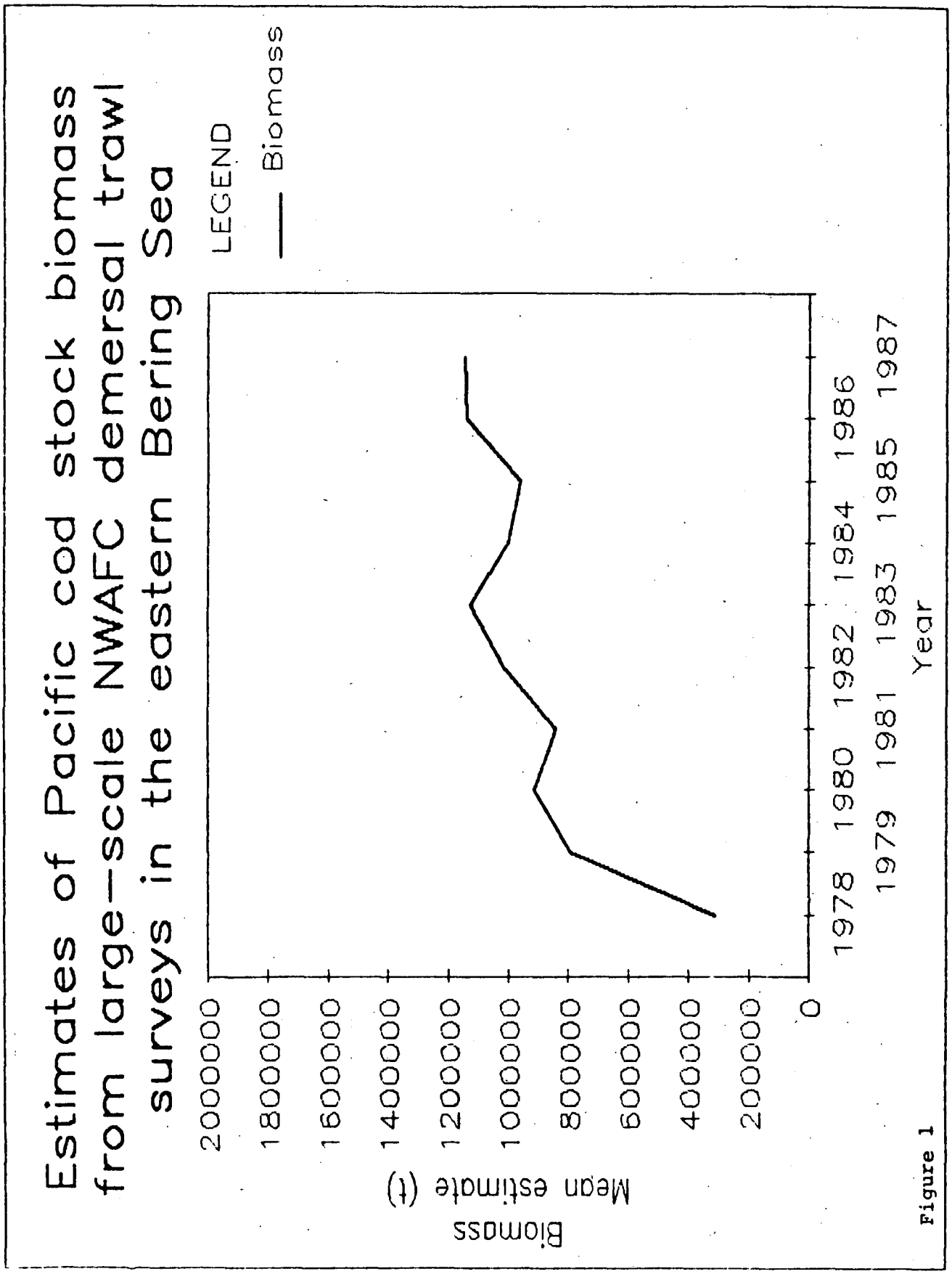
Estimates of Pacific cod stock biomass from large—scale NWAFC demersal trawl surveys in the eastern Bering Sea
LEGEND
Biomass
Biomass
Mean estimate (t)
2000000
1800000
1600000
1400000
1200000
1000000
800000
600000
400000
200000
0
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
Year

Figure 1

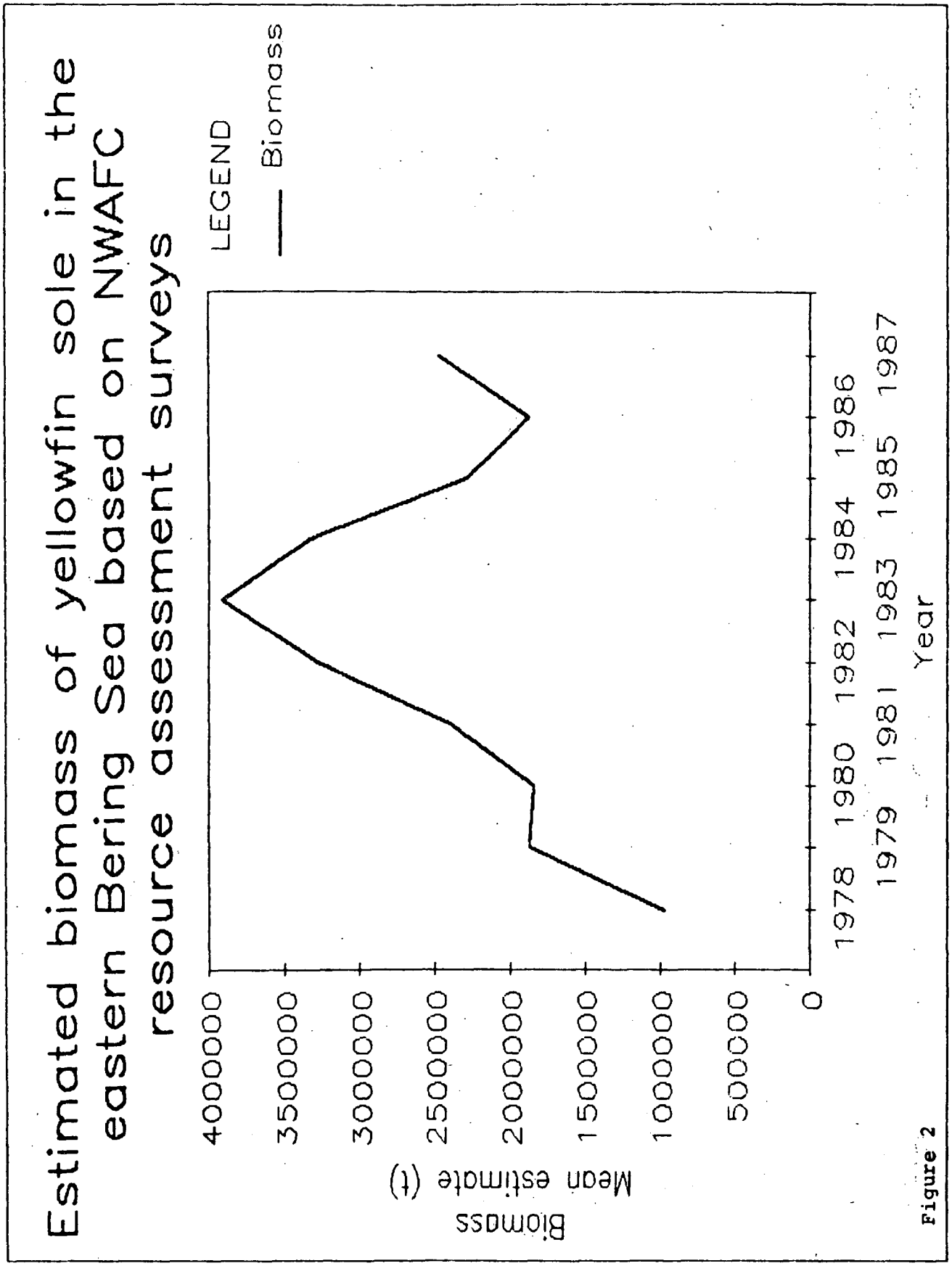
Estimated biomass of yellowfin sole in the eastern Bering Sea based on NWAFC resource assessment surveys
LEGEND
Biomass
Biomass
Mean estimate (t)
4000000
3500000
3000000
2500000
2000000
1500000
1000000
500000
0
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
Year

Figure 2

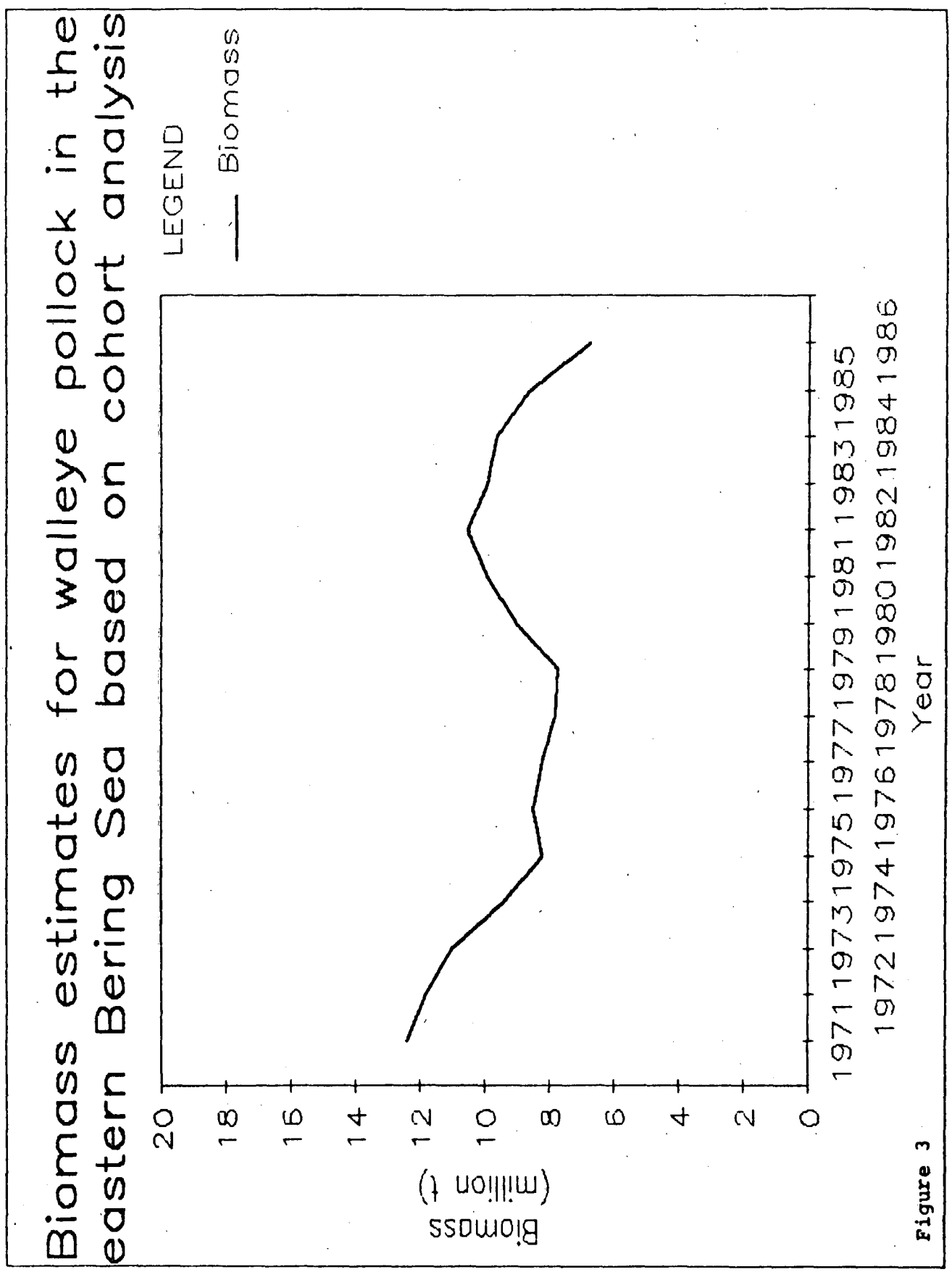
Biomass estimates for walleye pollock in the eastern Bering Sea based on cohort analysis
LEGEND
Biomass
Biomass (million t)
0
2
4
6
8
10
12
14
16
18
20
1971
1973
1975
1977
1979
1981
1983
1985
1972
1974
1976
1978
1980
1982
1984
1986
Year

Figure 3

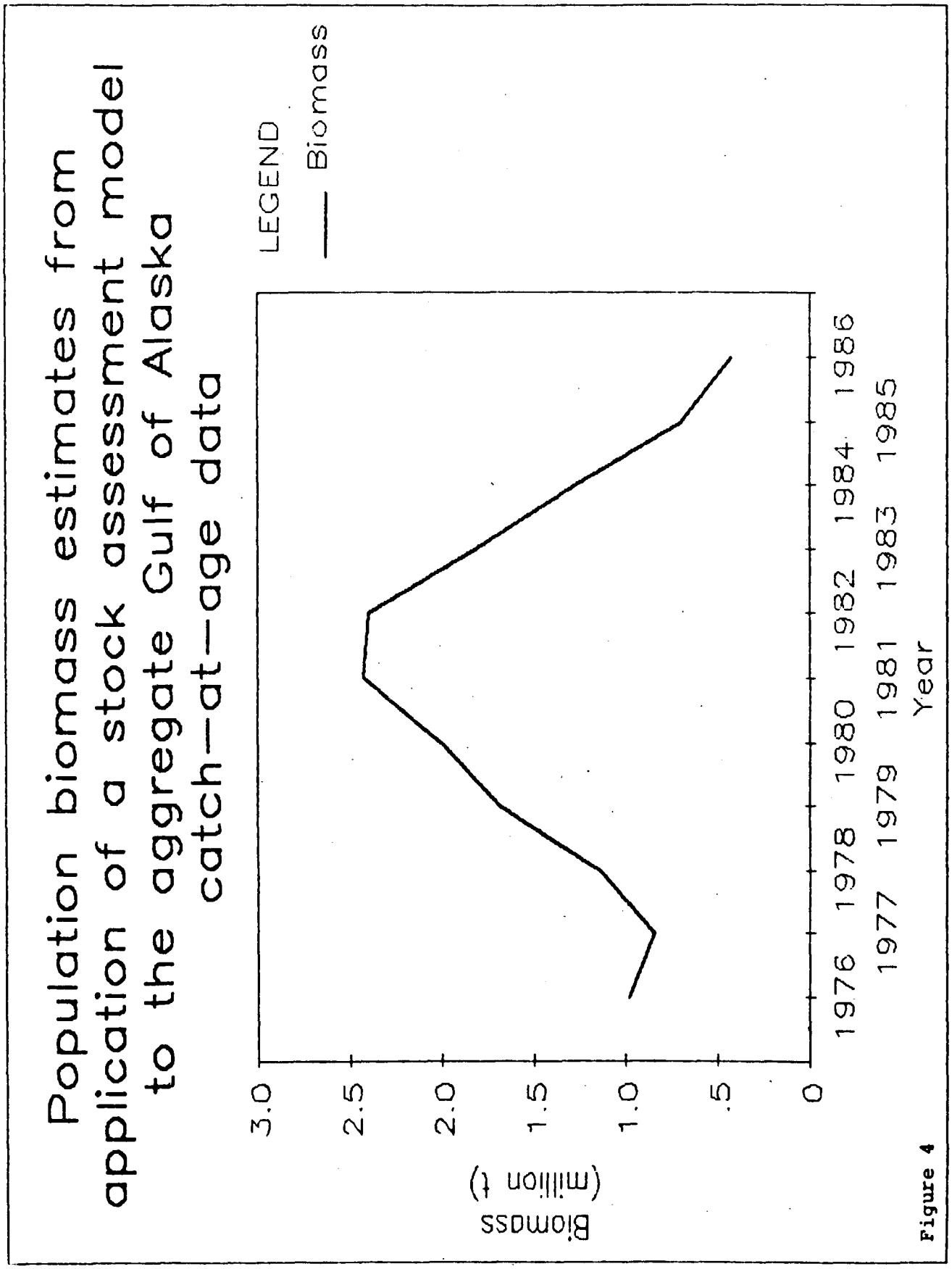
Population biomass estimates from application of a stock assessment model to the aggregate Gulf of Alaska catch—at—age data
LEGEND
Biomass
Biomass (million t)
3.0
2.5
2.0
1.5
1.0
.5
0
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
Year

Figure 4

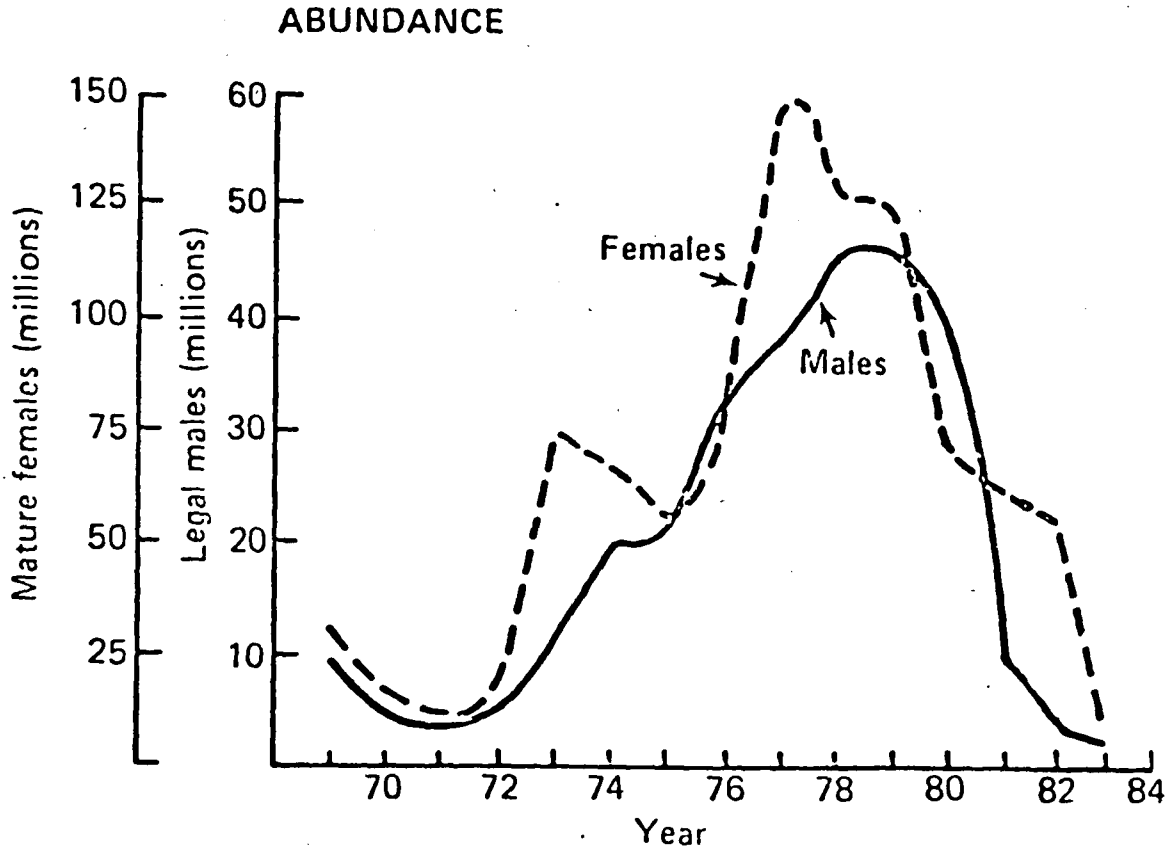

Figure 5 --Male and female red king crab abundance trends.

[FR Doc. 87-29521 Filed 12-30-87; 8:45 am]
BILLING CODE 3510-22-C

Notices

Federal Register
Vol. 52, No. 251
Thursday, December 31, 1987

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

Animal and Plant Health Inspection Service

[Docket No. 87-155]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Herbicide Tolerant Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing of genetically engineered tobacco plants, designed to be tolerant to the herbicide bromoxynil. The assessment provides a basis for the conclusion that the field testing of the genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not cause any significant impact to the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. John Payne, Staff Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7908.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 228992-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believed are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS Has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc. of Davis, California has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be tolerant to the herbicide bromoxynil. In the course of reviewing the permit application APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Calgene application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not cause any significant impact on the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Calgene, Inc. as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into a chromosome of these tobacco plants. In nature, genetic material contained on the chromosomes of tobacco plants can only be transferred to other compatible plants by cross pollination. In this field test the introduced gene cannot spread to other plants by cross pollination for the following reasons: (1) The field test plot is located hundreds of miles from any compatible plants with which it might cross pollinate; (2) no pollen will be produced since the tops of the plants will be removed upon flower initiation; and (3) the field test will be conducted at a time of year when tobacco is rarely grown.

2. Neither the herbicide tolerance gene itself, nor its gene product, confer on tobacco any plant pest characteristics. Traits that lead to weediness in plants are multi-gene traits and cannot be conferred by adding a single herbicide tolerance gene.

3. The microorganism from which the herbicide tolerance gene was isolated is not a plant pest and is widely distributed in the soil.

4. The herbicide tolerance gene does not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the herbicide tolerance gene to tobacco plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the herbicide tolerance gene into the

plant cell, has been shown to have been eliminated and no longer associated with the transformed tobacco plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome where it is inserted into the plant chromosomal DNA, and the remaining vector material disintegrates. The vector does not survive in the plant. No mechanism exists in nature to move the inserted gene from the plant to other organisms.

8. Bromoxynil is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the test plot is very small (440 feet wide by 1,034 feet long) and is biologically isolated from many species of wild plants and animals by a surrounding area of cultivated land. The area surrounding the plot has been used to grow cotton, an intensively managed crop. Cotton fields are known for their paucity of wildlife.

10. The plot has good physical security. Physical isolation will be ensured and incursion by large animals and humans will be prevented by a chain-link fence surrounding the plot. The occupants of a nearby farm house will provide additional security.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 24th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87-30043 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 87-156]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Herbicide Tolerant Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing of genetically engineered tobacco plants, designed to be tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of the genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not cause any significant impact to the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. John Payne, Staff Microbiologist, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7908.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 228992–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR Part 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believed are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Calgene, Inc. of Davis, California has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be tolerant to the herbicide glyphosate. In the course of reviewing the permit application APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Calgene application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Calgene, Inc. as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into a chromosome of these tobacco plants. In nature, genetic material contained on the chromosomes of tobacco plants can only be transferred to other compatible plants by cross pollination. In this field test the introduced gene cannot spread to other plants by cross pollination for the following reasons: (1) The field test plot is located hundreds of miles away from any compatible plants with which it might cross pollinate; (2) no pollen will be produced since the tops of the plants will be removed upon flower initiation; and (3) the field test will be conducted at a time of year when tobacco is rarely grown.

2. Neither the herbicide tolerance gene itself, nor its gene product, confer on tobacco any plant pest characteristics. Traits that lead to weediness in plants are multi-gene traits and cannot be conferred by adding a single herbicide tolerance gene.

3. The microorganism from which the herbicide tolerance gene was isolated is not a plant pest.

4. The herbicide tolerance gene does not provide the transformed tobacco plants with any measurable selective

advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the herbicide tolerance gene to tobacco plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the herbicide tolerance gene into the plant cell, has been shown to have been eliminated and no longer associated with the transformed tobacco plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome where it is inserted into the plant chromosomal DNA, and the remaining vector material disintegrates. The vector does not survive in the plant. No mechanism exists in nature to move the inserted gene from the plant to other organisms.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the test plot is very small (440 feet wide by 1,034 feet long) and is biologically isolated from many species of wild plants and animals by a surrounding area of cultivated land. The area surrounding the plot has been used to grow cotton, an intensively managed crop. Cotton fields are known for their paucity of wildlife.

10. The plot has good physical security. Physical isolation will be ensured and incursion by large animals and humans will be prevented by a chain-link fence surrounding the plot. The occupants of a nearby farm house will provide additional security.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 24th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87–30044 Filed 12–30–87; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Designation Renewal of the States of California (CA) and Washington (WA)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the California Department of Food and Agriculture (California) and Washington Department of Agriculture (Washington), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: February 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that California's and Washington's designations terminate on January 31, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the August 3, 1987, **Federal Register** (52 FR 28738). Applications were to be postmarked by September 2, 1987. California and Washington were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant names in the October 1, 1987, **Federal Register** (52 FR 36807) and requested comments on the designation renewal of California and Washington. Comments were to be postmarked by November 16, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that California and Washington are able to provide official services in the geographic area for which the Service is renewing their designations. Effective February 1, 1988, and terminating January 31, 1991, California and Washington will provide official inspection and Class X or Class Y weighing services in their entire specified geographic area, previously described in the August 3 **Federal Register**.

Interested persons may obtain official services by contacting the agencies at the following addresses: California Department of Food and Agriculture, 1220 N. Street, Sacramento, CA 95814; and Washington Department of Agriculture, 406 General Administration Building, Olympia, WA 98504.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 16, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–29963 Filed 12–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Lincoln (NE) and Omaha (NE) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to the Lincoln Inspection Service, Inc. (Lincoln) and Omaha Grain Inspection Service, Inc. (Omaha).

DATE: Comments to be postmarked on or before February 16, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail

Telex users may respond as follows:

To: Lewis Lebakken

TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action..

The Service requested applications for official agency designation to provide official services within specified geographic areas in the November 2, 1987, **Federal Register** (52 FR 42023). Applications were to be postmarked by December 2, 1987. Lincoln and Omaha were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 16, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87-29964 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Sioux City (IA) and Tischer (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Sioux City Grain Inspection and Weighing Agency, Inc. (Sioux City), and A.V. Tischer and Son, Inc. (Tischer).

DATE: Applications to be postmarked on or before January 29, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Sioux City, located at 310 South Floyd Blvd., Sioux City, IA 51101, was designated under the Act as an official agency to provide inspection functions on July 1, 1985. Tischer, located at 137 10th Street, NW., P.O. Box 339, Fort Dodge, IA 50501, was designated under the Act as an official agency to provide inspection and weighing functions on that date.

Each official agency's designation terminates on June 30, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Sioux City, in the States of Iowa, Nebraska, and South Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Iowa:

Bounded on the North by the northern Iowa State line from the Big Sioux River east to U.S. Route 59;

Bounded on the East by U.S. Route 59 south to B24; B24 east to the eastern O'Brien County line; the O'Brien County line south; the northern Buena Vista County line east to U.S. Route 71; U.S. Route 71 south to the southern Sac County line;

Bounded on the South by the Sac and Ida County lines; the eastern Monona County line south to State Route 37; State Route 37 west to State Route 175; State Route 175 west to the Missouri River; and

Bounded on the West by the Missouri River north to the Big Sioux River; the Big Sioux River north to the northern Iowa State line.

In Nebraska: Cedar, Dakota, Dixon, Pierce (north of U.S. Route 20 and west of U.S. Route 81), and Thurston Counties.

In South Dakota:

Bounded on the North by State Route 44 (U.S. 18) east to State Route 11; State Route 11 south to A54B; A54B east to the Big Sioux River;

Bounded on the East by the Big Sioux River; and

Bounded on the South and West by the Missouri River.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota (located inside Aberdeen Grain Inspection, Inc.'s area); Charter Oak Grain & Seed; and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa (located inside Fremont Grain Inspection Department, Inc.'s area); Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa (located inside A. V. Tischer and Son's Inc.'s area).

The geographic area presently assigned to Tischer, in the State of Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by Iowa-Minnesota State line from U.S. Route 71 east to U.S. Route 169;

Bounded on the East by U.S. Route 169 south to State Route 9; State Route 9 west to U.S. Route 169; U.S. Route 169 south to the northern Humboldt County line; the Humboldt County line east to State Route 17; State Route 17 south to C54; C54 east to U.S. Route 69; U.S. Route 69 south to the northern Hamilton County line; the Hamilton County line west to R38; R38 south to U.S. Route 20;

U.S. Route 20 west to the eastern and southern Webster County lines to U.S. Route 169; U.S. Route 169 south to E18; E18 west to the eastern Greene County line; the Greene County line south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to E53; E53 west to N44; N44 north to U.S. Route 30; U.S. Route 30 west to U.S. Route 71; and

Bounded on the West by U.S. Route 71 north to the Iowa-Minnesota State line.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Co-op Elevator, Boxholm, Boone County (located inside Central Iowa Grain Inspection Service, Inc.'s area); and Cargill, Inc., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Farmers Elevator, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County (located inside D. R. Schaal Agency's area).

Exceptions to Tischer's assigned geographic area are the following locations inside Tischer's area which have been and will continue to be serviced by the following official agencies:

1. D. R. Schaal Agency: Gold Eagle Co-op, Eagle Grove, Wright County; and

2. Sioux City Inspection and Weighing Agency, Inc.: Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County.

Interested parties, including Sioux City and Tischer, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning July 1, 1988, and ending June 30, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: December 16, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–29965 Filed 12–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Designation of Kankakee Grain Inspection Bureau, Inc. (IL), in the Kankakee, Illinois, Geographic Area

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation of Kankakee Grain Inspection Bureau, Inc., as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Kankakee, Illinois, geographic area.

EFFECTIVE DATE: February 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced the cancellation of designation of Kankakee Grain Inspection Bureau, Inc., effective January 31, 1988, and requested applications for official agency designation to provide official services within a specified geographic area in the August 3, 1987, **Federal Register** (52 FR 28739). Applications were to be postmarked by September 2, 1987. There were two applicants for designation in the Kankakee, Illinois, geographic area. Michael J. Fegan, Kankakee, Illinois, proposed to establish a new corporation with the name Kankakee Grain Inspection Bureau, Inc. Mark A. Beaupre, St. Anne, Illinois, proposed to do business as Illinois Valley Inspection. Both applicants applied for designation in the entire area available for assignment.

The Service announced the applicant names in the October 1, 1987, **Federal Register** (52 FR 36809) and requested comments on the designation of either applicant. Comments were to be postmarked by November 16, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Kankakee Grain Inspection Bureau, Inc., to be owned and operated by Michael J. Fegan, is better able than any other applicant to provide official services in the geographic area for which the Service is designating it. Effective February 1, 1988, and terminating January 31, 1991, Kankakee Grain Inspection Bureau, Inc., will provide official inspection services in the entire specified geographic area, previously described in the August 1 **Federal Register.**

Interested persons may obtain official services by contacting the agency at the following address: 232 North Main, Bourbonnais, IL 60914.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Date: December, 16, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87–29966 Filed 12–30–87; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the Agri Seed Agency (AZ)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Agricultural Seed Laboratories, Inc. (Agri Seed), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: January 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Agri Seed's designation terminates on December 31, 1987, and requested applications for official agency designation to provide official services within a specified geographic area in the July 1, 1987, **Federal Register** (52 FR 24490). Applications were to be postmarked by July 31, 1987, but the Service received no applications for designation postmarked by that date. As a result, the Service again requested applications in the September 1, 1987, **Federal Register** (52 FR 32949). Applications were to be postmarked by

October 1, 1987. Agri Seed was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant name in the November 2, 1987, **Federal Register** (52 FR 42024) and requested comments on the designation renewal of Agri Seed. Comments were to be postmarked by December 17, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Agri Seed is able to provide official services in the geographic area for which the Service is renewing its designation. Effective January 1, 1988, and terminating December 31, 1990, Agri Seed will provide official inspection services in its entire specified geographic area, previously described in the July 1 **Federal Register.**

Interested persons may obtain official services by contacting the agency at the following address: 212 S. 25th Avenue, P.O. Box 6363, Phoenix, AZ 85005.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 16, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87-29967 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-EN-M

Rural Electrification Administration

Plumas-Sierra Rural Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with repect to the construction of a 69 kV transmission line and associated facilities by Plumas-Sierra Rural Electric Cooperative (Plumas-Sierra). The proposed facilities would be constructed in Plumas and Lassen Counties, California.

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and Plumas-Sierra's Borrower's Environmental Report (BER) may be reviewed at the ofice of the Director, Southwest Area—Electric, Room 0207, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8848; or at the office of Plumas-Sierra Rural Electric Cooperative, (Bernard W. Pfile, Manager), P.O. Box 2000, Portola, California, 96122-2000, telephone (916) 832-4261, during regular business hours.

Copies of the EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by Plumas-Sierra and determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project consists of constructing approximately 51.2 km (32 miles) of 69 kV transmission line between the Chilcoot and Herlong Substations in Plumas and Lassen Counties, California. Possible REA actions might include providing financing assistance to Plumas-Sierra for the proposed project and approving construction contracts, power supply contracts, etc., related to implementation and utilization of the proposed facilities. The BER and EA adequately consider potential impacts of the proposed project to resources including, but not limited to, threatened and endangered species, prime farmland, prime forest land, prime rangeland, cultural resources, floodplains, and wetlands.

Alternatives examined included no action, rebuilding the existing 69 kV transmission line, building a new line adjacent to the existing 69 kV transmission line and removing the existing line, constructing a new line between the Chilcoot and Herlong Substations (proposed project) and alternate routes. After reviewing the engineering, economic and environmental aspects of these alternatives, REA determined that the proposed project is an acceptable alternative that meets Plumas-Sierra's needs with a minimum of environmental impact.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, Plumas-Sierra advertised the availability of its BER in the local newspapers. No comments were received.

Based upon the BER and other data, REA prepared an EA and FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: December 23, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87-29968 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Finding of No Significant Impact; Village of Warsaw Critical Area Treatment RC&D Measure, Wyoming County, NY, Seneca Trail RC&D Area

The measure concerns a plan to provide for the reduction of critical erosion along a streambank bordering a closed landfill in the Village of Warsaw. In addition, the plan provides for the control of surface and subsurface water entering the site. The planned works of improvement include the installation of rock riprap, grade stabilization sills, a diversion, surface drainage channels, an outlet channel, and outlet rock chutes. All disturbed areas will be seeded and mulched. Benefits will be derived through improved water quality by the reduction of sediment, reduction of the exposure of buried landfill materials, and reduction of leachate into Oatka Creek.

An environmental assessment as part of the measure planning process was conducted. The assessment revealed no significant adverse impacts to the environment would occur as a result of project implementation.

The environmental assessment prepared for this measure is available for public review at the James M. Hanley Federal Building, 100 South Clinton Street, Room 771, Syracuse, New York 13260.

Based on the facts derived from the assessment, it was concluded that an environmental impact statement would not be necessary.

Date: December 17, 1987.

Paul A. Dodd,

State Conservationist, U.S. Department of Agriculture, Soil Conservation Service, Syracuse, New York.

[FR Doc. 87-30033 Filed 12-30-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF AGRICULTURE
Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-030-08-4133-09; ES-00157-008]

Environmental Impact Statement; Mark Twain National Forest, Carter, Oregon and Shannon Counties, MO

AGENCY: Forest Service, USDA and Bureau of Land Management (BLM), Interior.

ACTION: Change in public comment period for Draft Environmental Impact Statement and Final Environmental Impact Statement availability date.

SUMMARY: This notice revises the written comment period for the Draft Environmental Impact Statement and the Final Environmental Impact Statement availability date for the Environmental Impact Statement, Hardrock Mineral Leasing, Mark Twain National Forest, Carter, Oregon, and Shannon Counties, Missouri.

DATE: Written comments on the Draft Environmental Impact Statement will be accepted until February 5, 1988, as opposed to the January 8, 1988 date published in the November 20, 1987, **Federal Register.** The Final Environmental Impact Statement will be available in July 1988, as opposed to the April 1988 date as previously announced.

Date: December 17, 1987.

Leon E. Kridelbaugh

Acting Forest Supervisor, USDA—Forest Service, Mark Twain National Forest.

Date: December 18, 1987.

Bert Rodgers,

District Manager, Milwaukee District Office, Bureau of Land Management.

[FR Doc. 87-29982 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Indianapolis Zoological Society Inc. (P409)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Indianapolis Zoological Society Inc., 1200 West Washington Street, Indianapolis, Indiana 46222.
2. Type of Permit: Public Display.
3. Name and Number of Marine Mammals:
   Atlantic bottlenose dolphins (*Tursiops truncatus*)—10.
   False killer whale (*Pseudorca crassidens*)—6.
4. Location and Type of Take: The dolphins will be collected from Florida. The take killer whales will be imported from Japan.
5. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved. Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 23, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-30028 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; LGL Limited, Environmental Research Associates (P273C and P273D); Modification to Permits No. 517 and 518

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 220.24 of the regulations on endangered species (50 CFR Parts 217-227), Scientific Research Permits No. 517 and 518 issued to LGL Limited, Environmental Research Associates, P.O. Box 280, King City, Ontario, LOG 1KO, Canada, on August 23, 1985 (50 FR 35286) are modified as follows:

Section B.7. of Permit No. 517 is changed to read:

7. This Permit is valid with respect to the taking authorized herein until December 31, 1989.

Section B.7. of Permit No. 518 is changed to read:

7. This Permit is valid with respect to the taking authorized herein until December 31, 1990.

As required by the Endangered Species Act of 1973 issuance of these modifications are based on a finding that such modifications (1) was applied for in good faith (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. These modifications were issued in accordance with, and is subject to Parts 220-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above Permits and modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW. Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 23, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-30029 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Ocean World (P21D) Modification No. 5 to Permit 334

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 334 issued to Ocean World, 1701 SE 17th Street Causeway, Fort Lauderdale, Florida on May 8, 1981 (46 FR 26673) as modified on October 6, 1982 (47 FR 44830), December 31, 1984 (50 FR 873), January 24, 1986 (51 FR 4408), and December 24, 1986 (52 FR 127), is further modified as follows:

Section B.2. is changed to read:

2. This Permit is valid with respect to the taking authorized herein until December 31, 1988. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective on December 23, 1987.

Documents submitted in connection with the above Permit and modification are available for review in the following offices:

Office of Protected Resources and Habitat Program, National Marine Fisheries Service, 1825 Conn. Ave. NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: December 23, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-30030 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-22-M

Extension of Comment Period on the Bering Sea Fishermen's Association; Petition for Rulemaking

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

ACTION: Notice.

SUMMARY: On November 5, 1987 (52 FR 42469), NOAA announced receipt of a petition for rulemaking submitted by the Bering Sea Fishermen's Association. The petition asks the United States Department of Commerce to adopt a rule prohibiting foreign fishing for anadromous species in the international waters of the North Pacific Ocean and the Bering Sea. The rule submitted by petitioners provides for observer coverage and a permit system, and would define foreign fishing for anadromous species to include fishing by a foreign fishing vessel for squid, pollock, and other nonanadromous species in the international waters of the North Pacific Ocean and Bering Sea at times of the year and with gear that can reasonably be expected to result in the taking of anadromous species.

At its December 1987 meeting, the North Pacific Fishery Management Council requested a longer comment period to provide the opportunity to consider the petition at their next meeting and submit timely comments. In view of the interest expressed in the petition, NOAA is extending the comment period for 60 days. NOAA is particularly interested in receiving information and comments on the relationship between directed fishing for nonanadromous species and the interception of anadromous species. Comments will be accepted for 60 days and will be considered by the Secretary in determining whether to undertake rulemaking.

DATE: Comments on the petition are invited until February 29, 1988.

ADDRESSES: Copies of the petition and the rule suggested by the Bering Sea Fishermen's Association are available and may be obtained by contacting Marilyn F. Luipold, Attorney Advisor, Office of General Counsel, NMFS, Universal South Building, 1825 Connecticut Avenue, NW., Room 611, Washington, DC 20235, telephone (202) 673-5206. Comments on the need for such a regulation, its objectives, alternative approaches to the issues addressed in the petition, as well as other comments on the petition may be addressed to John D. Kelly, Fees and Permits, Trade Services Division, NMFS, Universal South Building, 1825 Connecticut Avenue, NW., Room 906, Washington, DC 20235, telephone (202) 673-5319.

FOR FURTHER INFORMATION CONTACT: Marilyn F. Luipold, Attorney Advisor (202) 673-5206.

Dated: December 28, 1987.

Carmen J. Blondin,

Special Associate for Trade, National Marine Fisheries Service.

[FR Doc. 87-30027 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

Agency: National Marine Fishery Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee, and its Advisory Panel will convene separate public meetings at the Sheraton Hotel, Anchorage, AK, as follows:

Council will convene January 20, 1988, at 9 a.m., to review proposals for amendments to the Bering Sea/Aleutian Islands and Gulf of Alaska groundfish fishery management plans to determine which should be further developed by the plan teams for presentation at the Council's April meeting, before going out for public review. Final decisions on the amendments will be made in June. The Council also will consider delaying the opening of the Gulf of Alaska longline fishery for sablefish to coincide with the halibut season, and placing a condition on joint venture permits restricting rock sole to a bycatch only status in the Bering Sea eliminating targeted joint ventures on roe-bearing fish until April 15. Also during the week the Council will convene in executive session (not open to the public) to discuss personnel actions. The public meeting will adjourn January 22, 1988.

Scientific and Statistical Committee and Advisory Panel will convene January 18-19, 1988. Other workgroup and plan team meetings may also be convened on short notice during the week. For further information about the above meetings contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Future of Groundfish Committee will convene January 11, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Building 4, Room 2079, 7500 Sand Point Way, NE., Seattle, WA, to continue to hear presentations on various management systems currently employed in other fisheries and to begin development of recommendations for alternative management strategies for the Alaska groundfish fisheries. The public meeting will adjourn January 12. For further information contact Dorothy Lowman of the North Pacific Fishery Management Council, address and telephone number above.

Date: December 28, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-30047 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will convene public meetings as follows:

South Atlantic Fishery Management Council, its Committees, Gulf of Mexico Fishery Management Council, and the Florida Marine Fisheries Commission will convene a joint public meeting, January 25-29, 1988, at the Sheraton Brickell Point Hotel, Miami FL, to discuss king and Spanish mackerel, billfish, swordfish, spiny lobster, bluefish, snapper-grouper, and other fishery management business. A detailed agenda will be available to the public on or about January 14, 1988.

South Atlantic Fishery Management Council's Law Enforcement Committee will convene a public meeting, January 19-20, 1988, at the South Atlantic Council's office (address below), to review all fishery management plan (FMP) regulations, penalty schedules and enforcement records. They also will discuss FMP regulations to determine appropriateness relative to enforceability and ease of public understanding, as well as developing a standard permit system for each FMP. A detailed agenda will be available to the public on or about January 8, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: December 28, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-30048 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Orenco Inc.;

In FR doc. 87-25588 which appeared on Thursday, November 5, 1987, page 42470, in line 7 after "Patent Application S.N. 6-943,347" add the title of the invention, "Method of Determining Inert Content in Coal Dust."

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-29977 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Import Limits and Restraint Period for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs to Commissioner of Customs to amend the import restraint limits and periods for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the new restraint period which began on July 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated June 25, 1987 (52 FR 24504) established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1987 and extends through June 30, 1988.

The Governments of the United States and Indonesia have agreed to amend further their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 25, 1985 and October 3, 1985, as amended, and the Ramie Agreement, effected by exchange of notes dated September 25, 1985, to a combined agreement which covers cotton, wool, man-made fiber textiles and silk blend and other vegetable fiber apparel, produced or manufactured in Indonesia and exported during the period which began on July 1, 1985 and extends through June 30, 1992.

The agreement establishes, among other things, new import limits for certain cotton, wool and man-made fiber textile products in Group I Categories 313, 314, 315, 317, 317-S, 319, 320-P, 331, 334, 335, 336, 337, 338/339 (newly merged), 340, 341, 347/348, 351, 369-S, 445/446, 604-A, 613, 614, 631-W, 635, 638/639 (newly merged), 640, 641, 645/646, 647 and 648, as a group, including individual categories within the group; and a new limit for Group II Categories 300, 301, 310-312, 316, 318, 320-O, 330, 332, 333, 342/642, 345, 349, 350, 352-354, 359-363, 369-D, 369-O, 400-444, 447, 448, 459-469, 600-603, 604-O, 605, 610-612, 625-627, 630, 631-O, 632-634, 636, 637, 643, 644, 649-654, 659, 665, 666, 669, 670, 831-836, 838, 840, 842-847, 850-852, 858 and 859, as a group, including specific limits for Categories 342/642, 350, 345, 369-D, 636, 637 and 651, exported during the new six-month period which began on July 1, 1987 and extends through December 31, 1987. The wool subgroup limit within Group II for Categories 400-444, 447, 448 and 459-469, as a group, is also being amended for the same six-month period. Carryforward and carryover of 100 percent will be available in the foregoing categories between this and the next restraint period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1987 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to

assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 25, 1987 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1987 and extends through June 30, 1988.

Effective on January 1, 1988, the directive of June 25, 1987 is amended to include new restraint limits for the following categories, produced or manufactured in Indonesia and exported during the new restraint period which began on July 1, 1987 and extends through December 31, 1987.

Category	Six-month restraint limit
Group I	132,079,442 square yards equivalent.
313	8,988,800 square yards.
314	7,865,200 square yards.
315	8,932,620 square yards.
317	5,618,000 square yards of which not more than 1,179,780 square yards shall be in sateens in TSUS items 320.—through 331.—with statistical suffixes 50, 87 and 93.
319	2,955,068 square yards.
320-P [1]	6,011,260 square yards.
331	224,720 dozen pairs.
334	15,731 dozen.
335	40,449 dozen.
336	36,517 dozen.
337	42,135 dozen.
338/339	303,372 dozen.
340	207,866 dozen.
341	224,720 dozen.
347/348	393,260 dozen.
351	61,798 dozen.
369-S [2]	505,620 dozen.
445/446	255,025 dozen.
604-A [3]	393,260 pounds.
613	8,427,000 square yards.
614	8,427,000 square yards.
631-W [4]	365,170 dozen pairs.
635	42,135 dozen.
638/639	387,642 dozen.
640	151,394 dozen.
641	589,890 dozen.
645/646	196,630 dozen.
647	140,450 dozen.
648	674,160 dozen.
Group II:	
300, 301, 310-312, 316, 318, 320-0 [5], 330, 332, 333, 342/642, 345, 349, 350, 352-354, 359-363, 369-D [6], 369-0 [7], 400-444, 447, 448, 459-469, 600-603, 604-0 [8], 605, 610-612, 625-627, 630, 631-0 [9], 632-634, 636, 637, 643, 644, 649-654, 659, 665, 666, 669, 670, 831-836, 838, 840, 842-847, 850-852, 858 and 859, as a group.	32,147,755 square yards equivalent.
Subgroup:	
400-444, 447, 448 and 459-469, as a group.	1,530,150 square yards equivalent.
Sublevels within Group II:	
342/642	84,800 dozen.
345	108,650 dozen.
350	30,740 dozen.
369-D	450,500 dozen.
636	111,300 dozen.
637	68,900 dozen.
651	54,590 dozen.

[1] In Category 320, only TSUS items 320.—, 321.—, 322.—, 326.—, 327.— and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[2] In Category 369, only TSUSA number 366.2840.

[3] In Category 604, only TSUSA numbers 310.5049 and 310.6045.

[4] In Category 631, only TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.

[5] In Category 320, all TSUSA numbers except those listed in footnote 1.

[6] In Category 369, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[7] In Category 369, all TSUSA numbers except 365.5515, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in 369-D and 366.2840 in 369-S.

[8] In Category 604, all TSUSA numbers except 310.5049 and 310.6045.

[9] In Category 631, all TSUSA numbers except 704.3215, 704.8525, 704.8550 and 704.9000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign-affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30067 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau, Effective on January 1, 1988

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the designated limits.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the united States and

Macau establishes an aggregate limit and, within the aggregate, group limits for Catgories 200–239, 300–369, 600–670 and 800–899, as a group (Group I); and Categories 400–469, as a group (Group II), for the agreement year which begins on January 1, 1988 and extends through December 31, 1988. Within those overall limits are individual limits for Categories 331/831, 333/334/335/833/834/835, 336/836, 338, 339, 340, 341, 342, 345, 347/348/847, 350/850, 351/851, 359/859, 631, 633/634/635, 636, 638/639/838, 640, 641/840, 641/842, 645/646, 647/648, 652/852, 659, 670 and 845/846 in Group I; and Categories 434, 435, 436, 438, 442 and 445/446 in Group II.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 27, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commission of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1983 and Janaury 9, 1984, as amended and extended, between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textilollowing categories, produced or manufactured in Macau and exported during the twelve-month period beginning on Janaury 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	Twelve-month restraint limit
200-239, 300-369, 400-469, 600-670 and 800-899 as a group.	86,122,890 square yards equivalent.
Group I:	
200-239, 300-369, 600-700 and 800-899, as a group.	82,929,291 square yards equivalent.
Sublevels within Group I:	
331/831	300,000 dozen pairs.
333/334/335/833/834/835.	146,625 dozen of which not more than 79,688 dozen shall be in Categories 333/335/833/835.
336/836	23,000 dozen.
338	188,756 dozen.
339	790,633 dozen.
340	178,658 dozen.
341	115,231 dozen.
342	39,326 dozen.
345	31,875 dozen.
347/348/847	446,781 dozen.
350/850	18,000 dozen.
351/851	27,000 dozen.
359/859	304,000 dozen.
631	200,000 dozen pairs.
633/634/635	297,966 dozen.
636	15,453 dozen.
638/639/838	966,875 dozen.
640	68,745 dozen.
641/840	118,155 dozen.
642/842	56,313 dozen.
645/646	161,145 dozen.
647/648	325,081 dozen.
652/852	160,000 dozen.
659	197,892 pounds.
670	750,000 pounds.
845/846	201,000 dozen.
Group II:	
400-469, as a group.	1,631,453 square yards equivalent.
Sublevels within Group II:	
434	1,852 dozen.
435	1,852 dozen.
436	2,033 dozen.
438	6,667 dozen.
442	5,556 dozen.
445/446	73,541 dozen.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances shall be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 28, 1983 and Janaury 9, 1984, as amended and extended which provide, in part, that: (1) within the aggregate and applicable group limits, specific limits may be exceeded by designated percentages; (2) these same limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry into the United States for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisons of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementaiton of Textile Agreements.

[FR Doc. 87-30068 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to Import Limits and the Restraint Period for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Peru

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on Janaury 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information of the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the previously established import restraint limits for cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the new restraint period which began on May 1, 1987 and extends through December 31, 1987.

Background

The CITA directive dated April 13, 1987 was published in the **Federal**

Register (52 FR 12449) which announced the establishment of import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1987 and extends through April 30, 1988.

During consultations held between the Governments of the United States and Peru, agreement was reached to amend the previously established restraint limits for cotton and wool textile products in Categories 300, 301, 313, 315, 317, 319, 320, 338/339 and 410; Categories 330–359 (cotton apparel group), and Categories 400–469 (wool group), produced or manufactured in Peru and exported during the new prorated period which began on May 1, 1987 and extends through December 31, 1987. Carryforward and carryover of 100 percent will be available in the foregoing categories between this and the next restraint period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 447892), July 14, 1986 (51 FR 25386), July 29, 1986, (51 FR 27968) and in Statistical Headnote 5, Schedule 13, of the *Tariff Schedules of the United States Annotated* (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustment to the limits affected by adoption of the HCC will be published in the **Federal Register**.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilaterial agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 13, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of cotton and wool textile products, produced or manufactured in Peru during the twelve-month period which began on May 1, 1987 and extends through April 30, 1988.

Effective on January 1, 1988, the directive of April 13, 1987 is hereby amended to amend the previously established import restraint limits for cotton and wool textile products in the following categories, produced or manufactured in Peru and exported during the new restraint period which began on May 1, 1987 and extends through December 31, 1987:

Category	Amended restraint limit
300–359	6,666,667 square yards equivalent.
400–469	2,666,667 square yards equivalent.
300	2,000,000 pounds.
301	1,500,000 pounds.
313	13,357,167 square yards.
315	2,940,103 square yards.
317	12,250,430 square yards of which not more than 3,675,129 square yards shall be in Category 317pt. [1]
319	16,333,907 square yards.
320	11,842,082 square yards of which not more than 3,266,781 square yards shall be in Category 320pt. [2]
338/339	321,000 dozen of which not more than 214,000 dozen shall be in Categories 338pt./339pt. [3]
410	1,000,000 square yards.

[1] In Category 317pt., only TSUSA items 320.— through 331.—, with statistical suffixes 50, 87 and 93.

[2] In Category 320pt., only TSUSA items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[3] In Category 338pt./339pt., all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–30069 Filed 12–30–87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Levels for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia Effective on January 1, 1988

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota reopenings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the six-month period which begins on January 1, 1988 and extends through June 30, 1988, in excess of the designated levels.

Background

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, establishes limits for cotton, wool and man-made fiber textile products in Categories 219; 313–315, 317/617/326, 331, 334–337, 338/339, 340, 341, 347/348, 351, 369–S, 445/446, 604–A, 613/614/615, 625/626, 635, 638/639, 631–W, 640, 641, 645/646, 647 and 648, as a group (Group I), and individual limits within the group; and cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–218, 220–239, 300, 301, 330, 332, 333, 342/642, 345, 349, 350, 352–354, 359–363, 369–D, 369–O, 400–444, 447–469, 600, 603, 604–O, 606, 607, 611, 618–630, 631–O, 632–634, 636, 637, 642–644, 649–654, 659–670 and 831–859, as a group (Group II); and a wool subgroup

for Categories 400–444 and 447–469, as a group, and individual limits within Group II, produced or manufactured in Indonesia and exported during the six-month period which begins on January 1, 1988 and extends through June 30, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of The United States Annotated* (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury.
Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the following categories, produced or manufactured in Indonesia and exported during the six-month period which begins on January 1, 1988 and extends through June 30, 1988, in excess of the following levels of restraint:

Category	Six-month restraint limit
Group I: 219, 313–315, 317/617/326, 331, 334–337, 338/339, 340, 341, 347/348, 351, 369-S[1], 445/446, 604-A[2], 613/614/615, 625/626, 631-W[3], 635, 638/639, 640, 641, 645/646, 647 and 648, as a group.	131,554,631 square yards equivalent.
Within Group I:	
219	2,871,679 square yards.
313	5,210,634 square yards.
314	18,194,229 square yards.
315	8,477,887 square yards.
317/617/326	8,085,392 square yards.
331	224,720 dozen pairs.
334	15,731 dozen.
335	40,450 dozen.
336	36,517 dozen.
337	42,135 dozen.
338/339	303,372 dozen.
340	207,866 dozen.
341	224,720 dozen.
347/348	393,260 dozen.
351	61,798 dozen.
369-S	505,620 pounds.
445/446	25,503 dozen.
604-A	393,260 pounds.
613/614/615	7,185,399 square yards.
625/626	7,927,736 square yards.
635	42,135 dozen.
638/639	387,642 dozen.
640	205,611 dozen.
641	569,673 dozen.
645/646	196,630 dozen.
647	245,670 dozen.
648	568,941 dozen.
Group II: 200–218, 220–239, 300, 301, 330, 332, 333, 342/642, 345, 349, 350, 352–354, 359–363, 369-D[4], 369-O[5], 400–404, 447–469, 600–603, 604-O[6], 606, 607, 611, 618–630, 631-O[7], 632–634, 636, 637, 642–644, 649–654, 659–670 and 831–859, as a group.	32,672,565 square yard equivalent.
Subgroup within Group II: 400–444 and 447–469, as group.	1,530,150 square yards equivalent.
Sublevels within Group II:	
342/642	84,801 dozen.
345	108,650 dozen.
350	30,740 dozen.
369-D	450,500 pounds.
636	111,300 dozen.
637	68,900 dozen.
651	54,590 dozen.

[1] In Category 369-S, only TSUSA number 366.2840.

[2] In Category 604-A, only TSUSA numbers 310.5049 and 310.6045.

[3] In Category 631-W, only TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.

[4] In Category 369-D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366,2440 and 366.2860.

[5] In Category 369-O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366 2860 in 369-D and 366.2840 in 369-S.

[6] In Category 604-O, all TSUSA numbers except 310.5049 and 310.6045.

[7] In Category 631-O, all TSUSA numbers except 704.3215, 704.8525, 704.8550 and 704.9000.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period July 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels or restraint established for such goods during the period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and the Republic of Indonesia, which provide, in part, that specific limits may be increased by designated percentages for swing, carryover and carryforward; and administrative arrangement or adjustments may be made to resolve problems arising in the implementation of the bilateral agreement. Appropriate adjustments, referred to above, will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30070 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Japan Effective on January 1, 1988

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin board of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton textile and apparel products, in excess of the designated limits.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and Japan, as translated to the new category system, establishes, among other things, group limits for Categories 239, 330-354, 359, 431-448, 459, 630-654 and 659 (Group I), and within Group I specific limits for Categories 239, 331/631, 333, 334, 335, 337, 338, 339, 340, 341/641, 342/642, 347/348, 350, 435, 442, 444, 448, 634, 644, 645/646, 648 and 659-C (coveralls, etc.); Categories 200-229, 300, 301, 313-326, 360-369, 400-414, 464-469, 603, 604, 607, 611-629 and 665-670 (Group II), and within Group II a subgroup for Categories 218-220, 225-227 and 313-326, and within the subgroup individual limits for Categories 218, 313, 314, 315, and 317/326; also within Group II, specific limits for Categories 300/301, 410, 604pt. (acrylic plied yarn), 611, 613/614/615/617, 619, 620, 624, 625/626/627/628/629; and Categories 600 and 606, as a group (Group III); produced or manufactured in Japan and exported during the period which begins on January 1, 1988 and extends through December 31, 1988.

Deferred import charges for goods in Category 611 exported during 1986 and imported after March 31, 1987 in the amount of 3,312, 206 square yards will be charged to the 1988 limit established for Category 611. Additional adjustments will be made to Category 611 as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987 between the Governments of the United States and Japan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Japan and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the indicated restraint limits:[1]

Category	12-month restraint limit
Group I: 239, 330-354, 359, 431-448, 459, 630-654 and 659, as a group.	132,036,768 square yards equivalent.
Sublevels within Group I:	
239	923,636 pounds.
331/631	2,291,456 dozen pairs.
333	15,913 dozen.
334	26,877 dozen.
335	180,263 dozen.
337	91,078 dozen.
338	800,506 dozen.
339	1,266,905 dozen.
340	106,079 dozen.
340	106,079 dozen.
341/641	520,200 dozen.
342/642	349,019 dozen.
347/348	1,591,350 dozen.
350	21,430 dozen.
435	28,754 dozen.
442	22,251 dozen.
444	184,860 numbers.
448	37,606 dozen.
634	102,141 dozen.
644	241,668 numbers.
645/646	188,660 dozen.
648	500,497 dozen.
659pt.[1]	100,786 pounds.
Group II: 200-229, 300, 301, 313-326, 360-369, 400-414, 464-469, 603, 604, 607, 611-629 and 665-670, as a group.	509,349,618 square yards equivalent.
Subgroup: 218-220, 225-227, and 313-326, as a group..	129,065,996 square yards.
Sublevels within the subgroup:	
218	35,300,000 square yards.
313	8,013,799 square yards.
314	26,999,541 square yards.
315	17,035,316 square yards.
317/326	15,422,183 square yards of which not more than 9,874,391 square yards shall be in Category 326.
Sublevels within Group II:	
300/301	2,781,000 pounds.
410	10,711,050 square yards equivalent.
604pt.[2]	3,657,299 pounds.
611	18,041,965 square yards.
613/614/615/617.	11,062,386 square yards.
619	129,000,000 square yards.
620	56,105,500 square yards.
624	8,670,850 square yards.
625/626/627/628/629.	19,180,232 square yards.
Group III: 600 and 606, as a group.	137,533,422 square yards equivalent.

[1] In Category 659pt., coveralls, overalls, etc. in TSUSA numbers 381.3325, 381.9805,

384.2205, 384.2530, 384.8606, 384.8607, and 384.9310.

[2] In Category 604pt., only TSUSA numbers 310.5049 and 310.6045.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limited established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to further adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and Japan, which provides, in part, that: (1) Group limits, sublimits and specific limits may be increased by designated percentages for swing, carryover and carryforward; however, carryover shall not be available in the specific arrangement period in which the limit is established; (2) exports in excess of annual limits shall be charged to the limits for the subsequent year; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the bilateral agreement. Appropriate adjustments, referred to above will be made to you by letter.

Also effective on January 1, 1988, you are directed to charge 3,250,000 square yards and 62,206 square yards, for shipments exported in 1986, to the limited established in this letter for Category 611.

In carrying out the above directions the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonweath of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 87-30071 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement To Establish Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Peru Effective on January 1, 1988

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, and withdrawal from warehouse for consumption, of cotton and wool textile products, produced or manufactured in Peru and exported during the four-month period which begins on January 1, 1988 and extends through April 30, 1988.

Background

Pursuant to consultations held under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru, it was agreed to establish individual limits for cotton and man-made fiber textile products in Categories 219, 220, 226/313, 300, 301, 315 and 317/326; Categories 330-359 (cotton apparel group), a sublevel within the group for Categories 338/339; and Categories 400-469 (wool group), a sublevel within the group for Category 410, produced or manufactured in Peru and exported during the four-month period beginning on January 1, 1988 and extending through April 30, 1988. Carryover of 100 percent will be available from the previous restraint period, as adjusted.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

The letter to the Commissioner of Customs and actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Peru and exported during the four-month period beginning on January 1, 1988 and extending through April 30, 1988, in excess of the following restraint limits:

Category	4-Month restraint limits
Group limit: 330-359, as a group.	3,333,333 square yards equivalent.
Sublevel within Group: 338/339.	160,500 dozen of which not more than 107,000 dozen shall be in Categories 338pt./339pt. (other than tank tops and T-shirts).[1]
Group limit: 400-469, as a group.	1,333,333 square yards equivalent.
Sublevel within Group: 410.	500,000 square yards.
Individual limits not in a group:	
219	8,196,890 square yards.
220	4,042,302 square yards.
226/313	7,787,031 square yards.
300	1,000,000 pounds.
301	750,000 pounds.
315	1,470,052 square yards.
317/326	6,182,473 square yards of which not more than 1,873,699 square yards shall be in Category 326.

[1] In Categories 338pt./339pt., all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207,

384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period May 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall, be charged against the levels of restraint established for that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of January 3, 1985, as amended, between the Governments of the United States and Peru which provide, in part, that: (1) specific limits may be exceeded by designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be increased for carryover and carryforward not to exceed 11 percent, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30072 Filed 12-30-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 27 January 1988.

Time: 0830-1700.

Place: Rochester, Minnesota.

Proposed Agenda: Comprehensive review of the Army Cardiovascular Screening Program for soldiers aged 40 and over prior to undertaking strenuous physical exercise.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Sykline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: December 14, 1987.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 87-30055 Filed 12-30-87; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 28 January 1988

Time: 0830-1200

Place: Rochester, Minnesota

Proposed Agenda: Comprehensive review of the Army Cardiovascular Screening Program for soldiers aged 40 and over prior to undertaking strenuous physical exercise.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advice the Executive Secretary, AFEB, Sykline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Dated: December 14, 1987.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 87-30056 Filed 12-30-87; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) For a Proposed Use of Federal Lands at Santa Fe Dam and Flood Control Basin to Facilitate Parking for Raider Stadium, Irwindale, CA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. *Study Alternatives.* The City of Irwindale in conjunction with the Raiders football organization have proposed the development of a new football stadium in the City of Irwindale. The City of Irwindale has approached the U.S. Army Corps of Engineers, Los Angeles District and requested the use of Federal lands at Santa Fe Dam and Flood Control Basin to facilitate parking for the proposed stadium. The proposed football stadium would have a maximum seating capacity for 70,000 attendants. Proposed adjacent off street parking would accommodate a maximum of approximately 22,975 passenger vehicles, and 250 charter buses and provide facilities to be used by fans for picnics and tailgate parties. The stadium would be utilized by the Los Angeles Raiders for their home events, totalling approximately 10 games. Other stadium-type events to be scheduled at the discretion of the sponsors may be added to this total. People attending stadium-type events including: Regular season and postseason collegiate and junior college football; Regular season and postseason high school football; Stage events; Field events; Motor events; Arena events; Trade shows; and, Closed circuit television and video board events would utilize parking areas associated with the proposed Raiders stadium. General parking lot sites on non-event days may be used for trade shows, swap meets, or charitable and non-profit events.

The need for proposed project parking is estimated to be 19,125 passenger vehicle spaces in addition to the spaces that can be accommodated at the proposed stadium site. Maximum estimated acreage to fulfill the 19,125 parking spaces needed is 178 acres. This acreage could be reduced through use of stack parking or multi-level parking structures.

Potential alternate sites within a 1.5 to 2 mile radius from the proposed stadium site, estimated to be greater than approximately 30 acres in size, are under consideration as components of alternate parking configurations. The proponent for use of Federal lands to facilitate parking, the City of Irwindale, has expressed interest in utilizing a combination of Site 1, Site 2 and Site 3 (described below) to accommodate the requisite number of parking spaces. The Corps of Engineers has no preferred alternative pending examination of all potential solutions through the NEPA review process. The Draft Environmental Impact Statement will examine the potential for two-row parking, parking structures, three per row stack parking and four per row stack parking at the following sites and combinations of the following sites to provide the requisite equivalent of 19,125 vehicle parking spaces.

Site 1. An approximate 53-acre site located adjacent and east of the San Gabriel River channel and located north of the 210 Foothill Freeway on Federal

lands in Santa Fe Flood Control Basin. Site access is via Foothill Boulevard. This area is currently zoned as a Natural Area.

Site 2. An approximate 33-acre site located adjacent and east of the San Gabriel River channel and north of Foothill Boulevard on Federal land in the Santa Fe Flood Control Basin. Site access is via Foothill Boulevard. Lands within this site are currently zoned as Natural Area and Low Density Recreation. Site 2 is located adjacent to and to the northeast of Site 1.

Site 3. An approximate 92-acre site is located south of and adjacent to the 210 Foothill Freeway, west of the Miller Brewery site on Federal land within the Santa Fe Flood Control Basin. Site access is via First Street and via a proposed pedestrian overpass or underpass crossing the 210 Foothill Freeway. This area is currently zoned as Wildlife Management Area. Site 3 is located adjacent to and to the southwest of Site 1.

Site 4. An approximate 50-acre quarry site is located south of and adjacent to the 210 Foothill Freeway, east of the Santa Fe Flood Control Basin and within the northwest section of the approximate 210 acre Miller Brewery site, Irwindale, California. Site access is via First Street to an unnamed, unimproved roadway west of the pit and via a proposed pedestrian underpass or overpass, as previously described under Site 3.

Site 5. An approximate 72-acre site located at the south portion of the approximate 210-acre Miller Brewery site, south of the 210 Foothill Freeway and west of Irwindale Avenue, Irwindale, California. This 72-acre site includes an inactive quarry pit and adjacent areas that appear to be vacant. Access to this 72-acre site is via First Street.

Site 6. An approximate 175-acre site located north of Foothill Boulevard and Irwindale Boulevard, Irwindale, California. The site is accessed via Foothill Boulevard. The site is presently an active quarry included in the adopted City of Irwindale Redevelopment Project. It appears that approximately 40 percent of the site is currently used for quarry operations.

Site 7. An approximate 106 acre site located on Federal land at the south end of the Santa Fe Control Basin, southwest of the existing parking area provided for the Santa Fe Dam Recreation Area. This area is currently zoned as for Operations. Access to this site is via the current access road to the Recreation area (i.e. the northerly extension of Azusa Canyon Road).

Site 8. An approximate 245-acre site located northwest of the intersection of Gladstone Avenue and Jackson Avenue in the Cities of Azusa and Irwindale, California. Site access is via the northerly extension of Vincent Avenue. The site is known to be currently used for quarry and landfilling activities; however, it appears that portions of the site are not currently used for these operations. Approximately 30 percent of the site, or 73 acres, along the site perimeter appear currently not to be in use.

Site 9. An approximate 140-acre site located southwest of Arrow Highway and Irwindale Avenue in Irwindale, California. Site across in via either Arrow Highway and/or Irwindale Avenue. The site is a quarry included as a redevelopment site under the adopted City of Irwindale Industrial Redevelopment Project.

Site 11. An approximate 135-acre site located on Federal land at the spillway of the Santa Fe Dam. Site access is provided by an unnamed access road leading north from Arrow Highway, beneath the 605 San Gabriel River Freeway northeast to the east side of Site 11. This area is currently zoned for operations and is used on intermittent basis for water conservation by Los Angeles County Department of Public Works.

2. *Scoping Process.* Resources potentially impacted by the proposed use of Federal lands to facilitate parking in conjunction with the proposed Raider Stadium include biological resources, cultural resources, water conservation, recreation and traffic. Site 1, Site 2 and Site 3 are parts of the 1000 acres within Santa Fe Flood Control Basin leased to the County of Los Angeles for recreational development. Site 7 and site 11 are also on Federal land within the Santa Fe Flood Control Basin. The U.S. Army Corps of Engineers, Los Angeles District developed the 1975 Santa Fe Dam Master Plan in concert with Los Angeles County Department of Parks and Recreation to provide a conceptual framework for development of those lands leased to the County and those lands administered by the Corps. Site 1 and portions of Site 2 are designated as a Natural Area in the 1975 Master Plan. The designation was based on the presence of regionally unique alluvial scrub habitat and an effort to offset impacts to biological and open space resources resulting from the recreational development proposed in the Master Plan. Site 3 is designated as a Wildlife Management Area as mitigation for impacts to wildlife resources resulting from recreation development within Santa Fe Flood Control Basin. The alluvial scrub habitat at Santa Fe Dam is one of the few remaining pristine alluvial scrub sites in southern California. Examples of cultural resources which may be impacted by the proposed use of Federal lands for parking include the Santa Fe railroad bridge situated to the west of Site 1 which may be a significant historical resources. Potentially significant buried historic resources may also be present. Archival studies and a historic evaluation of the railroad will be required. Santa Fe Dam Recreation Area experiences heavy use during the summer months and on weekends throughout the year. Transportation routes accessing Sante Fe Dam and those within the flood control basin are heavily utilized during these times. Existing traffic, potential impacts to traffic, and means of mitigating those impacts will be a key issue in reviewing the possibility of utilizing lands within the flood control basin for the purpose of parking. In addition, the Corps is concerned with potential impacts to current recreation users at the Santa Fe Dam Recreation Area which may occur as a result of the proposed use of adjacent lands for parking.

3. *Scoping Meeting.* Two scoping meetings will be held in January 1988 to present alternatives under consideration to facilitate parking demands created by the proposed Raider Stadium. These meetings are tentatively scheduled for January 11 and 13 in Irwindale, California and Los Angeles, California respectively.

4. *Publication of the DEIS.* The Draft Environmental Impact Statement is scheduled to be available for public reivew in late January 1988.

ADDRESS: Questions about the proposed action, its alternatives, the DEIS, and the DEIS can be answered by, Mr. Rick Grover (213) 894–5635, U.S. Army Corps of Engineers, 300 N. Los Angeles Street, P.O. Box 2711, Los Angeles, California, 90053–2325.

Date: December 7, 1987.

Glen F. Weien,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer for Civil Works.

[FR Doc. 87–30057 Filed 12–30–87; 8:45 am]

BILLING CODE 3710-KF-M

Intent To Prepare a Supplemental Environmental Impact Statement; Rio Grande, NM

The Albuquerque District, U.S. Army Corps of Engineers intends to prepare a supplemental environmental impact statement on a proposal to reduce flooding and sedimentation in the

middle Rio Grande valley of New Mexico.

AGENCY: U.S. Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Intent to prepare a supplemental environmental impact statement.

SUMMARY:

1. *Alternatives Considered.* The purpose of the study is to reevaluate the plan of improvement authorized by the Flood Control Act of 1948 (Pub. L. 80–858, 203) in light of the economic infeasibility of recommended detention reservoirs on the Rio Puerco and Rio Salado drainages. Its objective is to reduce the effects of flooding and sediment deposition on farmlands, urban areas, a national wildlife refuge, and major water conveyance and storage facilities in the middle Rio Grande valley resulting from drainage from two major tributaries, the Rio Puerco and Rio Salado. Coincident objectives are the preservation, conservation, and enhancement of biological, recreational, social, and aesthetic values. A single alternative measure being evaluated in lieu of the previously recommended flood and sediment control dams consists of the orignally authorized plan of rehabilitating the existing levee system. Other alternatives formulated and evaluated during earlier studies and found not to be feasible included alternative dam sites, local levees around high value property, floodproofing of structures, flood plain zoning for future development, relocation of structures, and watershed treatment. This study comprises General Design Memorandum studies and will culminate in a recommendation that best satisfies overall public needs and desires.

2. *Public Involvement Process.* Coordination is being maintained with both public and private concerns having jurisdiction or an interest in land and resources in the Rio Puerco and Rio Salado watersheds and middle Rio Grande valley of New Mexico. These concerns include the general public, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the Interstate Stream Commission. A fully coordinated final environmental impact statement (EIS) addressing the previous recommendation to construct flood and sediment control dams on the Rio Puerco and Rio Salado was filed with the Council on Environmental Quality in 1977. An early public meeting was held in the city of Socorro in 1979. Coordination will be expanded and intensified as plans become increasingly refined. Federal, State, and local input in the development of the EIS will be obtained by the combination of agency coordination, workshops, and, if necessary, public meetings. All interested parties will be invited to submit comments on the EIS when it is circulated for review.

The planning effort is being coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1972 (72 Stat. 563) (Pub. L. 85–624) and the Endangered Species Act of 1973, as amended (87 Stat. 884) (Pub. L. 93–205). Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Officer will be initiated pursuant to the National Historic Preservation Act of 1966 (80 Stat. 915) (Pub. L. 89–655), and the Preservation of Historic and Archeological data (88 Stat. 174) (Pub. L. 93–291).

3. *Significant Issues to be Analyzed.* Significant issues to be analyzed in the development of the EIS include the effect of the recommended plan and any accompanying alternatives on human safety, flood plain development, water conveyance and storage facilities, riparian biological systems, wildlife refuge objectives, endangered species, social welfare, cultural resources, and aesthetic qualities. Also, the development of mitigative measures will be undertaken if necessary.

4. *Public Review.* The estimated date that the draft General Design Memorandum will be completed and the draft Supplemental EIS circulated for public review is December 1988.

5. *Further Information.* Questions regarding the study and the supplemental EIS may be directed to: Mark Sifuentes, USAED, Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103, Phone: (505) 766–3577.

Date: December 21, 1987.

Kent R. Gonser,

Lieutenant Colonel, CE District Engineer.

[FR Doc. 87–29979 Filed 12–30–87; 8:45 am]

BILLING CODE 3710–KK–M

Intent to Prepare a Draft Environmental Impact Statement; Big River Water Supply Project, RI

To prepare a Draft Supplemental Environmental Impact Statement (SEIS) for a Regulatory Permit for the development of the Big River Water Supply Project within the communities of Coventry, East Greenwish, West Greenwish and Exeter, Rhode Island.

AGENCY: New England Division, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement (SEIS).

SUMMARY: 1. *Description of Action:* The Rhode Island Water Resources Board has made an application for a permit under Section 404 of the Clean Water Act for the construction of the Big River Water Supply Project.

The project proposed by the Rhode Island Water Resources Board has a number of features similar to a project proposed by the U.S. Army Corps of Engineers as a multi-purpose water resource project. An Environmental Impact Statement (EIS) was used to evaluate the multi-purpose project of water supply, flood control and recreation. The State's project is a single-purpose project for water supply and design modifications have been made from the original Federal Project. For these reasons as well as others, the Corps has determined that a Supplemental Environmental Impact Statement (SEIS) is required.

The total reservoir area would encompass approximately 3,600 acres at elevation 303 feet MSL. At the normal operating level of 300 feet MSL the water area will comprise 3,470 acres. The proposed dam and its appurtenant structures will cross the Big River 100 feet upstream of Zeke's Bridge on Harkney Hill Road in Coventry. The maximum height of the dam will be 70 feet at elevation 310 feet MSL. The dam crest will be 2,200 feet along its axis with a top width of 25 feet. Water from the reservoir will be conveyed via a 2,000-foot long conduit to the proposed Big River Water Treatment Plant. A 96-inch diameter rock tunnel will convey water from the treatment plant to the Providence Water Supply Board's transmission connection in West Warwick.

2. *Alternatives:* A complete alternatives analysis based on the scoping process will be carried out during the development of the SEIS.

3. *Scoping Process:* The Corps of Engineers held a preliminary meeting with Federal and state agencies to solicit initial environmental concerns on December 8, 1987. NED will review EIS information supplied by the Rhode Island Water Resources Board, along with other agencies who have the appropriate jurisdiction or expertise. Coordination will be made with the Environmental Protection Agency and the U.S. Fish and Wildlife Service.

The Supplemental Environmental Impact Statement will address and

analyze indepth potential direct and indirect impact of the construction and operation of the Big River Reservoir, including water quality, fish and wildlife resources, recreation, endangered species, cultural resources, as well as an alternative analysis and demands analysis.

4. *Scoping Meeting:* The Corps and the Rhode Island Water Resources Board plans to hold a public scoping meeting on January 12, 1988 at the Coventry Town Hall in Coventry, Rhode Island at 2:00 p.m. and 7:30 p.m. All interested agencies, organizations and publics are invited to attend this meeting.

5. *Availability:* It is anticipated that the Draft SEIS would be made available for review in January 1989.

ADDRESS: Questions about the proposed action and SEIS can be answered by Mr. Douglas Sparrow, New England Division, Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254-9149. Phone: 617-647-8499.

Dated: December 18, 1987.

Stanley J. Murphy,

LTC, Corp of Engineers District Engineer.

[FR Doc. 87-29978 Filed 12-30-87; 8:45 am]

BILLING CODE 3710-24-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.190]

Invitation; Applications for New Awards Under the Christa McAuliffe Fellowship Program for Fiscal Year 1988

Purpose: To provide fellowships to outstanding teachers to enable and encourage them to continue their education or to develop educational projects and programs.

Deadline for Transmittal of Applications: Applications to statewide panel: February 15, 1988. Recommendations to Department of Education: March 30, 1988.

Available funds anticipated: It is estimated that approximately $2,000,000 will be available for fiscal year 1988 awards under this competition. However, applicants should note that Congress has not yet completed action on the fiscal year 1988 appropriation.

Estimated range of awards: $13,000 to $26,704.

Estimated average size of awards: $16,000-$22,000.

Estimated number of awards: 80-128.

Project period: Up to 12 months.

Supplementary Information: Section 563(a)(3) of the Higher Education Act, as amended (20 U.S.C. 1113b(a)(3)), the Christa McAuliffe Fellowship Program statute states that "If the appropriation for this subpart under section 502(d) [of the Higher Education Act] is not sufficient to provide the number of fellowships required by paragraph (1) [one in each congressional district, the District of Columbia, and the Commonwealth of Puerto Rico; and one such fellowship in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Palau] at the level required under paragraph (2), [not to exceed the national average salary of public school teachers], the Secretary shall determine and publish an alternative distribution of fellowships which will permit fellowship awards at that level and which is geographically equitable." The Secretary herein publishes the alternative distribution method for fiscal year 1988 awards. Funds will be distributed so that a minimum of $26,704, the national average teacher salary, will be available for public and private school teachers in each State, the District of Columbia, and the Commonwealth of Puerto Rico. For each of the Outlying Areas—Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Palau—$16,000 will be available. The balance of the funds will be distributed among the States, District of Columbia, and Puerto Rico according to their relative numbers of public school teachers. Awards to individual teachers may not exceed $26,704 for the 50 States, District of Columbia, and Puerto Rico or $16,000 for the Outlying Areas. The Secretary urges that fellowships be awarded in the maximum amount whenever possible.

Applicable Regulations: The Christa McAuliffe Fellowship Program Regulations, 34 CFR Part 237.

For Applications Call or Write State Contact Persons

Alabama

Mr. J. Paul Copeland, Alabama State House, Montgomery, Alabama 36130 (205) 261-7182

Alaska

Ms. Sandra Berry, Alaska Dept. of Education, P.O. Box F, Juneau, Alaska 99811, (907) 465-2841

American Samoa

Mr. Ralph Farrow, Dept. of Education, American Samoa Government, Pago Pago, American Samoa 96799, (684) 633-5237

Arizona

Ms. Nancy Mendoza, Arizona Dept. of Education, 1535 West Jefferson Street, Phoenix, Arizona 85007, (602) 255-3204

Arkansas

Ms. Brenda Matthews, Arkansas Dept. of Education, #4 Capitol Mall, Little Rock, Arkansas 72201, (501) 371-1281

California

Peter G. Mehas, Governor's Office, State Capitol, Sacramento, California 95814, (916) 323-0611

Colorado

Dr. Ray E. Kilmer, Colorado Dept. of Education, 201 East Colfax Avenue, Denver, Colorado 80203, (303) 866-6806

Connecticut

Mr. Thomas Lovia Brown, Connecticut State Dept. of Education, 165 Capitol Avenue, Hartford, Connecticut 06106, (203) 566-4122

Delaware

Dr. William B. Keene, Dept. of Public Instruction, Townsend Building, Dover, Delaware 19903, (302) 736-4601

District of Columbia

Ms. Eloise Turner, Office of Postsecondary Education Research and Assistance, 1331 H St., NW., Suite 600, Washington, D.C. 20005, (202) 727-3685

Florida

Ms. Ida S. Baker, Florida State Dept. of Education, G20-Collins, Tallahassee, Florida 32099, (904) 488-5724

Georgia

Ms. Gale Samuels, Georgia Dept. of Education, Twin Towers East, Atlanta, Georgia 30334, (404) 656-2476

Guam

Ms. Rosa S. Palomo, Governor's Office, P.O. Box 2950, Agana, Guam 96910, (671) 4728-931/9x212

Hawaii

Ms. Mary Tanouye, Hawaii Dept. of Education, P.O. Box 2360, Room 301, Honolulu, Hawaii 96864, (808) 548-5215

Idaho

Mr. Gene Peterson, Executive Office of the Governor, State House, Boise, Idaho 83720, (208) 334-3309

Illinois

Ms. Gail Lieberman, State Capitol, Room 2½, Springfield, Illinois 62706, (217) 782-4921

Indiana

Ms. Betty Johnson, Indiana Dept. of Education, 251 E. Ohio, Indianapolis, Indiana 46204, (317) 269-9641

Iowa

Ms. Carol Bradley, Iowa Dept. of Education, Grimes State Building, Des Moines, Iowa 50319, (515) 281-3575

Kansas

Mr. Warren Bell, Kansas State Dept. of Education, 120 East 10th Street, Topeka, Kansas 66612, (913) 296-2306

Kentucky

Ms. Beth Brinly, Office of the Governor, State Capitol Bldg., Rm. 103, Frankfurt, Kentucky 40601, (502) 564-2611

Louisiana

Dr. Sally Clausen, Governor's Office, P.O. Box 94095, Baton Rouge, Lousiana 70804, (504) 342-7000

Maine

Ms. Polly Ward, Maine Dept. of Education, State House Station 23, Augusta, Maine 04333, (207) 289-5803

Maryland

Dr. Douglas S. MacDonald, Maryland State Scholarship Board, 2100 Guilford Avenue, Baltimore, Maryland 21218, (301) 333-6420

Massachusetts

Ms. Nancy Richardson, State House, Room 173, Boston, Massachusetts 02133, (617) 727-0803

Michigan

Ms. Debra Clemmons, Michigan Dept. of Education, P.O. Box 30008, Lansing, Michigan 48908, (517) 373-3608

Minnesota

Dr. Susan K. Vaughn, Minnesota Dept. of Education, 645 Capitol Square Building, St. Paul, Minnesota 55101, (612) 296-4075

Mississippi

Mr. Jack Lynch, Mississippi Dept. of Education, P.O. Box 771, Jackson, Mississippi 39205, (601) 359-3519

Missouri

Ms. Georganna Beachboard, Missouri Dept. of Education, P.O. Box 480, Jefferson City, Missouri 65102, (314) 751-2661

Montana

Mr. J. Michael Pichette, Governor's Office, State Capitol, Helena, Montana 59620, (406) 444-3111

Nebraska

Mr. Andy Cunningham, Policy Research Office, Box 94601, Lincoln, Nebraska 68509, (402) 471-2414

Nevada

Ms. Marcia R. Reardon, Nevada Dept. of Education, 400 West King Street, Carson City, Nevada 89710, (702) 885-3104

New Hamsphire

Mr. David M. Carney, Office of the Governor, State House, Concord, New Hamsphire 03301, (603) 271-2121

New Jersey

Dr. Valerie French, New Jersey Dept. of Education, CN 500, Trenton, New Jersey 08625, (609) 292-4450

New Mexico

Ms. Marlis Mann, Governor's Office, State Capitol, Santa Fe, New Mexico 87503, (505) 827-3000

New York

Mr. Mike Van Ryn, State Education Department, Albany, New York 12230, (518) 474-3896

North Carolina

Ms. Grace Drain, N.C. Dept. of Public Instruction, 116 West Edenton Street, Raleigh, North Carolina 27603, (919) 733-4736

North Dakota

Mr. Wayne Sanstead, Department of Public Instruction, State Capitol, Bismarck, North Dakota 58505, (701) 224-2276

Northern Marianas

Mr. Robert Coldeen, Department of Education, Saipan, CM 96950, (670) 322-3194

Ohio

Dr. G. Robert Bowers, Ohio Dept. of Education, 65 S. Front Street, Columbus, Ohio 43266, (614) 466-2329

Oklahoma

Ms. Sharon A. Lease, State Dept. of Education, 2500 N., Lincoln Blvd., Oklahoma City, Oklahoma 73105, (405) 521-4311

Oregon

Ms. Joyce M. Reinke, Oregon Dept. of Education, 700 Pringle Parkway, SE., Salem, Oregon 97310, (503) 373-7118

Palau

Mr. William Tabelual, Palau Dept. of Education, P.O. Box 189, Koror, Palau 96940, Intl. Op. 160+680 Palau #952

Pennsylvania

Dr. William Logan, Pennsylvania Dept. of Education, 333 Market Street, Harrisburg, Pennsylvania 17126, (717) 787-3785

Puerto Rico

Mrs. Awilda Aponte Roque, G.P.O. Box 759, Hato Rey, Puerto Rico 00919, (809) 751-5372

Rhode Island

Mr. Ronald L. DiOrio, State House, Room 128, Smith Street, Providence, Rhode Island 02903, (401) 277-2080

South Carolina

Dr. Floride M. Martin, Governor's Office, P.O. Box 11369, Columbia, South Carolina 29211, (803) 734-9818

South Dakota

Mr. James O. Hansen, South Dakota Dept. of Education, 700 Governor's Drive, Pierre, South Dakota 57501, (605) 773-8134

Tennessee

Mr. Estel Mills, Tennessee Dept. of Education, Cordell Hull Building, Rm. 200, Nashville, Tennessee 37219, (615) 741-0874

Texas

Ms. Betsy Bishop, Governor's Office, Box 12428, Austin, Texas 78711, (512) 463-1778

Utah

Mr. Scott Cameron, Utah State Office of Education, 250 East Fifth South, Salt Lake City, Utah 84111, (801) 533-4095

Vermont

Dr. Stephen Kaagan, Department of Education, 120 State Street, Montpelier, Vermont 05602, (802) 828-3135

Virgin Islands

Dr. Linda Creque, Department of Education, P.O. Box 6640, Charlotte Amalie, St. Thomas, VI 00801, (809) 774-0100

Virginia

Dr. Margaret Roberts, State Dept. of Education, 101 North 14th Street, Richmond, Virginia 23219, (804) 225-2540

Washington

Mr. Ronn Robinson, Office of the Governor, 320 Insurance Building, Mail Stop AQ-44, Olympia, Washington, 98504, (206) 753-5460

West Virginia

Mr. Thomas R. Tinder, Office of the Governor, State Capitol, Charleston, West Virginia 25305, (304) 340-1600

Wisconsin

Ms. Harlene Ames, Dept. of Public Instruction, P.O. Box 7841, Madison, Wisconsin 53707, (608) 266-9849

Wyoming

Dr. Audrey M. Cotherman, State Dept. of Education, Hathaway Building, Cheyenne, Wyoming 82002, (307) 777-6202

For information contact: Donna Moore, Education Program Specialist, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 2004, Washington, DC 20202, Telephone (202) 732-5104.

Program authority: 20 U.S.C. 1113-1113e.

Dated: December 23, 1987.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-29971 Filed 12-30-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-1-003]

Bayou Interstate Pipeline System; Proposed Changes in FERC Gas Tariff

December 24, 1987.

Take notice that on December 21, 1987, Bayou Interstate Pipeline System (Bayou) tendered for filing the following revised tariff sheets:

Volume No. 1
Fourth Revised Sheet No. 4
Volume No. 1A
Substitute Original Sheet No. 2

The proposed effective date is April 1, 1988.

Bayou states these revised tariff sheets comply with ordering paragraph (C) of the order denying rehearing and motion for stay and granting alternate

request issued December 14, 1987 which directed the elimination from Bayou's rates the replacement cost calculation utilized in the rate of return and related income tax amounts. Bayou further states that the compliance filing is made with the understanding that any "surrogate fee" approved by the Commission shall become effective on April 1, 1988, concurrently with the other proposed rates in this proceding.

Copies of this filing have been served upon Bayou's jurisdictional customer, the Louisiana Public Service Commission and the Department of Natural Resources Office of Conservation of the State of Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filling are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29945 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-12-000]

Distrigas Corp. and Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision and Request for Waiver

December 24, 1987.

Take notice that on December 21, 1987, Distrigas Corporation ("Distrigas") tendered 20th Revised Sheet No. 1 to its FERC Gas Tariff to reflect (1) a rate reduction for LNG from two cargoes delivered in December 1987, and January 1988 and Distrigas of Massachusetts Corporation ("DOMAC") tendered for filing 20th Revised Sheet No. 3A of its FERC Gas Tariff to also reflect a rate reduction.

Distrigas' 20th Revised Sheet No. 1 is being filed pursuant to the Purchased LNG Cost Adjustment provision set forth in this FERC Gas Tariff. The Distrigas rate changes are being filed to reflect a reduction in its sales rates to DOMAC of over 47 cents per MMBtu.

DOMAC states that its 20th Revised Sheet No. 3A is being filed under section 15 of the General Terms and Conditions of its FERC Gas Tariff to reflect the Distrigas rate changes in DOMAC's rates for sale to its distribution customers, a losses and uses factor and the GRI surcharge. DOMAC further states that no surcharge is filed to recover outstanding balances in its unrecovered purchased LNG cost account and that this filing is a reduction in its gas cost of over 72 cents per MMBtu.

Distrigas and DOMAC request a waiver of all applicable notice requirements so that the proposed tariff sheets become effective on delivery of LNG on or about December 26, 1987.

Distrigas and DOMAC state that a copy of their filing is being served on all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filling are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29946 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-22-001]

Gasdel Pipeline System, Inc.; Compliance Filing

December 24, 1987

Take notice that on December 21, 1987, Gasdel Pipeline System, Incorporated ("Gasdel") tendered for filing Substitute Original Sheet Nos. 5, 8, 16, 33, 35, 36, 38 and 40 in its FERC Gas Tariff Original Volume No. 1-A.

Gasdel states that the revised tariff sheets are being filed pursuant to ordering paragraph (A) of the Commission's Order issued December 4, 1987 requiring that Gasdel file revised tariff sheets reflecting modifications to various provisions of its tariff filing and the use of projected units of transportation in developing its transportation rates.

Gasdel requests waiver of all Commission rules and regulations, as necessary, to permit the tendered tariff sheets to become effective on December 5, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987). All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29947 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Dockets Nos. CI77-782-002, et al]

Mobil Oil Exploration & Producing Southeast Inc.; Applications for Permanent Abandonment of Service

December 24, 1987.

Take notice that on December 10, 1987, Mobil Oil Exploration & Producing Southeast Inc. (MOEPSI), Nine Greenway Plaza, Suite 2700, Houston, TX 77046 filed applications in the referenced dockets requesting authorization to permanently abandon sales of gas to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) from the South Pass 78 Field, South Pass 78/ West Delta 109 Field, South Pass 49 Field, Mississippi Canyon 63 Field and Mississippi Canyon 148 Field, Offshore Louisiana.

MOEPSI states expedited relief is sought for the reason that various disputes have arisen concerning performance and contractual obligations, including take-or-pay and price issues. By an Agreement of Compromise to be effective January 1, 1988, MOEPSI and Tennessee resolved the disputes and agreed to terminate the sales. MOEPSI states that as part of the settlement: (1) Tennessee agreed to make certain cash payments and other considerations to MOEPSI in settlement of all claims and demands, including take-or-pay issues, (2) Tennessee will fully support MOEPSI's applications for

the subject abandonment, (3) the gas will be temporarily released for sale under a blanket limited-term abandonment [1], and (4) the gas will be sold to the traditional purchaser and on the spot market. Deliverability is approximately 17,600 Mcf per day of NGPA section 102(d) gas. Sales have been made under MOEPSI's certificates issued in Docket Nos. CI77-782, CI81-187, CI81-299, CI81-313, and CI82-15 and FERC GAs Rate Schedule Nos. 78, 111, 127, 128 and 130, respectively. Gas is also sold to Columbia Gas Transmission Corporation (Columbia) subject to the certificates and rate schedules set forth above. Columbia is unaffected by these filings. MOEPSI requests that its applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 19 CFR 2.77.[2] MOEPSI requests the Commission waive any and all rate filing and blanket affidavit filing requirements, as required by § 154.94 of the Commission's Regulations.

Since MOEPSI has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MOEPSI to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29948 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

[1] By order issued March 31, 1987, in Docket No. CI87-292-000, MOEPSI received a blanket limited-term abandonment and sales authorization (LTA). 38 FERC ¶ 61,343 (1987). This authorization will expire on March 31, 1988.

[2] The Unied States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76.

[Docket No. RP86-7-004]

Mountain Fuel Resources, Inc.; Rate Change

December 24, 1987.

Take notice that on December 21, 1987, Mountain Fuel Resources, Inc. (MFR) tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff as follows:

MFR has requested that Substitute Eleventh Revised Sheet No. 12 to First Revised Volume No. 1 be approved to be effective December 1, 1987; and that Substitute Twelfth Revised Sheet No. 12 to First Revised Volume No. 1, Substitute Fourth Revised Sheet No. 5 to Original Volume No. 1-A, and Substitute Seventh Revised Sheet No. 8 to Original Volume No. 3 be approved to be effective January 1, 1988.

MFR further states that the purpose of this filing is to place into effect tariff sheets which correctly reflect MFR's base rates, as approved by letter order dated December 4, 1987, in Docket No. RP86-7-000, and MFR's currently effective Purchased Gas Adjustment, as approved by letter order dated November 23, 1987, in Docket No. TA88-1-55-000.

MFR has requested waiver of the filing fee requirements of § 381.204 of the Commission's regulations and any other necessary waivers to allow the tendered tariff sheets to become effective as proposed.

MFR further states that it has provided a copy of the filing to interested parties and state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29949 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-41-000]

Southwest Gas Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

December 24, 1987.

Take notice that Southwest Gas Corporation (Southwest) on December 22, 1987, tendered for filing Thirty-seventh Revised Sheet No. 10 pursuant to section 9, Purchased Gas Adjustment Clause (PGAC), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect an increase in rates occasioned by an increase in rates from Northwest Pipeline Corporation (Northwest), Southwest's sole supplier of gas in northern Nevada, effective January 1, 1988. Southwest has requested that its filing become effective January 1, 1988, concurrent with Northwest's approved rate increase.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29950 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-41-000 and CI88-44-000]

Tenneco Oil Co.; Applications for Permanent Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

December 25, 1987.

Take notice that on October 19, 1987, as supplemented on December 7 and 17, 1987, Tenneco Oil Company (Tenneco), P.O. Box 2511, Houston, TX 77252 filed applications in Docket No. CI88-44-000 requesting permanent abandonment of sales of gas to Northwest Pipeline Corporation (Northwest) from the Erin Stays Com well number 1, located within Section 2, Township 25N, Range 11W, Basin Field, San Juan County, New Mexico, and requesting in Docket No. CI88-41-000 a three-year blanket limited-term certificate with pregranted abandonment for sales for resale in interstate commerce of the released gas to other purchasers.

Tenneco states expedited relief is sought for the reason that takes of gas under the terms of the Gas Purchase Contract dated September 2, 1977, have been substantially reduced without payment. Northwest gave formal notice on October 20, 1986, of cancellation of the gas sales contract. Deliverability is approximately 12.4 MMcf per month. The gas is NGPA section 104 post-1974 gas. Sales have been made under Applicant's certificate issued in Docket No. CI78-74 and FERC Gas Rate Schedule No. 333. Tenneco requests that its applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1] Tenneco requests the Commission waive any and all rate filing and blanket affidavit filing requirements, as required by Section 154.94 of the Commission's Regulations.

Since Tenneco has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tenneco to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29951 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expanded basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76.

[Docket No. RP87-92-001]

Williston Basin Interstate Pipeline Co.; Federal Energy Regulatory Commission Annual Charge Adjustment Filing

December 24, 1987.

Williston Basin Interstate Pipeline Company (Williston Basin), on December 18, 1987, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Second Revised Sheet No. 4
Substitute Fourth Revised Sheet No. 10
Substitute First Revised Sheet No. 115
Substitute Original Sheet No. 115A

Original Volume No. 1-A

Second Revised Sheet No. 4
Fifth Revised Sheet No. 11
Seventh Revised Sheet No. 12
First Revised Sheet No. 88
Second Revised Sheet No. 97
First Revised Sheet No. 146
Original Sheet No. 146A

Original Volume No. 2

Second Revised Sheet No. 1C
Substitute Seventh Revised Sheet No. 10
Substitute Eighth Revised Sheet No. 11

The proposed effective date of the tariff sheets is October 1, 1987.

Williston Basin states that the filing is in compliance with the Office of Pipeline and Producer Regulation blanket order of September 29, 1987 in Docket Nos. RP87-109 *et al.* and the Commission's December 10, 1987 order denying Williston Basin's request for waiver in Docket Nos. RM87-3-000 *et al.* and applies a Federal Energy Regulatory Commission Annual Charge Adjustment Provision (ACA) to all of its jurisdictional sales and transportation rate schedules pursuant to § 154.38(d)(6)(i) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29952 Filed 12-30-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3309-5]

Science Advisory Board, Environmental Engineering Committee and Unsaturated Zone Code Subcommittee; Two Open Meetings—January 19-20, 1988

Under Pub. L. 92-463, notice is hereby given that the Unsaturated Zone Code Subcommittee of the Science Advisory Board's Environmental Engineering Committee will meet from 8:00 a.m. to 1:00 p.m. on Tuesday, January 19, 1988 in the Administrator's Conference Room, 1101 West Tower, 401 M Street, SW., Washington, DC. The Subcommittee will continue the review of the Office of Solid Waste's Unsaturated Zone Code, FECTUZ.

At 2:00 p.m., the Environmental Engineering Committee will convene at the same location, and adjourn no later than 4:00 p.m. on Wednesday, January 20. The Committee will hear the reports of the Mine Waste Risk Screening Subcommittee and the Unsaturated Zone Code Subcommittee, discuss possible changes to the Underground Storage Tank draft report, consider a resolution on modeling and be briefed by the Agency on a variety of Environmental Protection Agency's engineering activities.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Mrs. Kathleen Conway, or Marie Miller at 202/382-2552 by January 15, 1988.

Date: December 21, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-30006 Filed 12-30-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3310-1]

Designation of an Ocean Disposal Site for THUMS Drilling Muds and Cuttings in the San Pedro Basin Off the Palos Verdes Peninsula, California; Intent To Prepare an Environmental Impact Statement

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

ACTION: Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) on the designation of an Ocean Disposal Site off the Palos Verdes Peninsula, California.

Purpose: The U.S. EPA, in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA) and EPA's policy for the preparation of an EIS for all ocean disposal sites (39 FR 37119, October 21, 1974), will prepare a SEIS on the designation of the THUMS drilling muds and cuttings ocean disposal site located in the San Pedro Basin off the Palos Verdes Peninsula, California. A SEIS is needed to provide the information necessary to redesignate the ocean disposal site. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For Further Information and To Be Placed on the Mailing List Contact: Patrick J. Cotter, Oceans and Estuaries Section (W-5-3), Water Management Division, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, telephone number (415) 974-0257 or FTS 454-0257; or Virginia Fox-Norse, Marine Operations Division, Office of Marine and Estuarine Protection (WH-556F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone number (202) 475-7129 or FTS 475-7129.

SUMMARY: The THUMS drilling muds and cuttings ocean disposal site was previously designated for a three year period (50 FR 9273, March 7, 1985). The site was used after an ocean dumping special permit (OD 82-01) was issued by EPA Region 9 on April 8, 1985. Both the permit and the site designation expire on April 8, 1988.

A SEIS will be prepared as a supplement to the final EIS (FEIS) issued in February 1985. This SEIS will be used by EPA to evaluate the impact of disposal during the term of the previous ocean dumping permit. The SEIS will be prepared using the FEIS and all of the monitoring data collected during the tenure of THUMS' three year ocean dumping permit (Special Permit OD 82-01).

The SEIS will examine the period of use for the site. While the existing designation was for a finite period of 3 years, the SEIS will examine whether another finite period or continuing use is appropriate. The SEIS will consider the impacts which could result from continued offshore disposal of drilling muds and cuttings from THUMS' oil production facilities at the existing designated site.

The center of the present THUMS ocean disposal site is located approximately 16 nautical miles (29.6 kilometers) southwest from the Los Angeles/Long Beach Harbor breakwater at coordinates 33°34'30" North latitude by 118°27'30" West longitude. The radius of the site is 1.5 nautical miles (2.8 kilometers) and water depth is approximately 485 fathoms (887 meters).

Need for Action: On July 1, 1986, EPA Region 9 received THUMS' ocean dumping permit reapplication, and Region 9 deemed the application completed on November 7, 1986. In response to this request, EPA has determined that a SEIS will be prepared to redesignate a site in the San Pedro Basin located off the Palos Verdes Peninsula, California. The site would be for the disposal of drilling muds and cuttings, when ocean dumping is the preferred alternative, from THUMS' oil production facilities within Long Beach Harbor. A SEIS is required to provide the necessary information to evaluate disposal alternatives and to designate the preferred site. Disposal of THUMS' drilling muds and cuttings, under Section 102 of MPRSA, will not be permitted unless EPA determines that the material is acceptable for disposal under the Ocean Dumping Criteria at 40 CFR Part 227, and a new special permit is issued.

Alternatives: The SEIS will characterize environmental parameters, assess environmental impacts and evaluate a reasonable range of alternatives to determine whether redesignation of the THUMS ocean disposal site is acceptable. The alternatives include: (1) Redesignation of the THUMS site, (2) no action, (3) land disposal, (4) disposal at a nearshore site, and (5) disposal at an alternate deep water site.

Scoping: A scoping meeting is not contemplated, unless significant comments are received in response to this Notice of Intent. Scoping will be accomplished with affected Federal, State and local agencies, as well as interested parties, by written responses to this notice. Comments on this Notice of Intent should be sent to the contact person listed above no later than 30 days after the publication of this notice.

Estimated Date of Release: The draft SEIS will be made available in early 1988.

Responsible Official: Tudor T. Davies, Director, Office of Marine and Estuarine Protection.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-30025 Filed 12-30-87; 8:45 am]

BILLING CODE 6760-50-M

[OPP—30000/44C; FRL 3310-4]

Alachlor; Notice of Intent to Cancel Registrations; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination; Notice of Intent to Cancel; Notice of Intent to Deny Applications for Registration.

SUMMARY: This Notice announces EPA's intent to cancel registrations and to deny registration applications for all pesticide products containing alachlor as an active ingredient (a.i.) unless the registrations/applications comply with the terms and conditions of registration that are set forth in this Notice. This action concludes EPA's Special Review of alachlor, and is based on the Agency's determination that the use of alachlor products without such modified terms and conditions of registration will result in unreasonable adverse effects on humans or the environment.

DATE: Requests for a hearing by a registrant, applicant, or other adversely affected party must be received on or before February 1, 1988, or, for a registrant or applicant, within 30 days from the receipt of this Notice, whichever occurs later.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

Additional information supporting this action is available for public inspection

from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail:

James V. Roelofs, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

Office Location and Telephone Number: Room 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202. Telephone (703 557-0064).

SUPPLEMENTARY INFORMATION: This Notice announces EPA's decision to cancel registrations and deny applications for registrations of pesticide products containing alachlor (2-chloro-2', 6'-diethyl-N-(methoxymethyl) acetanilide) as an active ingredient (a.i.), unless the terms and conditions of registration are amended to comply with the terms and conditions set forth in this Notice. This Notice concludes the Agency's administrative Special Review of the risks and benefits of alachlor which was initiated in a **Federal Register** notice of January 9, 1985, (50 FR 1115). A Notice of Preliminary Determination concerning alachlor was published in the **Federal Register** on October 8, 1986, (51 FR 36166), and supporting documents were made available to any requesting party at that time. EPA has evaluated the issues raised in the preliminary documents listed above in the light of comments and additional data received during the Special Review process. In summary, EPA is requiring that alachlor be classified for restricted use by certified applicators or persons under their direct supervision; that aerial application of alachlor be allowed only if mechanical and not human flaggers are used; and that persons applying alachlor to 300 or more acres per year use mechanical transfer (pumping) systems for mixing and loading alachlor.

This Notice is organized into seven units. Unit I is an Introduction providing background information on alachlor, EPA actions prior to this Notice, and the legal basis for these actions. Units II and III summarize EPA's risk and benefit evaluations of alachlor, respectively. Comments received from interested parties on specific risk and benefit issues are also discussed in these units. Unit IV discusses the comments of the Secretary of Agriculture, the Scientific Advisory panel and other parties on the regulatory actions previously proposed by EPA in its Preliminary Notice of Determination of October 8, 1986. Unit V describes the Agency's final determination and the actions required by this Notice. Unit VI describes the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit VII lists references used in this Notice.

I. Introduction

Pesticide products containing the active ingredient alachlor have been registered in the United States since 1969 by Monsanto Chemical Company. EPA records indicate that there are nine federally registered products containing alachlor, and nine products registered for intrastate sale only.

Alachlor is a selective herbicide used for preemergence control of many broadleaf weeds and grasses. Registered uses include selective weed control in cultivated agricultural land and woody ornamentals. In the United States, usage of alachlor is estimated at 80 to 84 million pounds a.i. per year. Approximately 94 percent of alachlor use is on three sites: corn (63 percent), soybeans (28 percent), and peanuts (3 percent). Alachlor is also registered for use on dry beans, lima beans (green), mung beans, green peas (for processing), cotton, grain sorghum, and sunflowers.

A. Regulatory History

In November 1984, the Agency issued a document entitled "Guidance for the Interim Registration of Pesticide Products Containing Alachlor as an Active Ingredient" (the Registration Standard). Prior to the issuance of the Registration Standard, the registrant voluntarily amended alachlor product labels to delete aerial application. Several label modifications were proposed through the Registration Standard, including a warning on possible risks of tumor formation and directions on the use of protective clothing by applicators. The Agency also required registrants to develop and implement an information and training program for users of alachlor products. Additional data were also required pursuant to section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*), including data on alachlor contamination of ground and surface waters, and on residues in various food commodities.

The Registration Standard was followed by publication of a Notice of Initiation of Special Review of Registrations of Pesticide Products Containing Alachlor, hereafter referred to as the Notice of Initiation of Special Review, which was published in the **Federal Register** of January 9, 1985 (50 FR 1115). That Notice also announced the availability of the Alachlor Position Document 1 (PD-1), which set out in detail the basis for initiating the Special Review.

The Special Review was initiated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) because pesticide products containing alachlor met or exceeded EPA's then applicable oncogenicity risk criteria under 40 CFR 162.11(a)(3). Specifically, EPA determined that exposure to pesticide products containing alachlor resulted in increased incidence of tumors at multiple sites in two species of laboratory animals. Subsequently, the risk criteria in 40 CFR 162.11 were superceded by revised criteria set forth in 40 CFR 154.7(a)(2). However, the Agency determined that alachlor exceeds the revised criteria for oncogenicity as well.

Following review of public comments received in response to the Notice of Initiation of Special Review and the alachlor PD-1, EPA issued a Notice of Preliminary Determination in which the Agency announced its proposed decision to allow the continued use of alachlor products subject to modification of the terms and conditions of registration. The Agency proposed to reclassify alachlor as a restricted use pesticide, to require the use of a closed mixing/loading system whenever alachlor was applied to 300 acres or more annually, to reinstate aerial application of alachlor but prohibit the use of human flaggers, and to retain the tumor warning statement on the labels. In addition, pursuant to 40 CFR 162.17, EPA notified producers of all alachlor products registered solely for intrastate sale and distribution that they were required to submit complete applications for Federal registration.

The Notice of Preliminary Determination was published in the **Federal Register** of October 8, 1986 (51 FR 36166). That Notice also announced the availability of the Alachlor Technical Support Document (TSD), which set out in detail the basis for the Agency's Preliminary Determination. In accordance with sections 6 and 25 of FIFRA, the Agency sent the Notice of Preliminary Determination, the Technical Support Document, and a draft Notice of Intent to Cancel to the Secretary of Agriculture and the Scientific Advisory Panel for the required 30-day review. The same documents were sent to all registrants and applicants for registration of

alachlor products. The Technical Support Document (TSD) is a detailed discussion of the risk and benefit data on alachlor considered by EPA, and is incorporated by reference in this Notice, except where it is specifically noted that additional information has led EPA to revise an evaluation presented in the TSD.

By this Notice, EPA is announcing that it will cancel the registrations of alachlor products and deny applications for registration of such products which have not complied with the modified terms and conditions of registration set forth in this Notice within 30 days of publication or receipt by registrants of this Notice, whichever occurs later. As further discussed in Unit I.B. and in Unit VI of this Notice, persons adversely affected by this action and who are not registrants who elect to amend registrations may request a hearing.

B. Legal Background

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency [FIFRA sections 3(a) and 12(a)(1)]. A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions.

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," under FIFRA section 3(c)(5). The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may issue a notice of intent to cancel the registration of a pesticide product whenever it is determined that the pesticide product causes unreasonable adverse effects on the environment. The Agency created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR Part 154. The Agency announces that a Special Review is initiated by issuing a notice in the **Federal Register.** Registrants and other interested persons are invited to review the data upon which the Special Review is based and to submit data and information to rebut the Agency's conclusions by showing that the Agency's initial determination was in error, or by showing that use of the pesticide is not likely to result in any significant risk to human health or the environment. In addition to submitting rebuttal evidence, commenters may submit relevant information to aid in the determination of whether the economic, social, and environmental benefits of the use of the pesticide outweigh the risks of use. After reviewing the comments received and other relevant material obtained during the Special Review process, the Agency makes a decision on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of the Agency's risk/benefit assessment. If the Agency concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, the Agency will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than its benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registration. Alternatively, the Agency may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, the Agency must issue a Notice of Intent to Cancel the registrations. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes set forth in the Notice, if possible. Adversely affected persons, including registrants and applicants for registration, may also request a hearing on the cancellation of a specified registration and use, and if they do so in a legally effective manner, that registration and use will be continued pending a decision at the close of an administrative hearing.

As noted above, no pesticide may be lawfully sold in interstate or intrastate commerce unless it is registered by EPA. However, under 40 CFR 162.17, the Agency has permitted certain products previously registered under State law to continue to be sold and distributed solely in intrastate commerce, pending a final decision concerning Federal registration. In each instance, the State registrant was required to submit a "notice of application" for Federal registration and to agree to submit the balance of the application upon request by the Agency. Depending on the circumstances, when the Agency announces its intent to cancel Federal registrations for a pesticide, it may either instruct intrastate applicants for similar products to submit a full application for Federal registration conforming to appropriate terms and conditions, or notify the intrastate applicant that it intends to deny the application.

II. Summary of Risk Assessment and Agency Evaluation of Comments and Additional Data Received

The regulatory actions required by this Notice are based on the Agency's determination that the use of alachlor products as currently registered will result in significant risks to applicators of these products, and that these risks are not outweighed by the benefits associated with the uses of alachlor. The basis for this determination is discussed in detail in the Technical Support Document, and summarized in Unit V below.

The primary health effect of concern for alachlor is oncogenicity (tumor formation), but other adverse effects have been observed in animal studies. Available data show that alachlor has a low degree of acute toxicity. Chronic exposure of laboratory animals has shown evidence of a degenerative eye problem known as uveal degeneration syndrome (UDS), as well as toxic effects on the liver and kidney in rat and dog studies. The available data are adequate to identify No Observed Effect Levels (NOELs) for non-oncogenic effects, as

follows. A 2-year feeding study in rats showed a NOEL of 2.5 mg/kg/day for UDS (molting of pigmentation from the retina). A 3-generation reproduction study in rats showed a NOEL of 10 mg/kg/day for kidney effects in the offspring. Alachlor did not cause birth defects (teratogenesis) in rats at the highest dose tested (400 mg/kg/day). A teratogenicity study in rabbits was judged to be inadequate: An additional rabbit study has been required (due in March 1988). A 1-year oral dosing study in beagle dogs showed a NOEL of 1 mg/kg/day for effects (hemosiderosis) in the liver, kidney and spleen.

Based on the beagle dog study, the Agency has established a provisional Reference Dose for alachlor of 0.01 mg/kg/day, incorporating a 100-fold uncertainty factor (i.e., the NOEL is divided by 100) to reflect possible differences in sensitivity between laboratory animals and humans. A Reference Dose represents the quantity of a substance which, if absorbed by the human system on a daily basis over a lifetime, is not expected to pose significant risks of certain adverse health effects. The alachlor Reference Dose is provisional because additional toxicity data are still required (e.g., teratology in rabbits).

It is EPA's assessment based on the available data that the exposures to alachlor typically experienced by users of alachlor products or consumers of treated commodities are not likely to pose significant risks of non-oncogenic health effects including UDS, kidney and/or liver effects, or adverse reproductive effects. Thus, EPA's risk assessment for alachlor is focused on oncogenicity.

A. Oncogenicity Data

The Special Review of alachlor products was initiated in 1985 because laboratory animal feeding studies demonstrated oncogenic effects in two species. One study (Daly, 1981a) conducted in mice showed a statistically significant increase in lung tumors in female CD-1 mice at the highest dose. Three chronic feeding studies (Daly, 1981b; Stout, 1983a; Stout, 1983b) were conducted in the Long-Evans strain of rat. These studies showed statistically significant increases in stomach, thyroid and nasal turbinate tumors in both sexes, at various dose levels. All stomach tumors observed were malignant, as were several of the tumors observed at other sites. In addition, an increased incidence of nasal turbinate tumors was observed after 2 years in rats which had received only 5 to 6 months of alachlor exposure, indicating that less than lifetime exposure is sufficient to elicit an oncogenic response in rats.

Supporting evidence for oncogenicity includes data showing that two metabolites of alachlor are mutagenic in the Ames assay, and that the structurally similar pesticide compound acetochlor has shown positive mutagenic effects, and caused increased incidence of hepatocellular carcinoma and thyroid follicular cell adenomas in high dose male rats. Another structurally related pesticide compound, metolachlor, has shown limited evidence of carcinogenic effects in rats.

On the basis of the available evidence, EPA assessed alachlor to be in Group B2 of the classification system set forth in EPA's Carcinogen Risk Assessment Guidelines (51 FR 33992, September 24, 1986). In general terms, a B2 classification means that the weight of evidence from laboratory animal data is sufficient to consider the compound a probable human carcinogen. Evidence is sufficient if there is an increased incidence of tumors (a) in multiple species or strains of test animals; or (b) in multiple experiments, for example, with different dose levels or routes of administration; or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age at onset.

1. *Registrant comments on oncogenicity issues.* In response to the Agency's Notice of Initiation of Special Review and the alachlor PD-1, the registrant submitted comments in rebuttal of EPA's interpretation of the available data on the oncogenicity of alachlor. No new oncogenicity studies were submitted. The Agency addressed these comments in detail in the Technical Support Document of October 1986 (pp. II-43 through II-51). EPA concluded that the concern for oncogenicity of alachlor had not been rebutted by the registrant's responses.

In accordance with section 6 of FIFRA, the Agency's proposed decision to cancel alachlor registrations (unless the terms were modified) due to the identified risks of oncogenicity, was submitted to the Scientific Advisory Panel (SAP) for review. The SAP held a public meeting on November 19, 1986, at which both EPA and the registrant made presentations. The SAP's report of November 25, 1986, is reprinted in its entirety in Unit IV of this Notice. The SAP concluded that available data supported the classification of alachlor as a B2, probable human carcinogen. However, the SAP did not think the available mouse data showed an oncogenic effect in that species. The panel also stated that "the monkey may be a better metabolic surrogate for man than is the rat * * *", and suggested that metabolism data from monkeys might be used to modify the interpretation of rat data in regard to assessment of potential for human cancer risk.

In December 1986, EPA received further comments from the registrant of alachlor concerning the proposed decision, the Technical Support Document, and the SAP report. EPA had previously received data on the metabolism of alachlor in Rhesus monkeys from the registrant, and received additional data from this monkey study on November 10, 1986. The comments received from the registrant and other parties, and EPA's detailed evaluations of these comments are included in the public docket (OPP 30000/44B), available for inspection as noted at the beginning of this Notice under "**ADDRESS**".

The Agency reconsidered the classification of alachlor as a B2 oncogen in the light of the SAP's and the registrant's comments. Below is a summary of the four principal issues raised by the registrant in support of their contention that alachlor should be reclassified as a Group C oncogen (a compound for which there is limited evidence of oncogenicity).

a. There is evidence for oncogenicity in only one species: both the SAP and the registrant felt that the mouse study was negative for oncogenicity, since the incidence of lung tumors in female CD-1 mice was within the historical range of tumors experienced by control animals for this strain of mouse, as reported in published literature (specifically, Sher, et al., Toxicology Letters, 11: 103-110, 1982). EPA disagrees with the registrant and the SAP on this point, and does not feel that the literature cited is wholly relevant in this case. In EPA's view it is more appropriate to consider data on control animals drawn from concurrent or contemporaneous studies performed at the same laboratory which conducted the mouse study in question. Such data from the performing laboratory show a range of 0-23 percent spontaneous lung tumors in CD-1 mice for studies of 23 or 24 months duration, rather than the 0-41 percent cited in the Sher paper. In EPA's view, the mouse study is positive because of significantly ($p < 0.05$) increased lung tumors in high dose females, and in the mice which died *in extremis*, lung tumors were significantly ($p < 0.01$) induced, indicating early onset. The Agency notes that it would not be unexpected for lung tumor incidence in the 18 month alachlor study to be within the range of historical controls since the rate for spontaneous

occurrence of these tumors increases significantly with age. Thus, the 22 percent incidence rate of tumors in the alachlor study is just within the range of historical controls for the performing laboratory for studies of 5 to 6 months longer duration, and is not inconsistent with a treatment-related oncogenic response.

b. The registrant claims that nasal turbinate tumors induced by alachlor were mostly benign, especially at doses considered to be at or below the maximum tolerated dose (MTD) of 42 mg/kg/day. The Agency agrees that most nasal turbinate tumors observed at the lower dose levels were benign, but this is still significant evidence of an oncogenic response. Also, malignant nasal turbinate tumors were induced at the 126 mg/kg/ day dose level, which shows that this tumor type progresses to malignancy.

c. The registrant contends that the nasal turbinate tumors were not induced to an unusual degree at doses below the MTD, nor are they rare tumors. The registrant states that such tumors were not routinely looked for at the time of the alachlor study, but would not be considered uncommon today. However, the registrant submitted no data to support the view that nasal turbinate tumors are no longer considered rare tumors, or that they occur spontaneously in the Long-Evans strain of rats. Such tumors were not observed in the control animals in any of the alachlor studies.

d. The registrant argues that alachlor is not a genotoxic oncogen, since available mutagenicity assays of alachlor are negative. The Agency agrees that the weight of evidence indicates that alachlor itself is not a mutagen. However, two metabolites of alachlor are mutagenic in the Ames assay. These two metabolites are N-2-ethyl-6-(1-hydroxyethyl)-phenyl-2(methylsulfonyl) acetamide and N-[2-ethyl-6-(1-hydroxyethyl)phenyl]-N-(methoxymethyl) acetamide. Both of these metabolites have been identified in rats, and one of them in the monkey.

In regard to the idea that the monkey may be a more appropriate model than the rat for assessing the oncogenic potential of alachlor to humans, the Agency observes that in the absence of any actual oncogenicity data on monkeys, rodent data must be used for cancer risk assessment. However, the Agency notes that the available metabolism data on monkeys do not necessarily support the view that monkeys, in fact, offer a more appropriate surrogate than rats in relation to oncogenic risks of alachlor. For example, certain types of metabolites which may be relevant to oncogenicity (side chain hydroxylated metabolites) have been detected in all three species, i.e., in rats given alachlor orally, in humans exposed topically, and in monkeys exposed intravenously. The presence of these metabolites suggests that the rat is an equally appropriate metabolic model.

The Agency agreed with the registrant on several issues, most notably on the point that additional evaluation of the data indicates that tumors originally diagnosed as brain tumors in rats receiving a 126 mg/kg/day dose of alachlor are actually extensions of nasal turbinate adenocarcinomas in those animals.

EPA and the registrant disagreed on whether or not stomach adenocarcinomas seen in rats at the 2.5 mg/kg/day dose level are treatment-related. Such tumors are seen in high dose animals in two other studies, and in no control animals. Thus, EPA believes these tumors are treatment-related.

On the general issue of classifying alachlor according to the weight of evidence for potential human oncogenicity, the Agency concludes that alachlor does meet the criteria for Group B2 classification, and that the comments and information submitted by the registrant have not changed that assessment. Alachlor is associated with statistically significant increases in the incidence of benign and malignant tumors at multiple organ sites in both sexes of rats, in three different experiments involving different dose levels, as well as increased incidence of benign lung tumors in female mice. Observed effects include tumor incidence at unusual sites (nasal turbinates) and to an unusual degree (i.e., after 5 to 6 months of exposure in one study).

2. *Other comments on toxicity/ oncogenicity of alachlor.* The Natural Resources Defense Council (NRDC) expressed concern about the SAP's comment that "the Panel is not comfortable with the implied conclusion of the EPA Guideline that this classification means that alachlor is a probable human carcinogen * * *." EPA notes that there is frequently disagreement in the scientific community about the extent to which certain animal data can be used to assess human risk. This is likely to remain an issue until the mechanisms of carcinogenesis are much more thoroughly understood than they are at the present time. However, the Panel did uphold EPA's classification of alachlor as a B2 carcinogen.

NRDC also objected to the SAP suggestion that "metabolic data from the monkey be used to scale the interpretation of risk from the rat data." As noted above, the available data on the metabolism of alachlor in rats, mice, monkeys and humans do not, in EPA's view, support this approach, and the Agency did not follow the SAP suggestion.

The National Network to prevent Birth Defects commented on non-oncogenic toxicity issues. This group stated that "A chemical that caused thyroid tumors and deterioration of the eye is certainly a candidate for neurological injury in adults and children." The eye effect known as uveal degeneration syndrome (UDS) refers to the vascular, pigmented middle coating of the eye, which is not neural tissue. EPA does not believe that UDS can be characterized as a neurotoxic effect. Thyroid tumors were induced by alachlor at relatively high dose levels compared to nasal turbinate tumors. The Agency is not aware of any correlation between the occurrence of thyroid tumors and neurotoxicity.

This group also commented that alachlor does not appear to have been adequately tested for birth defects. As noted above, alachlor was not teratogenic in rats at the highest dose tested. However, EPA agrees that teratology data are also needed in a second species, and has required a second rabbit study due for submission in March 1988 to replace a previous rabbit study which did not meet EPA standards for an adequate data submission.

B. Exposure and Risk Determinations

This Unit describes the Agency's assessments of exposure and associated risks for persons involved in applying alachlor, for dietary exposure through treated commodities, and through alachlor residues which may occur in ground or surface waters. An analysis of the comments received on these issues is presented following each category of potential risk.

The estimates of oncogenic risk cited in this Notice are upper bound estimates at the 95 percent confidence level, meaning that there is a 95 percent probability that the true risks do not exceed the estimates, and may be lower. The numerical risk estimates are based on the use of the linearized multistage model as recommended by EPA's Carcinogen Risk Assessment Guidelines. Applying this model to the rat oncogenicity data described in Unit II. A. of this Notice leads to the calculation of a cancer potency value for alachlor. This value, known as the "Q star" (written as Q_1*) is multiplied by

measured or estimated human exposure to alachlor (expressed in milligrams per kilogram of body weight per day) to give an estimate of increased risk of tumor incidence. Based on a 1987 review of the oncogenicity data by Agency scientists, the Q_1^* for alachlor used in the estimates given below is 8×10^{-2} (mg/kg/day)$^{-1}$, or 0.08 (mg/kg/day)$^{-1}$.

The Agency's Guidelines point out that the use of upper bound risk estimates is generally appropriate, but that the lower bound of risk may be as low as zero. The Guidelines state: "An established procedure does not yet exist for making 'most likely' or 'best' estimates of risk within the range of uncertainty defined by the upper and lower limit estimates." Thus, upper bound estimates are a prudent approach to risk estimation which may overstate risks, but it is designed to avoid understating them.

In this Notice, the upper bound risk estimates are cited in terms of an order of magnitude. For example, estimated risks in the range of 10^{-3} or 10^{-6} indicate increased risk of about one tumor/cancer case per 1000 or per 1,000,000 persons exposed, respectively. By simply multiplying a Q_1^* times an exposure level, a risk number can be generated which appears to give a more precise measure of risk, such as 3×10^{-5} for example, predicting three additional tumors/cancers for every 100,000 persons exposed at that level. However, in view of the many assumptions involved in calculating both cancer potency values and typical human exposure levels, cancer risk estimates do not realistically offer such precise predictions of disease incidence. The order of magnitude of risk is the main concern of the risk estimation process. In this Notice, incidence numbers are rounded off to the nearest order of magnitude.

1. *Applicator exposure and risk.* The Agency's risk estimates for ground and aerial applicators and mixer/loaders of alachlor given in the Alachlor PD-1 were based primarily on registrant data measuring exposure to the emulsifiable concentrate, microencapsulated and granular formulations of alachlor. Dermal exposure was assessed by measuring residue deposits on gloves or gauze pads attached to the workers' clothing (patch data). Inhalation exposure is considered insignificant compared to dermal exposure, since data show that less than 1 percent of applicator exposure is by the inhalation route. It was further assumed that protective clothing such as coveralls and rubber gloves would reduce exposure by 80 percent. The exposure estimates assumed a 50 percent dermal absorption rate for the emulsifiable concentrate, and 12 percent for the microencapsulated and granular formulations. The Agency also estimated the number of days per year that an applicator would be exposed. These ranged from 1 to 6 days for private farmers and up to 30 days for commercial applicators. Based on these data and assumptions, the Agency calculated the 95 percent upper bound risk estimate for various categories of users, including private farmers, commercial applicators, aerial applicators, and flaggers. These estimates showed that commercial ground applicators exposed for 30 days per year could face a lifetime risk of 10^{-3} (estimating about 1 increased incident of tumor formation per 1000 persons exposed). The risk to most classes of farm users ranged from 10^{-3} to 10^{-6} (i.e., from about 1 per thousand to 1 per million).

In response to the Notice of Initiation of Special Review and the Alachlor PD-1, the registrant submitted biomonitoring data for applicators, a monkey metabolism study, and a dermal absorption study. The registrant also supplied data to show that the number of days per year alachlor is typically applied should be revised downward to 3 days for a large private farmer, and 15 days for a commercial pesticide applicator. In addition to data from the registrant, the Agency also made use of data from the open literature concerning applicator and mixer/loader exposures resulting from identical application methods of pesticides other than alachlor. These "surrogate" data provide a check on the alachlor exposure estimates. As a result of assessing these additional data, the Notice of Preliminary Determination and the TSD of October 1986 presented revised estimates of lower exposure and risk for farmers and commercial applicators than were given in the PD-1.

The most significant factor to point out about EPA's revised exposure estimates for application of alachlor is the use of human biomonitoring data. EPA believes that biomonitoring data from well-designed and executed studies, if supported by adequate metabolism studies, provide a better measure of exposure than patch data. In general terms, biomonitoring measures the level of pesticides/metabolites in blood or tissues, or the levels excreted. In either case, an adequate understanding of the metabolism and pharmacokinetics of a compound make it possible to calculate with reasonable accuracy an actual dose absorbed into the body—as opposed to patch data, which only give an estimate of the amount of residues on the body's surface available for absorption. In this case, monkey data showing the rate and ratio of excreted alachlor metabolites can be used to interpret the results of the biomonitoring data. (Calculation of the absorbed dose represents a relatively limited use of monkey data in comparison to the more general qualitative issue raised by the SAP concerning rat versus monkey data as indicators of oncogenic risk in humans). Together with the registrant's patch data and surrogate patch data from the open literature, EPA used the biomonitoring data to calculate a range of exposures that are believed to more accurately reflect applicator exposure than the PD-1 estimates.

In the Technical Support Document, the revised estimates for applicator exposure indicated risks for farmers applying alachlor would range from 10^{-4} to 10^{-7}, and for commercial applicators, risks would be in the range of 10^{-4} to 10^{-6}. These risks pertain to ground application methods. The Agency noted in the TSD that registrant data and open literature data both showed that aerial applicators receive significantly less exposure than ground boom applicators. Thus, the Agency proposed to allow aerial application (deleted by the registrant in 1984) to be reinstated on the label under certain conditions. The exposure for human flaggers associated with aerial application was 10 times or more the exposure for pilots, posing upper bound risks in the 10^{-3} range. The Agency proposed to allow aerial application only if mechanical flagging systems were employed.

Following the issuance of the Notice of Preliminary Determination and the TSD, the registrant submitted additional biomonitoring data generated during 1986. These data include a study of open pour mixing/loading, and enclosed cab application, and a study of closed system mixing/loading, and enclosed cab application. Both studies are considered acceptable, and have been used to refine the exposure estimates for alachlor, although associated risk estimates are changed only slightly. Below are the estimated risks for the three principal groups of alachlor applicators, and the assumptions included in generating these upper bound estimates of oncogenic risk.

The risk estimates are for a 70 year lifetime and assume 40 years of exposure through application. Private farmers are assumed to fall into two groups: Those treating less than 300 acres per year, who are assumed to

apply alachlor only 1 day per year; and those treating over 300 acres, who are assumed to apply alachlor 3 days per year. Commercial applicators are assumed to apply alachlor 15 days per year. The small private user is assumed to mix and load alachlor by "open pouring", i.e., simply pouring the pesticide from 2.5 gallon containers into a mixing tank. The larger private users and commercial applicators are assumed to use mechanical transfer devices which pump pesticide material from large containers into mixing tanks. A mechanical transfer device is not necessarily an entirely hard-coupled system, but rather, any system that transfers pesticide material by pumping, and not open pouring. Available data indicate that most large scale pesticide users already employ mechanical transfer systems. The Notice of Preliminary Determination proposed that alachlor application to 300 or more acres per year require use of "closed systems", by which EPA intended to indicate mechanical transfer systems.

The Agency has used the registrant's biomonitoring data to define the low end of the range of estimated exposures because their data were based on workers wearing protective clothing, and applying alachlor with closed cab equipment. This represents a "best case" for applicator exposure. Based on patch data, as well as literature documenting exposure variability, the Agency has defined the upper end of the range as two orders of magnitude higher than the low end. The estimated annual exposures to alachlor for these three groups, and the associated upper bound risks are given in Table 1.

TABLE 1.—RISKS TO APPLICATORS

Type of applicator	Frequency of application (days/year)	Annual exposure (mg/kg/yr)	Upper bound oncogenic risks
Private farmers [1].	1	0.0019–0.19	10^{-7} to 10^{-5}
Private farmers [2].	3	0.0037—0.37	10^{-6} to 10^{-4}
Commercial applicators.	15	0.018—1.8	10^{-6} to 10^{-4}

[1] Applying alachlor on less than 300 acres per year.

[2] Applying alachlor on 300 acres or more per year.

Exposure estimates for human flaggers in aerial application are unaffected by these revisions, and therefore the Agency's position on this issue remains as stated in the Preliminary Notice of Determination.

2. *Comments on applicator exposure.*—a. The registrant commented that the 1986 biomonitoring data would lower estimated exposure dosage by an order of magnitude, and thus the acreage requirement for mechanical transfer systems should be raised accordingly from 300 to 3,000 acres. This would make the requirement unnecessary, since virtually no farmer treats 3,000 acres.

EPA disagrees with this rationale. The requirement is a reasonable one for minimizing exposure. A farmer treating 300 acres (or more) will be using over 1,000 gallons of alachlor, and the Agency believes that the resulting exposure, even adjusted by the 1986 biomonitoring data, would pose unacceptable risks if open pouring of alachlor took place in mixing/loading operations. The requirement for mechanical transfer systems is not burdensome, since EPA has information indicating that most users treating more than 100 acres already use mechanical transfer devices, which are readily available. In EPA's view this requirement implements what is already fairly common practice, and is also a reasonable means of avoiding unnecessary exposure and risk.

b. The registrant and EPA differ by a factor of 4 in their calculations of the actual absorbed dose of alachlor derived from the biomonitoring data.

The registrant treated urine samples that contained nondetectable levels of alachlor metabolites as if they contained zero alachlor metabolites. However, standard EPA practice, as indicated in the Pesticide Assessment Guidelines (Subdivision U—"Applicator Exposure") is to treat samples below the limit of analytical detection as containing one-half the detection limit. Thus, samples containing less than the 2.5 parts per billion (ppb) detection limit of metabolites were computed as containing 1.25 ppb. As a result of this difference, EPA's estimate of actual human dosage associated with open pour mixing and loading and enclosed cab application of alachlor turned out to be about 4 times higher than the registrant's estimate. EPA's procedure represents a prudent assumption as well as a standard procedure for dealing with the analytical limits of detection for chemical residues.

c. The Natural Resources Defense Council (NRDC) commented that the registrant's biomonitoring data was based on a very small sample (4 persons), that they were registrant employees, wore full protective clothing (rubber gloves, goggles), and applied alachlor from closed cab tractors. For all these reasons, NRDC felt the data would not represent typical usage and exposure to alachlor.

The Agency recognizes these considerations, and therefore views the registrant data as a "best case" for applicator exposure. As noted above, EPA applied its own procedures and assumptions to the interpretation of these data, and utilized the results to define a low-end for the range of probable applicator exposures.

d. NRDC commented that EPA should explain the basis for changing the estimated dermal absorption rate for alachlor from 50 percent in the PD–1 to 24 percent in the TSD.

EPA found the registrant's data on dermal absorption used in the PD–1 were difficult to interpret because of the failure to recover significant percentages of the radio-labeled material. The data required EPA to make various worst-case assumptions in order to generate a preliminary estimate of 50 percent dermal absorption. Additional data on Rhesus monkeys received and used for the TSD's estimate of 24 percent were considered more reliable, though still difficult to interpret.

However, the Agency's present exposure estimates do not rely on assumptions or estimates of dermal absorption. EPA's exposure estimates are based on a range of exposures defined by biomonitoring data (actual absorbed dosage) adjusted by the general range of variability as indicated by patch data. Thus, the dermal absorption rate is essentially a moot point. This response also applies to NRDC's concern about why EPA used surrogate patch data (i.e., on pesticides other than alachlor). These data help to establish the range of variability in pesticide exposures typical of the application methods used for alachlor. In this case, EPA defined the range as two orders of magnitude higher than the "best case" indicated by biomonitoring of fully protected workers.

3. *Dietary exposure and risk.* In the Alachlor PD–1, dietary exposure was calculated for alachlor and one class of its metabolites, those containing 2,6-diethylaniline (DEA). The total dietary exposure to the U.S. population was estimated two ways: (a) By assuming that 100 percent of each crop on the alachlor label is actually treated and contains alachlor residues at the tolerance levels, and (b) based on actual

residue data, but still assuming 100 percent of the crop is treated. Exposure was estimated to be 0.0006 mg/kg/day using the first method, and 0.0004 mg/kg/day using the second method. These estimates were believed to underestimate actual exposure because the analytical methods available at the time could detect only the diethylaniline (DEA) class of alachlor metabolites, along with parent alachlor. The Agency required the development of an analytical method capable of detecting the other major class of alachlor metabolites, those containing hydroxyethylethylaniline (HEEA). Based on these earlier exposure estimates, the Agency calculated that the upper bound on risk from dietary exposure to alachlor ranged from 10^{-4} to 10^{-5}.

In response to the Alachlor Registration Standard and Notice of Initiation of Special Review, the registrant submitted residue data for alachlor and its DEA and HEEA metabolites on the following crops and food sources: corn, eggs, meat, milk, peanuts, poultry, and soybeans. For the remaining crop uses (dry beans, lima beans, cottonseed, peas, sorghum and sunflower seeds), data were submitted for residues of alachlor and the DEA metabolites only.

Thus, in the 1986 Technical Support Document, the Agency had both DEA and HEEA residue measurements for the three major crop uses of alachlor, corn, soybeans and peanuts, as well as estimates for these metabolites in meat, milk, poultry and eggs. For dry beans, lima beans and peas, the Agency estimated a proportion of residues likely to be HEEA metabolites, based on data for related legume crops (i.e., soybeans and peanuts). For cottonseed, sorghum and sunflower seeds, HEEA residues were not estimated, since there was no basis for estimating the likely ratio of DEA to HEEA metabolites for these crops.

In the Notice of Preliminary Determination and the TSD, the Agency used estimates of the percentage of each commodity actually treated with alachlor, as well as the new residue data. This assessment showed that exposure from alachlor residues in meat, milk, poultry, and eggs had been overestimated in the PD-1. Instead of accounting for 50 percent of total dietary exposure estimated in the PD-1, these sources were found to account for only 4.2 percent of total exposure. This reduced exposure estimate is primarily due to taking account of the actual percentage of commodities treated with alachlor, and for some commodities, lower residue measurements as well.

The new residue data submitted to the Agency also showed that total dietary exposure had been overestimated in the Alachlor PD-1. EPA recalculated alachlor residue levels, and corresponding dietary risk, using the assumption of 100 percent of the crop treated, and also on the basis of best available estimates of percentage of crop treated. The new estimates of dietary risk were in the range of 10^{-5} and 10^{-6}, respectively.

Subsequent to the Preliminary Notice of Determination and the TSD, additional residue data have been submitted to EPA. These data include measurements of both DEA and HEEA metabolites of alachlor in dry beans, lima beans, peas, cottonseed, sorghum and sunflower seeds, and additional residue data on peanuts. The Agency has utilized these data to revise dietary exposure and risk estimates for alachlor using the following assumptions. The estimates below are based on the highest value for residues obtained in field trials for each crop. Each crop was treated at the maximum application rate for a typical labeled use. (A few labeled uses allowing higher rates are discussed in the comment section below, Unit II.B.4.f.) The residue values are multiplied by the percentage of the crop treated.

Dietary oncogenic risk is calculated for the U.S. population average, which is a weighted average of risk for adults and children. However, in this case, risk has also been calculated for children aged 1 to 6 years as a separate group. A separate estimate of risk for children is made because it may be appropriate to consider children a potentially susceptible population. This concern is based on some data indicating increased tumor incidence observed after two years in rodents which received limited alachlor exposure (5 to 6 months) in early life.

In the alachlor PD-1, the Agency pointed out that a risk estimate specific for children should be interpreted with caution. In general terms, risks for children are different from adults because of differences in their diet, as well as their lower body weight. However, these factors do not remain constant. Thus, estimates specific to children would yield the appropriate assessment of risk if, in fact, risk is determined by the level of exposure to alachlor in early life, or by the highest exposure occurring for any short portion of the lifespan. However, such an estimate would tend to overstate risk if it is average exposure over a prolonged period which is the determining factor for adverse health effects. The available animal data do not provide any basis to differentiate between these possibilities, or to draw any definitive conclusions regarding the risks of partial lifetime exposure to alachlor.

The following Table 2 presents upper bound risks by crop group, for both the U.S. average, and for children. The risk level for children is about twice that for average U.S. residents, but the difference is usually not great enough to change the order of magnitude of risk. For example, the calculation of risk (the Q_1^* times exposure, without rounding off) for adults from peanuts is 9.6×10^{-7}, and for children, 3.0×10^{-6}. As discussed earlier in this Notice, risk numbers are meaningful primarily as orders of magnitude, so that both of the risk estimates for peanuts, when rounded off, are cited as 10^{-6}.

TABLE 2.—UPPER BOUND ONCOGENIC RISK, BY COMMODITY GROUP

Crop	U.S. average	Children 1 to 6
Legumes	10^{-6}	10^{-6}
Peanuts	10^{-6}	10^{-6}
Soybeans	10^{-7}	10^{-7}
Corn	10^{-7}	10^{-7}
Red meat	10^{-8}	10^{-7}
Poultry	10^{-10}	10^{-9}
Eggs + Milk	10^{-7}	10^{-6}
Total [1]	10^{-6}	10^{-5}

[1] The other crops treated with alachlor, i.e., cottonseed, grain sorghum and sunflower seeds are negligible sources of human dietary exposure, but to the extent these are animal feed items, they are reflected in the meat, poultry, milk and eggs estimates.

The majority (70 percent) of dietary risk from food commodities is due to the legume group (dry beans, lima beans, peas, soybeans and peanuts). With the exception of soybeans, the current residue data and associated risk estimates for these commodities are based on the highest levels found on the raw commodities in field trials, and not on the processed or cooked foods as they are actually consumed.

The Agency has required cooking/processing data for these commodities (and certain corn products), and these data (due for submission in June, 1988) are expected to show that cooking or other processing reduces levels of alachlor, since reduction in residues is demonstrated by available data on soybean processing. However, the registrant has indicated that they will not submit processing data for peas, but rather, will amend their registration to remove peas from the label.

The estimates in Table 2 include the assumption, also used in the TSD, that peanut forage will not be used as animal fodder, since the registrant has reaffirmed their intention to amend the label to include a prohibition against using treated peanut forage as animal fodder.

The Agency recognizes that drinking water may also be a source of alachlor in the diet for some people. As discussed in Unit II.B.5. of this Notice, current data are not adequate for a definitive assessment of the number of people who may be exposed by this route, or the levels of alachlor most likely to occur. In general terms, available data indicate that alachlor can be expected to occur in some drinking water in areas of heavy alachlor use at relatively low levels, e.g., at concentrations in the range of 0.2 to 2.0 parts per billion (ppb).

At this time, any specific exposure level attributed to alachlor in drinking water should be understood as an example of including this route of exposure in the risk assessment, and not as an actual estimate based on sampling data. For example, if alachlor occurs in a drinking water supply at 2.0 ppb as an average over time, then the increased risk for both adults and children from this source would be in the 10^{-6} range. Including drinking water with 2 ppb alachlor in a total dietary exposure estimate still yields upper bound risks of 10^{-6} for adults and 10^{-5} for children, because the added exposure is not enough to change the magnitude of dietary risk. It should be noted that such levels of alachlor are not considered likely to occur in drinking water except infrequently in areas of heavy alachlor use, and that alachlor levels in drinking water can be reduced by available technology, namely, activated carbon filtration. Moreover, data on the seasonal nature of alachlor use suggest that levels approximating 2 ppb are likely to be transitory and not typical of long-term exposures.

4. *Comments on dietary exposure issues.* The following comments were made by the Natural Resources Defense Council (NRDC) regarding the dietary exposure assessment in the Preliminary Notice of Determination and TSD. In general, it is NRDC's view that EPA underestimates dietary exposure and risk for a variety of technical and procedural reasons.

a. Alachlor residues in meat, milk, eggs and poultry are inadequately characterized.

EPA response: The metabolism of alachlor in plants is adequately understood. Residues consist of alachlor and its DEA and HEEA metabolites. However, the metabolism of alachlor in animal tissues is not fully characterized at this time. Alachlor and its DEA and HEEA metabolites are known to occur, but there is also some evidence of alachlor metabolites containing the dihydroxyethylaniline moiety in meat and poultry products. EPA has informed the registrant of this problem, and the registrant must resolve this point in order to meet the data requirements issued pursuant to section 3(c)(2)(B) of FIFRA as part of the alachlor Registration Standard. EPA will reevaluate exposure from these animal commodities if further information indicates that it is warranted.

b. NRDC comments that exposure to alachlor through meat, milk, poultry and eggs may be underestimated because one-third of the 2.6 billion bushels of U.S. corn is fed to livestock and poultry on farms where corn is raised, and additional feeding of alachlor treated corn occurs off the farms where it is grown, e.g., in commercial feedlots.

EPA response: Data from crop reporting services and USDA indicate that 35 percent of field corn grown in this country is treated with alachlor, and that is the percentage of the crop treated used in estimating dietary exposure, including livestock diets. The location of feeding does not appear relevant to this estimate. The registrant estimates that 39 percent of field corn is treated with alachlor. Because of the low residue levels in corn grain (0.016 parts per million, based on maximum levels in field trials), the difference between 35 percent and 39 percent of crop treated would not result in a significant difference in estimated residues in meat and poultry products.

c. EPA assumed (in the TSD) that peanut hay and forage would not be fed to livestock because the registrant had agreed not to seek a tolerance for peanut hay and forage. NRDC felt that this assumption needed to be justified by a label prohibition on feeding these items to livestock.

EPA response: Subsequent to the publication of the TSD, the registrant submitted additional residue data on peanuts showing higher levels than previously estimated. The current dietary risk assessment uses the new residue data, but still assumes livestock will not be fed treated peanut hay, because the registrant has informed EPA that the label will be amended to include a prohibition on feeding alachlor treated peanut hay and forage to livestock. The dietary risks associated with meat products would be in the 10^{-8} range even if feeding of treated peanut hay and forage were allowed.

d. NRDC expressed concern that the current dietary risk estimates were based on residue data from the registrant which have not been validated, since supporting raw data were not available to the Agency. NRDC states that "EPA should never accept residue data that has not been validated by Agency scientists. Moreover, this is especially true when the analytical methodology for detecting alachlor residues has only just been submitted to EPA."

EPA response: In conducting exposure and risk assessments through the Special Review process, EPA uses the best information available, which in regard to alachlor residues on food items, is the registrant's data, even though they are not fully validated. It should be noted that validation data have been submitted by the registrant for previously submitted residue measurements on beans, peas, cottonseed and sunflower seeds, and the Agency is confident that the registrant is producing accurate results using its newly developed methodology. For purposes of enforcing tolerances, an analytical method must be reproducible by other laboratories. EPA is now conducting a method trial of the registrant's analytical method for the detection of alachlor and its DEA and HEEA metabolites to determine if it is suitable for enforcement of tolerances, which is a requirement set forth in the Registration Standard for alachlor.

e. NRDC commented that the Technical Support Document was vague in its discussion of analytical methods for alachlor, and asked for clarification of several points. Specifically NRDC noted that analytical methodology available at the time of the PD-1 appeared very limited, since it detected only 10 percent and 8 percent of soybean foliar and bean residues, respectively. The TSD mentioned new and more sensitive methods. NRDC asks:

(i) Why did EPA register this pesticide for use on food when apparently there was no effective analytical method for tolerance enforcement?

(ii) Are the [new] analytical methods designed to detect alachlor metabolites, in lieu of alachlor?

(iii) What evidence is there that measurement of these metabolites accurately reflects alachlor residues in foods?

EPA response: (1) The original analytical method for alachlor was based on converting alachlor and its DEA metabolites to DEA, and measuring DEA. This was considered acceptable because the parent alachlor molecule

contains the DEA moiety, and so did all the known major metabolites of alachlor. For similar reasons, the same method was used for propachlor residues, and had undergone a successful method trial on that compound. Thus, at the time of its registration (1969), an adequate enforcement method was considered to be available for alachlor residues, including its metabolites. Most tolerances for alachlor were set at the limit of detection for this method, 0.02 ppm. The reference to 10 percent and 8 percent detection of residues on soybeans is based on later metabolism studies showing that HEEA metabolites account for a large percentage of alachlor applied to corn and soybeans. Based on the most recent residue data, EPA estimates that 25 percent of alachlor residues on soybeans are due to parent alachlor (which contains DEA) or DEA metabolites, and that most of the remainder is attributable to HEEA metabolites.

(2) The registrant has developed a more sensitive method of analysis which measures parent alachlor and its DEA and HEEA metabolites as low as 0.5 parts per billion (ppb) of each class. Because of the extensive metabolism of alachlor in plants, it is essential to detect metabolites as well as parent alachlor. Since most of the residues are in the form of metabolites, the goal of the analytical method is to measure alachlor and its combined metabolites.

(3) Metabolism studies determine what residues must be detected by an analytical method in order for the method to be acceptable. The metabolism of alachlor in plants is adequately understood, and only parent alachlor and its DEA and HEEA metabolites have been determined to be of toxicological significance. In animal products, alachlor and its DEA and HEEA metabolites have been determined to be of toxicological significance. While there is evidence of a third class of alachlor metabolites in animal products, residues of this third class, if present at all, would be expected to occur at very low levels. It is estimated that such residues would occur in most animal products at less than 0.1 ppb, except in beef livers and kidneys, where less than 0.5 ppb would be expected.

f. NRDC states that EPA's Best Available Estimates in the TSD underestimate exposure from corn, soybeans and peanuts because the Agency assumed only one alachlor treatment at a rate of 4 pounds of active ingredient per acre (ai/A), although several product registrations allow treatment at double this rate. EPA should have used the maximum rate for these estimates.

EPA response: The Agency did not use the maximum allowable rate for corn, peanuts and soybeans in its exposure estimates, because these rates are not representative of alachlor usage. Available information indicates that less than 1 percent of these three crops is likely to receive two applications totalling 8 lbs. ai/A, or a single application of 8 lbs. ai/A. The 8 lb. ai/A rate is allowed by some labels for certain soil conditions. For peanuts, the 8 lbs. ai/A rate of application is registered in Virginia and North Carolina under section 24(c) of FIFRA.

g. NRDC felt that EPA underestimated exposure for lima beans, dry beans, peas, cottonseed, sorghum and sunflower seeds, because the residue estimates were calculated on the basis of DEA metabolites only.

EPA response: As noted elsewhere in this Unit, the Agency has received data measuring both DEA and HEEA metabolites in these commodities since issuing the Preliminary Notice and TSD. The new residue calculations have been used in the current dietary exposure and risk estimates. These new data show that the previous residue estimates for dry beans, lima beans, and peas, which were based on ratios of DEA to HEEA metabolites from soybean data, were overestimated.

h. NRDC stated that dietary risk estimates should include drinking water, since alachlor occurs in some drinking water.

EPA response: The Agency has given a combined food and water dietary risk estimate in this Notice, but notes that such combined risk is only likely to occur in limited areas of heavy alachlor use, while food-only dietary risk calculations are more likely to be applicable on a national basis.

i. NRDC stated their position that EPA should always estimate worst case dietary exposure by assuming that residues are present at tolerance levels because this is the legally allowed amount. The Agency is free to conduct a lower bound exposure estimate as well.

EPA response: There are a number of possible procedures for estimating dietary exposure to pesticide residues. The worst case estimate for dietary exposure to any pesticide can be generated by assuming that 100 percent of each crop on the label is treated, and that residues are present at the legal maximum, that is, at the tolerance level. EPA uses this procedure when no better information is available. However, the Agency does not agree that there is any reasonable purpose served by purely theoretical worst case estimates which are known to be wrong, when more accurate estimates can be acheived by making reasonable adjustments based on product usage information and/or actual residue data from field trials. Data on percent of crop treated is especially useful with a chemical long in use, such as alachlor, since its market share is unlikely to change dramatically, absent regulatory action. EPA used both up-dated residue data and percent of crop treated data for its estimates.

EPA did assume residues at the tolerance level in the PD-1, and in the TSD, tolerance level residues were assumed for sunflower seeds, due to lack of actual residue data. However, actual residue data from field testing is now available for all the commodities. Thus, the current exposure estimates use a different but still conservative assumption that residues will be equal to the highest levels detected in field trials for each crop. Each crop was treated at the typical maximum application rate. In most cases this procedure will still tend to overestimate exposure, since a maximum rather than an average or typical level is used. However, this is not always the case. For example, the maximum detected residue level on peanuts was 0.27 ppm, which is higher than the tolerance of 0.05 ppm. In this case, the use of actual field testing data is both more realistic and more conservative than the assumption of tolerance level residues. This finding also indicates that the tolerance for peanuts will be reassessed through the reregistration process when additional residue data required by EPA for certain geographic areas have been received.

The adjustment for percentage of crop treated also helps to make exposure estimates more realistic. However, the final risk estimates presented in this Notice still contain highly conservative assumptions or sets of assumptions which are more likely to overstate than to understate risk. These are: (1) The use of maximum rather than average detected levels; (2) the assumption that an individual eats all of the commodities for which alachlor tolerances exist; and (3) the use of the exposure estimates to generate upper bound estimates of risk at the 95 percent confidence level. Thus, EPA does not believe dietary risk has been underestimated.

5. *Ground and surface water exposure and risks.* In the Alachlor PD-1, EPA indicated its concern about ground and surface water contamination based on mathematical modeling assessments and on monitoring data from several

States and Ontario, Canada. These data showed that levels of alachlor in ground water attributable to normal use of the herbicide ranged from 0.01 to 16.6 ppb. Modeling assessments predicted levels in surface water from 2 to 5 ppb in areas of high alachlor use. EPA received additional data as well as extensive comments on the detection of alachlor in both ground and surface water. Ground water and surface water data are summarized separately in the following Units, II.B.5.a. and II.8.5.b.

a. *Ground water.* Additional ground water monitoring data were received in response to the Alachlor PD-1. Data originated from the registrant, the United States Geological Survey (USGS), and from various State agencies. The registrant submitted the results of a ground water sampling study of 246 wells. This study found detectable levels of alachlor in 4 percent of the wells (10 of 246 wells). The concentrations of alachlor in these wells ranged from 0.2 to 22.0 ppb. The remaining 236 wells contained no detectable levels of alachlor (limit of detection was 0.2 ppb).

The data from the USGS and the State agencies found alachlor contamination in some ground water in eight States and Ontario, Canada. The concentrations of alachlor attributable to normal use were similar to those reported in the PD-1 findings (range from 0.1 to 16.6 ppb with the majority in the range of 0.2 to 2.0 ppb). The available ground water data were presented in Tables 8A and 8B of the 1986 TSD. These tables noted that high levels detected in some wells were attributable to spills or runoff in the vicinity of wells, rather than to leaching associated with agricultural use.

In the TSD, the Agency noted its concern that some public wells were contaminated, although this appeared to be proportionally less frequent than contamination of private wells. It also appeared that all detections of alachlor in public wells over 2 ppb were attributable to spills or runoff events, rather than leaching after normal applications.

The TSD also presented a discussion of EPA's use of mathematical modeling to predict the leaching behavior of alachlor under "reasonable worst case" agricultural use conditions (e.g., application to corn or soybeans in sandy soil conditions). The use of EPA's Pesticide Root Zone Model (PRZM) indicated that alachlor is not likely to leach below the root zone of corn, but that a small percentage of applied alachlor (4.6 percent) may leach below the shallower root zone of soybeans in some climates. These modeling results were regarded as generally confirmed by monitoring data evidence that alachlor has a definite potential for leaching to ground water, at least under some soil and climatic conditions.

EPA stated in the Notice of Preliminary Determination and TSD that the ground water monitoring data available were not sufficient to properly assess the extent to which alachlor may be a ground water contaminant. The studies available did not provide a representative or statistically valid data base, which is important in view of the large volume and geographically widespread use of alachlor. The Agency noted that such a study, based on proper statistical, hydrogeological and agronomic criteria, was being conducted by the registrant under a protocol approved by EPA.

Since publication of the Preliminary Notice and the TSD, EPA has received additional well water data, including some additional sampling results from States represented in the TSD (Pennsylvania, Iowa and Minnesota), and data from States not previously reported in the TSD (Vermont, Arkansas, New York, Florida and Wisconsin). A revised version of Table 8 of the TSD incorporating these new data has been entered in the alachlor public docket. The Agency's current assessment of the available ground water data is summarized below in terms of findings for public wells, private wells, and wells intended specifically for monitoring purposes.

Significant sampling of public drinking water wells has been done in Iowa and Minnesota. In Iowa, 297 public wells were sampled, with 9 (3 percent) showing positive alachlor detections in a range of 0.09 to 2.30 ppb. The majority of positives were less than 1.0 ppb, and the study authors attributed the residues to leaching following normal agricultural use of alachlor (Kelly, et al., 1986; Kelly and Wnuk, 1986; and Kelly, 1985).

In Minnesota, 403 public wells were sampled with 9 (2 percent) positive detections of alachlor ranging from 0.08 to 4.03 ppb. Most positives were below 1.0 ppb. In this joint study by the Minnesota Departments of Health and Agriculture, attempts have been made to identify the source of the alachlor found in wells. At this time, it is the best estimate of the study authors that as many as one-half of the positive detections may not be due to leaching, but rather to point sources of contamination such as spills or runoff events near wells. If such point sources were confirmed for the Minnesota results, the combined incidence rate for both Iowa and Minnesota of alachlor residues in public wells attributable to leaching after normal use would be 2 percent or less.

For several alachlor monitoring studies of private wells, the source of most positive detections is attributable to leaching following normal use, and not point source spills or other anomalies. The following Table 3 lists the State, number of wells tested, percent of wells positive for alachlor, and range and mean level of alachlor concentrations detected.

TABLE 3.—ALACHLOR DETECTIONS IN PRIVATE WELLS

State	No. wells tested	Percent positive	Range of concentration (in ppb)	Mean level of alachlor (in ppb)
Massachusetts	147	3.4	0.2-4.4	1.3
Ontario [1]	281	7.5	1.0->100	9.0
Minnesota	222	10.5	0.05-9.76	Unknown
Pennsylvania	[2] 52	11.5	0.1-1.8	0.45
	[3] 87	6.3	0.08-20.0	4.7
Iowa	[4] 93	8.6	0.10-16.6	8.3
	[5] 59	1.7	0.05	n/a
Maryland	30	13.3	0.10-0.8	0.4
Florida	c. 250	0.8	2.0-99.9	[6] n/a

[1] Several high detections attributed to point sources.
[2] Data of Buchanan, et al., 1984.

[3] Data of Loper et al., 1985. 20 ppb finding attributed to point source; mean without 20 ppb case is 0.80 ppb.
[4] Libra, 1984.
[5] Hallberg, et al., 1985.
[6] Findings discussed in text.

In several States, alachlor was not detected in any of the wells sampled: Vermont, 165 wells; Kansas, 58 wells; Nebraska, 75 wells; and Arkansas, 28 wells. However, in each of these surveys, the limit of detection was higher than usual, being 0.4 ppb in the Kansas study and 1.0 ppb in the other three. Limits of detection for alachlor in water are usually between 0.15 and 0.25 ppb, and lower levels have been achieved in some studies.

As noted in Table 3, several high detections in these studies are attributable to point source contamination. For example, in the Ontario study (which also used a 1.0 ppb detection limit), the authors attributed 8 out of 21 positive wells to leaching following normal agricultural use, and the rest to runoff incidents or spills. These 8 wells showed a range of 1.0 to 12 ppb, with a mean of 4.2 ppb. Similarly, the Pennsylvania data show that the highest detection of 20 ppb occurred near a chemical distribution center, which suggests a point source for that positive reading.

High levels of alachlor reported in 1 of the 2 positive wells in Florida (out of about 250 wells sampled) appear to be anomalous. The Florida Department of Agriculture and Consumer Services is unsure of the cause of contamination for the well in question, but consistently high levels ranging from 42 to 99 ppb in monthly samples suggest a point source. For the second well, alachlor was initially detected at 83 ppb, but subsequent testing found levels between 2 ppb and 4 ppb. The Florida Department of Environmental Regulation attributes the presence of alachlor in this well to leaching following normal agricultural applications.

The two wells positive for alachlor in Florida are in different counties. Since the Florida study tested a high number of drinking water wells in five counties near farms known to have used alachlor, and found only these two positive results, the Agency cannot reach any definitive conclusions regarding alachlor contamination of ground water in Florida.

The rate of positive alachlor detections in private wells varies considerably from study to study, ranging from 0.8 percent to 13.3 percent. It appears that the rate of positives for private wells is greater than the rate in public wells, although this is not considered to be a statistically valid data base.

Only one on-going study is available involving wells dug for the purpose of studying alachlor leaching to a shallow aquifer (between 8 and 19 feet from the soil surface) beneath treated fields. This is a joint study by the Wisconsin Department of Natural Resources and the Department of Agriculture, Trade and Consumer Protection (Postle and Jones, 1986; Postle, 1987). Nine fields in 5 counties were monitored with 3 wells per field. It was concluded that one field, with readings up to 113 ppb, had been the site of a spill. Of the remaining 8 fields/24 wells, 3 fields/5 wells were positive, with a range of 0.1 to 7.7 ppb, and a mean of 2.1 ppb. In July and August of 1987, 5 additional fields were sampled once, with no positive detections of alachlor.

In summary, the additional data on ground water received and evaluated by EPA are essentially consistent with the data reported in the previous alachlor position documents. The available information shows that alachlor residues do occur in ground water, and that leaching following normal agricultural use is one of the likely causes for such contamination, as are spills, careless handling or disposal, and surface runoff events in conjunction with improper or inadequate well construction. It appears that detected alachlor residues in ground water attributable to leaching after normal use are rarely higher than 10 ppb and typically fall in the range of 0.2 to 2.0 ppb. The available data base does not provide an adequate basis for a risk assessment, because it is not considered adequately representative of alachlor's use in terms of geographic areas and associated hydrogeologic conditions. Also, the data base consists of various studies employing different criteria, methodologies and levels of quality control. The registrant's large scale monitoring study, conducted under a single, consistent protocol approved by EPA, should provide a more appropriate data base for determining the actual extent to which alachlor use may pose a threat to ground water.

b. *Surface water.* Additional data on alachlor residues in surface water were submitted in response to the PD-1. The TSD presented surface water sampling data involving over 60 sites from a number of States and Canada. Only some of these data concerned sources of drinking water. The registrant submitted monitoring data gathered in 1985 on 24 community water supplies (CWSs).

The registrant's 1985 data showed alachlor residues in 14 of the 24 CWSs (42 percent). The communities were located in areas of high alachlor use in seven States. Results were reported for weekly composites of daily samples over the entire calendar year. The highest weekly composite concentration was 10.9 ppb. Annualized mean concentrations ranged from the limit of detection (0.2 ppb) to a high of 1.5 ppb.

The registrant's data and other studies show that alachlor levels tend to peak just after the application season, in May and June, and decline rapidly thereafter. In some bodies of water, alachlor levels drop below the limits of detection in later months, while in some studies, alachlor has been detected throughout the year.

The registrant submitted a similar study of 30 CWSs in areas of high alachlor use for 1986. Alachlor was detected in 13 of these locations, with the highest weekly composite concentration at 9.5 ppb, and annualized mean concentrations from the limit of detection (0.2 ppb) to 0.98 ppb.

The Agency noted in the TSD that the monitoring data on alachlor runoff to surface waters under various conditions tended to confirm the results of mathematical modeling predictions. Thus, the Agency is reasonably confident in estimating that for areas of high alachlor use, residues which may occur in some sources of drinking water will, on an annualized basis, generally be below 2 ppb, and more likely fall in the range of 0.5 to 1.0 ppb.

Finally, it should be noted that alachlor residues have been reported in rain water samples collected at several sites between 1984 and 1986 by Dr. David Baker of Heidelberg College. All positive alachlor detections reported for rain water have been in the low parts per billion range. The highest peak level reported is 6.59 ppb, and the mean levels (simple arithmetic means) for the various sites range from 0.02 ppb to 1.67 ppb. The mechanism by which these residues occur in rain water is unknown, but presumably has to do with volatilization of alachlor after it is applied. Since the aerial application of alachlor was largely discontinued after the 1984 season due to labeling amendments, and essentially identical levels in rain water are reported for 1985

and 1986, it is not likely that aerial application is a significant contributing factor to this phenomenon.

It is not clear what alachlor residues in rain water might contribute in terms of the residue burden in surface or ground waters, or as an additional avenue of exposure for people or crops. The levels reported indicate that rain water is a very dilute source of alachlor for crops or water supplies, in comparison to the intentional use of pesticide products. However, rain water is also a mechanism for spreading residues far beyond original application sites. Any additional information which helps to identify the mechanism of transport, as well as any data showing significantly increased exposure to alachlor through rain water may be used by the Agency as a basis for re-evaluating the uses and application methods which may contribute to residues in rain water. At present, there is no adequate basis for incorporating the limited information available on alachlor in rain water into a risk assessment.

c. The Agency's current conclusions on risks associated with alachlor residues in ground and surface waters primarily concern potential dietary exposure through drinking water.

Existing data on alachlor residues in surface waters indicate that the upper bound of oncogenic risk associated with drinking water supplied by surface waters in areas of heavy alachlor use will generally not exceed the 10^{-6} range, assuming residues occur in the 0.2 to 2.0 ppb range. This is the same conclusion on risks given in the Preliminary Notice of Determination, and additional data received since publication of that Notice continue to support this assessment.

The risks associated with alachlor residues in ground water can not be adequately assessed at this time because of the lack of thorough and representative monitoring data. A monitoring study that should be adequate to generate such data is underway, and EPA will defer a final assessment of alachlor in ground water until after the completion of that study, scheduled for submission at the end of 1989.

In spite of the limitations of the available data, the Agency has been able to draw some tentative conclusions regarding alachlor in ground water. The available data suggest that a relatively small percentage of wells in areas of high alachlor use have detectable residues. The data also suggest that when spills and other point sources of well contamination are ruled out, the residues which are most likely to represent leaching after normal applications of alachlor occur in a low range, typically from 0.2 to 2.0 ppb. As noted earlier in this Notice, assuming the occurrence of 2.0 ppb alachlor in any drinking water source poses an upper bound oncogenic risk in the 10^{-6} range for both the U.S. average and for children ages 1 to 6.

The Agency is planning to propose a Maximum Contaminant Level (MCL) for alachlor under the Safe Drinking Water Act during late 1987. The levels being considered for the proposed MCL include 2.0 ppb. Under this Act, regulations would require appropriate treatment to reduce residues in any public drinking water supply determined to be exceeding the MCL for alachlor. The determination of whether or not an MCL is being exceeded is based on quarterly sampling to determine an annualized mean concentration of alachlor. Alachlor residues can be removed from water to a substantial degree through the use of powdered or granulated activated carbon filtration. The promulgation of a final MCL for alachlor would provide an enforceable means of controlling exposure through public drinking water supplies to ensure that the levels of concentration which may occur do not pose unreasonable risks.

At this time the Agency has no adequate basis for estimating how many public drinking water supplies might be affected in terms of exceeding an MCL for alachlor in the low parts per billion range. The available data suggest that it may occur in some areas of heavy alachlor use, but that annualized mean concentrations of alachlor in excess of (for example) 2.0 ppb are likely to be relatively infrequent.

6. *Comments on ground and surface water issues.* This Unit, II.B.6., presents the principal comments on water contamination issues submitted by the registrant and other interested parties in response to the October, 1986 Notice of Preliminary Determination and the accompanying Technical Support Document (TSD).

a. The registrant states that EPA evaluated only those monitoring data which reported positive alachlor findings, and assumed, incorrectly, that there must have been a hydrogeologic connection between well findings and normal agricultural use of alachlor. Negative findings should have been evaluated with equal vigor.

EPA response: EPA did not assume that all positives were the result of normal use of alachlor. The Agency evaluated each study to determine (1) whether the positive findings were the result of normal use or whether they could be attributed to point sources of contamination (e.g., spills, improper disposal and the like), and (2) whether an adequate quality assurance procedure was included in the sampling program. When necessary, EPA directly contacted the authors of these studies to resolve such questions. To the extent that satisfactory answers were obtained, EPA felt it was appropriate to report the results, but cases of probable point source contamination were noted in the TSD and in the current Notice. The Agency concedes that most of the data brought to its attention involve positive detections of alachlor. The current Notice does include reports of four negative studies.

b. The registrant made numerous comments criticizing specific aspects of various ground water studies cited in the TSD. The objections range from the number of wells being inaccurately listed in the TSD, to the overall validity of specific studies. All of the registrant's comments are part of the public docket for the alachlor Special Review.

EPA response: The Agency's detailed responses to the registrant's comments are also entered in the public docket. In general terms, some of the registrant's comments were accepted, and changes were made accordingly to a revised version of the listing of monitoring data presented in Table 8A of the TSD. For example, the Agency deleted the Illinois data (Felsot, 1983) as not having adequate confirmation of alachlor detections. The number of wells cited for Ontario has been corrected from 305 to 281, and other minor corrections and clarifications made to other study citations. The Agency did not agree with the registrant that positive results reported for Ontario, Pennsylvania (Buchanan, et al., 1984) or Minnesota were all problematic and could not be attributed to normal agricultural use. In each of these cases, EPA is satisfied that the study employed adequate quality controls, and that some of the positives can be reasonably attributed to normal agricultural use.

c. The registrant pointed out that their 1985 ground water monitoring study found infrequent positives, and very low levels.

EPA response: The registrant's 1985 study was to have met the Registration Standard requirement, issued November 21, 1984. A protocol for this study was submitted to EPA in August 1985, after the study was underway. The Agency did not approve the protocol. In reviewing the study itself, EPA finds that it does not fulfill its stated objective "to sample from rural domestic drinking water wells that can be considered to have the highest potential for

contamination based on sales and hydrogeologic information." In EPA's view, the wells sampled were not the most vulnerable, but included a high proportion of very deep wells. Also, top soil characteristics were not verified. To provide adequate data on ground water, the registrant is now pursuing a monitoring study under a protocol approved by the Agency.

d. The registrant claims that their 1985 field dissipation studies of alachlor in experimental plots in Georgia and Illinois indicate rapid dissipation and a lack of propensity for leaching under a variety of soil and climatic conditions.

EPA response: Agency review of these studies indicates that they do not meet Agency guideline requirements for field dissipation data. Specifically, the registrant has not submitted daily rainfall data, pre- and post-application soil samples, nor calculation of field half-lives. EPA can not accept the registrant's interpretation of these incomplete studies.

e. The registrant pointed out that the State of Wisconsin has conducted extensive monitoring for alachlor, and found nearly all the positives (35 out of 565 wells sampled) to be the result of point source contamination.

EPA response: The monitoring referred to by the registrant has been conducted by the Wisconsin Department of Natural Resources (DNR) primarily in connection with investigations of suspected point source contamination incidents. This monitoring is separate and distinct from the joint research project between DNR and the Wisconsin Department of Agriculture, Trade and Consumer Protection mentioned earlier in this Notice. As of July, 1987, Wisconsin DNR monitoring has tested 733 wells for alachlor, with 62 positives. Only 3 of these are thought to be possibly attributable to normal use of alachlor, which is hardly surprising given the nature of this monitoring program. The most common explanation for the positives in the DNR monitoring is that the wells are in the immediate vicinity of pesticide handling facilities.

f. The registrant cited a study by Exner and Spalding (1985) which sampled 268 wells in Nebraska for various contaminants, including alachlor. The study showed over 90 percent of wells failed to meet minimal construction standards, and this correlated with the occurrence of agrichemical contaminants. Only one well contained alachlor at 0.02 ppb.

EPA response: The Agency does not feel that this study is useful in regard to the alachlor ground water data base. Only 47 of the wells in this study were tested for pesticide chemicals, and no effort was made to identify areas of significant alachlor use.

g. The registrant noted that EPA's STORET data base, and the WATSTORE data base of the USGS were not accessed for information pertaining to alachlor in ground water. The registrant pointed this out in response to the PD-1, but the subsequent TSD did not include STORET data. The STORET data base shows that between December, 1984 and April, 1986, alachlor was not detected in samples from 475 wells in 21 states.

EPA response: The Agency has reported monitoring data which show an adequate degree of quality control, and which are designed to look for alachlor in the vicinity of known alachlor use, or in the vicinity of a point source. Information of this character is not readily available from STORET outputs. The Agency is in the process of compiling monitoring data for all pesticides, and this project involves extensive searching of the STORET data base. Scientists who have entered data in STORET which appear to be relevant are being contacted by the Agency and requested to provide their data. However, this process is very time-consuming, and to date, has not resulted in identifying additional monitoring data on alachlor which could be used in assessing ground water contamination during the Special Review.

h. The registrant claims that the parameters for alachlor used in the Pesticide Root Zone Model (PRZM) were not proper and the resulting simulations were unrealistic.

EPA response: The Agency presented extensive explanation of the PRZM parameters in the TSD and does not feel they need to be repeated here. EPA cited four references in support of its choice for a partition coefficient for sand soils, and also explained that the use of a 42-day half-life represented a reasonable worst case assumption. The Agency conclusion stated in the TSD based on the results of the PRZM simulations was that "* * * alachlor has the potential to leach below the soybean root zones, but in all likelihood would be retained within the deeper corn root zones until microbial degradation resulted in complete dissipation" (TSD, p. II-29). The Agency continues to regard this as a valid conclusion.

i. The National Audubon Society and the Natural Resources Defense Council (NRDC) both commented that alachlor contamination of ground water is likely to increase over time. There are data from Iowa showing increasing concentrations over a period of years.

EPA response: The Agency is aware of the studies by Hallberg which suggest a trend of increasing alachlor levels in some bodies of water, which might reflect considerable persistence of alachlor in some soils. EPA is concerned by the implications of Hallberg's data, but also notes that the appearance of a trend could be partly an artifact of increased monitoring efforts. The essential point, however, is that EPA believes that the true occurrence rate of alachlor in drinking water wells is not known at this time, nor is it adequately indicated by the existing data, even though a fairly large number of wells have been sampled. Thus, it is essential to complete a valid and comprehensive ground water monitoring survey to address this issue. The registrant's monitoring study now underway is designed to provide authoritative data concerning the extent and the conditions under which alachlor may pose risks of contaminating ground water.

j. The Audubon Society points out that time was lost for collecting monitoring data because the registrant embarked on a study without EPA approval of the protocol.

EPA response: It is true that the 1985 registrant monitoring study was not approved by EPA, and that further development of an acceptable protocol was necessary. It should be noted that the approved monitoring study now underway is both large and complex, and will not be completed until 1989. EPA's evaluation of the results will be completed in 1990.

k. The Natural Resources Defense Council (NRDC) stated their view that additional ground water monitoring data are not needed. Available data show widespread contamination, and the Agency should take regulatory action on that basis.

EPA response: The occurrence of alachlor residues in ground (and surface) water, and the risks which may be posed to the public as a consequence of such residues are among the major concerns EPA has about alachlor which led to the Special Review of this chemical. However, EPA has repeatedly pointed out in the Preliminary Notice of Determination, the TSD, and in this Notice, that the existing data on alachlor residues in ground water are not adequate to characterize the true extent to which alachlor use does or does not pose a problem for well contamination. Moreover, to the extent that data are available on alachlor levels in water, they do not show that alachlor is posing unreasonable levels of risk.

EPA is committed to the protection of ground water resources. The Agency's requirement for the registrant to conduct an adequate monitoring study is

consistent with the Agricultural Chemicals Strategy now under development within EPA, which recognizes that monitoring to define the scope of a ground water contamination problem is generally the essential first step toward selecting appropriate regulatory responses.

EPA would like to emphasize that issuing a final position document concluding the Special Review of alachlor should not be interpreted as ending the Agency's concern or active involvement with the regulation of alachlor. EPA's responsibility for evaluating the safety of registered pesticides continues throughout the life of a registration. Alachlor represents a good example of this on-going responsibility as evidenced by the long-term monitoring study EPA has required in order to provide definitive information on the ground water risk issue. If it is shown that alachlor residues are occurring in ground water at levels which pose unreasonable risks, the Agency will take appropriate action. However, EPA does not agree with the commenter that the data now available are adequate to warrant the action they advocate (cancellation or suspension of registration).

l. NRDC states that EPA should provide more information about the registrant's well water monitoring program, such as its intended scope and due dates for interim and final results.

EPA response: The specific contents of this testing protocol are claimed as confidential information by the registrant. In general terms, the registrant's ground water study is targeted on areas of high alachlor use, is nationwide in scope, involves sampling of about 1500 wells, and is scheduled for completion in 1989. It is expected that EPA's assessment of the results of this study will be available in early 1990. In the event that interim results are considered so significant as to require Agency action before that time, the results of such an Agency assessment would also be available to the public.

m. NRDC states that EPA should explain why high levels of alachlor in ground water are often attributed to spills and related point source contamination incidents.

EPA response: As noted earlier, the Agency evaluated the various studies received to determine, among other things, whether the source of alachlor residues could be identified. In some cases, the Agency contacted the authors of studies in order to clarify this issue. Thus, the attribution of positive findings of alachlor to spills, improper handling or surface runoff events generally reflect the judgment of the authors based on direct observation of the wells and the relative location of normal use sites, or of pesticide handling or storage facilities, considered in conjunction with very high residue detections.

n. NRDC commented that in using the PRZM simulation to estimate alachlor migration through the root zones of corn and soybeans, EPA did not use worst case assumptions because the model did not use the maximum allowable application rate for alachlor for these crops. Also, the PRZM model would not reveal the effect of channels through the soil which could lead more directly to ground water.

EPA response: When using the PRZM model, Agency practice is to simulate a "reasonable worst case". This means the simulation of a typical use pattern (typical application rate, method of application, and date of application), but in a hydrogeologically vulnerable setting, e.g., sandy soil. In other words, the "worst case" element among the assumptions used is the hydrogeological setting, and the other factors reflect typical usage for alachlor. Corn and soybeans are grown in many locations, and EPA is assuming that at least some of these crops are grown in highly vulnerable sandy soil, although the actual percentage is probably very small. The Agency does not think the usefulness of the modeling simulation would be improved by adding more "worst case" assumptions in addition to the hydrogeologic factor since the result would be to further reduce the likelihood that the estimates reflect any real world conditions.

The second issue is known as "macropore" transport, which refers to the effect of fissures, worm, insect or animal burrows, or any other relatively large physical pathways in soil or unsaturated geological strata which have the potential to act as channels for contaminants to reach ground water more quickly than by leaching through soil layers with few or no macropores. EPA recognizes that the PRZM does not simulate such effects. The existence of macropore transport is known, but the nature and extent of this phenomenon is not well understood, and it is the subject of much current research. At this time the state of the art of modeling ground water contamination events does not include an ability to address this potential mechanism of transport.

o. The Department of Public Works for the City of Akron, Ohio, commented that they believed the risks of alachlor outweigh its benefits. They cited the risks to applicators without closed loading systems, and the increased cost to water treatment facilities for removal of alachlor. They questioned EPA's assertion that the levels of alachlor detected in drinking water sources are low.

EPA response: The upper bound risks for private farmers who will not be required under EPA's decision to use mechanical tranfer systems for mixing/loading alachlor are estimated to be 10^{-5} to 10^{-7}, which are not considered unreasonable levels of risk for that population in relation to the benefits of alachlor use. The issue of treatment cost in the event that a community water supply does need to remove alachlor residues is discussed in Unit III of this Notice on benefits and impacts. Both the TSD and this Notice have presented data which show that the levels of alachlor which have been found in drinking water sources would pose risks in the 10^{-5} or 10^{-6} range. EPA regards alachlor residues in drinking water in the low parts per billion range as significant and worthy of careful evaluation and concern. As indicated in this Notice, the Agency is continuing to review this issue in both its pesticide and water programs.

p. Alaska Survival commented that public exposure to alachlor through drinking water is not negligible. This organization did not think alachlor should be termed as having a "potential" to leach to ground water, since it has actually been found in ground water.

EPA response: The Agency agrees that exposure to alachlor in drinking water is a matter of concern. However, as noted in the preceding response, EPA's assessment is that the levels of alachlor reported in drinking water do not appear to pose unreasonable risks. The term "potential" is used to mean that the chemical properties of alachlor are thought to be such that the chemical may leach to ground water under some conditions. EPA agrees that the available data show that some leaching has occurred, but these data also show that alachlor does not always leach to ground water.

III. Summary of Benefits Assessment and Agency Evaluation of Comments and Additional Data Received

In its Preliminary Notice of Determination EPA presented an analysis of the benefits associated with the continued use of alachlor herbicide products, and presented a crop-by-crop evaluation of benefit considerations in the accompanying Technical Support Document. The benefits of alachlor were assessed in terms of the economic impacts which would result if the chemical were no longer available because of regulatory action such as

cancellation or suspension. Impacts were estimated for the farmer/user level, and for the larger society (commodity markets and consumers). The main factors in the impact analysis are changes in production costs and crop yields.

An assessment of the effects of cancelling alachlor provides a baseline estimate of the value of alachlor products to the agricultural community and society and illustrates the effects that would follow if all current alachlor users had to switch to alternative weed control measures. Obviously this is a worst case estimate of impacts, since the Agency is not proposing cancellation.

In the Notice of Preliminary Determination and the TSD, the Agency estimated that cancellation of all uses of alachlor would result in total first year losses to farmers of $510 to $759 million, which represents the cost of increased weed control using registered alternative pesticides, and the decreased value of production (decreased yields). It was estimated that the burden of these impacts would be largely borne by the farmer, with possibly one-third of the burden shifted to the consumer. The overall loss of benefits to society in the first year of cancellation was estimated to be between $302 and $508 million.

In response to the Preliminary Notice of Determination the Agency received numerous comments relating to its assessment of benefits and potential economic impacts. Virtually all of these comments concerned the evaluation of alachlor's use and importance as a herbicide on corn. As a result of the concerns raised by commenters, and additional data which became available, the Agency has revised its estimates of the economic impacts relating to alachlor use on corn. The estimated economic impacts for other crops treated with alachlor are essentially unchanged from those given in the TSD, since no additional data or substantive consideration for modifying the previous analysis has come to EPA's attention. The following section gives EPA's current estimate of impacts that would result from loss of alachlor availability by crop.

A. Summary of Potential Impacts by Crop

1. *Corn.* The largest use of alachlor is on field corn, which represents about 63 percent of total annual use. Between one-fourth and one-third of the U.S. corn crop is treated with alachlor. The primary alternative herbicide for corn is metolachlor. Alachlor and metolachlor are both acetanilide herbicides which play a major role in corn/soybean rotations and in conservation tillage. These herbicides are not phytotoxic to rotated crops, and are surface applied, imposing minimal disturbance to the soil surface.

In the TSD, the Agency concluded on the basis of all available comparative product performance data that alachlor yields were slighly greater than metolachlor in comparative test plots in the northern corn growing areas of the U.S. For these areas, alachlor was found to control certain weeds more effectively than metolachlor and to be less stressful (phytotoxic) to corn grown under cold/wet conditions.

The latter effect is known as the hybrid stress factor, which developed in seed corn because of the early introduction of alachlor by seed companies as a standard grass herbicide in their plots. This hybrid stress factor does not affect all corn at all times, but rather appears to be associated with cold and/or wet soil conditions which slow down the seedling growth of metolachlor sensitive hybrids.

Based on available data, about 70 percent of corn hybrids appear to be more sensitive to metolachlor than to alachlor. The cold/wet conditions associated with this effect occur on about 40 percent of corn acres in the north central U.S. in a given year. This effect does not seem to be a concern in the southern States.

Many commenters on the TSD, including the registrant of metolachlor, disagreed with EPA's assessment of yield differentials between alachlor and metolachlor. Accordingly, EPA engaged an independent crop consultant to evaluate the accuracy of the biological assessment in the TSD, and any other data submitted by the registrants or other parties. Data were provided by both the alachlor and metolachlor registrants, by crop consultants and seed companies.

Based on a review of all the data available, EPA's consultant concluded that there is a consistent positive yield advantage for alachlor over metolachlor regardless of how data bases are compared. Even the metolachlor registrant's data shows this trend. However, the yield differential is relatively slight, i.e., less than 5 bushels per acre. Such a differential can not be quantified with statistical rigor, because yield differences of 5 bushels per acre or less are not statistically significant by the methods utilized by most researchers in standard weed control plots.

In summary, the weight of evidence consistently points to a yield advantage in favor of alachlor under most conditions associated with herbicide stress. The Agency is confident that the yield differential for corn is less than 5 bushels per acre. Thus, the impact of losing alachlor is best represented by the lower end of the range given in the TSD.

The Agency's earlier benefits assessment also assumed that yield losses would be reflected in reduced deficiency payments to farmers, since the Secretary of Agriculture had the option of basing deficiency payments on the average of actual historical yields. However, current information from the Department of Agriculture indicates that deficiency payments are to be frozen at the 1981–85 average, so that yield reductions will not impact these subsidy payments to farmers.

As a result of considerations discussed above, the Agency believes a lower estimate of potential impacts on corn is appropriate based on the best information now available. The range of first year losses to farmers resulting from a cancellation of alachlor would be in the range of $184 to $270 million, which represents losses of 5 to 7 percent of the expected net income from corn acreage of the typical farmer using alachlor. The first year losses to society would range from $122 to $208 million which represents between 1 and 2 percent of the value of the corn crop.

Losses would decrease over time, since the hybrid stress factor will dissipate eventually with development of less sensitive hybrids and/or less stress inducing formulations of metolachlor. There is no adequate basis for predicting when the impact of hybrid stress would cease to be a factor, but 10 years has been cited as a plausible time horizon. There would still be impacts attributable to specific weed control differences between alachlor and its alternatives. Thus, the elimination of the stress factor would still leave an estimated on-going annual impact of between $29 and $42 million due to increased weed control costs.

2. *Soybeans.* The second largest use of alachlor is on soybeans, which represents 28 percent of the total annual usage. Alachlor is used on about 13.5 million acres of soybeans, or about 21 percent of the U.S. crop. Metolachlor is the primary alternative to alachlor in soybeans, with other herbicides and/or cultivations used under some conditions. The use of alternatives could increase average weed control costs by about $8.00 per acre for alachlor users. Yield reductions of 3.5 to 5 bushels per acre could occur on about 18 percent of those acres currently treated with alachlor. The cancellation of alachlor use on

soybeans could result in annual losses to users of $153.6 to $159.5 million (EPA, 1986). This represents increased production costs of $113 million and decreased value of production of $40.6 to $46.5 million. Such losses, in aggregate, would represent less than 2 percent of the $10 billion value of soybean production, but approximately $1,150 to the typical soybean grower using alachlor. Costs to consumers of soybean products could increase slightly (less than 1 percent).

Since the TSD benefits analysis of alachlor, the Agency suspended the use of dinoseb, another herbicide used on soybeans. However, several new herbicides have also been registered for use on soybeans. The impact of these developments has not been included in the current assessment due to lack of data.

3. *Peanuts.* Alachlor is applied to about 60 percent of the U.S. peanut crop. Over 90 percent of the alachlor used on peanuts is applied as a cracking stage treatment. Metolachlor is the only herbicide which could be used as a substitute. Alachlor is a more effective product in that it gives better control of broadleaf weeds and does not retard peanut yields. Relying on metolachlor, peanut yield losses of 14 to 17 percent could occur in the Southeastern region. The cancellation of alachlor could result in user losses of about $35 million (EPA, 1986). This represents about 2 percent of the value of peanut production, and about $2,000 for the average producer. It is estimated that impact on consumers would be about $37 million.

The suspension of dinoseb for use on peanuts has created uncertainty about the benefits of alachlor. Dinoseb was typically applied as a tank mix with alachlor. Other things being equal, the loss of dinoseb may make peanut production less profitable. However, there are no data available at this time to assess the impact of the dinoseb suspension on peanut production, or how the use of alachlor on this crop may have been affected.

4. *Dry beans.* Dry beans represent less than 1 percent of total alachlor usage. If alachlor is cancelled, equally effective alternatives exist for some regions of the country, and less effective alternatives exist for others. The loss of alachlor could result in annual losses of $0.4 to $1.5 million. These losses include increased production costs of $12.74 per acre to alachlor users.

5. *Grain sorghum.* Alachlor is used on about 1.4 million acres of grain sorghum which represent about 8 percent of U.S. planted acres. It is estimated that the cancellation of alachlor use on grain sorghum would have little if any impact to users. Metolachlor, the currently registered alternative, appears to be the preferred herbicide for use on grain sorghum.

6. *Sweet corn or popcorn.* Current information indicates that about 300,000 acres of sweet corn and popcorn, which represents about 25 percent of the total acreage for these crops are treated with alachlor. The cancellation of alachlor could result in losses of $3 to $10 million to alachlor users. Weed control costs could increase about $300,000 with value of production losses of $2.8 to $9.6 million. This could represent losses for farmers of about $9.00 to $32.00 per acre. Available information indicates that the losses could be borne largely by the farmer with little passed on to consumers.

7. *Sunflowers.* Less than 1 percent of the sunflower crop is treated with alachlor for weed control. It is estimated that the loss of alachlor could result in minor annual losses. Alternatives to alachlor include trifluralin, EPTC, and pendimethalin.

8. *Cotton.* Alachlor is currently used on about 30,000 acres of cotton which represent less than 1 percent of the U.S. planted acres. The cancellation of alachlor use on cotton could result in losses of about $160,000 to users.

9. *Green peas.* Limited quantities of alachlor are used on green peas. Metolachlor has comparable grass control, while alachlor and propachlor can be used on soils with a higher organic content. The registrant intends to delete this use from its label.

10. *Lima beans.* Alachlor is currently used on about 6,000 to 9,000 acres of lima beans, or about 10 to 14 percent of U.S. planted acres. The cancellation of alachlor would result in little, if any, efficiency losses to society.

11. *Ornamentals.* Alachlor is registered for use on selected woody ornamentals. However, the Agency did not find any evidence that alachlor is actually used on ornamentals.

12. *Summary.* The Agency has lowered its estimates of the economic benefits of alachlor somewhat, primarily because of further evaluation of its role in corn production. As a result of reevaluating the potential impact on the corn crop, the overall estimated impact of the loss of alachlor is about 10 to 20 percent below the range cited in the TSD. Thus, total estimated losses at the farm level for all crops would be between $413 and $465 million. The loss to society would fall betweeen $300 and $404 million.

B. Comments and Agency Responses Relating to Benefits

1. A total of 13 academic experts in weed control submitted comments relating to yield differentials in corn between alachlor and metolachlor. In addition, the registrants of alachlor and metolachlor made presentations to EPA on this issue, and submitted data, some of it from seed companies. All of these responses, and Agency memoranda describing the registrant presentations are included in the public docket. Most of the academic experts reported that they did not think that there was a significant difference in corn yields between metolachlor and alachlor.

EPA response: The Agency's response has been summarized above, and consisted of engaging an independent consultant to evaluate all pertinent data. Only one of the commenters from the various colleges and universities submitted data in support of his comment. EPA's consultant concluded that the available data do demonstrate a slight yield advantage for alachlor in cold/wet soil conditions, i.e., conditions which may affect corn grown in the northern U.S. The Agency's impact analysis in the TSD only assumed a yield differential in the northern region, and assumed zero difference in the southern States.

2. The National Audubon Society commented at length on EPA's benefits assessment, arguing that for a number of reasons the Agency exaggerated the benefits of alachlor. The Audubon Society's main points are itemized below. To begin with, Audubon does not believe there is a yield differential between alachlor and metolachlor, and that all estimates based on that calculation are in error.

EPA response: The Agency has described the reexamination of comparative yield data by its consultant, and the conclusion that there is a yield differential consistently supported by the data. Audubon submitted no data in support of its view.

3. The Audubon Society commented that the withdrawal of alachlor would hardly be noticed in corn and soybean production because any yield losses would be insignificant in view of the large surpluses for these crops.

EPA response: The Agency recognizes that the impacts on these crops would represent a very small percentage of the value of corn or soybeans. Audubon's comment is probably correct for the short term, since there are significant surpluses of these crops. However, it should also be noted that current Administration policy is to eliminate

subsidies and reduce surplus stocks. The implementation of the 1985 Farm Bill has already begun to reduce surplus stocks of corn. Thus, the Society's comment may not be valid in the long term. In addition, the Agency's impact assessment also considers the effects at the grower level, where reduced yields and increased costs would reduce the net income of farm families.

4. The Audubon Society disagrees with estimates of increased costs for weed control. Audubon states that prices for herbicides in general are declining, and new products have become available.

EPA response: The Agency analyzed production costs both with and without the availability of alachlor. If alachlor were removed from the market, metolachlor would have a near monopoly of some large agricultural use patterns, and EPA believes prices for metolachlor would rise. It is true that if the related acetanilide herbicide, acetochlor, were registered, it would probably compete successfully for a market share and possibly reduce prices.

5. The Audubon Society notes that the alachlor patent is about to expire, and this may result in generic alachlor products competing for market share beginning in 1988. The likely result will be a decrease in alachlor prices, which makes EPA's cost estimates erroneous, and will encourage more alachlor use.

EPA response: The Agency recognizes that product price reductions could result from competition by generic alachlor, and did consider this effect in its assessment. However, generic product competition is only one factor involved in trying to forecast the use of alachlor. For example, total acres planted to corn and soybeans have been declining for several years due to government policies and market conditions for these crops. Also, profits for growers of these crops have been declining, with the result that farmers have been reducing production inputs, including the use of pesticides. Thus, it is not clear that Audubon's prediction of dramatically increasing use is correct.

6. The Audubon Society pointed out that EPA's inclusion of reduced deficiency payments in estimated impacts on growers does not reflect announced Department of Agriculture policy.

EPA response: This comment is correct, at least in the short run, since the Department of Agriculture has indicated that deficiency payments are to be frozen at levels based on the 1981–85 historical average yield rates. EPA has revised its impact assessment accordingly.

7. The Audubon Society comments that one of the benefits EPA cites for alachlor use is its role in conservation tillage (i.e., use of a herbicide rather than conventional tilling in order to reduce soil erosion). However, Audubon comments that application rates for conservation tillage are often higher than for conventional tillage systems, and this leads to high alachlor concentrations in runoff from treated fields.

EPA response: It appears to be Audubon's position that the use of alachlor in conservation tillage is a problem rather than a benefit, because it is a water soluble pesticide, and conservation tillage leads to higher runoff. The labels for alachlor do not allow higher application rates for conservation tillage systems versus conventional tillage applications. Thus, it is not clear whether Audubon is making a general comment which happens not to apply to alachlor, or is claiming that applications are made at maximum label rates as opposed to typical rates when a conservation tillage system is involved.

EPA recognizes Audubon's concern that conservation tillage increases surface application of herbicides and consequently the potential for runoff to surface waters. However, as Audubon itself points out in its comments, other application methods such as banding or soil incorporation may only increase the potential for ground water contamination. In short, modifying existing application methods does not seem to offer any practical solutions to the potential for some degree of ground or surface water contamination by alachlor.

In the Agency's view, the issue here is not whether this potential for agricultural runoff exists, as it surely does, but whether the use of alachlor poses risks which outweigh its benefits. That issue has been addressed through EPA's risk and benefits assessments, which at this time indicate that alachlor use is not posing risks that outweigh its benefits.

8. The Audubon Society states that conservation tillage is not needed on 90 to 100 percent of the land devoted to row crops in this country.

EPA response: The Agency is not directly involved in evaluating or formulating soil conservation policy, but notes that the U.S. Department of Agriculture encourages the adoption of conservation tillage practices. The basis for Audubon's statement is not explained. EPA notes that aside from the value of preventing soil erosion, conservation tillage practices are economically appealing to farmers because the number of trips over the field are reduced, saving fuel and related costs. Increased habitat for wildlife has also been noted in areas where conservation tillage is practiced.

9. The National Network to Prevent Birth Defects states that EPA failed to consider alternatives to alachlor other than metolachlor, including non-chemical cultivation methods of weed control.

EPA response: The TSD does discuss in detail other registered pesticides which can be used for the same sites as alachlor. However, for many of the major use sites, metolachlor is the most likely alternative to be chosen, since it is the most cost-effective. The Agency did evaluate the availability of Integrated Pest Management techniques, including mechanical and cultural practices, in its biological analysis of alachlor. This report is in the alachlor public docket. The use of such techniques would be highly desirable from the perspective of reducing concerns about alachlor. However, it is EPA's judgment that for cost reasons, metolachlor is the alternative most likely to be chosen by growers if alachlor were not available.

10. The Department of Public Works for the City of Akron, Ohio, commented that the occurrence of alachlor in drinking water would impose costs for remedial treatment on communities.

EPA response: The Agency actions under the FIFRA required by this Notice do not directly impose costs for water treatment. However, the commenter is correct in the sense that a Maximum Contaminant Level (MCL) for alachlor set by the Agency under the Safe Drinking Water Act could require a community to monitor for alachlor and to undertake treatment adequate to reduce levels below the MCL if alachlor in excess of that level occurs in a public drinking water supply.

This is a difficult issue to evaluate, in part because the Agency has not yet proposed a specific MCL for alachlor. As noted earlier in this Notice, a level of 2.0 ppb is being considered as the proposed MCL for alachlor. If it is assumed that this level is ultimately adopted, the question remains as to how many public drinking water supplies may exceed that level. The data discussed in this Notice include studies of 54 community water supplies using surface water, none of which exceeded 2.0 ppb as an annualized mean concentration. However, these studies used many weekly samples to compute an annualized mean. If the MCL established by EPA is defined as the average of only four samples collected quarterly, as MCLs generally are, then

there is a potential that a high level detected during the peak period of alachlor use in May and June could result in raising the annualized average above the MCL.

At this time, the Agency's best assessment based on the available monitoring information is that it is relatively unlikely that public water supplies will be out of compliance with an MCL for alachlor in the low parts per billion. However, such events may occur, and the effect could be to require treatment to bring a public drinking water supply into compliance with the MCL.

The available technology for removing alachlor residues from water is the use of powdered or granulated activated carbon filtration. It is estimated that fewer than one percent of water treatment systems are currently equipped with activated carbon filtration systems. This treatment method is relatively expensive. Capital costs could range from about $45,000 for a small system to tens of millions for a large municipal system. The per gallon treatment cost is estimated to range from about $1.71 per 1000 gallons for a small system to about $0.06 per 1000 gallons for a large system. The costs of treating ground water would be similar. Available data on the effectiveness of activated carbon indicate that these systems remove about 60 percent of the detected alachlor. Activated carbon filtration is not a treatment specific to alachlor; rather, it is the recommended treatment for the removal of most pesticides and other potentially toxic organic compounds from drinking water. Thus, an activated carbon system might also be needed in some locations to achieve compliance with MCLs for compounds besides or in addition to alachlor.

State governments have certain options in the event the MCL for alachlor (or any other pesticide) is exceeded. Under the FIFRA, States retain the authority to impose pesticide use regulations more stringent than the terms of the Federal registration. Thus, in response to alachlor residues levels exceeding the MCL in one or more water supplies, a State has the option of limiting alachlor use according to criteria of its own determination in order to reduce or eliminate those residues, rather than impose the cost of treatment on affected communities.

Some communities might have other options available, such as diluting a water source known to contain alachlor with an uncontaminated source during the periods of peak alachlor residue occurrence, or switching altogether to another source during such peak periods.

In should be noted that States determine which water systems are monitored for compliance with MCLs. The cost of quarterly sampling for alachlor would be about $800 annually per water system, regardless of size, and the tests would also detect other organohalide pesticides or industrial chemicals.

The Agency currently estimates that alachlor is used in about 1100 counties, which represents about 16,000 public drinking water systems. If all these systems were monitored, the total cost would be about $12.8 million annually, spread among numerous State and local jurisdictions. The States may not require every system to be monitored.

In summary, the costs which may be associated with an MCL for alachlor include monitoring, which is minor in cost, and activated carbon treatment of public drinking water supplies which exceed the MCL, which is expected to be an infrequent occurrence, but which would involve high costs, potentially in the millions of dollars for individual communities. There are no data available that would support a specific estimate of the number of communities that might exceed an MCL for alachlor. The data now available indicate that it is unlikely that significant numbers of public drinking water supplies will exceed an MCL for alachlor in the 2 ppb range. As noted above, State or local restrictions on alachlor use, rather than remedial treatment of drinking water is an alternative approach to ensuring MCL compliance. Since MCL compliance is likely to be an infrequent and localized issue, this approach may be the most cost-effective alternative available in most circumstances. It is also consistent with the Agency's Agricultural Chemical Strategy to recognize that State and local governments have an essential role in protecting water resources and making the risk/benefit evaluations affecting their local communities.

IV. Comments of the Scientific Advisory Panel, Secretary of Agriculture and Other Parties

As required under sections 6 and 25 of FIFRA, the Agency provided its Preliminary Notice of Determination and TSD to the Scientific Advisory Panel and the Secretary of Agriculture, respectively, for their comments, which are presented below. This section also includes general comments from other parties which relate to the regulatory measures proposed in the Preliminary Notice of Determination, as opposed to comments on specific risk or benefit issues.

A. Comments of the Scientific Advisory Panel

EPA presented its proposed decision on alachlor at a public meeting of the Scientific Advisory Panel held in Arlington, Virginia on November 19, 1986. The Panel issued its response in a written report of November 25, 1986. The Panel's report is reproduced below in its entirety.

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel

A Set of Scientific Issues Being Considered by the Agency in Connection with the Special Review of Alachlor

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the data base supporting the Environmental Protection Agency's (EPA) preliminary decision to cancel the registrations of all pesticide products containing the active ingredient alachlor unless certain modifications to the terms and conditions of registrations are made by the registrants. The review was conducted in an open meeting held in Arlington, Virginia, on November 19, 1986. All Panel members except Dr. Harold L. Bergman, Dr. John J. Lech, and Dr. Thomas W. Clarkson were present for the review. Although Dr. Lech was not present at the meeting, he provided his comments via telephone to the Chairman of the Scientific Advisory Panel and agreed with the Panel's recommendations.

Public notice of this meeting was published in the **Federal Register** on Friday, October 24, 1986.

Oral statements were received from staff of the Environmental Protection Agency and from Mr. Robert Harness, Monsanto Company.

In consideration of all matters brought out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report.

Report of Panel Recommendations

Alachlor

The Agency requested the Panel to focus its attention upon a set of scientific issues relating to the Special Review of Alachlor. There follows a list of the issues and the Panel's response to each issue:

A. *Toxicological Issues.* The Agency has classified alachlor as a category B_2 probable human carcinogen.

1. Part of the basis for this classification is a statistically significant increase in lung bronchioalveolar tumors at the highest dose tested in female mice.

Panel Response: The Panel does not agree with the Agency's interpretation of the female mouse lung tumor data. The technical support document incorrectly suggests that the Sher paper's data are from mice 81 to 105 weeks of age. In reality, the paper clearly

states that "Almost all studies were of 81 weeks duration in mice * * *". The Panel recognizes that lung tumor incidence in mice represents one of the more variable endpoints in carcinogenesis bioassays. The control incidence for adenomas/carcinomas in the Monsanto study was 6 percent whereas the average incidence in 1240 control mice was 17 percent (range 0–41 percent). Thus, the finding of a lung tumor incidence of 22 percent in the high dose group was considered by the Panel to be within the limits of normal variation. Additional support for this interpretation was provided by the lack of evidence of progression from benign to malignant tumors, and the lack of an increase in tumor multiplicity in treated mice.

2. The rat is an appropriate model for predicting human risk for alachlor.

Panel Response: The Panel agrees that more data are available on metabolism of alachlor and on the carcinogenic potential of this chemical in rats than in other species. The Panel concurs that alachlor is carcinogenic for the rat and that it produces nasal adenomas and adenocarcinomas, an unusual type of neoplasm that has a low spontaneous incidence. However, whether the rat (or any other nonhuman species) is an appropriate model for predicting human risk for alachlor is not presently an answerable question. The Panel believes that the monkey may be a better metabolic surrogate for man than is the rat; unfortunately, data are not available on the tumorigenicity of alachlor in the monkey, so the circle of evidence for carcinocenesis risk evaluation in this species cannot be closed. Thus, the only positive evidence on which to evaluate human risk of carcinogenicity is the rat data. (The Panel does not believe that the mouse data show that alachlor is carcinogenic in this species). The Panel suggests, however, that metabolic data from the monkey may be used to scale the interpretation of risk from the rat data.

The Panel believes that alachlor should be classified as a B_2 carcinogen based on the production of an unusual type of neoplasm in the rat, coupled with the finding that two metabolites of alachlor are mutagenic. While the Panel is not comfortable with the implied conclusion of the EPA Guideline that this classification means that alachlor is a probable human carcinogen, the data available clearly meet the criteria for B_2 classification.

B. *Exposure Issues.* The Agency estimated applicator dosage by pooling Monsanto patch data and surrogate patch data from published exposure studies to calculate a range of exposure, and then applied this range to the biomonitoring dosage.

Panel Response: It was encouraging to see the use of a limited amount of biomonitoring data, both by the Agency and by the Monsanto Company. Even though the data are limited in scope, it can serve to corroborate the exposure assessment generated by the Agency. We compliment the Agency on expediting the incorporation of the 1985 Monsanto biomonitoring data in its exposure and risk assessment evaluation.

FOR THE CHAIRMAN

Certified as an accurate report of Findings:

Stephen L. Johnson,
Executive Secretary,
FIFRA Scientific Advisory Panel
Date: November 25, 1986.

The Agency's response to the toxicological issues raised by the SAP comments has already been noted in Unit II of this Notice. In brief, the Agency interpreted historical control data on lung tumors in CD–1 mice as supporting the evidence of oncogenesis in mice. EPA also believes that the rat does provide an appropriate metabolic model for evaluating human risk to alachlor, and adjustments based on monkey data are not required. EPA agrees with the SAP that the rat tumor data are the best available data for carcinogenic risk assessment purposes, that is, for the determination of cancer potency values utilized in upper bound risk estimates.

B. Comments of the Secretary of Agriculture

The comments of the U.S. Department of Agriculture in response to the Notice of Preliminary Determination, Draft Notice of Intent to Cancel and the Technical Support Document, dated January 12, 1987, are printed in full below:

Mr. Douglas Campt, Director,
Office of Pesticide Programs (TS–766C), U.S. Environmental Protection Agency,
Washington, DC 20460

Dear Mr. Campt:

This is the Department of Agriculture's response to EPA's notice of proposed decision to allow the continued registration of alachlor products with various specified modifications to the terms of registration and use.

We do not have any objection to your proceeding with your proposed decision nor do we have any major discussion in relation to the documents furnished. We note that there are places within the documentation where space has been reserved to expand the language. We would appreciate receiving a copy of the final document when it is completed.

Finally, as discussed with Mr. Giamporcaro, the bibliography will be corrected by including reference to the Kuchler-Osteen report.

Sincerely,
Charles L. Smith, Coordinator,
Pesticides and Pesticide Assessment.

C. Other Comments on the Proposed Regulatory Actions

1. The National Audubon Society and the Natural Resources Defense Council (NRDC) both commented that the proposed classification of alachlor for restricted use would do little to reduce risks for applicators, and is not relevant to the problems of ground and surface water contamination.

EPA response: The Agency acknowledges that this measure may not result in a major (or quantifiable) degree of risk reduction, especially in view of the fact that many private farmers and virtually all commercial applicators affected are already certified. However, EPA estimates there may be approximately 150,000 current alachlor users who are not certified, and therefore it makes sense to ensure that they all receive training in the proper handling, application and disposal of this pesticide, especially in view of the fact that a portion of the known well contaminations with alachlor are attributable to improper handling.

2. In its Preliminary Notice, EPA asked for suggestions on measures that might reduce concerns about exposure to or environmental contamination by alachlor. The Audubon Society commented that various alternative methods of applying alachlor, such as soil incorporation rather than surface spraying, or band application, all tended to involve unacceptable trade-offs between increased risks to ground water for reduced risks to surface water, or vice versa. Audubon suggested that more encouragement be given to biological controls, crop rotation practices, use of pest-resistant crop strains, and organic farming.

EPA response: The Agency agrees that Integrated Pest Management techniques and organic farming are desirable ways to address concerns about environmental contamination resulting from pesticide use. However, the present Special Review has to focus on a risk/benefit decision concerning the continued use of alachlor. The Agency agrees with the Audubon Society that choices among the existing application methods for alachlor do not seem to offer any likely alternatives for addressing concerns that have been raised about alachlor's potential for water contamination.

3. The Audubon Society and NRDC commented that a cancer warning statement is not an effective risk reduction measure, and in any case, the warning is already on labels as a result of the 1984 Registration Standard.

EPA response: The purpose of health warning statements on pesticide labels is not primarily to achieve risk reduction in the same sense as label directions, such as the use of protective clothing. Rather, the purpose is to give the persons involved in direct handling and application of the chemical valid information about the hazards of the substance in order to give them an informed basis for taking appropriate precautions. The view that this is not a major risk reducing action is a matter of judgment; however, the Agency did not

assume any quantified reduction in risk from this requirement.

4. NRDC commented that the requirement for mechanical transfer devices to mix/load alachlor applied to over 300 acres is not a significant risk reduction measure.

EPA response: The Agency's assessment is that persons treating more than 300 acres per year with alachlor as currently registered may receive significant exposure. Available data show that the use of mechanical transfer systems reduces exposure during mixing and loading by approximately fortyfold, which is more than one order of magnitude. Consequently, the requirement does achieve significant risk reduction for a high risk group of applicators. The fact that most of these applicators already use mechanical transfer systems to handle alachlor is not an argument against mandating the use of such systems to ensure that all such applicators are protected.

5. NRDC states that EPA's sole justification for allowing the reinstatement of aerial application is that ground boom applicators are at higher risk. Aerial application will also pose risks of human exposure through drift, and mixing and loading operations at airports pose increased risks of ground and surface water contamination.

EPA response: The Agency's assessment is that aerial applicators are not exposed to alachlor at levels which pose unreasonable risks of adverse effects. With the exception of human flaggers, EPA has no evidence that exposure to alachlor through aerial drift has been a significant route of exposure in the past. The Agency has no information to indicate that mixing/loading operations at airports are a specific problem in relation to water contamination with alachlor. Historically, less than 1 percent of alachlor has been applied aerially. It is true that improper handling and disposal of alachlor appears to be associated with some contamination of wells. However, improper disposal under any circumstances is a violation of label requirements.

V. Initiation of Regulatory Actions

A. Introduction

In its Preliminary Notice of Determination the Agency reached several conclusions, as follows.

In relation to ground water, EPA determined that the available data were not adequate for a proper assessment of the potential risks which alachlor use may pose through contamination of this resource. That conclusion is unchanged by this Notice. EPA has taken the action necessary to ensure that adequate data on ground water contamination by alachlor is developed by the registrant and submitted to the Agency for a more definitive determination on this issue. The conclusion of the Special Review of alachlor is intended to terminate this specific administrative review process, but in no way reduces the Agency's commitment to evaluate alachlor as a potential contaminant of ground water, and to take any further regulatory action which is warranted on the basis of valid evidence.

The Agency also proposed in the Preliminary Notice to consider cancellation of alachlor use on certain crops in order to reduce potential dietary exposure, but to defer a decision pending receipt of residue data on the processed commodities. These crops were lima beans, dry beans and green peas for processing. Since issuance of the Preliminary Notice, the registrant has provided additional residue data on the raw commodities, including validation data for dry beans. However, it was found that exaggerated rates of alachlor would need to be applied in order to have detectable residues in dry beans so that a cooking and processing study could be conducted. These data are now due in June, 1988.

The Agency does not now feel that a decision needs to be deferred, since the additional residue data from field trials indicate that residues on these commodities are lower than previously estimated. As noted earlier in this Notice, the registrant has also indicated that label amendments will remove the crop green peas from their label. Thus, the Agency does not intend to cancel alachlor for use on the commodities dry beans, lima beans or green peas for processing as part of the current decision. The established tolerances for alachlor will be reevaluated when all the residue data required by the Registration Standard have been submitted and evaluated.

Finally, the Notice of Preliminary Determination proposed a number of specific modifications to the terms and conditions of registration for alachlor products. The comments and additional information received by the Agency since publication of the Preliminary Notice of Determination have been presented in this Notice, and have not changed the Agency's previous conclusions, which are briefly summarized as follows.

Alachlor is determined to offer substantial benefits to agriculture. The potential risks posed by alachlor fall into the categories of applicator exposure, dietary risks through residues in food commodities, and dietary risks through the occurrence of alachlor residues in drinking water. The risks posed to applicators and other persons directly involved in application of alachlor were found to be unreasonable and to outweigh the benefits of continued use, unless certain modifications to the terms and conditions of registration are made. The dietary risks to the public were estimated in terms of an upper bound of risk for increased tumor formation, and found to be in the range of 10^{-6} or 10^{-5}, including the possible occurrence of alachlor in drinking water. The actual occurrence of alachlor residues in drinking water at the 2.0 ppb concentration level used for risk estimation would only be expected to occur in areas of heavy alachlor use, and not on a nationwide basis. Upper bound levels of risk of this order of magnitude do not outweigh the substantial benefits of alachlor use.

B. Modifications to Terms and Conditions of Registration

Based on the information summarized in Unit V.A. of this Notice and discussed elsewhere in this Notice, the Agency has determined that the use of alachlor as currently registered poses unreasonable adverse effects to human health or the environment, and that certain modifications to the terms and conditions of registration are required to bring these products into compliance with the statutory standard for registration. Therefore, in order to avoid cancellation, registrations of alachlor products must be modified to include the terms and conditions listed below.

1. *Label changes*—a. *Label requirements.* The following language must appear on the label of all alachlor products:

i. *Restricted use.*

Restricted Use due to oncogenicity.

For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicators' certification.

ii. *Health warning.*

The use of this product may be hazardous to your health. This product contains alachlor which has been determined to cause tumors in laboratory animals.

iii. *Restriction on application.*

The use of a mechanical transfer system is required to be used by all mixer/loaders and/or applicators who treat 300 acres or more annually.

b. *Aerial application.* Aerial application may be reinstated on the alachlor label with the following additional label restriction:

Human flaggers prohibited. Aerial application may be performed using mechanical flaggers ONLY.

2. *Basis for regulatory actions*—a. *Restricted use classification.* Classification of alachlor as a restricted use pesticide will increase the level of protection afforded to users of the product. Certified applicators are trained in safe methods of using pesticides. Untrained users are less likely to be aware of the hazards, both to humans and to the environment, of using alachlor. It should be noted that the existing EPA-approved label for alachlor includes precautions concerning the potential for contaminating ground and surface water. Certification programs emphasize the importance of adherence to the label directions.

Approximately 75 percent of the estimated 500,000 commercial applicators and private farmers who use alachlor are already certified under State certification programs, according to data provided by the registrant. An estimated 150,000 private farmers would comprise nearly all of the remaining uncertified group. The cost to each farmer of obtaining certification would be minimal. States typically charge nominal fees or none at all to certify private farmers.

Thus, the cost of additional certification and training stemming from this requirement would be largely borne by the States. The average cost to a State program of certifyinc an individual is estimated to be about $65. Thus, if all the currently uncertified alachlor users choose to become certified, the total initial impact would be about $9.75 million. This impact would be shared among many State certification programs. The impact would also vary from State to State because of differences in the percentage of farmers already certified. Most commercial applicators using alachlor are already certified and will incur no additional costs as a result of this requirement.

The Agency has determined, therefore, that the greater assurance that label precautions are followed, which would be achieved by restricted use classification, outweighs the costs. The impact of this requirement would be minimal in States which already have a high proportion of private farmers certified, but in other States, the initial impact on the resources of the State certification and training program could be substantial.

b. *Restriction on application.* Studies have demonstrated that the use of mechanical transfer systems for mixing/loading can substantially reduce exposure to some pesticides. EPA expects that use of a mechanical transfer system for alachlor will reduce exposure by fortyfold. This estimate is based on the Agency's review of many pesticide applicator exposure studies.

Approximately 40 percent of the farms using alachlor apply it to 300 or more acres annually. Available information indicates that most large farms already use mechanical transfer systems for mixing/loading operations, and therefore EPA expects this requirement to have minimal impact. The registrant has developed a "shuttle system" which is essentially a 200 gallon container of alachlor with a built in pumping system for mixing/loading. This system is not purchased by the user, but returned to the dealer for refilling and servicing. The cost of purchasing alachlor with this system is only about 1 percent higher than purchasing alachlor in conventional bulk containers, a difference amounting to less than $100 for most large users. Pumping devices designed for transferring pesticide chemicals from drums ("barrel suckers") are also available at moderate cost, and are already in widespread use.

Since mechanical transfer systems are already widely used as a practical convenience rather than a safety measure, EPA has no way of estimating how many users would incur a new expense in order to meet this requirement. Since the potential reduction in exposure and risk is more than one order of magnitude, and the cost would be less than $100 for the typical user, this is a cost-effective and reasonable requirement for risk reduction.

c. *Prohibition of human flaggers.* Human flaggers face a substantial risk through exposure to alachlor which may be as high as 10^{-3}. The use of mechanical flaggers would eliminate this avenue of human exposure. The potential population of human flaggers is not known, since this task is often performed by farmers themselves; several thousand persons could be affected. Alachlor has historically been applied by air to less than 1 percent of total acres treated. If 410,000 to 440,000 acres (1 percent of total acres) were aerially treated using mechanical flaggers, the total cost would be under $40,000. The Agency concludes that the avoidance of significant risks for human flaggers outweighs the minor cost of requiring mechanical flaggers during aerial applications.

d. *Summary.* The Agency has concluded that, subject to the modifications to the terms and conditions of registration set forth in this Notice, the risks of continued use of alachlor are outweighed by the substantial benefits of its use, notwithstanding any impact of implementing this regulatory decision.

Additional data concerning alachlor's potential for ground water contamination are due in 1989, and will be evaluated by EPA in 1990. It has been noted that alachlor's benefits on various crops might decline over time. Thus, the evaluation of ground water data in 1990 offers an appropriate occasion to revisit the risks and benefits of alachlor on a crop-by-crop basis to determine whether the risk/benefit balance has changed to a degree requiring regulatory action.

C. Existing Stocks and Disposal Provisions

Pursuant to FIFRA section 6(a)(1), "the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration [is cancelled pursuant to this Notice] to such extent, under such conditions, and for such uses as he may specify, if he determines that such sale or use is not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment". The Agency has determined that limited sale and use of certain existing stocks of alachlor is not inconsistent with FIFRA and will not cause unreasonable adverse effects on the environment. Accordingly, under the authority of FIFRA section 6(a)(1), EPA will permit the continued sale and use of existing stocks of alachlor products whose registrations are cancelled pursuant to this Notice, subject to the following conditions and limitations. For purposes of this Notice, EPA defines the term "existing stocks" to mean any quantity of alachlor product in the United States on the date of publication of this Notice of Intent to Cancel that has been formulated, packaged, and labeled for use and is being held for shipment or release, or has been shipped or released into commerce. No stocks of alachlor products formulated, packaged, or labeled for use subsequent to the publication of this Notice shall qualify as "existing stocks", notwithstanding delayed cancellation following a hearing resulting from this Notice.

In order to allow a reasonable time to accomplish the modifications to the terms of registration required by this Notice, EPA will allow the sale and distribution of existing stocks of alachlor products whose registrations are cancelled pursuant to this Notice for up to 6 months after publication of this Notice of Intent to Cancel in the **Federal Register**. After that date, no registrant may release for shipment any alachlor product subject to this Notice unless the product bears an amended label which complies with the requirements set forth in Unit V.B. of this Notice. EPA also will

allow use of existing stocks for up to 1 year after publication of the Notice. EPA is requiring registrants to affix revised labeling to existing stocks in their possession to indicate the time limitations on distribution, sale, and use. In addition, EPA is also requiring registrants to contact commercial distributors of alachlor products to inform them of the time limitations on distribution, sale, and use and to provide revised labeling that reflects the time limitations for existing stocks in the possession of the commercial distributors. Upon expiration of the time limitations for use of existing stocks, disposal of cancelled alachlor products must be in accordance with the requirements of the Resource Conservation and Recovery Act.

VI. Procedural Matters

This Notice announces the Agency's final decision to cancel all registrations and to deny all applications for registration of products containing alachlor which do not comply with the modified terms and conditions of registration set forth in this Notice. This action is being taken pursuant to authority granted by section 6(b) of FIFRA. Under FIFRA sections 6(b)(1) and 3(c)(6), applicants, registrants, and certain other adversely affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. Any hearing concerning cancellation or denial of registration for any pesticide product containing alachlor will be held in accordance with FIFRA section 6(d). Alternatively, registrants/applicants may apply to amend the product registrations/applications in accordance with the terms and conditions set forth in this Notice. Unless a hearing or amended registration is properly requested with regard to a particular registration or application, the registration will be cancelled or the application denied. This Unit of the Notice explains how such persons may request a hearing or amend their registrations in accordance with the procedures specified in this Notice, and the consequences of requesting or failing to request a hearing or submit an amended registration or application.

A. Procedures for Requesting a Hearing

To contest the regulatory action initiated by this Notice, registrants, or any applicant whose application for registration is affected by this Notice (including intrastate applicants who have previously marketed such products pursuant to 40 CFR 162.17), may request a hearing within 30 days of receipt of this Notice, or within 30 days from the publication of this Notice in the **Federal Register**, whichever occurs later. Any other persons adversely affected by the cancellation action described in this Notice, or any interested persons with the concurrence of an applicant whose application for registration has been denied, may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

All registrants, applicants, and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require that all reguests must identify the specific registration(s) by Registration Number(s) and the specific use(s) for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A-100), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation action concerning the specific use or uses of the specific registered product which is the subject of the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing. Similarly, in the event of a hearing, each denial of registration which is a subject of the hearing will not become effective prior to the final order of the Administrator at the conclusion of the hearing.

The hearing will be limited to the specific registrations or applications for which the hearing is requested.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation or denial of registration of a specific alachlor product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30-day period, registration of that product will be cancelled, or the denial will be effective.

B. Amendment of Registration or Application

Registrants of alachlor products who are affected by this Notice of Intent to Cancel may avoid cancellation of their registrations, without requesting a hearing, by filing an application for an amended registration that contains the label modifications detailed in Unit V.B.l. of this Notice of Intent to Cancel. Applications containing the label modifications required by this Notice must contain a sample label. The approved label must be affixed to all end use products released for shipment 6 months after publication of this Notice. All registrations or applications for registration must be amended to comply with the requirements of 40 CFR 162.10 and PR Notices issued by EPA. This application must be filed within 30 days of receipt of the final notice, or within 30 days of publication of the final notice, whichever occurs later. Similarly, applicants for a registration that is subject to this Notice of Intent to Cancel must file an amended application for registration within the applicable 30-day period to avoid denial of the application.

Registrants whose registrations become cancelled but who wish to use the existing stocks provisions provided above, must submit revised labeling, including time limitations on use, for EPA acceptance prior to the sale and distribution of such existing stocks. All applications must be addressed to: Robert Taylor, Product Manager 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., SW., Washington, DC 20460

C. Procedures for Intrastate Products

Under 40 CFR 162.17, the Agency has permitted certain alachlor products previously registered under State law to continue to be sold and distributed solely in intrastate commerce, pending a final decision concerning Federal registration. In the Notice of Preliminary Determination published in the **Federal Register** of October 8, 1986 (51 FR 36166), the Agency notified producers of such products that they were required to submit a complete application for Federal registration within 60 days of the date of publication of the Notice of Preliminary Determination. Failure to submit a timely application would result in the Agency considering the producer's Notice of Intent to Apply as an application for Federal registration. Producers were further notified that, should the Agency issue a final notice allowing continued registration of alachlor products under certain

circumstances, they would be notified of that decision and allowed at least 30 days to make changes that would allow EPA to approve the applications for Federal registration. If an application has not been amended in the prescribed manner within the period allowed, the application may be denied.

In light of the regulatory decision set forth in this Notice, the Agency hereby notifies all such producers that within 30 days of publication or receipt of this Notice, whichever occurs later, their applications for Federal registration must be amended to comply with the terms and conditions of registration set forth in this Notice. Failure to make the necessary changes in a timely manner will result in denial of the application.

Under FIFRA section 3(c)(6), the issuance of a denial notice entitles an applicant, or other interested person with the concurrence of the applicant, to request a hearing to challenge the denial decision. The procedures for requesting a hearing and the consequences of not filing a request are discussed above in Unit VI. A.

D. Separation of Functions

The Agency's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of the Agency in any administrative hearing on this Notice of Intent to Cancel: The Office of Administrative Law Judge, the Office of the Judicial Officer, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, the Administrator and the members of the staff in the immediate office of the Administrator. None of the persons designated as the judicial staff may have any ex parte communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

VII. References

The references used in this Federal Register Notice are listed below:

(1) "Alachlor Monitoring of Ontario Drinking Water May–November 1985", Ontario Ministry of the Environment, 1985.

(2) Ascheman, R.E., "Alachlor/Corn Biological Analysis", prepared for Benefits and Use Division, Office of Pesticide Programs under EPA Contract No. 68–02–4272, May 1987.

(3) Becher, A., Pennsylvania Geological Survey, Personal Communication to M. Lorber, 1987.

(4) Buchanan, J.W., W.C. Loper, W.P. Schaffstall, and R.A. Hainly, "Water Resources Data, Pennsylvania Water Year 1983", Vol 2. Susquehanna and Potomac River Basins, U.S. Geological Survey Water—Data Report Pa–83–2, 1984.

(5) Comstock, J., Vermont Department of Agriculture, Pesticide Monitoring Program. Personal communication to M. Lorber, 1987.

(6) Exner, M.E., and R.F. Spalding, "Ground-Water Contamination and Well Construction in Southeast Nebraska", in *Ground Water* 23 (1): 26–33, 1985.

(7) Felsot, A., "Survey for Pesticides in Ground Water Supplies in Illinois", Illinois Natural History Survey, 1983.

(8) Frank, R., Ontario Ministry of Agriculture and Food, personal communication to M. Lorber, 1984.

(9) Hallberg, G.R., B.E. Hoyer, E.A. Bettis, and R.D. Libra, "Hydrogeology, Water Quality, and Land Management in the Big Spring Basin, Clayton County, Iowa", Iowa Geological Survey report on contract number 82–5500–02 from the Iowa Department of Environmental Quality, 1983.

(10) Hallberg, G.R., R.D. Libra, and B.E. Hoyer, "Nonpoint Source Contamination of Groundwater in Karst-Carbonate Aquifers in Iowa", in "Perspectives on Nonpoint Source Pollution", EPA publication No. 440/5, 85–001, Washington, DC, 1985.

(11) Hallberg, G.R., "Agrichemicals and Water Quality", prepared for Colloquium on Agrichemical Management to Protect Water Quality, National Academy of Sciences, 1986.

(12) Hallberg, G.R., personal communication to M. Lorber, 1987.

(13) Inman, R., Florida Department of Agriculture and Consumer Services, letter to M. Lorber dated August 18, 1987.

(14) Kelly, R.D., "Synthetic Organic Compound Sampling Survey of Public Water Supplies", Iowa DWAWN Report, 1985.

(15) Kelly, R., G.R. Hallberg, L.G. Johnson, R.D. Libra, C.A. Thompson, R.C. Splinter, and M.G. DeTroy, "Pesticides in Ground Water in Iowa", unpublished study available from the authors, 1986.

(16) Kelly, R.D., and M. Wnuk, "Little Sioux River Synthetic Organic Compound Municipal Well Sampling Survey", Iowa DWAWN Report, 1986.

(17) Klaseus, T., Minnesota Department of Health, personal communication to M. Lorber, 1987.

(18) Lavy, T.L., J.D. Mattice, and T.C. Cavelier, "Analyses of Groundwater for Trace Levels of Pesticides", Arkansas Water Resources Research Center, University of Arkansas, Fayetteville, 1985.

(19) Libra, R.D., G.R. Hallberg, G.R. Ressmeyer, and B.E. Hoyer, "Ground Water Quality and Hydrogeology of Devonian-Carbonate Aquifers in Floyd and Mitchell Counties, Iowa", Iowa Geological Survey, Report 84–2, 1984.

(20) Loper, W.C., T.E. Behrendt, W.P. Schaffstall, and R.A. Hainly, "Water Resources Data, Pennsylvania, Water Year 1984", volume 2, Susquehanna and Potomac River Basins, U.S. Geological Survey, Water Data Report PA–84–2, 1985.

(21) Massachusetts Interagency Pesticide Task Force Publication #14, "1985 Summary Report: Interagency Pesticide Monitoring Program", Boston, 1986.

(22) "Minnesota Pesticide Monitoring Surveys", Minnesota Department of Health and Minnesota Department of Agriculture, Conference report presented at "Pesticides and Groundwater: A Health Concern for the Midwest", Minneapolis, Oct. 16, 1986.

(23) Osteen, C. and F. Kuchler, "Potential Bans of Corn and Soybean Pesticides", USDA Economic Research Service, Agricultural Economic Report No. 546, 1986.

(24) Postle, J.K., Wisconsin Department of Agriculture, Trade and Consumer Protection, personal communication to M. Lorber, 1987.

(25) "Results of a Maryland Ground Water Herbicide Survey", Office of Environmental Programs, Maryland Department of Health and Mental Hygiene, Annapolis, 1983.

(26) United States Environmental Protection Agency, "Alachlor Residue Estimates for Use in the Tolerance Assessment System", memorandum of August 18, 1987.

(27) United States Environmental Protection Agency, "Dietary Exposure Analysis for Alachlor", memorandum of August 18, 1987.

All but the published references are available for inspection in Room 236, 1921 Jefferson Davis Highway, Arlington, Virginia, from 9 a.m. to 4 p.m. Monday through Friday, except legal holidays.

Dated: December 14, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–30041 Filed 12–30–87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3309-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared December 14 Through 18, 1987

Availability of EPA comments prepared December 14, 1987 through December 18, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-BLM-K60017-CA, Rating LO, Western Mojave Land Tenure Adjustments Project, Implementation, Kern, Los Angeles, and San Bernadino Counties, CA.

Summary

EPA expressed a lack of objections to the proposal but asked that BLM determine if hazardous waste problems exist on any lands that would be transferred to BLM's ownership in the land adjustment plan.

ERP No. D-NPS-J70015-00, Rating LO, Fishing Bridge Developed Area, Development Concept Plan, Implementation, Yellowstone National Park, Fremont County, ID, Park and Gallatin Counties, MT and; Park and Teton Counties, WY.

Summary

EPA has no objection to the project as proposed, but requests additional information on water quality impacts from petroleum based products leaking from parked vehicles.

ERP No. DS-USA-K21000-00, Rating * * *, Johnston Atoll Chemical Agent Disposal System (JACADS) of Generated Liquid and Solid Waste, Additional Information, Special Use Permit, Pacific Ocean.

Summary

EPA rated each disposal option individually. Options A-3, B-1, and C-3 were rated LO. Options A-1, A-4, B-2, B-3, C-1, C-2, and C-4 were rated EC-2 for a variety of environmental reasons. Option A-2 was rated EO-2 because of the potential for discharged brines to be washed onto the island's reef. EPA made recommendation that additional information be included to improve the document's value as a decision-making tool. Further, EPA recommendation that the final supplementary EIS identify and briefly discuss any further studies that may be needed to complete the subsequent ocean site designation process if designation is pursued. EPA recognizes that the primary objective of this document is to analyze all feasible disposal options before proceeding with the ocean disposal site designation EIS. EPA will continue to work with the Army on this project.

Final EISs

ERP No. F1-BLM-J65106-C0, Glenwood Springs Resource Area, Wilderness Recommendations, Designation or Nondesignation, Eagle Mountain, Hack Lake, Bull Gulch and Castle Peak WSA's Garfield, Eagle and Pitkin Counties, CO.

Summary

The Final EIS adequately addressed EPA concerns. No formal comments were made.

Note.—The above summary should have appeared in the 12-24-87 FR Notice.

ERP No. FA-COE-G30008-LA, New Orleans to Venice Hurricane Protection Plan, Barrier Feature Construction, Implementation, Plaquemines Parish, LA.

Summary

In response to EPA's concerns regarding mitigation of the fishery and upland habitat losses, the COE has responded favorably and is stated as being in agreement that the mitigation plan should be developed for full agency and public review and is committed to implement the mitigation measures that are responsive to the COE regulations and National mitigation policy. With these stated commitments and assurances to satisfy the mitigation concerns, EPA has no serious objections to the proposed plan and level of protection. However, EPA must defer any final comments regarding compliance with the section 404(b)(1) Guidelines and NEPA regulations until the mitigation plan, and agency and public review have been provided.

ERP No. F-SCS-J31019-WY, Big Sandy River Unit, Onfarm Irrigation Improvements, Colorado River Salinity Control Program, Implementation, Funding, Sublette and Sweetwater Counties, WY.

Summary

EPA notes the improvements of the document over the draft EIS, but continues to request that SCS ensure maintenance of Bone Draw existing uses.

Note.—The above summary should have appeared in the 12-24-87 FR Notice.

Regulations

ERP No. R-AFS-A65154-00, 36 CFR Part 222; Grazing Fees on National Forests in the 16 Western States (52 FR 37483).

Summary

EPA is concerned that the environmental impacts of the proposed regulation have not been adequately documented. EPA believes that the Forest Service needs to more thoroughly evaluate the potential environmental impacts of the proposed regulation and the various alternatives available for mitigating and preventing such impacts.

Note.—The above summary should have appeared in the 12-24-87 FR Notice.

ERP No. R-BLM-A65155-00, 43 CFR Part 4100; Grazing Administration-Exclusive of Alaska; Grazing Fees (AA-220-87-4322-02) (52 FR 37485).

Summary

EPA is concerned that the environmental impacts of the proposed regulation have not been adequately documented. EPA believes that BLM needs to more thoroughly evaluate the potential environmental impacts of the proposed regulation and the various alternatives available for mitigating and preventing such impacts.

Note.—The above summary should have appeared in the 12-18-87 FR Notice.

Dated: December 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-30020 Filed 12-30-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3309-8]

Availability of Environmental Impact Statements Filed December 21, 1987 Through December 25, 1987

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 870449, Draft, FHW, DE, 12th Street Improvement Project, I-495/12th Street Interchange to the Central Business District of Wilmington at Walnut Street, Funding and 404 Permit, New Castle County, Due: February 15, 1988, Contact: Robert Wheeler (302) 734-5323.

EIS No. 870450, Draft, FHW, IN, Harding Street Improvement, Relocation and Upgrading, Funding and 404 Permit, Marion County, Due: February 15, 1988, Contact: Larry Tucker 1-(317) 269-7494.

EIS No. 870451, Final, FHW, CT, CT-72 Extension, Plainville to Bristol, Funding and 404 Permit, Hartford County, Due: February 1, 1988, Contact: James Barakos (203) 722-2420.

EIS No. 870452, Final, DOE, WA, Hanford Site, Defense High-Level Transuranic and Tank Wastes Disposal Plan, Implementation, Richland County, Due: February 1, 1988, Contact: Tom Bauman (509) 376-7501.

EIS No. 870453, Final, NOA, NH, Great Bay National Estuarine Research Reserve Designation and Management Plan, Establishment and Funding, Towns of Durham, Newmarket, Newfields, Stratham and Newington, Straffard County, Due: February 5, 1988, Contact: Joseph Uravitch (202) 673-5126.

EIS No. 870454, Draft, FHW, OR, OR-42/Coos Bay/Roseburg Highway, Widening and Realignment, Cedar Point

Road to Main Street, Funding and 404 Permit, City of Coquille, Coos County, Due: February 19, 1988, Contact: Dale Wilken (503) 399-5749.

EIS No. 870455, Final, IBR, NV, Newlands Project, Operating Criteria and Procedures, Adoption, Implementation and Possible 404 Permit, Carson River Basin, Truckee and Carson Rivers Water Diversion, Churchill and Storey Counties, Due: February 1, 1988, Contact: John Brooks (916) 978-5049.

EIS No. 870456, Final, BLM, NV, Esmeralda and Southern Nye Planning Area WSAs', Wilderness Recommendations, Designation or Nondesignation, Silver Peak Range, Pigeon Spring, Queer Mountain, Grapevine Mountains and Resting Springs WSAs', Nye and Esmeralda Counties, Due: February 1, 1988, Contact: Janaye Byergo (702) 388-6403.

EIS No. 870457, Draft, AFS, OR, Winema National Forest, Land and Resource Management Plan, Implementation, Klamath County, Due: March 30, 1988, Contact: J.L. Christensen (503) 883-6714.

Amended Notice

EIS No. 870434, Draft Supplement, UMT, Los Angeles Metro Rail Rapid Transit Project, Wilshire/Fairfax Methane Gas Zone Alternate Alignment Alternatives, Funding, Los Angeles County, Due: January 27, 1988, Published FR 12-11-87—Review period extended.

Dated: December 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-30021 Filed 12-30-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3308-1]

Water Quality Act of 1987 Implementation; Final Guidance Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final guidance document entitled "State Water Quality-based Toxics Control Program Review Guidance." The purpose of this guidance is to provide information to EPA Regional Offices and States necessary to conduct comprehensive assessments of State toxics control programs on a State-by-State basis, and to develop detailed State action plans to strengthen State toxics control programs, including monitoring, water quality standards, and NPDES permitting.

DATE: Copies of this final guidance document are available beginning December 31, 1987.

ADDRESSES: EPA will mail to those people who submitted comments on the final draft guidance documents: (1) A copy of the final guidance document; and (2) a responsiveness summary of the comments submitted to EPA. Others who want to receive a copy of the final "State Water Quality-based Toxics Control Program Review Guidance" may obtain it by contracting Mr. Rick Brandes, Office of Water, Office of Water Enforcement and Permits, EN-336, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or telephoning him at (202) 475-9525.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Water, at the above address and telephone number, or contact the EPA Regional Office nearest you.

Date: December 18, 1987.

Larry Jensen,

Assistant Administrator for Water.

[FR Doc. 87-29900 Filed 12-30-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 23, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

For Further Information Contact:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340)

Proposal to approve under OMB delegated authority the implementation of the following report

1. *Report title:* Survey to Obtain information on the Relevant Market in Individual Merger Cases.

Agency form number: FR 2060

OMB Docket Number: 7100-0232

Frequency: On occasion

Reporters: Small businesses and consumers

Annual reporting hours: 92

Small businesses are affected.

General description of report:

This information collection is voluntary [12 U.S.C. 1828(c)] and is given confidential treatment [5 U.S.C. 552(b)(4) and (b)(6)].

To provide the Federal Reserve with information needed to analyze local market competition in specific merger and acquisition applications, Federal Reserve employees will conduct a telephone survey of small businesses and consumers.

Board of Governors of the Federal Reserve System, December 23, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-29934 Filed 12-30-87; 8:45 am]

BILLING CODE 6210-01-M

Bankers Trust New York Corp., New York, NY; Application To Offer Investment Advice, Securities Brokerage, and Permissible Underwriting Activities on a Combined Basis to Institutional Customers

Bankers Trust New York Corporation, New York, New York ("Applicant" or "BTNY"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to expand the authority of its subsidiaries, BT Brokerage Corporation, New York, New York ("BT Brokerage"), and BT Securities Corporation, New York, New York ("BT Securities") (collectively, "brokerage subsidiaries"), to offer, through either or both of these subsidiaries, investment advice, securities brokerage, and (for BT Securities only) permissible underwriting activities on a combined basis to institutional customers. In particular, BTNY has applied for permission to expand the authority of BT Brokerage to offer, in addition to its previously approved securities brokerage services, fee and non-fee investment advisory services, as well as an integrated combination of securities brokerage services and investment advisory activities ("full service brokerage"). With respect to BT Securities, Applicant has applied to expand its authority to offer, in addition to its previously approved activities of underwriting and dealing in bank-

eligible securities,[1] securities brokerage services, fee and non-fee investment advisory services and full service brokerage activities.

Applicant also has proposed that the brokerage subsidiaries be empowered to offer discretionary investment management services upon a client's request, and limited to institutional customers only. Applicant would conduct the proposed activities from domestic and foreign offices of its brokerage subsidiaries for institutional customers located both within the United States and abroad, as well as for affiliates.

The Board previously has determined that the combined offering of investment advice with securities brokerage services to institutional customers from the same bank holding company subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) ("*NatWest*"); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987) ("*Manufacturers Hanover*"). That position has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in its affirmance of the Board's *NatWest* Order. *Securities Industry Ass'n* v. *Board of Governors*, 821 F. 2d 810 (D.C. Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3303 (U.S. Oct. 5, 1987) (No. 87-562). The provision of discretionary investment management services for institutional customers is an activity previously approved by Board Order in *J.P. Morgan and Company, Inc.*, 73 Federal Reserve Bulletin 810 (1987) ("*J.P. Morgan*").

In addition to those classes of institutional customers previously authorized to receive such combined services in the *Manufacturers Hanover* Order, Applicant's proposed definition of institutional customer will encompass: an employee of the Applicant or one of its subsidiaries; and investment or banking professionals. It also appears that Applicants proposal differs from the combined activities authorized by the Board in the *NatWest*, *J.P. Morgan*, and *Manufacturers Hanover* Orders in several other respects. When brokering or recommending securities, BT Securities also may take a principal's position in securities it is authorized to underwrite, but it will inform clients as to whether it is acting as principal or agent in any particular transaction. (Applicant's brokerage subsidiaries will not, pursuant to this application, offer securities to the public as agent for an issuer.) Applicant also proposes that officers of affiliated banks may be directors of BT Brokerage, but that no officer of its brokerage subsidiaries will serve as an officer or director of an affiliated bank, and no director of the brokerage subsidiaries will serve as a director of an affiliated bank. Finally, Applicant proposes to engage in the cross (or joint) marketing of its various services for institutional customers provided by the brokerage subsidiaries as well as other affiliates of Applicant.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n.* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board my consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

BTNY believes that its proposed securities activities are closely related to banking essentially for the reasons previously espoused by the Board concerning the provision of similar activities to institutional customers in the Board's *NatWest*, *Manufacturers Hanover*, and *J.P. Morgan* Orders. Moreover, BTNY notes that the OCC has authorized operations subsidiaries of national banks to offer investment advisory services to retail securities brokerage customers. OCC Interpretive Letter No. 386 (June 19, 1987), *reprinted in* [Current] Fed. Banking L. Rep. (CCH) ¶ 85,610, at 77,932.

In determining whether an activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "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."

Applicant contends that Company's conduct of the proposed activities will not result in any significant adverse effects, primarily for the reasons set forth by the Board in its *NatWest* Order, where the Board declined to find significant adverse effects in the conduct of similar activities.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 29, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Board of Governors of the Federal Reserve System, December 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29935 Filed 12-30-87; 8:45 am]

BILLING CODE 6210-01-M

[1] BT Securities also has received Board approval to engage in underwriting and dealing in bank-ineligible securities. These activities are currently subject to the securities powers moratorium imposed by the competitive Equality Banking Act of 1987, and are also the subject of a judicial stay arising from litigation regarding Board approval of such activities. *See Securities Industries Ass'n* v. *Board of Governors*. No. 87-4041 (2nd Cir. May 19, 1987).

Banque Indosuez, 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 (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Banque Indosuez*, Paris, France, and Compagnie Financiere De Suez, Paris, France; to engage *de novo* through their subsidiary, BI Systems, Inc., New York, New York, in data processing and data transmission activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Riggs National Corporation*, Washington, DC; to engage *de novo* in making or acquiring commercial loans and participation interests therein, such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by January 15, 1988.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *National City Bancorporation*, Minneapolis, Minnesota; to continue to engage through its subsidiary, National City Business Credit, Inc., Minneapolis, Minnesota, in making consumer and commercial financing activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. Applicant seeks to gain approval to expand the geographic scope of its financing activities from the State of Minnesota to a nationwide basis. Comments on this application must be received by January 15, 1988.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Business Bancorp*, San Jose, California; to engage *de novo* in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y. This activity will be conducted in the State of California. Comments on this application must be received by January 15, 1988.

Board of Governors of the Federal Reserve System, December 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29936 Filed 12-30-87; 8:45 am]

BILLING CODE 6210-01-M

Lane Financial, Inc, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 20, 1988.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lane Financial, Inc.*, Northbrook, Illinois; to acquire Lane Data Services, Inc., Northbrook, Illinois, and thereby engage in providing data processing and data transmission services, and in permissible courier services pursuant to § 225.25 (b)(7) and (b)(10) of the Board's REgulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wisdom Holding Corporation*, Salem, Missouri; to acquire Wisdom & Merrell Insurance Agency, Inc., Rolla, Missouri; and Your Insurance Man Agency, Inc., Salem, Missouri; and thereby engage in operating a general insurance agency in a town with population less than 5,000 by a bank holding company with consolidated assets of less than $50 million pursuant to § 225.25 (b)(8)(iii)(A) and (b)(8)(vi) of the Board's Regulation Y. Wisdom & Merrell Insurance Agency, Inc., Rolla, Missouri, will operate from offices in the towns of Rolla and St. James, Missouri. Your Insurance Man Agency, Inc., Salem, Missouri, will operate from an office in the town of Salem, Missouri.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Standard Chartered PLC and Standard Chartered Bank*, London, England; to acquire Scimitar North American Asset Management, Inc., Boston, Massachusetts, and thereby engage in general investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y. Comments on this application must be received by January 15, 1988.

Board of Governors of the Federal Reserve System, December 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29937 Filed 12-30-87; 8:45 am]

BILLING CODE 6210-01-M

National Westminster Bank PLC, London, England; Proposal To Officer Investment Advice, Including Analysis of U.S. Legislative and Regulatory Developments, and Securities Brokerage Services on a Combined Basis to Institutional Customers

National Westminster Bank PLC, London, England, and NatWest Holdings Inc., New York, New York (collectively, "Applicant" or "NatWest"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to acquire indirectly through their wholly owned subsidiaries, County NatWest Inc., New York, New York and County Securities Corporation USA, New York, New York ("CSC"), Washington Analysis Corporation, Washington, DC ("WAC"). WAC is currently engaged in the activity of providing investment advice, including analysis of U.S. legislative and regulatory developments, to institutional customers. CSC has previously received Board approval to offer investment advice and securities brokerage services on a combined basis to institutional customers. *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) ("*NatWest*"). NatWest now proposes to offer WAC's services as part of the investment advisory package that CSC provides to institutional customers in combination with its security brokerage services. NatWest intends to offer these services to institutional customers within the United States and abroad, both directly and through CSC affiliates.

The Board previously has determined that the combined offering of investment advice and securities brokerage services to institutional customers by the same bank holding company subsidiary is a permissible nonbanking activity and does not violate the Glass-Steagall Act. *See e.g., NatWest* Order; *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987) ("*Manufacturers Hanover*"). That position has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit in its affirmance of the Board's *NatWest* order. *Securities Industry Ass'n* v. *Board of Governors*, 821 F. 2d 810 (D.C. Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3303 (U.S. Oct. 5, 1987) (No. 87-562).

Applicant has indicated that the investment advisory activities previously approved by the Board for CSC in its *NatWest* Order did not specifically include analysis of U.S. legislative and regulatory developments. Applicant maintains, however, that the proposed activities are permitted under 12 CFR 225.25(b)(4)(iv) and do not represent an expansion of the activities previously authorized to CSC under the terms of the earlier *NatWest* Order.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity "which the Board after due notice and opportunity for hearing has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984).

NatWest believes that its proposed investment advisory activities are closely related to banking essentially for the reasons previously espoused by the Board concerning the provision of similar activities to institutional customers in the Board's *NatWest* and *Manufacturers Hanover* Orders. NatWest believes that the combined offering of brokerage and investment advisory services, which will include analysis of U.S. legislative and regulatory development services, does not alter the operational characteristics of the combined services so that they lose their close functional connection to banking activities.

In determining whether Applicant's proposed investment advisory activities meet the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "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."

Applicant contends that the proposed activities will not result in any significant adverse effects, primarily for the reasons set forth by the Board in its *NatWest* Order, where the Board declined to find significant adverse effects in the conduct of similar activities. As noted previously, Applicant maintains that the proposed activities are permitted under 12 CFR 225.25(b)(4)(iv) and do not represent an expansion of the activities previously authorized to CSC by in the Board's earlier *NatWest* Order. Thus, according to NatWest, there is no reason to believe that the inclusion of analysis of U.S. legislative and regulatory developments as part of its previously approved investment advisory activities would alter the adverse effects analysis contained in the *NatWest* Order.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 25, 1988. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29938 Filed 12-30-87; 8:45 am]

BILLING CODE 6210-01-M

North Side 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 (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 20, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *North Side Bancorp, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of North Side Savings Bank, Bronx, New York. Comments on this application must be received by January 15, 1988.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Apple Creek Banc Corp.*, Apple Creek, Ohio; to become a bank holding company be acquiring 100 percent of the voting shares of Apple Creek Banking Company, Apple Creek, Ohio.

2. *Banc One Corporation*, Columbus, Ohio; to merge with Universal Corporation, Ypsilanti, Michigan, and thereby indirectly acquire National Bank of Ypsilanti, Ypsilanti, Michigan. Comments on this application must be received by January 15, 1988.

3. *First West Virginia Bancorp, Inc.*, Wheeling, West Virginia; to acquire 100 percent of the voting shares of Farmers and Merchants National Bank in Bellaire, Bellaire, Ohio.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *ComSouth Bankshares, Inc.*, Columbia, South Carolina: to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Bank of the South, N.A., Columbia, South Carolina, a de novo bank.

2. *Fidelity BancShares (N.C.), Inc.*, Fuquay-Varina, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The Fidelity Bank, Fuquay-Varina, North Carolina.

3. *First United Corporation*, Oakland, Maryland; to acquire 100 percent of the voting shares of The First National Bank of Piedmont, Piedmont, West Virginia.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Owenton Bancorp, Inc. Employee Stock Ownership Plan*, Owenton, Kentucky, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by it; to become a bank holding company by acquiring 30.01 percent of the voting shares of Owenton Bancorp, Inc., Owenton, Kentucky, and thereby indirectly acquire Peoples Bank and Trust Company, Owenton, Kentucky.

E. **Federal Reserve Bank of Kansas City** (Thomas Mr. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Akron Bancorp*, Akron, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Akron, Akron, Colorado. Comments on this application must be received by January 15, 1988.

F. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Enterprise Bancorp, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Enterprise Bank-West, N.A., Houston, Texas.

Board of Governors of the Federal Reserve System, December 23, 1987.

James McAfee,

Associate Secretary of the Board.

FR Doc. 87-29939 Filed 12-30-87; 8:45 am]

BILLING CODE 6210-01-M

Orrstown Financial Services, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 20, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Orrstown Financial Services, Inc.*, Orrstown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Orrstown Bank, Orrstown, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation*, Midland, Michigan; to acquire 100 percent of the voting shares of First National Bank & Trust, Big Rapids, Michigan.

2. *Unibancorp, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Farmers State Bank of Lostant, Lostant, Illinois. Comments on this application must be received by January 15, 1988.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Newberry Bancorp, Inc.*, Newberry, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Newberry State Bank, Newberry, Michigan.

Board of Governors of the Federal Reserve System, December 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29940 Filed 12-30-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Injury Control Information Systems; Meeting

Time and Date: 8:30 a.m. to 5:00 p.m.—January 19 and 20, 1988. 8:30 a.m. to 3:00 p.m.—January 21, 1988.

Place: Presidential Hotel, 4001 Presidential Parkway, Doraville, Georgia 30340.

Status: Open to public.

Matters To Be Discussed: The Centers for Disease Control (CDC) is convening a public meeting of injury control

researchers, State public health officials, Federal agency representatives, and other interested parties regarding the development of an information system to serve CDC and the injury control constituency. The purpose of the meeting is to obtain information and recommendations from individuals and organizations most likely to be served by the system, those who generate injury control information, and experts in information management. The input will be used to assist CDC in developing short- and long-term plans for the development of injury control information systems to allow practitioners, researchers, and others to obtain information about injury control research, research findings, prevention programs, vital statistics, numerical data, and other pertinent information.

For Further Information Contact: Stuart T. Brown, M.D., Director, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE.; F36, Atlanta, Georgia 30333, Telephones: FTS: 236-4690, Commercial: (404) 454-4690.

Dated: December 22, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-30117 Filed 12-30-87; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[BERC-413-PN]

Medicare and Medicaid Programs; Recognition of Joint Commission on Accreditation of Healthcare Organizations' Home Care Program Standards and the National League for Nursing's Standards for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In this notice, we propose to recognize both the accreditation program of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for hospital-based home health agencies, and the standards of the National League for Nursing (NLN) for home health agencies, that wish to participate in the Medicare or Medicaid programs. We believe that the accreditation processes of these two organizations provide a reasonable assurance that home health agencies accredited by them meet the conditions required by the law and regulations. As a result of this recognition, hospital-based home health agencies accredited by JCAHO and home health agencies accredited by the NLN would not ordinarily be subject to an inspection by Medicare State survey agencies to determine their compliance with Federal requirements. They would be "deemed" to meet the Medicare conditions of participation (42 CFR, Part 405, Subpart L). As a result of the home health agency's deemed status, a State could also choose to permit the agency to participate as a provider under the Medicaid program (42 CFR 440.70(d)).

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on February 29, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-413-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-413-PN. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (301) 594-9446.

SUPPLEMENTARY INFORMATION:

I. Background

A. Determining Compliance—Surveys and Deeming

Providers of health care services participate in the Medicare and Medicaid programs under provider agreements with HCFA (for Medicare) and State Medicaid agencies (for Medicaid). In order to enter into a provider agreement, an entity, generally, must first be certified by a State survey agency as complying with the conditions of participation or standards set forth in regulations. Facilities are surveyed periodically by State survey agencies to ascertain their continued compliance with these Federal requirements.

Not all providers of services, however, are surveyed by the Medicare State survey agencies for compliance with the conditions of participation. Medicare legislation at section 1865(a) of the Social Security Act (the Act) specifies that certain providers which are accredited by a national accrediting organization, may be considered as meeting the applicable conditions of participation. The legislation states that if the Secretary finds that the accreditation of the provider by the national accreditation body provides a reasonable assurance that the Medicare conditions of participation are met, then he may treat any or all of the conditions of participation as met to the extent he deems it appropriate.

An accrediting organization may request, at any time, that the Secretary recognize its program as providing reasonable assurance that some or all of the Medicare conditions for participation are met. Thus, if the Secretary recognizes an accrediting organization in this manner, the providers it accredits are considered or "deemed" to meet the same conditions of participation for which the accreditation standards have been recognized. To provide a mechanism by which such requests could be received and evaluated, we established a process through which we publish a notice in the **Federal Register** to discuss our intent to "deem", including any conditions we may impose, and provide an opportunity for the public to comment on the notice. If, after analysis of the public comments, we decide to finalize the proposed decision to "deem" (in whole or in part), we would publish a final notice in the **Federal Register** to announce the decision and to address the public comments.

On April 26, 1985, we wrote to the Joint Commission for Accreditation of Hospitals (JCAH) and a number of other organizations that had previously indicated a desire to have entities that were accredited by them deemed to be in compliance with the conditions of participation. (**Note:** JCAH has since changed names. The new name for this organization is the Joint Commission on Accreditation of Healthcare Organizations. Throughout the remainder of this document, we will refer to this organization as JCAHO regardless of whether we are referring to the organization before or after the name change.) We advised them of the process that we would use to make "deeming" decisions. In addition to advising them of the newly established process, we specified the information that they would have to submit based on

their current standards (rather than any previously submitted information) and asked that they respond with respect to whether they continued to desire deemed status for accredited facilities.

JCAHO and the National League for Nursing (NLN) responded to our April 26, 1985 letter. JCAHO requested that the home care programs of JCAHO-accredited hospitals be deemed to be in compliance with the Medicare conditions of participation for home health agencies (HHAs), based upon the home care program standards contained in the JCAHO Accreditation Manual for Hospitals (AMH). NLN requested that we deem HHAs accredited by NLN to be in compliance with the Medicare conditions of participation.

In 1985 there were 5,963 HHAs participating in Medicare. Approximately 1,363 of these were hospital-based, and approximately 4,484 were freestanding agencies.

B. Home Health Agency Conditions of Participation and Requirements

The regulations specifying the Medicare conditions of participation for HHAs are located at 42 CFR Part 405, Subpart L and implement the elements of the statutory definition of an HHA contained in section 1861(o) of the Act. In addition to the specific requirements it articulates, section 1861(o) also includes general authorization for the Secretary to prescribe other requirements that are found necessary in the interest of the health and safety of the individuals who are furnished services by the HHA. Additional requirements were developed under this authority and also are included in the conditions of participation contained in regulations. An HHA must meet the conditions of participation contained in the regulations to be determined to be an HHA for Medicare program purposes.

II. Proposed Approval of JCAHO and NLN Accreditation

We believe that JCAHO accreditation of a hospital with a home care program provides reasonable assurance that the hospital and its home care program, when considered together, meet the Medicare conditions of participation for HHAs. We also believe that NLN accreditation of a HHA provides reasonable assurance that the HHA meets the Medicare conditions of participation for HHAs. We have drawn these conclusions based on a thorough examination of the accrediting programs of the organizations, which we have discussed below. Accordingly, we propose that home care programs of hospitals that are accredited by JCAHO and that HHAs accredited by NLN be deemed to meet the Medicare conditions of participation for HHAs. This also means that State Medicaid programs could permit the accredited programs and agencies to be deemed to meet the Medicaid requirements for HHAs.

Our comparison of the Medicare conditions of participation and survey procedures to the JCAHO and NLN home care standards revealed both areas in which JCAHO and NLN requirements are more stringent than the Medicare requirements, and areas in which Medicare requirements are more stringent than those of either JCAHO or NLN. Based on our initial review of NLN's 1986 standards and survey procedures, we contacted NLN to discuss the differences between the Medicare conditions of participation and the NLN standards. NLN responded to our concerns by proposing to change their standards. The proposed changes were accepted by their Board of Directors and are reflected in NLN's standards for HHAs applying for accreditation or reaccreditation after January 1, 1987. Thus, for NLN, we compared their new standards and survey procedures for 1987 to the Medicare conditions of participation and survey procedures. For JCAHO, we compared the 1987 standards contained in their AMH and their survey procedures to the Medicare conditions of participation for HHAs and survey procedures.

In evaluating the accreditation standards and survey processes of the two organizations to determine if there was a reasonable assurance that the facilities they have accredited meet the conditions of participation, we looked at the individual requirements and overall effects of the accreditation process. We did so because we recognize that positive health care outcomes are achieved not only through adherence to specific requirements but through achievement of specific and general results. Accordingly, we first did a point by point comparison of the requirements to determine which ones could be directly matched and to establish whether the JCAHO and NLN requirements were the same as the Medicare requirements or more or less stringent. In cases where there were not directly comparable requirements, we looked at the effect of combinations of requirements, as well as at the survey processes and the guidelines used for them, to determine whether the operation of the accreditation process as a whole achieved the desired result. In some few cases, we also considered whether there were other, external assurances that would enable us to conclude that a reasonable assurance existed that our conditions of participation would be met if the accreditation process was permitted to take the place of the Medicare survey and certification.

In most cases, we were able to establish that the accreditation standards and survey processes were equal or superior to Medicare requirements based on a simple comparison of standards. In some cases, however, our conclusions were based on a more complex comparison of the systems. The discussion that follows details the differences between the Medicare requirements and the requirements of the JCAHO and the NLN which required such an analysis. It also explains the reasons why we have concluded that there is a reasonable assurance that our requirements are met by the respective accreditation processes and specifies certain stipulations and restrictions that we would establish in connection with our decision.

In addition to reviewing the standards of the accrediting organizations, we looked at the facilities which they routinely survey and accredit, in light of their compliance level with Medicare's conditions of participation for HHAs. Specifically, we reviewed the survey and qualification data on 75 NLN-accredited and 500 JCAHO-accredited facilities currently participating in the Medicare program as HHAs, to determine their continued compliance with Medicare requirements. The review confirmed that no facility accredited by either the NLN or the JCAHO which also was participating in Medicare as an HHA had its provider agreement terminated because of a failure to be in compliance with Medicare's conditions of participation as applied and interpreted by Medicare State survey agencies.

A. Differences Between JCAHO and Medicare Conditions

1. Medicare annual survey for HHAs versus JCAHO survey every three years or less.

State survey agencies survey HHAs against the Medicare conditions of participation once a year. The JCAHO survey cycle for hospitals includes the home care program which JCAHO accredits and inspects as a part of the hospital every three years. (We are required by law to recognize JCAHO accreditation of hospitals and deem the accredited hospitals to meet most of the Medicare conditions of participation).

The three year survey cycle has not proven problematic in the context of the

JCAHO's hospital accreditation program for which we have had the statutory authority to validate for many years. The JCAHO requirements for hospital-based HHAs are integrated into the overall hospital accreditation requirements and survey process (including many shared requirements). We believe that accepting the home care aspects of the JCAHO process, which we already have long accepted, would provide reasonable assurance that the Medicare requirements for the home care programs are met. Also, as in the case of current JCAHO hospital accreditations, we would continue to maintain the right, provided under § 1864(c) of the Act, to validate the accreditation process for Medicare purposes.

2. Medicare announced and unannounced surveys versus JCAHO announced only surveys.

Medicare surveys of HHAs generally are announced and, if warranted, unannounced. JCAHO surveys are always announced.

As we noted above, we are considering these requirements in the context of a longstanding hospital accreditation program that functions well and that HCFA routinely monitors through validation reviews. We believe that our experience with the JCAHO's methods and the results of its reviews provides reasonable assurance that the intent of surveys (that is, to assure that requirements continue to be met over time) has been achieved. In order to ensure that this continues to be the case, we will, as appropriate, make announced and unannounced visits to JCAHO accredited hospital-based HHAs in response to complaints and as part of our monitoring of JCAHO's program.

3. Medicare certification of a hospital based HHA as a provider apart from the hospital versus JCAHO's accreditation of both the hospital and its home care program in the context of the hospital's accreditation.

HCFA approves a hospital-based HHA for participation in the Medicare program as a separate entity from the hospital, even though the functions of the HHA may be fully integrated into the hospital, causing them to share basic functions (for example, governing body, medical records, accounting systems, etc.). Separate provider agreements are issued to the hospital and to its HHA. (In fact, to be determined to be "hospital-based" for Medicare cost limits purposes, the HHA and the hospital must be fully integrated.) Therefore, approval to participate in the Medicare program may be withdrawn separately, if necessary, from either the HHA or the hospital. JCAHO, on the other hand, views a hospital's home care program exclusively in the context of the hospital's functions and accredits the hospital as a single entity, one component of which is the home care program. Thus, if we recognized JCAHO's home care standards for purposes of the Medicare program, unless any deficiencies in a hospital's home care program were so serious as to cause the hospital to lose its JCAHO accreditation, the hospital's home care program would continue to be deemed to be in compliance with the Medicare conditions of participation for HHAs in spite of the deficiencies.

Our acceptance of JCAHO accreditation of hospital-based home care programs in place of a survey against the conditions of participation for HHAs would be contingent upon the agreement of the accredited organization to authorize the JCAHO to release to HCFA, and the JCAHO's actual release of: (1) Any JCAHO survey report upon request of HCFA; and (2) any JCAHO survey report which cited a deficiency with respect to the hospital or its home care program that has not been resolved within 90 days. We would review the reports and would determine what action should be taken. We also would reserve the right to survey any HHA directly, to withdraw an agency's deemed status, or to require a satisfactory plan of correction if warranted by deficiencies.

Because we are relying on a strong and effective survey process whose efficacy has been accepted by Congress and demonstrated over time, and because we would be assured access to any survey information that might provide the basis for terminating a provider agreement, we believe that there exists a reasonable assurance that any problems would be identified and dealt with as effectively as would have been the case under the Medicare conditions of participation and procedures.

We propose to continue to issue separate provider agreements to the hospital-based HHA and the hospital as separate providers, and would reserve the right to terminate either provider agreement independently of the other.

4. Medicare withholding of approval pending an acceptable plan of correction versus JCAHO's granting of contingent accreditation.

Medicare withholds approval of a provider pending an acceptable plan of correction. JCAHO grants accreditation contingent upon the correction of deficiencies.

Our experience with the JCAHO's hospital survey process has been, as we have noted, quite positive. The JCAHO has a consistent history of following up on deficiencies, thereby supporting a conclusion that deficiencies would be corrected promptly. We would also note, however, that our proposed stipulation that the provider authorize release by the JCAHO and that the JCAHO provide to us all survey reports containing deficiencies enables us to validate the process continuously. Thus, despite our general reliance on the JCAHO's process, we are assured of the means to make independent judgments and withhold provider status if appropriate.

5. Medicare's complete access to the findings of the State survey agencies versus JCAHO's requirement for hospital permission to release findings.

Medicare has open access to the reports of Medicare State surveys of HHAs. JCAHO does not release reports of its survey findings unless it has the permission of the hospital.

We propose to make the Medicare deeming of a hospital-based HHA accredited by the JCAHO contingent upon the HHA's agreement to authorize JCAHO to release its accreditation findings to HCFA, upon HCFA's request, and HCFA's receipt of the findings. We would request that all survey reports that contain deficiencies related to the provision of home care be provided to HCFA routinely when they have remained unresolved for 90 days or longer.

Section 1865(a) of the Act prohibits the Secretary from disclosing any accreditation survey made and released to him by any national accreditation body, of an entity accredited by such body. Hence, the accreditation surveys that would be provided to HCFA as a condition of the granting of deemed status would be protected from disclosure.

6. Medicare definition of hospital-based HHAs as subordinate to the hospital versus the absence of an explicit JCAHO requirement that a home care program meet the hospital-based "definition".

Medicare requires that a HHA meet all of the conditions of participation for HHAs, but allows hospital-based HHAs to meet many, particularly administrative, requirements, through the use of services from a corresponding department of the hospital. JCAHO home care standards treat home care as one of the many integrated programs or departments of a hospital and are written as an add-on to the basic AMH. Thus, we also had to look to the JCAHO standards applicable to the hospital overall to determine whether there was a reasonable assurance that its

accreditation process assured that all the Medicare HHA requirements would be met. Based on this review, we believe that deeming would be appropriate for HHAs that are truly hospital-based (that is, physically located in or near a hospital and administratively and financially integrated and dependent on the hospital) since their mode of operation lends itself to assessment in the context of the JCAHO's integrated standards and survey process. However, if the home care program does not meet this definition (that is, wholly owned subsidiaries, or hospital-owned HHAs that meet the Medicare definition of subunits, etc.), we believe that it would not be appropriate to deem the program as being in compliance with the Medicare conditions of participation based on the JCAHO accreditation of the hospital with which they were not administratively and financially integrated.

Therefore, we propose to grant deemed status based on JCAHO accreditation only to those hospital-based HHAs that are administratively and financially integrated and dependent on the JCAHO-accredited hospital where they are based. Medicare has already established, and Medicare intermediaries have already applied, a definition that enforces this distinction. It is the definition used for the application of the Medicare home health cost limits. (These guidelines were published with the cost limits at 45 FR 38017, June 5, 1980.) Only HHAs that are recognized as hospital-based for reimbursement purposes and whose parent hospital is accredited by JCAHO could be deemed to be in compliance with the Medicare home health conditions of participation.

7. The Medicare requirement for physician review and approval of the plan of treatment and inclusion of frequency, duration and amount of therapy services versus the JCAHO absence of such requirements.

Medicare requires that a physician review and approve a plan of treatment for each patient, and that the plan of treatment include the frequency, duration and amount of therapy services. JCAHO requires that each patient have a patient care plan that contains everything that the Medicare conditions of participation require be contained in the plan of treatment except for the duration and amount of therapy services. JCAHO requires that the plan conform to the physician's orders for the patient's care and that all other medical record standards for JCAHO accreditation of the hospital be met. These medical record standards include the requirement that all physician orders for services be authenticated by a physician.

Because the physician orders must be authenticated by a physician, we believe that JCAHO's medical records standards are sufficient to provide for physician review and approval of the plan of treatment. Moreover, Medicare also imposes the requirements with respect to physician review and approval of the plan of treatment and the inclusion of duration and amount of therapy services in the plan of treatment as payment requirements (as distinguished from participation requirements) for both Medicare and Medicaid patients. Because an HHA must furnish this information to be paid, we believe that it would comply with these requirements for its Medicare and Medicaid patients. Also, we believe that the need to demonstrate that services were provided on the order of a physician and in the quantities ordered for purposes of other third party payment and to demonstrate appropriate professional behavior in the event of a dispute, have now led to increasingly standard documentation practices which are consistent with our requirements.

8. Medicare requirement for registered nurse (RN) assignment of home health aides to particular patients and RN supervisory visits every two weeks versus JCAHO absence of such requirements.

Medicare requires that an RN, in assessing the patient's particular needs, assign home health aides to particular patients. Medicare also requires that the HHA have the RN make supervisory visits to the patient's home every two weeks to ensure that the services of the home health aides and others are being provided properly and that the patient's needs are being met. JCAHO's standards do not explicitly require that an RN assign home health aides to particular patients, or that an RN make supervisory visits every two weeks.

As we noted earlier, however, the JCAHO standards for home care are an integrated part of its overall hospital standards package. Our review of the package as a whole shows that the home care section requires nursing and related services be provided under the same requirements that relate to those services as described throughout the AMH and that they be provided by qualified and properly trained nurses or monitored and supervised by them. The same supervision and quality assurance requirements applicable in the hospital setting, which have proven their effectiveness, are also applicable in the home care setting. Thus, we are satisfied that the JCAHO standards in this area provide reasonable assurance that the supervision and care quality objectives underlying the Medicare requirements are met.

9. Medicare prohibition against delegation of administrative and supervisory functions versus JCAHO absence of such prohibition.

Medicare prohibits the delegation of administrative and supervisory functions outside of the HHA (that is, to an entity providing services "under arrangements") under the condition of participation at 42 CFR 405.1221. JCAHO does not have an identical restriction.

The Medicare provision requires that the HHA assume full authority and responsibility for the care delivered but is expressed in the context of an assumption that the HHA is an independent agency whose agreements are, of necessity, with other entities. In the context of a JCAHO accredited home care program, the assumption is inherently different because the program is an integral part of the hospital and draws upon the other departments of the hospital for assistance as if those departments were a part of the agency. Hence, the language of the JCAHO home care standard that relates to delegation of responsibility may be understood more properly to be describing the allocation of responsibility within the organization. The JCAHO accreditation standards make it clear that the responsibility for and control of all functions do lie within the home care department. We believe that these requirements, taken as a whole, create a reasonable assurance that the Medicare conditions of participation relating to administration is met.

10. Medicare definitions for branches, subunits, types of HHAs, etc., versus JCAHO's absence of such definitions.

Medicare defines branches, subunits, types of HHAs, subdivisions, etc. for purposes of determining which Medicare requirements apply to the entity requesting participation. JCAHO has no such definitions, and applies its standards to any home care program operated by a hospital requesting accreditation. We would note, however, that the home care concept embodied in the JCAHO standards is one which envisions that the service would be a single, integral aspect of the operation of an accredited hospital. Therefore, the issues relating to branches and subunits do not arise, and the definitions do not appear to have any relevance in connection with JCAHO accredited programs.

11. Medicare's specific criteria for professional qualifications versus JCAHO allowing "equivalent training".

Medicare conditions of participation specify criteria that must be met for the individuals providing skilled home health services. If the criteria are not met, the individual may not be considered qualified to provide the service, irrespective of what other training he or she has. JCAHO also specifies criteria that must be met, but allows hospitals to use individuals who have "equivalent training". The determination of whether the individual has "equivalent training" is made by the hospital medical staff and JCAHO requires that the same staff qualifications which are applied to those who provide care to inpatients be applied as well to those who provide home health care.

Our experience with the JCAHO requirements relating to training give us a reasonable assurance that appropriately trained and supervised staff are providing the services. Thus, we do not believe that these JCAHO requirements detract from the overall conclusion we have made that the JCAHO standards provide reasonable assurance that our conditions of participation have been met.

12. Medicare five year record retention requirement versus JCAHO's allowance of hospital discretion.

Medicare requires that records be retained for at least five years after the end of the month in which the Medicare cost report is filed. JCAHO leaves the retention of records to the hospital's discretion, subject to State and local laws.

This Medicare requirement is not contained in the JCAHO hospital standards which, for many years, have been deemed to satisfy the conditions of participation for hospitals. It has not proven to be a problem because there are duplicate Medicare payment requirements that provide external assurance that hospitals and hospital-based HHAs will retain records needed to make appropriate payment determinations. Section 1815 of the Act and the regulations governing provider agreements require that hospitals retain the documentation necessary for the determination of appropriate payments. If the records are not available to support a provider's claim, payment is not made. We believe that this basic requirement for payment provides an overriding assurance that appropriate documentation will be retained by the provider.

13. Medicare recognition of more stringent State requirements versus JCAHO failure to specifically recognize them.

The Medicare conditions of participation for HHAs contain an appendix that recognizes several States' requirements that are more stringent than those of Medicare. The appendix specifies these State requirements and requires that they must be met in order for an agency to meet the conditions of participation. JCAHO, of course, does not specifically refer to these requirements in its accreditation standards. JCAHO does, however, have a threshold requirement for hospitals to meet before they may apply for accreditation: "The hospital must have all current licenses required by governmental authorities having jurisdiction". When these higher State requirements are also conditions for receiving a license, we believe that the JCAHO requirement would provide a reasonable assurance that these hospitals will have met higher State standards when they are accredited. We are, however, in the process of making further inquiries relating to the source of the requirements (that is, are they part of State licensing requirements or are they imposed by some other mechanism). Based on our conclusions from this inquiry, we will determine if an accredited facility can be deemed to meet these State requirements. We invite public comment on this issue.

B. Proposed Stipulations Relating to JCAHO Accreditation

We propose to recognize as meeting Medicare's home health conditions of participation those programs accredited under JCAHO's accreditation program for home care programs of hospitals with the following restrictions:

1. We would reserve the right to withdraw deemed status from all JCAHO-accredited hospital-based HHAs if JCAHO revises its standards or accreditation policies and procedures in such a manner that they fail to provide reasonable assurance that JCAHO-accredited hospital-based HHAs meet the conditions of participation. We also would reserve the right to withdraw deemed status from all JCAHO-accredited hospital-based HHAs if we should change the home health conditions of participation in such a manner that the JCAHO standards or accreditation policies would no longer provide a reasonable assurance that Medicare's conditions would be met.

2. We would reserve the right to withdraw deemed status from all JCAHO-accredited hospital-based HHAs if a HCFA validation survey or a public complaint survey reveals widespread, systematic, and unresolvable problems with the JCAHO accreditation process with respect to these programs. Such problems would provide evidence that there has ceased to be reasonable assurance that JCAHO hospital based HHAs meet the Medicare conditions of participation.

3. We would reserve the right to perform, as appropriate, announced and unannounced validation and complaint surveys to ensure that the home care programs of JCAHO-accredited hospitals which participate as HHAs meet the conditions of participation.

4. The granting of "deemed status" to a hospital-based HHA based upon the hospital's accreditation by JCAHO would be contingent upon the existence of an agreement between the hospital and the JCAHO under which the JCAHO would release copies of all survey documents to HCFA upon request and also would automatically provide copies of all survey documents to HCFA whenever a noted deficiency remains unresolved for 90 days. We would cease to deem the hospital in compliance with our conditions of participation if such an agreement were not in force or if the JCAHO does not release the information that is the subject of the agreement. We would reserve the right to survey any accredited HHA, to require a satisfactory plan of corrective action if appropriate, and to withdraw "deemed status" from an agency if appropriate.

5. We would continue to treat the hospital as a separate provider from the HHA and would reserve the right to terminate either provider separately from the other, if appropriate.

6. We would grant "deemed status" only to hospital-based HHAs that are administratively and financially integrated with and dependent upon a JCAHO-accredited hospital. Only if the HHA meets the Medicare definition of "hospital based" for purposes of the Medicare HHA cost limits would the agency be considered administratively and financially integrated with and dependent upon the JCAHO-accredited hospital.

7. The granting of deemed status to a JCAHO accredited hospital-based HHA would be contingent upon JCAHO's agreement to report (to the Office of the Inspector General and the State agency responsible for investigating fraud and abuse for Medicaid): any complaints received from persons working in an accredited agency or any substantial complaints from others, anonymous or identified, concerning potential fraud and abuse violations; and any indication of a Medicare program abuse encountered by JCAHO during the course of a JCAHO inspection or the

accreditation process. We believe that this requirement is necessary to ensure that the fraud and abuse reporting which presently occurs as a byproduct of the Medicare State survey's inspection of the agency continues to occur.

C. Differences Between NLN and Medicare Conditions

1. Medicare annual survey for HHAs versus NLN survey every three years or less.

State survey agencies survey HHAs against the Medicare conditions of participation once a year. The NLN would survey and accredit HHAs on a three year cycle effective for HHAs applying or reapplying for accreditation after January 1, 1987. This constitutes a change from the NLN's current five year accreditation cycle. Agencies that are currently accredited may remain in the five year cycle, subject to continuing Medicare surveys, until they are reaccredited by NLN, at which time they would become subject to the three year accreditation cycle. These agencies alternatively may opt into the three year cycle at some time prior to the expiration of their current five year accreditation. When accredited or reaccredited, they would enter the three year survey cycle. As we noted earlier in this notice, our review of Medicare survey data concerning facilities accredited by the NLN indicates that facilities the NLN surveys and accredits have uniformly received and retained Medicare approval based on independent surveys by State survey agencies. We believe, particularly based on the NLN's consent to shorten the period between surveys to make it consistent with the practices of the JCAHO, that this survey frequency is adequate to assure that appropriate standards are enforced.

Moreover, as with hospitals, we would maintain the right to perform, as appropriate, announced and unannounced, validation and complaint surveys to ensure that HHAs accredited by NLN that participate in Medicare meet the conditions of participation.

2. Medicare announced and unannounced surveys versus NLN announced only surveys.

Medicare surveys of HHAs generally are announced but, when warranted, unannounced. NLN surveys are always announced.

Medicare's unannounced surveys are performed when it receives information that leads it to believe that a program is out of compliance with its standards. Medicare continues to have the ability to make such visits and continues to have access to the same types of information that have prompted such visits in the past. We will, as appropriate, make announced and unannounced visits to NLN accredited agencies in response to complaints and as part of our monitoring of NLN's program. Thus, we believe that the NLN's regular practices do not impair our enforcement ability in such cases.

3. Medicare withholding of approval pending acceptable plan of correction versus NLN use of latitude.

Medicare withholds approval pending the submission of an acceptable plan of correction. The NLN's procedures focus on actual correction of the deficiencies rather than on the development and acceptance of a "plan of correction". The NLN procedures assume a plan and contain three different measures for determining that actual corrections are made. NLN may: (a) Accredit the facility but request a progress report or interim report within a specific timeframe; (b) defer initial accreditation pending receipt of additional information; or (c) schedule a supplementary visit to examine progress on a particular issue. HCFA would be provided with a survey report for any agency which does not correct a deficiency related to a Medicare condition of participation within 90 days.

Any of the options open to an NLN Board of review as discussed above would ensure that deficiencies are resolved timely. Moreover, we would be promptly notified of unresolved problems.

4. Medicare prohibition against delegation of administrative and supervisory functions versus NLN absence of this prohibition.

Medicare prohibits the delegation of administrative and supervisory functions outside of the HHA (that is, to an entity providing services "under arrangements"). The NLN approaches this objective in a different manner by stipulating, instead, that the contract under which a program arranges for services embody a description of the mechanisms to be used for assuring that the program's requirements are met. The program remains responsible for assuring that the terms of the contract are met. Thus, we believe that there is a reasonable assurance that the procedures the NLN has adopted with respect to these services assure that the HHA's administrative and supervisory responsibilities continue to be met through its own management.

5. Medicare requirement for physician review of the plan of treatment, inclusion of frequency, duration and amount of therapy services, and requirement for physician countersignature on oral orders versus NLN absence of such requirements.

Medicare requires that the physician review and approve the plan of treatment, that the plan include the frequency, duration and amount of therapy services, and that the physician countersign oral orders. NLN requires that the service record of each patient contain everything that the Medicare conditions of participation require be contained in the plan of treatment except the frequency, amount and duration of therapy services. NLN further requires that the service record contain appropriate, current and signed medical orders where applicable. They also require that the service record reflect that medications are administered as ordered by the physician.

We believe that State Nurse Practice Acts would require that all services provided by HHAs that might be covered by Medicare, be furnished only pursuant to medical orders. Therefore, the NLN requirement would result in there being current, signed medical orders for all services provided by the HHA which are of the nature that Medicare might cover. We believe that the existence of current signed medical orders constitutes a de facto demonstration of physician review and approval of the plan of treatment, and of any oral orders given by the physician. Moreover, Medicare coverage requirements mandate the submission of a plan of treatment specifying the amount, duration, and scope of services and require a physician's signature demonstrating that he ordered the services and certifies that they are necessary. Thus, in addition to the NLN standard's basic operation to assure that these requirements are met, there is an external Medicare coverage requirement to assure that the program takes further steps to create and maintain the evidence of this fact in the form required by the Medicare program. These coverage requirements would not be subject to "deeming" and would continue to be enforced. The physician signature on the plan of treatment required for payment would constitute the required countersignature for oral orders. Thus, we believe that there is a reasonable assurance that an NLN accredited agency would be in compliance with these Medicare requirements.

6. Medicare recognition of more stringent State requirements versus NLN failure to specifically recognize them.

The Medicare conditions of participation for HHAs contain an appendix that recognizes several States'

requirements that are more stringent than those of Medicare. The appendix specifies these State requirements and requires that they be met in order for an agency to meet the conditions of participation. NLN does not specify these requirements.

As in the case of the JCAHO, the NLN requires that both the program and the staff are appropriately licensed as a condition of applying for accreditation. As we noted in connection with our discussion of the JCAHO accreditation program, we believe that these prerequisites for accreditation provide a reasonable assurance that these specific State requirements have been met. However, we are making further inguiries on this matter and will take any necessary actions needed to provide an external assurance of compliance if we find that it is necessary.

D. Proposed Stipulations Relating to NLN Accreditation

We propose to recognize as meeting Medicare's home health conditions of participation those programs accredited by the NLN with the following restrictions:

1. We would reserve the right to withdraw deemed status from all NLN accredited HHAs if NLN revises its standards or accreditation policies and procedures in such a manner that they fail to provide reasonable assurance that NLN accredited HHAs meet the conditions of participation. We also would reserve the right to withdraw deemed status if the Medicare conditions of participation changed to such a degree that the NLN standards or accreditation policies would no longer provide a reasonable assurance that Medicare's conditions would be met.

2. We would reserve the right to withdraw deemed status from all NLN accredited HHAs if HCFA's validation or public complaint surveys reveal widespread, systematic, and unresolvable problems with the NLN accreditation process, thereby providing evidence that there is not reasonable assurance that NLN HHAs meet the Medicare conditions of participation.

3. We would reserve the right to perform, as appropriate, announced and unannounced validation and complaint surveys to ensure that the NLN accredited HHAs that participate in Medicare meet the conditions of participation.

4. The granting of "deemed status" to a HHA based upon accreditation by NLN would be contingent upon the HHA's and NLN's continued agreement to release to HCFA the survey reports of NLN surveyors. If the reports reveal deficiencies which we believe warrant action by HCFA, we would reserve the right to survey the HHAs with deficiencies, withdraw "deemed status" if appropriate, and to require a satisfactory plan of corrective action.

Section 1865(a) of the Act prohibits the Secretary from disclosing any accreditation survey made and released to him by any national accreditation body, of an entity accredited by such body. Hence, the accreditation surveys that would be provided to HCFA as a condition of the granting of deemed status would be protected from disclosure.

5. The granting of deemed status to a NLN accredited HHA would be contingent upon NLN's agreement to report (to the Office of the Inspector General and the State agency responsible for investigating fraud and abuse for Medicaid): complaints received from persons working in an accredited agency or from others, anonymous or identified, concerning potential fraud and abuse violations; and any indication of a Medicare program abuse encountered by NLN during the course of a NLN inspection or the accreditation process. We believe that this requirement is necessary to ensure that the fraud and abuse reporting which presently occurs as a byproduct of the Medicare State survey's inspection of the agency continues to occur.

E. Conclusion

In conclusion, we believe that both the JCAHO and the NLN accreditation standards and survey processes, subject to the stipulations described above, provide the Secretary with a reasonable assurance that the Medicare conditions of participation have been met. Accordingly, subject to those stipulations, we propose to deem home health programs accredited by JCAHO or NLN to be in compliance with the Medicare conditions of participation in accordance with the authority provided in section 1865 of the Act.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. We do not expect this proposed notice to meet any of the criteria for a major rule. Therefore, we are not including an initial regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare and publish an initial regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all HHAs, both free-standing and hospital-based, as small entities.

The HHAs currently participating in the Medicare program and which are accredited by JCAHO or NLN would be affected only to the extent that Medicare surveys would no longer be routinely performed. New agencies would continue to have the currently existing free choice to seek accreditation by the NLN or the JCAHO or to rely, instead, upon Medicare survey and certification processes. Thus, implementing these policies would not have a significant impact with respect to cost of operation and would, to the extent that Medicare surveys would be discontinued in some cases, reduce the administrative burden currently borne by these entities. Therefore, the Secretary certifies that this proposed notice would not have a significant economic effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not included in this proposed notice.

IV. Response To Comments

Because of the large number of pieces of correspondence we normally receive on proposed documents, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final notice, we will respond to those comments in the preamble to that notice.

(Sec. 1865(a) of the Social Security Act (42 U.S.C. 1395bb(a))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance, and No. 13.714, Medical Assistance Program)

Dated: June 3, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 30, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-29883 Filed 12-30-87; 8:45 am]

BILLING CODE 4120-01-M

[IOA-016-N]

Task Force on Technology-Dependent Children; Public Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

DATES: The meeting will be held on January 28, 1988 from 9:00 a.m. to 5:00 p.m., E.S.T., and on January 29, 1988 from 9:00 a.m. to 3:30 p.m., E.S.T. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Belleview Biltmore Hotel, 25 Belleview Boulevard, Clearwater, Florida 34616.

FOR FURTHER INFORMATION CONTACT: Bill Pickens, Executive Director, Task Force on Technology-Dependent Children, Department of Health and Human Services, Room 4414 HHS North Building, 330 Independence Avenue, SW, Washington, DC 20201, (202) 245-0070.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), investigates alternatives to institutional care for technology-dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services and to Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to—

(1) Identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology-dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

The Task Force will address fully the two specified goals before it takes up any other questions. To the extent that time and resources permit, the Task Force may develop recommendations that would address additional concerns regarding technology-dependent children. The Task Force recommendations are intended to be used only at the option of the Department of Health and Human Services and the Congress.

Agenda

The Task Force will conduct a business meeting to review, recommend, and edit for final approval the Report on Technology-Dependent Children, which is due to be issued on April 7, 1988. It will consider barriers to, and recommendations for change in, the areas of finance, case management, family services, standards, respite, and access.

The public is invited to present testimony to the Task Force. We request those wishing to testify to contact the Task Force by January 14, 1988.

Agenda its are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92-463, as amended (5 U.S.C. App. I, sec. 1-15) and sec. 9520 of Pub. L. 99-272 (42 U.S.C. 1396a note); 45 CFR Part 11)

Dated: December 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-30031 Filed 12-30-87; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Advisory Committee to the Director; Meeting

Notice is hereby given that the National Institutes of Health (NIH) will hold the fifth and sixth meetings of a series of seven regional public briefing meetings to be conducted under the auspices of the Advisory Committee to the Director, NIH on "The Health of Biomedical Research Institutions." The purpose of the meetings is two-fold:

(1) To provide current information concerning the activities of the NIH by describing the broad political context in which the NIH operates, discussing the Federal budget process as it affects the formulation of the NIH budget, demonstrating recent trends in the funding of NIH programs, discussing the broad strategies adopted by NIH to meet emerging needs, and describing new NIH policies and programs designed to achieve program objectives; and

(2) To solicit through public testimony the views of biomedical researchers, university faculty and administrators, representatives of professional societies, and other interested parties concerning the impact of the Federal system of sponsored research on the health of biomedical research institutions.

The fifth meeting will be held on Thursday, February 18, 1988, from 9:00 a.m. to 4:30 p.m. at the University of Texas Southwestern Medical Center at Dallas, Dallas, Texas. The sixth will be held on February 19, 1988, from 9:00 a.m. to 4:30 p.m. at the Emory University School of Medicine, Atlanta, Georgia. Notice of the time and location of the final meeting will be published later.

Following presentations by the Director, NIH, and his senior staff, a panel comprised of members of the Advisory Committee to the Director, NIH; representatives of NIH national advisory councils; and senior NIH staff will spend the remainder of the day receiving testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a statement at this public meeting should notify, in writing, Jay Moskowitz, Ph.D., Executive Secretary, Advisory Committee to the Director, National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892. Those planning to make a presentation should file a one-page summary of their remarks with Dr. Moskowitz by January 22, 1988; a copy of the full text of these remarks should be submitted for the record at the time of the meeting. Please indicate which of the two meetings you plan to attend. Additional information may be obtained by calling Mr. Edward Lynch, Division of Program Analysis, Office of Program Planning and Evaluation, National Institutes of Health, at (301) 496-4481.

Date: December 24, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87-30049 Filed 12-30-87; 8:45am]

BILLING CODE 4140-01-M

Fogarty International Center Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Fogarty International Center (FIC) Advisory Board, January 26 and 27, 1988, in the Stone House (Building 16), at the National Institutes of Health.

The meeting will be open to the public on January 26 from 8:30 a.m. to 4:30 p.m., and on January 27, from 8:30 a.m. to 12 noon. On January 26, the morning agenda will include a discussion with the Director, NIH, on "Thoughts on the FIC at the NIH," and an Overview Report by the Director of the FIC including discussions of proposed program initiatives. The afternoon agenda will include a report on the last meetings of the Advisory Committee to the NIH Director; reports from the Advanced Studies and Research Awards Working Groups of the FIC Advisory Board; and a report on an FIC WHO Collaborating Center project on "Research Strengthening in the Americas." On January 27, the agenda will include a legislative update; a scientific overview of research activities and contributions of the Gorgas Memorial Laboratory; and discussions of FIC future program and policy direction and the FIC Advisory Board Biennial Report. The meeting will conclude with comments from retiring Board members.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 26, from 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual research fellowship applications. These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary) Building 38A, Room 609, telephone 301–496–1491, will provide substantive program information.

Dated: December 15, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–30050 Filed 12–30–87; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 17–18, 1988, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 17 from 9 a.m. to recess and from 8:30 a.m. to adjournment on February 18 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Lawrence Friedman, Acting Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 28, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–30051 Filed 12–30–87; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, February 29 and March 1, 1988, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 7, C Wing.

The entire meeting will be open to the public from 9 a.m. to recess on February 29, and from 9 a.m. to adjournment on March 1 to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 24, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–30052 Filed 12–30–87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Disease; Meeting, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Arthritis and Musculoskeletal and Skin Diseases on February 17 and 18, 1988, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 17 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on February 17 from 1 p.m. to adjournment and again on February 18 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or

commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496-7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: December 15, 1987.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 87-30053 Filed 12-30-87; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents, the Extramural Programs and Program Outreach Subcommittees

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 28-29, 1988, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the following subcommittees:

Program Outreach Subcommittee, Conference Room A, Mezzanine, National Library of Medicine, from 1 to 2 p.m., January 27.

Extramural Programs Subcommittee, 5th-floor Conference Room, Lister Hill Center Building, 2 to 3 p.m., January 27.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5:00 p.m. on January 28 and from 9 a.m. to approximately 11:15 a.m. on January 29 for administrative reports and program discussions. The entire meeting of the Program Outreach Subcommittee will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the entire meeting of the Extramural Programs Subcommittee on January 27, will be closed to the public, and the regular Board meeting on January 29 will be closed from approximately 11:15 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: December 15, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-30054 Filed 12-30-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Vacancy; Osage Tribal Education Committee; Vacancy

December 15, 1987.

25 CFR 122.5(e)(5) states that any vacancies shall be filled in the same manner described by this section for the selection of committee members. The period of time for receiving applications shall not exceed 30 days with the expiration date to be announced by the Assistant Secretary. The purpose of this announcement is to solicit nominations from individuals or from Osage organizations on behalf of nominees for this vacancy.

This notice announces that a vacancy has occurred on the Osage Tribal Education Committee. This vacancy is the Member At Large Representative.

The requirements of the Member at Large are: (a) Must be an adult person of Osage Indian Blood, who is an allottee or a descendant of an allottee; and (b) May include residents who are living anywhere in the United States.

The nominee or his representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

Applications and nominations must be made no later than 30 days from the publishing date of this notice and shall be mailed to: Assistant Secretary-Indian Affairs, Attention: Deputy to the Assistant Secretary/Director—Indian Education (Indian Education Programs), Room 3512, 18th & C Streets, NW., Washington, DC 20240.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 87-29980 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-02-M

[Phoenix Area Office Redelegation Order 3, Amdt. 6]

Delegation of Real Estate Services Authority; Superintendents, et al.

December 7, 1987.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

This delegation is issued under the authority delegated to the Assistant Secretary—Indian Affairs from the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs in 230 DM 3.

The Phoenix Area Office Redelegation Order 3, published on page 11108 in the July 1, 1969, issue of the **Federal Register** (34 FR 11108), as amended, is further amended by redelegating to the Superintendent, Uintah and Ouray Agency, the authority to approve Indian Mineral Development Act of 1982 agreements, under § 2.17 of Part 2—Authority of Superintendents Functions Relating to Specific Programs.

As amended, Part 2 reads as follows:

Part 2—Authority to Superintendents Functions Relating to Specific Programs

Sec. 2.17 *Oil and Gas Agreements, Uintah and Ouray.* To the Superintendent of the Uintah and Ouray Agency only, the authority of the Area Director relating to oil and gas agreements on tribal or individually owned Indian lands. Such authority includes the responsibility for compliance with the provisions of the Indian Mineral Development Act of 1982 (96 Stat. 1938; 25 U.S.C. 2101-2198). This authority does not apply to:

(1) Lands purchased or reserved for agency, school or other administrative purposes; and,

(2) Modification of any forms approved by the Assistant Secretary—Indian Affairs.

James Stevens,

Area Director.

Approved:

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87-29981 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-02-M

Ordinance Relating to the Use and Distribution of Liquor; Cocopah Tribe of the Cocopah Indian Reservation, AZ

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. CT-87-26 enacting Ordinance No. CTO-87-02 the "Cocopah Indian Tribal Liquor Control Ordinance" was duly adopted by the Cocopah Tribal Council on July 2, 1987. The ordinance provides for the distribution of alcoholic beverages in the area of Indian country under the jurisdiction of the Cocopah Tribe of the Cocopah Reservation. The ordinance reads as follows:

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

Resolution No. CT-87-26 of the Governing Body of the Cocopah Tribe of the Cocopah Indian Reservation

A resolution authorizing the approved Cocopah Indian Tribal Liquor Control Ordinance.

Whereas: The Cocopah Tribal Council acting on behalf of the Cocopah Indian Tribe under Articles VI, and;

Whereas: The Cocopah Tribal Council wishes to confirm its previous passage of Ordinance Number CTO-87-02 on February 18, 1987;

Whereas: The Cocopah Tribal Council requests the Secretary of the Interior to certify and publish the Liquor Control Ordinance in the **Federal Register.**

Now, therefore, be it resolved, that the Chairman be authorized to execute the confirmation of Passage of Ordinance Number CTO-87-02 on February 18, 1987.

Certification

The foregoing Resolution was passed at a duly called meeting of the Cocopah Tribal Council at a special meeting held on the 2nd day of July, 1987, with a quorum present by a vote of three (3) For, and two (2) Abstain.

Fred Miller, Sr.,

Tribal Chairman, Cocopah Tribal Council.

Faye Ortega,

Secretary, Cocopah Tribal Council.

Ordinance of the Cocopah Indian Tribe of the Cocopah Indian Reservation

Be it enacted by the Tribal Council of the Cocopah Indian Tribe, duly assembled: Has enacted Ordinance Number CTO-87-02 which shall be known as the Cocopah Indian Tribe Liquor Control Ordinance.

Section I—Declaration of Public Policy and Purpose

(a) Federal Law prohibits the introduction of liquor into Indian country, 18 U.S.C. section 1154, unless the tribe having jurisdiction over that Indian country enacts an ordinance authorizing such introduction. The Tribal Council finds that exclusive tribal control and regulation of liquor sales on Cocopah Indian Reservation land through a tribally operated establishment will enhance the ability of the tribal government to control reservation liquor distribution and possession, and at the same time provide an important source of revenue for the operation of the tribal government and delivery of essential tribal social services.

(b) This ordinance shall be cited as the "Cocopah Indian Tribal Liquor Control Ordinance" and under the inherent sovereignty of the Cocopah Indian Tribe, shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, safety, morals, and peace of the people of the Tribe, and all of the provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to the public policy that the traffic in alcoholic beverages if it affects the public interest of the people, should be regulated to the extent of prohibiting all traffic of liquor, except as provided by this Ordinance.

Section II—Definitions

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise.

(a) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilution and mixtures of this substance.

(b) "Alcoholic Beverage" is synonymous with the term liquor as defined in Section II (o) of this Ordinance.

(c) "Application" shall mean a formal request for the issuance of a license supported by a verified statement of facts.

(d) "Beer" means any beverage obtained by the alcoholic fermentation, infusion, or decoction of barley, malt, hops, or other ingredients not drinkable, or any combination of them. "Beer" as defined in herein shall include "low-point beer" which is hereby defined as beer having not more than 3.2% alcohol content by weight.

(e) "Board" means the Cocopah Indian Tribe Business Development Committee previously established under resolution.

(f) "Broken Package" means any container of alcoholic beverages on which the United States tax seal has been broken or removed, or from which the cap, cork, or seal placed thereupon by the manufacturer has been removed.

(g) "Bulk Container" means any package or a container within which container are one or more packages.

(h) "Cocopah Easy Corner" means that gas station, convenience store, and smokeshop facility located on the Cocopah Reservation which was constructed and is maintained and operated under that certain Joint Venture Agreement dated October 10, 1986, as amended, between the Cocopah Tribe of Indians and Easy Corner, Inc., a Colorado Corporation authorized to do business in Arizona. References to "Cocopah Easy Corner" may include references to employees hired by the joint venture as store employees.

(i) "Company" or "Association" when used in reference to a corporation includes successors or assigns.

(j) "Election Days" means the biennial primary election for nomination of United States, State, County and precinct officers, a special election called pursuant to Section 1, Article 21, of the Constitution of the State of Arizona, the biennial general election of the State of Arizona and all Cocopah Indian Tribal Elections.

(k) "Foreign" means any corporation not incorporated under the laws of the Cocopah Indian Tribe.

(l) "Joint Venture Management Group" shall mean the persons or committees controlling any business joint ventures established between the Cocopah Tribe of Indians and any persons, partnerships, corporations, or associations pursuant to written agreements approved by the Bureau of Indian Affairs.

(m) "Legal Age" means the age requirement as defined in this Ordinance.

(n) "Liquor Store" means any store established by the Cocopah Indian Tribe Business Development Committee which is authorized to sell alcoholic beverages, such as, Cocopah Easy Corner.

(o) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof; and mixed liquor, a part of which is fermented; spiritous, vinous or malt liquor; and every liquid or solid, or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquors and all preparations or mixtures capable of human consumption and any liquid, semi-solid or solid substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating liquor.

(p) "Malt Liquor" means ale, beer, stout, and porter.

(q) "Package" means the bottle or immediate container of any alcoholic beverage.

(r) "Package Dealer" means the Cocopah Indian Tribe and its liquor retail outlet known as Cocopah Easy Corner.

(s) "Person" includes any partnerships, association, enterprise, or corporation, as well as, a natural person.

(t) "Sale" and "Sell" means the selling or supplying or distributing of liquor or any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or wine, by the Tribal retail outlet known as Cocopah Easy Corner.

(u) "Spiritous Liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, absinthe or compound (or mixture of any of them with any vegetable or other substance), alcohol bitters, bitters containing alcohol and any liquid mixtures or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one percent alcohol by volume.

(v) "Stamp" shall mean the various stamps required by this Ordinance to be affixed to the package or bulk container, as the case may be, to evidence payment of the tax prescribed by the Cocopah Indian Tribe Tax Code.

(w) "Vehicle" means any means of transportation by land, water, or air, and includes everything made use of in any way for such transportation.

(x) "Veteran" means a person who served in the United States Armed Forces, or Merchant Marine Service, or as an active nurse in the service of the Red Cross in a time of war, or in any expedition of the Armed Forces of the United States and received a discharge other than dishonorable.

(y) "Wholesaler" shall mean any person other than a brewer or bottler of beer, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in intoxicating liquor or beer; no wholesaler shall be permitted to sell liquor for consumption upon the premises.

(z) "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverages fortified with grape brandy and containing not more than twenty-four percent of alcohol by volume.

Section III—General Prohibition

It shall be unlawful to manufacture for sale or to sell, offer, or keep for sale, possess or transport alcoholic beverages, wine, or, beer except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

Section IV—Liquor Division Created Under the Business Development Committee

There is hereby established a branch of the Cocopah Indian Tribe Business Development Committee known as the Liquor Division. This branch shall be constituted as an agency and department of the Cocopah Indian Tribe Business Development Committee.

Section V—Cocopah Indian Tribe Liquor Division

Liquor Division Established—Composition. There is hereby established a Cocopah Indian Tribe Liquor Division (herein referred to as "Liquor Division"). The members of the Cocopah Indian Tribe Business Development Committee shall serve as the members of the Liquor Division. The Liquor Division is empowered to:

1. Administer this Ordinance by exercising general control, management, and supervision of all liquor sales, places of sale, and sale retail outlets, as well as, exercising all powers necessary to accomplish the purpose of this Ordinance.

2. Adopt and enforce rules and regulations in furtherance of the purposes of this Ordinance and the performance of its administrative functions.

3. Employ any and all persons necessary in any capacity, professional or otherwise, to allow the Liquor Division to perform its function.

4. Bring suit in the appropriate jurisdictions to enforce the provisions of this Ordinance with the consent of the Cocopah Indian Tribal Council.

Section VI—Tribal Business Manager

Powers and Duties. The Tribal Business Manager shall have the following powers and duties in regard to the Liquor Division:

1. To manage the Liquor Division for the benefit of the Cocopah Indian Tribe.

2. To establish within the Liquor Division, subject to its approval, such administrative procedures as are necessary to govern the operation of the Liquor Division.

3. To report and account to the Liquor Division at least four times per year regarding the operation and financial status of the Liquor Division. The Liquor Division may require that the Tribal Business Manager report and account on a more frequent basis if necessary.

4. To hire and set salaries of additional personnel, subject to Liquor Division approval, as he deems necessary to the successful operation of the Liquor Division.

5. To supervise all persons employed by the Liquor Division.

6. To purchase and maintain real and personal property with the approval of the Liquor Division.

7. To transfer all tax revenues and gross proceeds of the Liquor Division to the Tribal Treasurer for disposition in accordance with Section XI.

8. To require all Joint Venture Management Groups engaged in maintaining tribally authorized retail liquor outlets to obtain and maintain in full force and effect a policy of general liability insurance covering the premises in an amount set by the Liquor Division. The policy shall contain the stipulation that the Tribe shall be given ten days' notice of the proposed cancellation or expiration of such policy. The Tribal Business Manager shall submit to the Liquor Division a certificate of insurance for such policy and shall have available for inspection a complete copy of such policy.

9. The Tribal Business Manager shall be bonded for such additional amount and for such additional purposes as the Liquor Division shall determine to be appropriate in managing the Liquor Division.

Section VII—Sales

(a) Only Tribal Sales Allowed. No sales of alcoholic beverages shall be made within the exterior boundaries of the Cocopah Indian Reservation except

at retail outlets properly authorized under this Ordinance to conduct such sales.

(b) No credit shall be extended to any person, organization, or entity except by means of recognized bank and other major credit cards.

(c) All Sales for Personal Use. All sales of alcoholic beverage shall be for the personal use of the purchaser, and resale for profit of any alcoholic beverage purchased at an authorized tribal retail outlet is prohibited. The purchase of an alcoholic beverage at an authorized tribal retail outlet and subsequent resale of that beverage for profit, whether in the original container or not, shall be a violation of this Ordinance and the violator shall be subject to the penalties described in section XI.

(d) Ownership of Liquor Stock. The entire stock of liquor and alcoholic beverages referred to under this Ordinance shall remain the property of the Joint Venture conducting sales at any authorized tribal retail outlet until sold.

Section VII—Taxation

(a) *Tax Imposed.* There has been levied and shall be collected a tax on all retail sales of alcoholic beverages on the Cocopah Indian Reservation in the amount of four percent of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the Cocopah Indian Reservation. No municipality, city, town, county, nor the State of Arizona shall have any power to impose an excise tax on liquor or alcoholic beverages as defined by this title or govern or license the sale or distribution thereof in any manner within the Cocopah Indian Reservation except to the extent permitted by 18 U.S.C. Section 1161. The tax hereunder shall not be effective until ordered by the Tribal Council and the Liquor Division.

(b) *Distribution of Taxes.* All taxes and profits from the sales of alcoholic beverages on the Cocopah Indian Resevation shall be paid over to the tax and liquor fund of the Cocopah Tribe and be subject to distribution by the Cocopah Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services. Provided, however, that priority in funding shall be given to those Tribal programs which demonstrate the greatest need and past successful performance in providing community services to Tribal members, with specific consideration given to the Detox Program as more fully set forth in Section XI of this Ordinance.

Section IX—Illegal Activities

Violations

1. *Liquor Stamp Contraband.* It shall be a violation of this Ordinance for any person to sell alcoholic beverages on the Cocopah Indian Reservation other than as authorized by this Ordinance. All alcoholic beverages not stamped which are sold or held for sale on the Cocopah Indian Reservation are hereby declared contraband and, in addition to the penalties or fines imposed by the courts for violation of this Section, shall be confiscated and forfeited in accordance with the procedures set out in the Cocopah Tribal Court's Rules of Civil Procedures.

2. *Use of Seal.* It shall be a violation of this Ordinance for any person, other than an employee of the Liquor Division, to willfully keep or have in his possession any legal seals prescribed under this Ordinance unless the same is attached to a package which has been purchased from an authorized tribal retail outlet, or to willfully keep or have in his possession any design imitation of any official seal prescribed under this Ordinance or calculated to deceive by its resemblance to any official seal, or any paper upon which such design is stamped, engraved, lithographed, printed, or otherwise marked.

3. *Illegal Sales of Liquor by Drink or Bottle.* It shall be a violation of this Ordinance for any person to sell, by the drink or by the bottle, any liquor except as otherwise provided in this Ordinance.

4. *Illegal Transportation; Still.* It shall be a violation of this Ordinance for any person to sell or offer for sale or transport in any manner any liquor in violation of this Ordinance, or to operate or have in his possession any mash capable of being distilled into liquor.

5. *Illegal Purchase of Liquor.* It shall be a violation of this Ordinance for any person within the boundaries of the Cocopah Indian Reservation to buy liquor from any person other than at the properly authorized tribal retail outlets, such as, Cocopah Easy Corner.

6. *Illegal Possession of Liquor; Intent to Sell.* It shall be a violation of this Ordinance for any person to keep or possess liquor upon his person or in any place or on premises conducted or maintained by him as a principal or agent with the intent to sell it; unless such sale is otherwise authorized by this Ordinance.

7. *Sales to Persons Apparently Intoxicated.* It shall be a violation of this Ordinance for any person to sell liquor to a person apparently under the influence of liquor.

8. *Possession and Use of Liquor by Minors.* It shall be a violation of this Ordinance for any person under the age of twenty-one years to consume, acquire, or have in his possession any alcoholic beverage.

9. *Furnishing Liquor to Minors.* It shall be a violation of this Ordinance for any person to permit any other person under the age of twenty-one years to consume liquor on premises under his control or ownership.

10. *Sale of Liquor to Minors.* It shall be a violation of this Ordinance for any person to sell liquor to any person under the age of twenty-one years.

11. *Unlawful Transfer of Identification.* It shall be a violation of this Ordinance for any person to transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor.

12. *Possession of False or Altered Identification.* It shall be a violation of this Ordinance for any person to attempt to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of twenty-one years.

13. *Identification; Proof of Minimum Age.* Where there may be a question of a person's right to purchase liquor by reason of his age, such a person shall be required to present any one of the following officially issued cards or identification which shows correct age and bears his signature and photograph:

(i) Liquor Control Authority Card or officially issued identification card of any state;

(ii) Driver's License of any state or an identification card issued by a State Department of Motor Vehicles;

(iii) United States Active Duty Military Identification;

(iv) Passport.

14. It shall be a violation of this Ordinance to employ a person under the age of nineteen years to sell or dispose of alcoholic beverages.

15. It shall be a violation of this Ordinance to employ a person under the age of nineteen years in any capacity connected with the handling of alcoholic beverages.

16. It shall be a violation of this Ordinance for an employee of a tribally authorized retail outlet, during his working hours or in conection with his employment, to give to or purchase for any other person, or, to purchase for himself, or to consume alcoholic beverages.

17. It shall be a violation of this Ordinance for an employee of a tribally authorized retail outlet to sell to a person alcoholic beverages on the retail

outlet premises except during the normal posted business hours of the retail outlet.

18. It shall be a violation of this Ordinance for an employee of a tribally authorized retail outlet to sell, dispose of, deliver, or give away alcoholic beverages on the retail outlet premises on election days during the hours that polling places are open for voting.

19. It shall be a violation of this Ordinance for an employee of a tribally authorized retail outlet to sell alcoholic beverages except in the original container, to permit alcoholic beverages to be consumed on the retail outlet premises, or to sell alcoholic beverages in a container having a capacity less than eight ounces.

20. It shall be a violation of this Ordinance for a person to have in his possession or to transport alcoholic beverages which are manufactured in a distillery, winery, brewery, or rectifying plant contrary to the laws of the United States.

21. It shall be a violation of this Ordinance for an employee of a tribally authorized retail outlet, when engaged in waiting on or serving customers, to consume alcoholic beverages or remain on or about the premises while in an intoxicated or disorderly condition.

22. It shall be a violation of this Ordinance for an individual to publicly consume, possess, or sell any alcoholic beverage within Tribal Residential Areas and Cocopah Tribal Office Areas of the Cocopah Indian Reservation.

Section X—Tribal Court Jurisdiction, Enforcement

(a) The Cocopah Indian Tribal Court of the Cocopah Indian Tribe, Arizona, shall have jurisdiction over all offenses and unlawful acts enumerated in this Ordinance when committed by an Indian, whether or not the violator is a member or non-member of the Cocopah Indian Tribe.

(b) *Proof of Unlawful Sale; Intent.* In any proceeding under this Ordinance, proof of one unlawful sale of alcoholic beverages shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this Ordinance.

(c) *General Penalties.* Any person adjudged to be in violation of this Ordinance shall be subject to a civil penalty of not more than five hundred dollars ($500.00) for each such violation. The Liquor Division may adopt by separate rule or regulation a schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of the Tribal members. Such a schedule may also provide, in the case of repeated violations, for imposition of monetary fines in excess of those otherwise imposed for a first offense.

(d) *Illegal Items Declared Contraband.* Alcoholic beverages which are possessed contrary to the terms of this section are declared to be contraband. Any tribal law enforcement officer who issues a citation under this section may seize all contraband under this section and shall have the authority to seize consistent with the Cocopah Tribal Constitution and the applicable provisions of 25 U.S.C. section 1302.

(e) *Preservation of Forfeiture.* Any tribal law enforcement officer seizing contraband shall preserve the contraband by placing it in a secured area provided for storage of impounded property and shall promptly prepare an inventory. Upon entry of judgment, the person adjudged to be in violation of this Ordinance shall forfeit all right, title, and interest in the items seized, which shall be disposed of in accordance with the Cocopah Tribal Court's Rules of Civil Procedures.

Section XI—Profits

Distribution of Profits. The gross proceeds collected by the Liquor Division for all sales of alcoholic beverages on the Cocopah Indian Reservation shall be distributed as follows:

(i) The Cocopah Tribe's Alcohol and Detox Program in an amount of at least twenty-five percent (25%) of the total tax and profit received.

(ii) The Liquor Division may authorize that a portion of the profit and taxes received shall be turned over to the general fund of the Cocopah Tribe on a monthly or other periodic payment schedule established by the Liquor Division and shall be expended by the Cocopah Tribal Council for the general services of the Tribe.

(iii) The remainder of all gross proceeds shall be paid over to the Cocopah Indian Tribe Business Development Committee and the Cocopah Tribal Account.

Section XII—Severability and Revision

(a) If any section or any part of this Ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of the section or part of the Ordinance shall not be effected thereby and shall remain in full force and effect as through no part thereof had been declared to be invalid.

(b) All Prior Ordinances and Resolutions Repealed. All prior ordinances and resolutions or provisions thereof that are repugnant or inconsistent to any provision of this Ordinance are hereby repealed.

(c) Application of 18 U.S.C. section 1161. All acts and transactions under this Ordinance shall be in conformity with this Ordinance and in conformity with the laws of the State of Arizona as that term is used in 18 U.S.C. Section 1161.

The foregoing Ordinance Number CTO–87–02 was on February 18, 1987, duly enacted by a vote of three (3) for and one (1) against by the Tribal Council of the Cocopah Tribe, pursuant to authority vested in it by Article VI of the Constitution and Bylaws of the Tribe.

For the Cocopah Tribe of Indians.

Fred Miller Sr.,

Tribal Chairman.

Faye Ortega,

Secretary.

Felix Montague,

Superintendent.

[FR Doc. 87–30019 Filed 12–30–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CO–010–08–4121–12]

Draft Environmental Impact Statement for Northwest Colorado Coal Preference Right Lease Applications

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft Environmental Impact Statement (EIS) for the Northwest Colorado Coal Preference Right Lease Applications and plan amendment.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management has prepared a draft EIS on two coal preference right lease applications (PRLAs) in northwest Colorado. The applications are in Rio Blanco County, Colorado. Copies of the draft EIS are available for public review and comment. The draft EIS also documents an amendment to a planning document for the PRLAs.

DATES: Written comments on the draft EIS will be accepted up to and including April 8, 1988.

ADDRESS: Written comments on the proposals in the document should be addressed to: Roger Wickstrom, Project Coordinator, Bureau of Land Management, White River Resource Area, PO Box 928, Meeker, Colorado 81641; telephone (303) 878–3601.

AVAILABILITY: Single copies on the draft EIS are available from the White River Resource Area Office (address and phone listed above).

FOR FURTHER INFORMATION CONTACT: Roger Wickstrom, Bureau of Land Management, White River Resource Area, Meeker, Colorado 81641; telephone (303) 878-3601.

SUPPLEMENTARY INFORMATION: This draft EIS describes and analyzes the environmental impacts of the proposed leasing of two preference right lease applications (PRLAs), Chapman-Riebold C-0125366 north of Rangely, and Jensen-Miller C-4275 northeast of Meeker, in northwest Colorado. It also serves as the analysis for amending the White River Resource Area Management Framework Plan by applying the unsuitability criteria (43 CFR Part 3460) to the project area.

The alternatives considered in the EIS include:

No Action
Exchange
Withdrawal/Just Compensation
Proposed Action
BLM's Preferred Alternative

If there is adequate interest, a public meeting will be held to discuss the proposals in more detail. Any interested parties should contact Roger Wickstrom, Project Coordinator, at the above address before February 12, 1988.

Date: December 23, 1987.

Neil F. Morck,

State Director, Colorado State Office.

[FR Doc. 87-29929 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-08-4332-09; FES 87-71]

Availability of Esmeralda-Southern NYE Final Wilderness Environmental Impact Statement for the Tonopah and Stateline Resource Areas

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Tonopah and Stateline Resource Areas, Battle Mountain and Las Vegas Districts, Nevada.

SUMMARY: This EIS assesses the environmental consequences of managing five wilderness study areas (WSA) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) a Partial Wilderness alternative for four of the WSAs.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
Silver Peak Range	[1] 17,850	17,234
Pigeon Spring	0	3,575
Queer Mountain	0	81,550
Grapevine Mountains	0	66,800
Resting Springs	0	3,850

[1] Includes acres added from outside the WSA.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals will be made by the Secretary during the 90 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2)

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District Manager, Las Vegas District, 4765 W. Vegas Dr., P.O. Box 26569, Las Vegas, Nevada 89126, or call (702) 388-6403. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Street, NW., Washington, DC 20240;
Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520;
Bureau of Land Management, Battle Mountain District, N. 2nd & Scott Steets, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Janaye Byergo, EIS Team Leader, at 4765 W. Vegas Dr., P.O. Box 26569, Las Vegas, Nevada 89126.

Dated: December 21, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-29849 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-040-07-4322-02]

Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Safford District Grazing Advisory Board will be held.

DATE: Friday, February 12, 1988, 9:00 a.m.

ADDRESS: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: Time Control Grazing; District Resource Management Plan; Plant Seed Available for Reseeding; Report of Advisory Board Funds Use in FY 87; BLM management update; Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, February 11, 1988.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and production (during regular business hours) within thirty (30) days following the meeting.

Date: December 22, 1987.

Ray A. Brady,

District Manager.

[FR Doc. 87-29984 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-059-08-4333-10]

Off-Road Vehicle Use Designation; California

ACTION: Notice of off-road vehicle use designation, special area designation, closures and restrictions applying to the Sacramento River Special Recreation Management Area.

SUMMARY: Notice is hereby given that the below listed off-road vehicle use designation, special area designation, closures and restrictions apply to those public lands which lie within the boundaries of the Sacramento River Area Management Plan area. These designations, closures and restrictions are made as implementation of management actions contained in the Sacramento River Area Management Plan, in accordance with the authority contained in 43 CFR 8342.1, 8364.1 and 8372.1.

1. Off-road vehicle use is limited to the designated road and trails located in

Sections 1, 11, 12 and 14, T. 28 N., R. 3 W., M.D.M. All other areas and trails in these sections, as well as areas and trails located in Sections 24, 25, 26 and 36, T. 29 N., R. 3 W., M.D.M., are designated closed to off-road vehicle use.

(2) Those public lands located in Section 34, known as Jellys Ferry, and those public lands located in Section 25, E1½SW¼, W½SE¼; and a portion of Lots 6 and 7 of Section 36, also known as the Mouth of Inks Creek, are closed to camping.

(3) The Sacramento River Area is designated as a special area under 43 CFR 8372, requiring Special Recreation Permits for group uses or events which are not commercial, competitive, or off-road vehicle events involving 50 or more vehicles.

(4) The Sacramento River Area is closed to shooting. The exceptions to this restriction include: (a) properly licensed hunters shooting at game during legal hunting seasons in compliance with California State Law, and (b) target shooting at the area within the NE¼ of Section 14, T. 28 N., R. 3 W., M.D.M.

The purpose of these designations, restrictions and closures is to provide a means by which the Bureau of Land Management can effectively control visitor activities which jeopardize public safety, damage populations of both Federally and State listed threatened and endangered plant and animal species, destroy historic and pre-historic artifacts and sites, create soil erosion, and damage fish and wildlife habitat. These designations, restrictions and closures were developed with full public participation as action decisions in the Sacramento River Area Management Plan, which was approved after the completion of an environmental assessment.

DATE: These designations, restrictions and closures are effective December 31, 1987, and will remain in effect until modified or rescinded by the authorized officer.

SUPPLEMENTARY INFORMATION: Authority for these designations, restrictions and closures is contained in CFR Title 43, Chapter II, Parts 8342, 8364 and 8372. Any person who violates or fails to comply with this designation, restriction and closure order may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months under the authority of 43 CFR 8360.0–7, 8340.0–7 and 8372.0–7.

The Sacramento River Area Management Plan, approved December 31, 1986, provides management direction for a portion of the Sacramento River Special Recreation Management Area, including approximately 4,330 acres of public lands adjoining the Sacramento River in Tehama County, California.

ADDRESS: Send inquiries to Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. The Sacramento River Area Management Plan is available for public review at the Redding Area Office from 7:45 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joe Williams, Outdoor Recreation Planner, at (916) 246–5325.

Date: December 23, 1987.

Timothy P. Julius,

Acting District Manager.

[FR Doc. 87–29985 Filed 12–30–87; 8:45 am]

BILLING CODE 4310-40-M

[NM-943-08-4111-13; NM NM 68038]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease; Atlantic Richfield Co.

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2–3, Atlantic Richfield Company, petitioned for reinstatement of oil and gas lease NM NM 68038 covering the following described lands located in Eddy, New Mexico:

T. 18 S., R. 31 E., NMPM
Sec. 5: Lots 1, 2, SE¼NE¼, S½NW¼
Containing 200.04 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $7.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, August 1, 1987.

Date: December 3, 1987.

Dolores L. Vigil,

Acting Chief, Adjudication Section.

[FR Doc. 87–29986 Filed 12–30–87; 8:45 am]

BILLING CODE 4310-FB-M

[MT-930-08-4212-13; M 72225]

Conveyance of Public Land in Lewis and Clark County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice informs the public and interested state and local government officials of the completion of a land exchange and issuance of the conveyance documents. The land acquired in the exchange has high recreational and natural resource values and is a part of the Sleeping Giant Recreation Area.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the following described surface and mineral estates were transferred to Sieben Ranch Company:

Principal Meridian, Montana

T. 13N., R. 3 W.,
Sec. 32, W½NW¼SE¼, W½SE¼N W¼SE¼.
Containing 25 acres.

2. The following described surface estate and all minerals except oil and gas were also transferred to Sieben Ranch Company:

Principal Meridian, Montana

T. 13 N., R. 4 W.,
Sec. 18, lot 1.
T. 13 N., R. 5 W.,
Sec. 2, lot 4, S½NW¼, N½SE¼;
Sec. 4, S½NW¼;
Sec. 6, lot 1;
Sec. 10, SE¼SW¼, SW¼SE¼;
Sec. 20, E½NE¼, N½NW¼, SW¼NW¼;
Sec. 26, E½NE¼,NW¼NE¼;
Sec. 28, W½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 33, lot 1, N½SE¼;
Sec. 34, NE¼, N½NW¼, SW¼NW¼, SE¼SW¼, S½SE¼.
Aggregating 1,587.36 acres.

Upon termination or relinquishment of the existing oil and gas leases on the above lands, all rights and interests in the oil and gas deposits shall automatically vest in Sieben Ranch Company, its successors or assigns.

Total acreage patented—1,612.36 acres.

John A. Kwaitkowski,

Deputy State Director, Division of Lands and Renewable Resources.

December 22, 1987.

[FR Doc. 87-29983 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-020-08-4212-13; A-18992]

Realty Action; Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination/realty action—Exchange, Public Land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 14 N., R. 20 W.,
Sec. 4, lots 5, 8, and 9;
Sec. 9, lots 2 and 3, SW¼NW¼, N½N½ NW¼SW¼.

Containing 144.5 acres, more or less.

In exchange for these lands, the United States will acquire the mineral interest in the following described lands from New Mexico and Arizona Land Company of Phoenix, Arizona:

Gila and Salt River Meridian

T. 17 N., R. 19 W.,
Sec. 1, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½;
Sec. 5, lots 1–4, S½N½, S½;
Sec. 7, lots 1–4, E½, E½W½;
Sec. 11, all;
Sec. 13, all;
Sec. 15, NE¼, S½NW¼, S½;
Sec. 17, W½NE¼, S½;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1–4, E½, E½W½;
Sec. 33, all;
Sec. 35, NE¼, N½NW¼, E½SE¼.
T. 18 N., R. 19 W.,
Sec. 3, lots 1–4, S½N½, S½;
Sec. 5, lots 1–4, S½N½, S½;
Sec. 7, lots 1–4, E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1–4, E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 17 N., R. 18 W.,
Sec. 3, lots 1–4, S½N½, S½;
Sec. 5, lots 1–4, S½N½, S½;
Sec. 7, lots 1–4, E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1–4, E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 18 N., R. 18 W.,
Sec. 5, lots 1–4, S½N½, S½;
Sec. 7, lots 1–4, E½, E½W½;
Sec. 9, all;
Sec. 17, all;
Sec. 19, lots 1–4, E½, E½W½;
Sec. 21, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1–4, E½, E½W½;
Sec. 33, all.
T. 19 N., R. 18 W.,
Sec. 29, all.
T. 19 N., R. 19 W.,
Sec. 5, lots 1–4, S½, S½N½;
Sec. 7, lots 1–7, NE¼, E½W½, NE¼SE¼;
Sec. 9, all;
Sec. 19, lots 1 & 2, E½, E½NW¼;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1–4, E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 20 N., R. 19 W.,
Sec. 5, lots 1–4, S½N½, S½;
Sec. 7, lots 1–4, E½, E½W½;
Sec. 17, all;
Sec. 19 lots 1–4, E½, E½W½;
Sec. 29 all;
Sec. 31, lots 1–7, NE¼, E½NW¼, NE¼SW¼, N½SE¼.

Containing 48,228.97 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the Act of August 30, 1890.

2. Subject to: (a) Restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 adopted on December 3, 1984, as amended; (b) Right-of-way to the Arizona State Highway Department (A–4315); (c) Right-of-way to Citizens Utilities Rural Company, Inc. (A–7475); (d) Right-of-way to the Mohave County Board of Supervisors (A–17951); (e) Rights-of-way to Citizens Utilities Company (A–20874 and PHX–034352); (f) Reservation of all minerals to Santa Fe Pacific Railroad Company (sec. 9 only); and (g) Continuation of grazing by Havasu Heights Ranch and Development Corporation through June 21, 1989.

The purpose of the exchange is to unify the surface and mineral estates under federal ownership to facilitate resource management in recreation, minerals, wildlife and range and to dispose of isolated and/or difficult to manage land with speculative development potential.

Publication of this Notice will serve as public notification that all action relating to private exchange A–22308 described in the **Federal Register** publication of June 25, 1987, Volume 52, No. 122, page 23895, is terminated as to the public lands described in this Notice. However, the subject lands are to remain segregated from operation of the public land laws, including the mining laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a deed or patent, publication of a Notice of Termination or June 24, 1989, whichever occurs first.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: December 23, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87-29988 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-059-08-7122-10-U012; CA 19062]

Sale of Interest in Public Lands; Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) the reserved perpetual exclusive easement interest in the westerly 60′ × 1190′ of Lot 8, Section

18, T. 31 N., R. 5 W., M.D.M., California (containing 1.64 acres) is proposed for direct sale to Bill G. and Marylee Minton at the appraised fair market value of $1500.00. The reserved interest has never ben used for the intended purpose, no are there any known plans for future use of this reserved easement and right-of-way.

SUPPLEMENTARY INFORMATION: This action is consistent with County and Bureau planning decisions. Terms and conditions applicable to this action are:

1. Title transfer will be subject to valid existing rights.

2. BLM may withdraw this interest from sale at any time if, in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

3. The United States will convey the interest reserved in Patent 04-72-0109 dated May 8, 1972 specifically "a perpetual easement and right-of-way, including but not limited to the right and privilege, in the public, to use same, and to locate, construct, relocate, maintain, control, and repair a road and public utility facilities, situated on the westerly 60 feet of Lot 8".

4. The interst will be conveyed as a direct sale at the fair market value of $1500.00 plus the cost of obtaining an appraisal and publication of the Notice of Realty Action.

DATE: Comments may be sent to the Area Manager for a period of up to and including February 16, 1988.

ADDRESS: Area Manager, BLM, 355 Hemsted Drive, Redding, California 96002.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Date: December 23, 1987.

Timothy P. Julius,

Acting District Manager.

[FR Doc. 87-29989 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-40-M

[M-74540; MT-020-08-4212-14]

Realty Action; Direct Sale; Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of realty action M-74540, sale of public land in Rosebud County, Montana.

SUMMARY: The following described land has been determined to be suitable for disposal by direct, noncompetitive sale under section 203 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1713).

Principal Meridian

T. 2 N., R. 39 E.,
Section 12, NW¼SE¼.
Containing approximately 40 acres.

The land will be offered for direct sale to Mary Genie Dowlin at not less than the established fair market value of $1,400.00 and not until 60 days after the date of this notice.

DATES: For a period of up to and including February 16, 1988, interested parties may submit comments to the District Manager, Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information relating to the sale, including the environmental assessment and the land report is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until patent is issued or 270 days from the date of this notice, whichever occurs first.

The sale will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. A reservation to the United States of all minerals.

3. All valid existing rights and reservations of record.

The land has been determined to have no known mineral values and the exercise of surface rights will not interfere with mineral development. The proposed sale is consistent with the Bureau's planning and has been discussed with State and local officials. The purpose of this sale is to resolve an unauthorized use of the lands.

Date: December 22, 1987.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 87-29990 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-DN-M

[M-75256, M-75257; MT-020-08-4212-21]

Realty Action; Leases in Wheatland and Carbon Counties, MT

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Non-competitive leasing of public land in Wheatland and Carbon County, Montana.

SUMMARY: The following described lands have been examined and identified as suitable for leasing under section 302 of the Federal Land Policy and Management Act (43 U.S.C. 1732) at not less than fair market value:

M-75256

Principal Meridian

T. 6 S., R. 21 E.,
Sec. 5, E½SE¼SE¼.

Carbon County

Containing 7 acres.

M-75257

Principal Meridian

T. 9 N., R. 12 E.,
Sec. 28, S½NW¼.

Wheatland County

Containing 60 acres.

The purpose of each lease is to authorize the agricultural use of public land. Lease M-75256 will be offered non-competitively to Devries Sheep and Land Company, Box 60, Joliet, Montana 59070 as the land is an overlap of their circular sprinkler irrigation system. Lease M-75257 will be offered non-competitively to the Martinsdale Colony, Box 152, Martinsdale, Montana 59053. The land to be leased for farming is adjacent to the private property of the proposed lessee. The proposed leases will provide authorized agriculture use of the public land. The terms, conditions, and reservations of the leases are:

1. The leases will run for a ten year period to be further evaluated upon expiration.

2. The lands will be leased subject to all valid existing rights of record.

3. All the coal, oil, gas geothermal and other mineral deposits are reserved together with the right to enter upon the land and prospect for, mine and remove such materials.

4. The United States reserves the right to issue rights-of-way or use permits over the area. Such uses, however, shall not unduly impair the use of said lands for authorized improvements therein.

5. The United States reserves the right to use the public lands or authorize use of the public lands by the general public in any way compatible or consistent with the use authorized by this lease.

DATES: For a period of up to and including February 16, 1988, interested parties may submit comments to Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Sally King, Billings Resource Area, 810 East Main, Billings, Montana 59105, Telephone Number 406-657-6262.

Date: December 22, 1987.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 87-29991 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-DN-M

[NV-020-08-4212-14; N-47294]

Realty Action; Advertisement of Public Land To Be Sold by Noncompetitive Sale Procedures; Humboldt County, NV

ACTION: Notice of realty action—advertisement of public land to be sold by noncompetitive sale procedures—N-47294. The land is located within Humboldt County, Nevada.

SUMMARY: Notice is hereby given that pursuant to the Act of October 21, 1976 (43 U.S.C. 1713, section 203), the Bureau of Land Management is selling at fair market value, the following public lands by noncompetitive land sale procedures:

Mount Diablo Meridian, Nevada

T. 44 N., R. 30 E., Sec. 23, NE1/4SE1/4
40 acres more or less

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, Nevada 89445.

DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445, (702) 623-3676.

SUPPLEMENTARY INFORMATION: This parcel of public land is bordered by private land at the Big Creek Ranch which is near Denio, Nevada. Competitive interest could not be determined at the time of sale preparation and to eliminate conflicts of interest in land ownership, noncompetitive sale procedures were used for the purpose of disposal of the parcel.

Publication of this Notice in the **Federal Register** shall segregate the land to the extent that it will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application shall not be considered as filed and shall be returned to the applicant. This segregative effect of the Notice of Realty Action shall terminate upon issuance of the patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

Payment for the property shall be by cash, certified check, postal money order, bank draft, or cashier's check made payable to the Dept. of the Interior—BLM. The Authorized Officer may withdraw the parcel from sale if it is determined that consumation of the sale would be inconsistent with the provisions of existing law or policy.

The sale is consistent with the Federal Regulations contained in Title 43 CFR, specifically:

1. 43 CFR 2430.5(a) which states that the lands which have value for residential, commercial, agricultural, or industrial purposes or for more than one such purpose, will be considered chiefly valuable for that purpose which represents the "highest and best use: of the lands, for example, their most profitable legal use is in private ownership.

2. 43 CFR 2430.5(c) which states that the lands determined to be valuable for residential, commercial, agricultural, or industrial use may be classified for disposal under appropriate authority providing such classification is consistent with local government comprehensive plans or in the absence of such plans, with the views of local government authorities.

3. 43 CFR 2410(b) which states that all present and potential uses and users of the land have been taken into consideration and the land classification will achieve the maximum future benefit and use with minimal disturbance to or dislocation to existing users.

4. 43 CFR 2410.1(d) which states that the Bureau Motion Land Sale is consistent with Federal programs and policy.

Conditions of Sale

Craig Moore agrees that he takes the parcel which will be subject to the existing grazing preference of Julian Marcuerquiaga to graze domestic livestock on the land according to the terms and conditions of the Alder Creek Grazing Allotment. The preference of Julian Marcuerquiaga to graze domestic livestock on the parcel of land according to the terms and conditions of the above mentioned allotment will cease on October 12, 1989. Craig Moore is entitled to receive annual grazing fees from Julian Marcuerquiaga for the livestock grazing in the same amounts as the fee that is published in the **Federal Register** annually. This requirement will expire on October 12, 1989.

Reservations to the Federal Government:

1. Rights-of-way for ditches and canals constructed under the Authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits together with the right to prospect for, mine, and remove the same.[1]

3. Patent, when issued, will be subject to the following rights-of-way of record: N-16244, an irrigation ditch issued to the Big Creek Ranch for purposes of transferring agricultural water to the ranch and farmland.

Note.—The land purchaser and right-of-way holder being the same person, titles will merge upon issuance of the land patent.

4. All geothermal resources will be reserved to the United States Government.

Dated: December 18, 1987.

Frank C. Shields,

District Manager.

[FR Doc. 87-29992 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-HC-M

[NM-010-08-4111-16]

Office Relocation; Farmington, NM

AGENCY: Bureau of Land Management.

ACTION: Notice of Office Relocation—Farmington, New Mexico.

SUMMARY: All offices of the Bureau of Land Management currently located in Farmington, New Mexico, at the following locations, 3535 E. 30th Street, Room 206, and 900 La Plata Highway will be moved to a new location between January 15 and January 31, 1988. During this period, services to the public may be curtailed to the extent necessary to complete the move as quickly as possible.

All Farmington BLM offices will be located at 1235 La Plata Highway effective January 15, 1988. The new mailing address for all offices will be:

[1] The mineral deposits or interests having no known mineral value will be conveyed simultaneously with the surface estate at the time of sale. The purchaser will be required to remit $50.00, nonrefundable fee. Failure to do so will result in the cancellation of the sale.

Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401. All telephone numbers currently listed in the Farmington phone directory will remain unchanged.

Other phone numbers to individual offices or specialists may be changed.

FOR FURTHER INFORMATION CONTACT: Ron Fellows, Area Manager, (505) 325-3581, 325-4572 or FTS 476-6465.

Richard Fagan,

Acting District Manager.

[FR Doc. 87-29987 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-08-4220-11; NM NM 6266]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 160-acre withdrawal for the Bureau of Reclamation continue for an additional 20 years. The land would remain closed to surface entry. The mineral estate is reserved to and controlled by the State of New Mexico.

DATE: Comments should be received by March 30, 1988.

ADDRESS: Comments should be sent to: New Mexico State Director, BLM, P. O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM New Mexico State Office, 505-988-6589

The Department of the Interior proposes that the existing land withdrawal made by Public Land Order No. 4798 of April 14, 1970, 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:

New Mexico Principal Meridian

T. 10. N., R. 31 E.,
sec. 16, E½E½.

The area described contains 160 acres in Quay County.

The purpose of the withdrawal is for use in connection with the Tucumcari Reclamation Project. The withdrawal segregates the land from the operation of the public land laws generally. The minerals are not owned by the United States.

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 New Mexico State Director at the address indicated above.

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 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.

Larry L. Woodard,

State Director.

Dated: December 22, 1987.

[FR Doc. 87-29993 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-08-4220-11; GP-08-040; ORE-05047]

Proposed Continuation of Withdrawal; Oregon; Correction

The FR Doc. 87-26474 published at page 43951 in the issue of Tuesday, November 17, 1987 make the following corrections:

1. In the second column, in the fourth line, land description "sec. 21, lots 1 and 2", should read "sec. 24, lots 1 and 2;"

2. In the second column, in the sixteenth line, land description "sec. 4, S¼SW¼, NE¼, SW¼NW¼", should read "sec. 4, S½SW¼NE¼, SW¼NW¼,".

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: December 22, 1987.

[FR Doc. 87-29994 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1260, Block 177, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on December 18, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Warren Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: December 22, 1987

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-29995 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Chevron U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Timbalier Block 135 Federal Unit Agreement No. 14-08-001-6669, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 135 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on December 16, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2659.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 21, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-29996 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil & Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4138, Block 565, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on December 22, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Warren Williamson, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 22, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-29997 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Oil and Gas Information Program (OCSIP)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the "Pacific Summary/Index: June 1, 1986-July 31, 1987" (OCS Information Report MMS 87-0078) has been published. The publication's purpose is to provide affected States, local governments, and other interested parties with current information on OCS oil and gas activities and related issues so that they may plan for any possible impacts.

DATES: Availability effective December 31, 1987.

To obtain copies: Write or call the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Mail Stop 642, Vienna, VA 22180. Telephone (703) 285-2280. Copies are free upon request.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slitor, Chief, OCS Information Program, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Mail Stop 642, Vienna, VA 22180. Telephone (703) 285-2285.

SUPPLEMENTARY INFORMATION: The OCSIP publishes its documents in compliance with a mandate in the OCS Lands Act Amendments of 1978 (43 U.S.C. 1352). According to the mandate, the documents are to provide affected States, local governments, and other interested parties with current information on OCS oil and gas activities and related issues to help them plan for any potential impacts.

This Pacific Summary/Index has a slightly altered format:

(1) The chapters on "Transportation Scenarios" and "Onshore Facilities" are merged into one chapter entitled "Project-Specific Developments and Status."

(2) Appendix A contains detailed MMS leasing procedures.

(3) Some of the standard narrative now appears as tables or graphs instead of text.

(4) Each chapter ends with a list of "Additional Reading" for reference to more detailed discussions of relevant topics and issues.

(5) A special festure is the 53" x 42" map that provides with pictorial symbols and tabular data an overview of the oil and gas activities and related onshore facilities in the Southern California area.

The Summary/Index's data support the premise that with current market conditions, industry has shifted its interest in the Pacific OCS Region from an acquisition and exploration phase to development and production. Discoveries over the past 5 years led to estimates of increased amounts of oil and gas reserves. Subsequent development is expected to bring new production on line to reverse the declining trend. Platform Irene in the Point Pedernales Unit is already producing, and Chevron and Texaco were expected to be producing in the Point Arguello field late this year. As for interest in State waters and onshore activities, the document highlights the status of some proposed and existing projects, such as the Celeron interstate pipeline, the expansion of the Gaviota and Los Flores marine terminals, and the Coal Oil Point and Hercules projects.

Date: December 16, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-29998 Filed 12-30-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31183]

H. Peter Claussen and Linda Claussen; Continuance in Control Exemption; Wiregrass Central Railroad Co., Inc.

H. Peter Claussen and Linda Claussen (Mr. and Mrs. Claussen) have filed a notice of exemption under 49 CFR 1180.4(g) regarding their continuance in control of Wiregrass Central Railroad Company, Inc. (WCRC), under the provisions of 49 CFR 1180.2(d)(2). At present, Mr. and Mrs. Claussen control Alabama & Florida Railroad Company (A&F) and Gulf & Ohio Railways, Inc., doing business as Mississippi Delta Railroad (G&O).

WCRC, a noncarrier, has filed concurrently a notice of exemption in Finance Docket No. 31184, *Wiregrass Central Railroad Company, Inc.—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.*, relating to WCRC's purchase and operation of a 23.2-mile line of railroad in Alabama. The line will be purchased from CSX Transportation, Inc.

Mr. and Mrs. Claussen are the sole shareholders of WCRC. Their control of A&F and G&O, was previously approved by the Commission in Finance Docket No. 30837. Mr. and Mrs. Claussen indicate that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employee affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-29481 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31184]

Wiregrass Central Railroad Co., Inc.; Acquisition and Operation Exemption; Rail Lines of CSX Transportation, Inc.

Wiregrass Central Railroad Company, Inc. (WCRC), has filed a notice of exemption to acquire and operate approximately 23.2 miles of railroad of CSX Transportation, Inc. (CSX), located in Alabama. The line extends from milepost 800.00 at Waterford, AL, to milepost 823.20, at Clintonville, AL. The agreement for transfer of the lines between WCRC and CSX will be consummated on or about December 18, 1987.

A transaction relating to the control of WCRC by H. Peter Claussen is the subject of a notice of exemption filed concurrently in Finance Docket No. 31183, *H. Peter Claussen—Continuance in Control Exemption—Wiregrass Central Railroad Company, Inc.* Any comments must be filed with the Commission and served on Mark M. Levin, Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue NW., Suite 800, Washington, DC 20005-4797.

This transaction will also involve the issuance of securities by WCRC, which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-29482 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 223X)]

CSX Transportation, Inc.—Exemption—Abandonment Near Quarry Road, North Baltimore in Wood County, OH

Applicant filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 1.88 miles of railroad near Quarry Road, North Baltimore, in Wood County, OH, between valuation station 880 + 66 and valuation station 980 + 09.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, or may be rerouted, and (2) no formal complaint, filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective January 30, 1988, unless stayed pending reconsideration. Petitions to stay must be filed by January 11, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 20, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives: Patricia Vail, Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 21, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-29731 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-257 (Sub-No. 1X)]

Sand Springs Railway Co.—Abandonment Exemption—Tulsa County, OK

Applicant filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.6-mile line of railroad in Tulsa, Tulsa County, OK, starting at a point 350 feet south of the south line of West First Street, and running north and east to the end of the

line at its interchange with the Missouri Pacific Railroad Company and the Atchison, Topeka and Santa Fe Railway Company east of Greenwood Avenue, at King Street.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, or may be rerouted, and (2) that no formal complaint, filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line, either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from the abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective January 30, 1988, unless stayed pending reconsideration. Petitions to stay must be filed by January 11, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 20, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: S. Douglas Dodd, Doerner, Stuart, Saunders, Daniel & Anderson, 1000 Atlas Life Building, Tulsa, OK 74103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 21, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-29732 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

Agricultural Cooperative; Intent to Perform Interstate Transportation for Certain Nonmembers

Date: December 28, 1987.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

A. (1) Tennessee Farmers Cooperative;
(2) P.O. Box 3003, LaVergne, TN 37086;
(3) P.O. Box 3003, LaVergne, TN 37086;
(4) Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086.

B. (1) Southern States Cooperative, Inc.;
(2) P.O. Box 26234, Richmond, VA 23260;
(3) 6606 West Broad Street, Richmond, VA 23230;
(4) Garry L. Horn, P.O. Box 26234, Richmond, VA 23260.

Noreta R. McGee,

Secretary.

[FR Doc. 87-30008 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Spring Industries, Inc., Fort Mill, South Carolina 29715.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) or incorporation:

(i) Graber Industries, Inc.—DE
(ii) Brooksea Foods, Inc.—GA
(iii) Lancaster International Sales, Inc.—SC
(iv) Fort Mill Properties, Inc.—DE
(v) Fort Mill A, Inc.—DE
(vi) Clark-Schwebel Fiber Glass Corporation—NY
(vii) Clark-Schwebel Corporation—NY
(viii) King Fiber Glass Corporation—DE
(ix) Fiber Glass Reinforcements, Inc.—CA
(x) Accel Plastic Products, Inc.—AZ
(xi) Catawba Trucking, Inc.—SC

Noreta R. McGee,

Secretary.

[FR Doc. 87-30009 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31139]

The Golden Cat Railroad Corp.; Acquisition and Operation Exemption; Certain Line of Missouri Pacific Railroad Co.; Supplement to Notice of Exemption'

The notice of exemption served November 19, 1987, concerned the acquisition and operation by the Golden Cat Railroad Corporation (GCR), a noncarrier, of 10.8 miles of rail line of Missouri Pacific Railroad Company (MPR) between milepost 149.5 located at or near Delta, MO, and milepost 160.3 located at or near Newman Spur, MO. The Acquisition included the involved right-of-way and associated real estate.

The notice of exemption stated that it was unclear whether the proposed operator of the rail line, Cape County Development, Inc., doing business as The Jackson & Southern Railroad (JSR), would be operating the line in its own name or an behalf or GCR. By supplemental statement filed December 8, 1987, GCR has clarified the situation by explaining that it, rather than JSR, will be operating as a rail common carrier over the line and that JSR will merely perform physical rail service on behalf of GCR over the line on a non-exclusive basis. Thus, JSR will not assume the status of a rail common carrier.

The notice of exemption should be considered clarified to the extent indicated here, and in all other respects it shall remain in full force and effect.

Decided: December 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-30010 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31188]

Maryland Midland Railway, Inc.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts the acquisition by Maryland Midland Railway, Inc. of 4.42 miles of track owned by Western Maryland Railway Company from the requirements of 49 U.S.C. 11343.

DATES: This exemption is effective on January 14, 1988. Petitions to reopen must be filed by January 25, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31188 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Henry E. Seaton, Suite 525, McLachlen Bank Building, 11th and G Streets, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: December 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-30065 Filed 12-30-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order; Associated Metal and Minerals Corp., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States v. Associated Metal and Minerals Corporation and Gulf Chemical and Metallurgical Company, Inc.* was lodged in the United States District Court for the Southern District of Texas on December 7, 1987.

The proposed consent order resolves a lawsuit initiated by a complaint that the United States filed on January 15, 1985. The complaint alleged violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, during the operation of defendants' catalyst reclamation facility in Freeport, Texas. The proposed order contains interim effluent limitations and ultimately requires compliance with the NPDES permit in effect on March 31, 1989. The proposed order also provides stipulated penalties for failure to comply with interim or final effluent limitations. It also contains a $230,000 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed order. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Associated Metal and Minerals Corporation and Gulf Chemical and Metallurgical Company, Inc.* D.J. Ref. 90-5-1-1-2297.

The proposed order may be examined at the Office of the United States Attorney, Federal Building and U.S. Courthouse, 515 Rusk Avenue, Houston, Texas 77002, the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-29999 Filed 12-30-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA; Russell Martin Bliss, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 7, 1987 a proposed Consent Decree in *United States v. Russell Martin Bliss, et al.*, Civil No. 84-2086-C-1; *United States v. Russell Martin Bliss, Primerica, et al.*, Civil No. 87-1558-C-2; *State of Missouri v. Russell Martin Bliss*, Civil No. 84-1148-C-1; and *State of Missouri v. Grover Callahan*, Civil No. 84-2092-C-1, was lodged with the United States District Court for the Eastern District of Missouri Eastern Division.

The Consent Decree was entered into between the United States and the state of Missouri, and the following defendants: Primerica Corporation, American National Can Company, Inc.; G.K. Technologies, Inc.; Kisco Company, Inc.; and The Orchard Corporation of America.

Four civil actions were brought by the United States and the state of Missouri pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9607, for reimbursement of certain costs incurred by the United States and Missouri in connection with the release of hazardous substances, pollutants and contaminants (hazardous substances) from the Callahan and Rosalie site near Ballwin, Missouri, and for other relief.

The Consent Decree, subject to certain re-opener provisions, resolves the governmental claims against the Settling Defendants as alleged in the complaints and provides for the payment of $566,670 to the United States and $93,330 to the state of Missouri.

The proposed decree may be examined at the office of the United States Attorney for the Eastern District of Missouri 1114 Market Street, St. Louis, Missouri 63101; at the Region VII office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th and Pennsylvania Avenue, Washington, DC 20530.

The Department of Justice will receive written comments relating to the proposed partial consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Russell Martin Bliss, et al.*, Civil No. 84-2086-C-1; *United States v. Bliss, Primerica, et al.*, Civil No. 87-1558-C-2; *State of Missouri v. Russell Martin Bliss*, Civil No. 84-1148-C-1; and *States of Missouri v. Grover Callahan*, Civil No. 84-2092-C-1 Department of Justice Reference Nos. 90-11-2-42; 90-11-3-155.

In requesting a copy please enclose a check in the amount of $1.70 (10 cents

per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-30000 Filed 12-30-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[Unemployment Insurance Program Letter No. 6-88]

Revised Definition of Employment for Trade Readjustment Allowance (TRA) Qualifying Purposes Applicable to Claims for Weeks of Unemployment Beginning Before October 1, 1981

On June 30, 1987, the United States District Court for the District of Columbia issued an Order directing the Secretary of Labor to promulgate a new definition of weeks of employment and wages needed by a worker to qualify for trade readjustment allowances (TRA). The Decision which resulted in the Order involves claims for weeks of unemployment beginning before October 1, 1981.

The Department of Labor has announced to all SESAs the revised departmental interpretations of weeks of employment and wages and provided instructions for implementing them in accordance with the court Order. The revised departmental interpretations and instructions are contained in UIPL No. 6-88, which is published below.

Dated: December 18, 1987.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Classification: UI/TRA.

Correspondence Symbol: TEUMI.

Date: November 17, 1987.

Directive: Unemployment Insurance Program Letter No. 6-88.

To: All State Employment Security Agencies.

From: Donald J. Kulick, Administrator, for Regional Management.

Subject: Revised Definition of Employment for Trade Readjustment Allowances (TRA) Qualifying Purposes Applicable to Claims for Weeks of Unemployment Beginning Before October 1, 1981.

1. *Purpose.* To advise State Employment Security Agencies (SESAs) of the revised interpretation of section 231 of the Trade Act of 1974 as required by order of the United States District Court for the District of Columbia concerning eligibility for TRA for weeks beginning prior to October 1, 1981.

2. *References.* Section 231(2) of the Trade Act of 1974 as in effect before the 1981 amendments; United States District Court for the District of Columbia, Civil Action No. 81-1954, Order dated June 30 1987 United States Court of Appeals for the District of Columbia Circuit, No 83-2026 decision dated April 24, 1987 United States Court for the District of Columbia Civil Action 81-1954 decision dated July 28, 1983 (568 F supp 1047); and ET Handbook 315, Part C, Page C-I-4.

3. *Background.* On July 28, 1983, the United States Court for the District of Columbia ruled in a suit against the Department of Labor, brought by the International union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), that the phrase "weeks of employment" in section 231(2) of the Trade Act, given its ordinary meaning, includes weeks in which a worker received a payment of workers' compensation, disability pay, sickness or accident pay, holiday pay, back pay or fringe benefits of at least $30.

Subsequently, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court decision on the grounds that the UAW did not have standing to file a class action on behalf of the TRA claimants involved. Further appeal to the United States Supreme Court was made and that body ruled that the UAW did have standing to file a class action on behalf of the TRA claimants involved and the case was remanded back to the U.S. Court of Appeals for the District of Columbia Circuit to rule on the merits of the case.

On April 24, 1987, the Court of Appeals for the District of Columbia Circuit affirmed the decision by the District Court concerning the meaning of "weeks of employment" in section 231(2) of the Trade Act, and the case was remanded to the District Court with instructions that:

> [T]he District Court should direct the Secretary to promulgate a new definition that comports with congressional intent as found in the foregoing opinion, and then advise the state agencies of the correct interpretation of the statute. The trial court should also direct the Secretary to order agency officials to take appropriate action to enforce this correct interpretation of the statute in pending and future cases, and, consistent with state law, to correct any erroneous eligibility determinations that may have occurred as a result of his incorrect interpretation.

On June 30, 1987, the District Court issued an Order with the following directions:

> In accordance with the Court of Appeals' opinion, the Court hereby directs the Secretary to promulgate a new definition of section 231 of the Trade Act that comports with congressional intent as set forth in the opinion and to advise the state agencies of the correct interpretation of the statute. The Secretary is also directed to order agency officials to take appropriate action to enforce this correct interpretation of the statute in pending and future cases, and, consistent with state law, to correct any erroneous eligibility determinations that may have occurred as a result of his incorrect interpretation.

This program letter sets forth the instructions which SESAs shall follow in carrying out the District Court's Order. These instructions are issued solely for this purpose, and shall not under any circumstances, be construed to apply, or be applied, with respect to entitlement to TRA for any week which begins after September 30, 1981.

4. *Definitions of "Employment" and "Wages".* Solely for the purposes of section 231(2) of the Trade Act of 1974, prior to the amendment of such provision by section 2503 of Pub. L. 97-35, and with respect to weeks of unemployment for TRA purposes which began before October 1, 1981, the terms "employment" and "wages" in section 231(2) are defined as follows:

1. The term "employment" means any service performed for an employer by an individual for wages or by an officer of a corporation and also includes all periods for which the employment relationship continues and for which the individual receives a payment of workers' compensation, disability pay, sickness or accident pay, holiday pay, back pay or fringe benefits as a result of services performed for such employer.

2. The term "wages" means all compensation for employment from an employer including commissions, bonuses, the cash value of all compensation in a medium other than cash, workers' compensation, disability pay, sickness or accident pay, holiday pay, back pay, and fringe benefits.

To be a qualifying week for purposes of section 231(2), the week must be a week of "employment" as defined above for which the gross "wages" as defined above equal or exceed the sum of $30.

These definitions of "employment" and "wages" are applicable solely to TRA claims for weeks of unemployment beginning on or after April 3, 1975 and through September 30, 1981.

5. *Implementation.* For purposes of implementing the instructions in this program letter, the procedures under the State law for making determinations and redeterminations and appeal and review, shall be the same procedures as apply to claims for unemployment compensation under the State law, as required by 20 CFR 617.51 and 617.52 and other provisions of the regulations.

a. *Pending Claims.* SESAs should make determinations on any pending claims for the period at issue (April 3, 1975 through September 30, 1981) according to the definitions of "employment" and "wages" in this program letter. Any cases pending in State court, or before a referee or appeal board, shall be disposed of in a manner consistent with this program letter and applicable State procedures.

b. *Denied Claims.* SESAs are to redetermine previously denied claims for which appeals filing periods have ended only to the extent that the applicable State law would permit redeterminations for regular UI claims having the same elapsed time periods as the TRA claims. A survey made of SESAs indicated that a majority of States could not make redeterminations for the pre-October 1, 1981 period. However, those States whose laws would permit it must do so. The provisions of State law should be the sole criterion in determining whether SESAs have

the authority to make the redeterminations. See 20 CFR 617.51(c).

SESAs which have the authority to make redeterminations in accordance with State law shall search their records for TRA claims denied because of insufficient weeks of employment, and where weeks of unemployment may have occurred in the period from April 3, 1975 through September 30, 1981. If it is possible that the claimants would have 26 weeks of employment as defined in this program letter, they shall be invited to file claims if their current address can be determined. News releases may also be used to help identify eligible claimants.

To the extent redeterminations are authorized by State law, SESAs shall make every effort to locate supporting records from their files, employer, or other contracts, as provided in 29 CFR 91.8. Verification shall be pursued as provided in paragraph (d) of 29 CFR 91.8. Unemployment and availability for work must also be documented for each week claimed.

To the extent State laws do not allow the redetermination of claims, SESAs should not solicit claims. Neither should claims be solicited beyond the limit set forth in each State's statutory redetermination authority. If any unallowable claims are received, they would have to be denied in accordance with the provisions of the State law; appealable determinations must be issued in accordance with 20 CFR 617.51 and 617.52.

The redeterminations shall be made applying the substantive law and regulations (29 CFR Part 91) as in effect before the 1981 amendments to the Trade Act. For example, any UI payable for the week is deducted from any TRA payable. The TRA weekly amount shall be based on 70 percent of the individual's average weekly wage not to exceed the average weekly manufacturing wage (AWMW) determined by the Bureau of Labor Statistics for the applicable period. Weekly amounts and duration shall be computed in accordance with 29 CFR 91.11 and 91.12. The following table shows the correct AWMW to use:

On or after	And through	TRA will not exceed
Mar. 20, 1981	Sept. 30, 1981	$289
Mar. 20, 1980	Mar. 19, 1981	269
Mar. 22, 1979	Mar. 19, 1980	250
Mar. 24, 1978	Mar. 21, 1979	227
Mar. 17, 1977	Mar. 23, 1978	208
Mar. 20, 1976	Mar. 16, 1977	190
Apr. 3, 1975	Mar. 19, 1976	176

6. *Funding.* For reimbursement for the administrative costs of these special redeterminations, an MPU of 130 will be allowed for all subject SESAs. The MPU for continued claims and appeals that result from the redeterminations will be the same as is currently allowed for TRA continued claims and appeals. A separate UI-3 will be submitted to the appropriate Regional Office. Only section II of the form will be completed, and all administrative costs will be reflected on part I of the regular UI-3. TRA benefit costs will be paid from "M" account FUBA funds and must be requested in advance Attention: TSCA, and written approval received before any funds are obligated.

7. *Reports.* The claims taken and paid should be reported on the Form ETA 563, Monthly Determinations, Allowance Activities and Reemployment Services under the Trade Act. It is important that the correct petition number be shown on the form 563 so that these claims and payments can be identified as those occurring because of the court order.

8. *Action Required.* SESA administrators should communicate the content of this UIPL to appropriate staff, and implementation should be initiated and concluded as quickly as possible.

9. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 87-29943 Filed 12-30-87; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, January 21, 1988, in Room S-4215C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

I. Introduction and Swearing-In of New Council Members.

II. Assistant Secretary's Report on:

A. Pension Reform

B. Status of Advisory Council recommendations on ESOP/LBO's

C. Status of Advisory Council recommendations on Individual Benefit Reporting & Recordkeeping

D. PWBA Priorities for 1988

E. Naming of Council Chairperson and Vice Chairperson

F. Miscellaneous Issues

III. Report of existing Advisory Council Working Groups (as appropriate).

IV. Determination of Council Working Groups for 1988.

V. Statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before January 15, 1988 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Signed at Washington, DC this 28th day of December, 1987.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 87-29942 Filed 12-30-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Jim Houser, (202) 395-7316.

Title: Survey of Science and Engineering Faculty and Staff.

Affected Public: Non-profit institutions.

Number of Responses: 23,850 responses; total of 6,670 hours

Abstract: This survey provides the only national statistics on numbers and characteristics of faculty and research staff by science/engineering field at academic institutions. Data will used by the National Science Foundation, other Federal agencies, professional societies and institutions to monitor S/E faculty, vacancies, and undergraduate instruction.

Dated: December 28, 1987.

Herman G. Fleming,

NSF Reports Officer.

[FR Doc. 87-29953 Filed 12-30-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-409]

Dairyland Power Coop., (LaCrosse Boiling Water Reactor); Exemption

I

Dairyland Power Cooperative (the licensee) is the holder of a Provisional License No. DPR-45 which authorizes

the possession but not the operation of the LaCrosse Boiling Water Reactor (LACBWR). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a permanently shut down boiling water reactor and stored spent fuel located at the licensee's site in Vernon County, Wisconsin.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.2 of Appendix E requires that each licensee at each site annually exercise its emergency plan. Section 50.47(b)(7) of 10 CFR requires that information be made available to the public on a periodic basis.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a) are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(ii) describes the special circumstances such that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

LACBWR was permanently shut down on April 30, 1987 and reactor defueling was completed on June 11, 1987. The licensee applied for a license amendment change to a possess-but-not-operate status on May 22, 1987. The amendment was issued on August 4, 1987. Among other things, the NRC found that (1) the licensee's facility will be maintained in conformance with the application, (2) there is reasonable assurance: (i) That the activities authorized by the amendment can be conducted without endangering the health and safety of the public, and (ii) such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Subsequently, on September 1, 1987, the licensee submitted a request for exemption from the requirement for an annual emergency preparedness exercise and from the preparation and distribution of a public information brochure. The licensee clarified the request in a October 1, 1987 letter by stating that the intent was to request an exercise exemption for the 1987 exercise only. The licensee plans to conduct an emergency preparedness exercise within 180 days after the date of the Commissions approval of the revised emergency plan, submitted on September 29, 1987. The revised emergency plan reflects the changed status of the plant, and the next exercise would follow the training of the LACBWR staff in the new emergency preparedness assignments.

The request for an exemption from the requirement to produce the distribute an annual information brochure was qualified by the licensee's intent to distribute a final letter to the residents of the current emergency planning zone. This final letter would inform the public of the current status of LACBWR and state that there is no further need for public protective actions. The licensee would sent this letter within 90 days of the Commissions approval of the revised emergency plan.

The bases for both these requests were the permanent shut down and defueled status of LACBWR and the licensee's analysis of the reduced consequences of a "worst-case" spend fuel accident. The licensee calculated that a "worst-case" scenario would result in a maximum whole body dose of less than 50 mRem at the Exclusion Area Boundary.

IV

Based on a review of the licensee's exemption request, the NRC staff finds that the following factors support the granting of the requested exemption.

1. LACBWR is permanently shut down and defueled. The spent fuel is located in the spent fuel pool which is, in turn, in the reactor containment. The license for LACBWR has been amended to a possess-but-not-operate status.

2. The licensee plans to conduct annual emergency exercises based on a revised emergency plan. The first such exercise would be held within 180 days of the Commissions approval of the revised emergency plan, submitted September 30, 1987.

3. The licensee plans to distribute a final letter to the residents of the current plume exposure pathway emergency planning zone informing them that there is no further need for public protective actions. This letter would be sent within 90 days following the Commissions approval of ther revised emergency plan.

Based on the foregoing, and in accordance with 10 CFR 50.12(a)(2)(ii), the staff concludes that the exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2, as discussed above, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Similarily, given the permanent shutdown status of LACBWR, the 10 CFR 50.47(b)(7) requirement to make information available to the public on a periodic basis would not serve the underlying purpose of the rule nor is it necessary to achieve the underlying purpose of the rule after the public is informed of the current status of LACBWR. The staff finds that the exemption from 10 CFR 50.47(b)(7) may be granted with the condition that the licensee make information available to the public in the current plume exposure pathway emergency planning zone, within 90 days of the Commission's approval of the revised emergency plan. The information shall include, but is not limited to (1) the current status of the reactor and fuel, (2) instructions on appropriate actions for the public in the event of an emergency at LACBWR, (3) contacts for further information, and (4) notification that no further periodic information will be required to be furnished.

Accordingly, the Commission hereby grants the following:

(1) Dairyland Power Cooperative is exempt from the requirements of 10 CFR Part 50, Appendix E. Section IV.F.2. for the conduct of an annual exercise for the calendar year 1987 of its emergency plan provided that such an exercise is conducted within 180 days of the Commission's approval of the revised emergency plan for the LaCrosse Boiling Water Reactor that reflects the permanent shutdown status of the reactor.

(2) Dairyland Power Cooperative is exempt from the requirements of 10 CFR 50.47(b)(7) for periodically making information available to the public provided that within 90 days of the Commission's approval of the revised emergency plan for LaCrosse Boiling Water Reactor, the licensee disseminates to the public in the plume exposure pathway emergency planning zone, information including:

(a) The current status of the reactor and fuel,

(b) Instructions on appropriate actions for the public in the event of an emergency at LACBWR,

(c) Contacts for further information,

(d) Notification that no further periodic information will be required to be furnished.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 47982). This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 23rd day of December, 1987.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Division of Reactor Projects III/IV/V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-30038 Filed 12-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power and Light Co. et al., (Crystal River Unit 3); Exemption

I

Florida Power Corporation, et al. (FPC, the licensee) are the holders of Facility Operating License No. DPR-72, which authorizes operation of Crystal River Unit 3 (CR3, the facility) at steady-state power levels not in excess of 2544 megawatts thermal. The license provides, among other things, that the facility is subject to all the rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor (PWR) located at the licensee's site in Citrus County, Florida.

II

General Design Criterion-17 (GDC-17) requires that the onsite power supply (diesel generators) for nuclear plants be of sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences, and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents. NRC Safety Guide 9 (and subsequently Regulatory Guide 1.9) describes a basis for selection of a diesel generator of sufficient capacity to implement GDC-17. It indicates that predicted diesel generator loads should not exceed the lower of the 2000 hour rating or 90 percent of the 30 minute rating.

III

An inspection recently performed by the staff identified discrepancies between the surveillance requirements of the Technical Specifications (TS) and the manufacturer's recommendations related to the diesel generator ratings. In reviewing this situation and verifying loads, the licensee identified an error in the load calculations. Diesel generator loads were recalculated using conservative best estimates based on actual equipment configuration for each accident scenario and, after deleting certain unnecessary loads, it was determined that for all accident scenarios except two, maximum diesel generator loads for one of the two emergency diesel generators, generator "A", would be within the 2000 hour rating. The two scenarios, involving large and intermediate size loss-of-coolant accidents (LOCAs), loss of offsite power, and failure of either diesel generator "B" or emergency feedwater pump "B", result in calculated auto-connected loads of approximately 3228 KW. Although this is in excess of the 2000 hour rating, it is within the 30 minute rating of the diesel generator. Certain auto-connected loads not needed for these scenarios can and will be manually tripped prior to 30 minutes. Dropping these loads will reduce the load demand on generator "A" to a level within the 2000 hour rating.

The auto-connected loads in the original plant design were below the 2000 hour rating of the diesel generators. However, loads have been added to the diesel generators, the largest of which is the electric emergency feedwater pump motor, added after the TMI-2 accident. This additional load has resulted in generator "A" being loaded in the 30 minute rating.

By letter dated December 14, 1987, the licensee requested a temporary exemption from the requirements of GDC-17, in accordance with 10 CFR 50.12(a), until the next scheduled refueling outage. In that letter, the licensee referenced its letter dated November 16, 1987 and the information transmitted therewith. The licensee's letter of December 16, 1987 further describes testing to be performed which will support this request for exemption. The licensee's letter of November 20, 1987 describes alternatives the licensee is examining to bring the facility in compliance with GDC-17, and commits to submit to the Commission by March 30, 1988 its proposed actions.

This case involves special circumstances as set forth in 10 CFR 50.12(a)(2)(v). The exemption will provide only temporary relief until the end of the next refueling outage, by which time the licensee is to be in full compliance with GDC-17, and the licensee has made a good faith effort to comply with GDC-17. Promptly upon identifying the problem of diesel generator capacity, the licensee undertook a number of analyses and design modifications in order to reduce auto-connected loads on the diesels to levels acceptable for long-term operation. Although the licensee has been able to reduce load estimates to within the 2000 hour rating of generator "B" and to within the 30 minute rating of generator "A", it has not been able to reduce auto-connected loads to within the 2000 hour rating of generator "A". Specifically, the licensee:

—Removed loads not required for safety from the diesel while retaining required loads,

—Employed adequately conservative scenario-based load analyses,

—Provided additional guidance, procedures, and training to the plant operators to permit timely and effective load management, and

—Designed automatic load control features which would have prevented exceedance of the 2000 hour rating but which were determined by the staff to be undesirable for other reasons.

Compensatory measures and features proposed and committed to by the licensee to be completed before exceeding 5% power and to be in effect during the temporary exemption period include the following:

(1) Control room alarms have been provided which will alert the operators initially when the diesels are operating in the 30 minute rating and again when 5, 24, and 29 minutes of that period have expired.

(2) Operators are well-trained in the facility's symptom-based emergency operating procedures and will receive additional training and guidance to better equip them to manage diesel generator loads by tripping those which are not required for any particular scenario in order to bring the loads within the 2000 hour rating in a timely manner. The licensee has stated that when load management is necessary, a dedicated operator will be available to accomplish that function.

(3) Individual loads will be tested to verify the calculated values and the diesel generators will be tested to demonstrate their ability to handle the expected accident loads.

On the following basis, the staff concludes that operation of the facility with the diesels functioning in the manner described above, including the additional compensatory measures discussed, provides a level of safety for the period of the exemption equivalent to that provided by compliance with GDC-17.

(1) The exemption is only temporary in nature, lasting about 24 months until the next refueling outage.

(2) The auto-connected load demand exceeds the 2000 hour rating of diesel generator "A" only for two very unlikely scenarios.

(3) The potential loss of offsite power occurring simultaneously with such unlikely scenarios is remote.

(4) The low probability of simultaneous loss of diesel generator "B" or emergency feedwater pump "B" reduces risk even further.

(5) The compensating measures described above include measures to assure that loads not needed to cope with the accidents imposing the greatest demand can and will be dropped while generator "A" is still within its 30 minute rating.

The licensee has supplied reliability assessments which indicate that the probability of simultaneous occurrence of all the failures necessary to produce the highest load on diesel generator "A" is between 10^{-7} and 10^{-8}. This further supports the staff's conclusion that an adequate level of safety exists for the duration of the exemption.

IV

Based on the above and on our review of the licensee's submittals, the staff concludes that: (1) The licensee's load calculations are acceptable, provided they are confirmed by valid tests, (2) loads not needed to mitigate any particular design basis accident scenario can be tripped within 30 minutes to bring the load on the "A" diesel generator to within the 2000 hour rating, and (3) the diesel generators will remain operable so that accident consequences previously analyzed will not be affected by this exemption. The NRC staff therefore finds the proposed temporary exemption from the requirements of GDC-17 of Appendix A to 10 CFR Part 50 to be acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying he exemption, namely that the exemption would provide only temporary relief from the applicable regulation and that FPC has made a good faith effort to comply with the regulations.

Therefore, the Commission hereby approves the following exemption from the requirements of GDC-17: The facility may operate with predicted loads for diesel generator "A" within the 30 minute rating of the diesel generator for not more than 30 minutes, provided that (1) the principal estimate loads are confirmed by test as described in the licensee's letters dated November 16, 1987, December 14, 1987 and December 16, 1987, and (2) operators are trained, and alarms and procedures are provided as described in the licensee's letters dated November 16 and December 14, 1987, and, when required, a dedicated operator will be available for load management. This exemption shall expire at the end of the next refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant effect on the environment (52 FR 48351, December 21, 1987).

For further details with respect to this action, see the licensee's request dated November 14, 1987, as supplemented November 20, December 14 and December 16, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 23rd day of December, 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 87-30039 Filed 12-30-87; 8:45 am]

BILLING CODE 7590-01-M

BWR MARK I Improvements; Workshop

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of workshop on MARK I Reactor Containments.

SUMMARY: The U.S. Nuclear Regulatory Commission staff will hold a workshop to discuss the boiling water reactor MARK I containment with emphasis on understanding severe accident challenges and potential ways to improve the performance of the MARK I in response to severe accident challenges. Specific plant improvements, and the benefits and drawbacks are to be discussed. In the course of examining the potential plant improvements for the MARK I containment, it is expected that an in-depth discussion of the phenomenology concerning the containment challenge and response to a spectrum of severe accidents will result. These discussions of phenomenology and improvements are intended to focus on differing views on improvement issues and to assist the staff in their resolution. Following the meeting, the NRC staff intends to evaluate the issues and make recommendations to the Commission to effect closure of MARK I severe accident containment performance issues. The staff intends to specifically invite some individuals from industry and the research communities to provide their views in the form of written analyses and verbal summaries of the issues. In addition, other individuals interested in participating should contact Jerry Hulman (tel. 301-492-3976) or John Lane (tel. 301-492-3985) before January 15, 1988 to receive an invitation and a preliminary statement of issues. Participation would expected to be primarily in the form of written assessments of issues.

DATES AND TIMES: Wednesday, Thursday, and Friday, February 24, 25 and 26, 1988; 8:30 am to 5:00 pm first two days, 8:30 am to noon last day.

ADDRESS: The location of the workshop will be determined by January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Jerry Hulman, Chief, Severe Accident Issues Branch, Office of Nuclear Regulatory Research, Washington, DC 20555 (301-492-3975).

SUPPLEMENTARY INFORMATION: Members of the public may submit written assessments of the issues. Verbal comments by members of the public may be permitted at the workshop as time permits. Prospective attendees should notify Jerry Hulman or John Lane by February 1, 1988 of their intention to attend to facilitate planning. An information package for the workshop containing a preliminary statement of the issues and related questions will be sent with copies of the invitation. A written record of the meeting will be placed in the NRC Public Document Room.

Dated at Rockville, Maryland, this 15th day of December, 1987.

For the U.S. Nuclear Regulatory Commission.

Jerry Hulman,

Acting Director, Division of Reactor Accident Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 87-30034 Filed 12-30-87; 8:45 am]

BILLING CODE 7590-01-M

The Battelle Memorial Institute, Columbus Division (The Battelle Research Reactor); Order Terminating Facility Operating License

[Docket No. 50-6]

By application to Materials License SNM-7 dated March 6, 1987, and by the resulting Amendment No. 2 to Materials License SNM-7 dated June 2, 1987, The Battelle Memorial Institute, Columbus Division (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to terminate Facility Operating License No. R-4. A notice of "Proposed Issuance of Order Terminating Facility License", was published in the **Federal Register** on August 21, 1987 (52 FR 31683). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Reactor operations were terminated in December 1974 and all fuel has been removed from the core and shipped to a DOE facility. The reactor facility has been dismantled in accordance with the Commission approved "Dismantling Plan for the Battelle Research Reactor" and the residual activation and fission products that remained were transferred to Materials License SNM-7 on June 2, 1987. Therefore, pursuant to the application filed by Battelle Memorial Institute, Columbus Division, located in West Jefferson, Madison County, Ohio, Facility Operating License No. R-4 is terminated as of the date of this Order.

For further details with respect to this action, see (1) the application for amendment to Materials License SNM-7, dated March 6, 1987, (2) Amendment No. 2 to Materials License SNM-7 dated June 2, 1987, (3) the Commission's Safety Evaluation related to the termination of the license, (4) the notice of "Proposed Issuance of Order Terminating Facility License" published in the **Federal Register** on August 21, 1987 (52 FR 31683). Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of items (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland this 22nd day of December 1987.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-30035 Filed 12-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-254]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-29 issued to Commonwealth Edison Company, (the licensee), for operation of Quad Cities, Unit 1, located in Rock Island County, Illinois.

Pursuant to 10 CFR 50.90, Commonwealth Edison Company (CECo, the licensee) has proposed an amendment of Facility Operating License DPR-29 which would revise Technical Specifications (TS) in order to accommodate for continued operation of Quad Cities Nuclear Power Station (QCNPS), Unit 1, with a failed jet pump flow instrument line.

Proposed TS 3.6.G. Limiting Conditions of Operation (LCO) would change the total number of jet pump flow indications from "20" to "19" for: (1) Verification of recirculation flow prior to reactor startup from cold conditions, (2) input to the indicated core flow, and (3) applicable technical bases.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and-or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and exent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commissions Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Wester Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator

should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to Michael Miller of Isham, Lincoln, and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602, attorney for the licensee.

Nontimely Filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to the action see the application for amendment dated November 16, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC; and at the Dixon Public Library, 221 Hennepin Ave., Dixon, Illionois 61021.

Dated at Bethesda, Maryland this 23rd day of December 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87-30036 Filed 12-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No.: STN 50-454, et al.]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66 issued to Commonwealth Edison Company (the licensee), for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois, and Facility Operating License Nos. NPF-72 and NPF-75, issued to the licensee, for operation of Braidwood Station, Units 1 and 2, located in Will County, Illinois.

These amendments modify Figure 3.2-2 in the Technical Specifications which depicts the normalized heat flux hot channel factor as a function of core height in accordance with the licensee's application for amendment dated December 4, 1987. This figure is being modified to include more operating margin that resulted from removing some conservatism when the small break loss of coolant accident analysis was repeated for the hot leg temperature reduction program.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esq., Isham, Lincoln, and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a

balancing of the factor specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 4, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; and the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Dated at Bethesda, Maryland this 23rd day of December 1987.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87-30037 Filed 12-30-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council; Renewal

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the Renewal of the White House Science Council is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, Office of Science and Technology Policy, by the Presidential Science and Technology Advisory Organization Act of 1976 and other applicable law. This determination follows consultation with the General Services Administration, pursuant to section 9(a)(2) of the Federal Advisory Committee Act and the GSA Interim Rule on Federal Advisory Committee Management (48FR 19324, April 28, 1983).

1. *Name of Group:* White House Science Council

2. *Purpose:* The purpose of the White House Science Council is to advise the Director, Office of Science and Technology Policy (OSTP), on science and technology issues of national concern. The Council shall concern itself with specific issues assigned by the Director, OSTP, and will keep him informed of changing perspectives in the science and technology communities.

3. *Effective Date of Establishment and Duration:* The renewal of the White House Science Council is effective upon filing of the charter with the Director, OSTP, and with the standing committees of Congress having legislative jurisdiction over the Office of Science and Technology Policy. The White House Science Council will terminate on December 31, 1989, unless sooner extended.

4. *Membership:* Members of the White House Science Council will be appointed by the Director, Office of Science and Technology Policy. That appointment shall be subject to review every 365 days unless earlier terminated. The Council shall consist of no more than 20 members. Additional technical experts will be utilized as needed to constitute panels and study groups.

5. *Advisory Group Operation:* The White House Science Council will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), GSA Interim Rule on Federal Advisory Committee Management (48FR 19324), and other directives and instructions issued in implementation of the Act.

Jonathan F. Thompson,

Executive Director.

Office of Science and Technology Policy

Charter: White House Science Council

1. *Committee's Official Designation:* White House Science Council (WHSC)

2. *Objectives and scope of Activities and Duties:*

- The purpose of the WHSC is to advise the Director, Office of Science and Technology Policy (OSTP), on science and technology issues of national concern.
- In furtherance of this mission the WHSC shall concern itself with specific issues assigned by the Director, OSTP, and will keep him informed of changing perspectives in the science and technology communities.

3. *Duration:* The Council will terminate on December 31, 1989, unless sooner extended.

4. *Official to Whom the Council Reports:* The WHSC will report to the Director, OSTP.

5. *Agency Responsible for Providing Necessary Support for this Council:* Office of Science and Technology Policy.

6. *Description of Duties:* The duties of the Council are solely advisory and are stated in paragraph 2 above.

7. *Costs:* The estimated annual operating cost of the Council is $50,000.

8. *Estimated Number and Frequency of Meetings:* The White House Science Council shall normally meet six times each year at regular intervals, and at such other times as may be called by the Director, OSTP. In addition, 10-15 meeting each year by subgroups are anticipated.

9. *Subgroups:* Subgroups may be formed to conduct studies on specific issues assigned by the Director, OSTP.

10. *Members:* WHSC members shall be appointed by the Director, OSTP. That appointment shall be subject to review every 365 days unless terminated earlier. The WHSC shall consist of no more than 20 members. *The Director, OSTP shall appoint a Chairman and Vice Chairman from the members of the Council.*

The Council shall utilize additional technical experts as needed to constitute its panels and study groups. *These technical experts shall be appointed by the Director, OSTP, and shall be for the duration of the panel upon which the Associate Member serves or 365 days, whichever is sooner, unless teminated earlier by the Director.*

This Charter for the Advisory Committee named above is hereby approved on:

Date: December 16, 1987.

Jonathan F. Thompson,

Committee Management Officer.

Date filed: December 21, 1987.

[FR Doc. 87-30158 Filed 12-30-87; 8:45 am]

BILLING CODE 3170-01-M

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records, Deletions, Revisions

AGENCY: Panama Canal Commission.

ACTION: Annual notice.

SUMMARY: The Panama Canal Commission is required by the Privacy Act of 1974, 5 U.S.C. 552(a)(e)(4), to give annual notice in the **Federal Register** of the existence and character of the systems of records it maintains. Included in this annual publication are the nine new systems of records that were published in the **Federal Register** (52 FR 28498): PCC/AE-1, Executive Personnel Financial Disclosure Reports; PCC/AMTE-2, Equity Adjustment Records; PCC/FMAC-10, Estate Files; PCC/FMAP-2, Payroll Deduction System for Court Ordered Wage Garnishments; PCC/FMCL-1, Travel and Transportation Claims; PCC/GCCL-1, Marine Accident/Miscellaneous General Claims; PCC/MRNP-1, Employee Training Development Records; PCC/PRAA-1, Adverse Actions Files; and PCC/PRCL-1, Injury Claims (FECA) Files. This document fulfills the Privacy Act annual notice requirement for 1987.

EFFECTIVE DATE: December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC. 20036-4996 (Telephone: 202-634-6441).

SUPPLEMENTARY INFORMATION: The Panama Canal Commission maintains active and inactive Privacy Act System of Records. This agency defines active systems as those systems which the Commission continues to collect and which maintain personal information on individuals. Inactive systems are defined as those systems for which the Panama Canal Commission no longer has a requirement to collect or update personal information. This agency last

published a complete description of its Privacy Act Systems of Records, both active and inactive, in the **Federal Register** on January 7, 1983.

In accordance with the provisions of the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat, 452 and the Panama Canal Treaty of 1977, the Canal Zone Government was disestablished and the Panama Canal Company was replaced by the Panama Canal Commission on October 1, 1979. The disestablishment of the Panama Canal Government, along with the gradual phase out of several law enforcement and court related functions between October 1, 1979 and March 31, 1982 obviated the need to continue to operate several Privacy Act Systems of Records. Recognizing, however, that individuals may continue to have a need to request copies of records in these systems, the PCC has continued to report them as "inactive systems" in the **Federal Register.**

The revisions of the Panama Canal Commission's systems of records are generally editorial in nature and do not affect the character of information contained in any systems described, nor do they expand the population of individuals to whom the systems apply or change any individual rights.

The changes in the systems of records maintained by the Panama Canal Commission appear below preceded by the modified prefatory statement of the general routine uses applicable to all systems, which was published in the **Federal Register** (52 FR 28498) and is reprinted for the benefit of the reader.

Thomas E. Pierce,

Acting Agency Records Officer.

1. The Prefatory Statement of General Routine Uses (35 CFR Part 10, Appendix A)

Information about an individual which is maintained in any system of records under the control of the Panama Canal Commission is subject to disclosure, as a routine use of such information, to any of the following persons or agencies under the circumstances described:

1. Information indicating a violation or potential violation of law (whether civil, criminal, or regulatory in nature, and whether involving a statute or regulation or a rule, or order issued pursuant thereto) may be referred to an appropriate Federal, state, local or foreign agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

2. Information which has a bearing on matters which may be in dispute may be disclosed in the course of presenting evidence or argument to a court or administrative tribunal, a judicial official, or counsel for a party in connection with litigation or administrative proceedings in which the agency, or its officers or employees, are or may become involved.

3. Information may be provided to persons or agencies from whom information is solicited, to the extent necessary to elicit facts which may be relevant to a financial audit or an agency decision to hire or retain an employee, issue a security clearance, award a contract, grant a license, or other benefits.

4. Information may be disclosed to a federal agency, in response to its request in a particular case or in a category of cases, in connection with that agency's (a) decision in a personnel matter; (b) financial audits and accounting; (c) issuance of a security clearance; (d) investigation of an individual employed or formerly employed by the Panama Canal Commission (or its predecessors); or (e) decision to award a contract, grant a license, or other benefit.

5. Information may be supplied in response to an inquiry from a Member of Congress on behalf of an individual or, at any stage of the legislative coordination and clearance process, to the Office of Management and Budget in connection with the review of private relief legislation.

6. Information contained in licenses or certifications issued by the agency (including the former Panama Canal Company/Canal Zone Government) to professional employees (such as architects, canal pilots, attorneys, engineers, medical practitioners and teachers) of the agency may be released to professional licensing, certification or other regulatory boards or commissions. Disclosure pursuant to this routine use shall be limited to the names and types of license or certifications, dates of issuance, and dates of expiration, if appropriate.

7. To the extent necessary for implementation of the Panama Canal Treaty of 1977 and related agreements, information may, upon approval by the Agency Records Officer (Chief, Administrative Services Division) or that official's designee, be disclosed to officials of the Government of the Republic of Panama and to U.S. Government agencies which, under the Treaty, assumed functions formerly performed by the Panama Canal Company or the Canal Zone Government.

2. Due to the continuing reorganization of the Panama Canal Commission, five active systems of records and two inactive systems of records have been relocated, thus changing the alphanumerical designation as listed below:

PCC/AMSA–1 to PCC/AMTE–1
PCC/AMSE–3 to PCC/AMRM–8
PCC/FMAX–1 to PCC/FMAC–1
PCC/FMAC–4 to PCC/FMAP/AC–4
PCC/FMGA–1 to PCC/GA–1
PCC/GSPL–13 to PCC/PR–14
PCC/MRNV–2 to PCC/MRCP–1

3. The following active and inactive systems, identified by their alphanumerical designation and system name, have been discontinued and are hereby removed.

Systems Removed:

PCC/AEPR–3 Probation and Parole Unit Statistical File.
PCC/AMRM–2 Advance Authorizations to Enter the Canal Zone.
PCC/AMRM–5 Directory of Forwarding Addresses.
PCC/AMRM–6 Postal Claims and Inquiries.
PCC/CALS–10 Runners, Peddlers, and Solicitors-Application and License Files.
PCC/CALS–2 Hunting Permit Application File.
PCC/CALS–3 Fishing Pass Application File.
PCC/CAPS–5 Philatelic Program.
PCC/FMAC–3 Trust Fund Records.
PCC/FMAK–1 Claims Files.
PCC/GSCE–1 Emergency Preparedness Records (Civil Defense/Emergency Management).
PCC/MRNV–1 Marine Accident Reference Cards.
PCC/OPR–2 Operating Unit Employment Inquiry Files.
PCC/PR–11 Racial, National Origin Code Records.
PCC/PR–3 Personnel Data Records.

4. The following is the revised listing of active Panama Canal Commission Privacy Act Systems of Records.

PCC/AE–1 Executive Personnel Financial Disclosure Reports.
PCC/WO/AE–2 Panama Canal Commission Board of Directors Biographical and Correspondence Files.
PCC/ADSA–1 Biographical Data.
PCC/AMRM–1 General Files of the Panama Canal Commission.
PCC/AMSA–3 Land Utilization Records.
PCC/AMTE–1 ID Card and Documentation Control System.
PCC/AMTE–2 Equity Adjustment Records.

PCC/AMTR-1 Employees and Dependents Travel Orders.
PCC/ECIN-1 Plumbing and Welding License Files.
PCC/ECLE-1 Telephone Exchange Directory.
PCC/EO-1 Racial/National Origin Category Data.
PCC/EO-2 Equal Employment Opportunity Complaint File.
PCC/FMAC-1 Embezzlements, Burglaries, and Cash Shortages.
PCC/FMAC-2 Accounts Receivable Records.
PCC/FMAC-5 Delegation of Authority for Procurement.
PCC/FMAC-6 Cash Collection Agents and Sugagents.
PCC/FMAC-7 Canal Commission Awards and Service Contracts Control Records.
PCC/FMAC-8 Accounts Payable Disbursement Records.
PCC/FMAC-9 Unnegotiated Checks Over One Year Old.
PCC/FMAC-10 Estate Files.
PCC/FMAP-1 Payroll Master File for Panama Canal Commission Employees.
PCC/FMAP-2 Payroll Deduction System for Court Ordered Wage Garnishments.
PCC/FMAP-3 Injury Compensation Payroll Records.
PCC/FMAP-/AC-4 Payroll Deductions.
PCC/FMCL-1 Travel and Transportation Claims.
PCC/FMTR-1 Termination of Employment Actions Records.
PCC/FMTR-2 Internal Revenue Service Notice of Levy Files.
PCC/FMTR-3 Suspension of Check Cashing Privileges Files.
PCC/GA-1 Cash Audit Files.
PCC/GCCL-1 Marine Accident/ Miscellaneous General Claims.
PCC/GSCL-1 Library Services Branch Registration Record.
PCC/GSCP-2 Canal Protection Division Incident Report Files.
PCC/GSCS-1 Housing Files.
PCC/GSCS-2 Housing Complaints File.
PCC/GSCX-1 Administrative Reports, Transfer of Custody and Official Complaint files.
PCC/IR-1 Quarterly Report of Employee Union Dues Deductions.
PCC/IR-2 Records of grievances, appeals and adverse actions processed under a Negotiated Grievance Procedure (NGP).
PCC/MRBL-1 Marine License Files.
PCC/MRBL-2 Marine Accident Reports and Investigations.
PCC/MRCP-1 Pilot Workload Statistics.
PCC/MRNA-1 Admeasurer Examination File.
PCC/MRNP-1 Employee Training Development Records.
PCC/OM-1 Ombudsman Investigation Files.
PCC/OM-2 Residents' Advisory Committee Files.
PCC/OPR-1 Operating Unit Personnel Records.
PCC/PA-1 News Morgue Records.
PCC/PB-1 Merit System Recruiting, Examining and Placement Records.
PCC/PB-2 Appeals, Grievances, Complaints, and Assistance Records.
PCC/PB-3 Personnel Investigation Records.
PCC/PR-1 Disability Relief, Retirement and Group Supplementary Life Insurance Records.
PCC/PR-2 Employee Benefits Records.
PCC/PR-4 Personnel Management System.
PCC/PR-5 Recruiting and Placement Records.
PCC/PR-6 Training and Employee Development Records.
PCC/PR-7 Personnel Reference Unit Files.
PCC/PR-8 Systems of records notice by the Office of Personnel Management and applicable to the Panama Canal Commission.
PCC/PR-9 Incentive Awards Programs Files.
PCC/PR-10 Occupational Health Records.
PCC/PR-12 Industrial Accident Prevention Supervisor/Unit Awards File.
PCC/PR-13 20/30/40 Safety Key Awards Files.
PCC/PR-14 Arrest Record Files.
PCC/PRAA-1 Adverse Action Files.
PCC/PRCL-1 Injury Claims (FECA) Files.

5. The following active systems are modified as follows:

PCC/WO/AE-2

SYSTEM NAME:

Panama Canal Commission Board of Directors Biographical and Correspondence Files, PCC/WO/AE-2.

SYSTEM LOCATION:

Office of Executive Administration, Administration Bldg., Balboa Heights, Republic of Panama and Office of the Secretary, 2000 L Street NW., Suite 550, Washington, DC 20036-4996.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain names, addresses, newspaper clippings, general biographical information, minutes of Board meetings, and official correspondence between Commission officials and Board members.

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SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011-5000; Assistant to the Secretary, Panama Canal Commission, 2000 L. Street NW., Suite 550, Washington, DC 20036-4996.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Managers or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/ADSA-1

SYSTEM NAME:

Biographical Data, PCC/ADSA-1.

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SYSTEM MANAGER(S) AND ADDRESSES:

Office of the Staff Assistant, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/AMRM-1

SYSTEM NAME:

General Files of the Panama Canal Commission, PCC/AMRM-1.

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RETENTION AND DISPOSAL:

Records transferred to Agency Records Center after eight years and retained permanently. General files prior to June 30, 1960 have been accessioned by the National Archives of the United States. General files for July 1, 1960-September 30, 1976 have been accessioned by the Federal Records Center in Duluth, Ga.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/AMSA-3

SYSTEM NAME:

Land Utilization Records, PCC/AMSA-3.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Administrative Services Division, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Rules are published in 35 CFR Part 10.

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PCC/AMTE-1

SYSTEM NAME:

ID Card and Documentation Control System PCC/AMTE-1.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Records in connection with applications for Photo-Identification and/or purchase authority cards; subsystem in connection with applications for U.S. Government Vehicle Operator's identification and Material Handling card; subsystem in connection with application of exoneration of customs duty to import goods into the Republic of Panama; and subsystem in connection with administrative investigations on persons reported to be, or suspected of involvement in activities which are violations of treaty provisions governing identification documents and importation, purchase, use, transfer of goods or services, including but not limited to transfer of duty free goods and services into the Republic of Panama without proper Panama customs clearances; shoplifting in military retail facilities, and abuse of mailing privileges. Records include applicant's name, identity number, social security number, home address, postal address, birthdate, citizenship, employment status and/or employing unit, position title, marital status, purchase authority status, medical privilege status, work and home telephone number, name, date of birth, relationship, physical impairments and citizenship of dependents of applicant, and history of identification cards issued.

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SYSTEM MANAGER(S) AND ADDRESSES:

Supervisor, Employee and Cargo Documentation Section, Transportation Services Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/AMTR-1

SYSTEM NAME:

Employees and Dependents Travel Orders, PCC/AMTR-1.

SYSTEM LOCATION:

Transportation Services Branch, Bldg. 5140, Diablo Heights, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Services Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURES:

Information may be obtained from System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/ECIN-1

SYSTEM NAME:

Plumbing and Welding License Files, PCC/ECIN-1.

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SYSTEM MANAGER(S) AND ADDRESS:

For plumbing license file, Director, Engineering and Construction Bureau, Panama Canal Commission, APO Miami 34011-5000. For welding license file, Chief, Industrial Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Managers or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/ECLE-1

SYSTEM NAME:

Telephone Exchange Directory, PCC/ECLE-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Electrical Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC/EO-1

SYSTEM NAME:

Racial/National Origin Category Data, PCC/EO-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Equal Opportunity, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/EO-2

SYSTEM NAME:

Equal Employment Opportunity Complaint File, PCC/EO-2.

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SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Equal Opportunity, Panama Canal Commission, APO Miami 34011-5000.

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PCC/FMAC-1

SYSTEM NAME:

Embezzlements, Burglaries, and Cash Shortages, PCC/FMAC-1.

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RETENTION AND DISPOSAL:

Placed in inactive file when case is closed and cutoff at end of fiscal year. Destroyed ten years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission,

APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAC-2

SYSTEM NAME:

Accounts Receivable Records, PCC/FMAC-2.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAC-5

SYSTEM NAME:

Delegation of Authority for Procurement, PCC/FMAC-5.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAC-6

SYSTEM NAME:

Cash Collection Agents and Subagents, PCC/FMAC-6.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAC-7

SYSTEM NAME:

Canal Commission Awards and Service Contracts Control Records, PCC/FMAC-7.

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RETENTION AND DISPOSAL:

Records of transactions of more than $10,000 and construction contracts exceeding $2,000 are destroyed six years and three months after final payment. Records of transactions of $10,000 or less and construction contracts under $2,000 are destroyed three years after final payment.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAC-8

SYSTEM NAME:

Accounts Payable Disbursement Records, PCC/FMAC-8.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to show payments from accounts of the former Canal agencies and the Commission including such documentation as purchase orders, vendors invoices, payment authorizations, approvals, check follow copies, and accounting classifications, vendor condensed listing, and vendor historical listings. Those two last listings resulted from the accounts payable system being automated and include the names and addresses of all vendors in alphabetical order and the historical record of all payment and other transactions to individual vendors.

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STORAGE:

Paper records in folders and individual forms.

RETRIEVABILITY:

Filed alphabetically by name through September 1984. Since October 1984, when accounts payable system was automated, files are kept in vendor number sequence.

SAFEGUARDS:

Paper records stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed six years and three months after the period of the account.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10

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PCC/FMAC-9

SYSTEM NAME:

Unnegotiated Checks Over One Year Old, PCC/FMAC-9.

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STORAGE:

Cards and papers in file folders and listed in microcomputers by bank in check date and check number sequence.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAP-1

SYSTEM NAME:

Payroll Master File for Panama Canal Commission Employees, PCC/FMAP-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAP-3

SYSTEM NAME:

Injury Compensation Payroll Records, PCC/FMAP-3.

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RETENTION AND DISPOSAL:

SF 115, Request for Records Disposition Authority, submitted to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. See rules published in 35 CFR Part 10.

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RECORD SOURCE CATEGORIES:

Panama Canal Commission Office of Personnel Administration and Occupational Health Division.

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PCC/FMAP/AC-4

SYSTEM NAME:

Payroll Deductions, PCC/FMAP/AC-4.

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STORAGE:

Computer runs, discs, cards, ledgers, and papers in file folders.

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SYSTEM MANAGER(S) AND ADDRESS:

For Payroll Master File: Chief, Payroll Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000. For accounts receivable: Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Managers or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMTR-1

SYSTEM NAME:

Termination of Employment Actions Records, PCC/FMTR-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMTR-2

SYSTEM NAME:

Internal Revenue Service Notice of Levy Files, PCC/FMTR-2.

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RETENTION AND DISPOSAL:

Destroyed when four years old.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMTR-3

SYSTEM NAME:

Suspension of Check Cashing Privileges Files, PCC/FMTR-3.

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SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/GA-1

SYSTEM NAME:

Cash Audit Files, PCC/GA-1.

SYSTEM LOCATION:

Office of General Auditor, Bldg. 6530, Corozal, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission collecting agents whose accounts are audited by the Office of General Auditor.

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SYSTEM MANAGER(S) AND ADDRESS:

General Auditor, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Bldg., Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC/GSCL-1

SYSTEM NAME:

Technical Resources Center Registration Record, PCC/GSCL-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Technical Resources Center, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/GSCP-2

SYSTEM NAME:

Canal Protection Division Incident Report Files, PCC/GSCP-2.

SYSTEM LOCATION:

Canal Protection Division Pacific and Atlantic Area Chiefs' Offices, at Bldg. 6534 Corozal, Republic of Panama and Bldg. 40, Gatun, Republic of Panama respectively.

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STORAGE:

Printed forms 8½ by 11 inches, logbooks and disks.

RETRIEVABILITY:

Chronological logbook and specific variable searches give cross-reference to incident reports filed in numerical order.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Canal Protection Division, Panama Canal Commission, APO Miami 34011-5000.

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PCC/GSCS-1

SYSTEM NAME:

Housing Files, PCC/GSCS-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Community Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records

Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/GSCS-2

SYSTEM NAME:

Housing Complaints File, PCC/GSCS-2.

SYSTEM LOCATION:

General Services Bureau, Bldg. 28, Balboa, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, General Services Bureau, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/GSCX-1

SYSTEM NAME:

Administrative Reports, Transfer of Custody and Official Complaint files, GSCX-1.

SYSTEM LOCATION:

Offices of Area Coordination, Bldg. 5140, Diablo, and Bldg. 7998, Margarita, Republic of Panama.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Cases involving the Transfer of Custody of Commission employees or their dependents, and copies of their Panamanian Court dispositions. Cases involving the theft of Commission property, including records on the value of Commission recovered or stolen property, and copies of Panama's National Department of Investigations reports on these cases. Records of shoplifting cases or other misconduct referred to the Area Coordination by either the U.S. military or Government of Panama law enforcement authorities for review, counseling and/or administrative action to be carried out by the appropriate Commission officials. Additionally, records on individuals provided assistance or requested assistance from the Offices of Area Coordination, including any involvement with authorities of the Government of Panama.

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STORAGE:

Paper records in file folders and index cards. Also recorded in a computer. Stored in locked metal file cabinets in building which is locked when not in use. Access and use are restricted to authorized personnel for official use.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief of Operations, Office of Area Coordination, General Services Bureau, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC/IR-1

SYSTEM NAME:

Quarterly Report of Employee Union Dues Deductions, PCC/IR-1.

SYSTEM LOCATION:

Office of Industrial Relations, Bldg. 37, Balboa, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESS:

Director of Industrial Relations, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Office, Panama Canal Commission, APO Miami 34011-5000.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC/IR-2

SYSTEM NAME:

Records of grievances, appeals and adverse actions processed under a Negotiated Grievance Procedure (NGP), PCC/IR-2.

SYSTEM LOCATION:

Office of Industrial Relations, Bldg. 37, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Panama Canal Commission whose grievances related to disciplinary and adverse actions and to other complaints have been referred to binding arbitration by a certified representative in accordance with an appropriate negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files on employee grievances and adverse or disciplinary action appeals containing the formal grievance or appeal; background, supporting, and investigatory information; record of hearing, arbitrator's award and related documents.

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SYSTEM MANAGER(S) AND ADDRESSES:

Director of Industrial Relations, Panama Canal Commission, APO Miami 34011-5000.

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RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; officials of the Canal agencies; witnesses; official documents related to the appeal or grievance; and others involved in the grievance or appeal procedure.

PCC/MRBL-1

SYSTEM NAME:

Marine License Files, PCC/MRBL-1

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SYSTEM MANAGER(S) AND ADDRESS:

Chairman, Board of Local Inspectors, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/MRBL-2

SYSTEM NAME:

Marine Accident Reports and Investigations, PCC/MRBL-2.

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RETENTION AND DISPOSAL:

Retention pending submission of SF 115 to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman, Board of Local Inspectors, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/MRCP-1

SYSTEM NAME:

Pilot Workload Statistics, PCC/MRCP-1.

SYSTEM LOCATION:

Office of the Chief Pilot, Marine Traffic Control Center, Bldg. 910, La Boca, Republic of Panama; and Data Processing Systems Division, Administration Bldg., Balboa Heights, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESS:

Chief, Pilot Rotation and Scheduling Unit, Office of the Chief Pilot, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC/MRNA-1

SYSTEM NAME:

Admeasurer Examination File, PCC/MRNA-1.

SYSTEM LOCATION:

Admeasurement Office, Bldg. 729, Balboa, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESS:

Director of Admeasurement, Panama Canal Commission, APO Miami 34011-5000.

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PCC/OM-1

SYSTEM NAME:

Ombudsman Investigation Files, PCC/OM-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Ombudsman, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/OM-2

SYSTEM NAME:

Residents' Advisory Committee Files, PCC/OM-2.

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RETENTION AND DISPOSAL:

Maintained indefinitely pending submission of SF 115 to NARA. Forwarded to Agency Records Center for disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Ombudsman, Panama Canal Commission, APO Miami 34011-5000

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/OPR-1

SYSTEM NAME:

Operating Unit Personnel Records, PCC/OPR-1

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STORAGE:

Paper files maintained in file folders stored in desk drawers or filing cabinets.

RETRIEVABILITY:

Employee name.

SAFEGUARDS:

Paper records maintained in lockable file cabinets or supervisor's desk. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Folders are reviewed at the end of each calendar year. Documents whose retention period have expired or are no longer applicable are destroyed by burning or shredding one year after transfer or separation by the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Head of Branch, Division, Independent Unit, or Bureau where employee works.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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RECORD SOURCE CATEGORIES:

Supervisor/Unit records.

PCC/PA-1

SYSTEM NAME:

News Morgue Records, PCC/PA-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of Public Affairs, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PB-1

SYSTEM NAME:

Merit System Recruiting, Examining and Placement Records, PCC/PB-1

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RETENTION AND DISPOSAL:

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Index Cards:

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SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, his delegate the Manager, Central Examining Office, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Individual should provide name, date of birth, approximate date of record, and title of examination or announcement with which concerned. Rules are published in 35 CFR Part 10.

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PCC/PB-2

SYSTEM NAME:

Appeals, Grievances, Complaints, and Assistance Records, PCC/PB-2.

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RETENTION AND DISPOSAL:

Destroy three years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Individual should provide name, date of birth, and approximate date and kind of action taken. Rules are published in 35 CFR Part 10.

CONTESTING RECORD PROCEDURES:

Subject individuals; agency and Board officials; affidavits of employees; testimonies of witnesses; documents in file related to the appeal, grievance, complaint, or request for assistance; and correspondence from organizations or persons with pertinent knowledge.

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PCC/PB-3

SYSTEM NAME:

Personnel Investigation Records, PCC/PB-3.

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SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, his delegate the Manager, Central Examining Office, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Individual should provide name, date of birth, approximate date of record, and title of examination or announcement with which concerned. Rules are published in 35 CFR Part 10.

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PCC/PR-1

SYSTEM NAME:

Disability Relief, Retirement and Group Supplementary Life Insurance Records, PCC/PR-1.

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SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-2

SYSTEM NAME:

Employee Benefits Records, PCC/PR-2.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-4

SYSTEM NAME:

Personnel Management System, PCC/PR-4.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-5

SYSTEM NAME:

Recruiting and Placement Records, PCC/PR-5.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-6

SYSTEM NAME:

Training and Employee Development Records, PCC/PR-6.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-7

SYSTEM NAME:

Personnel Reference Unit Files, PCC/PR-7.

SYSTEM LOCATION:

Personnel Reference Unit, Office of Personnel Administration, Bldg. 780, Balboa, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Personnel Policy and Programs, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

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PCC/PR-8

SYSTEM NAME:

Systems of records noticed by the Office of Personnel Management and applicable to the Panama Canal Commission, as follows:

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(1) * * * [1]

PCC/PR-9

SYSTEM NAME:

Incentive Awards Programs Files, PCC/PR-9.

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RETENTION AND DISPOSAL:

Paper records maintained manually. Employee Awards files:

1. General: Destroy two years after approval or disapproval.

2. Correspondence or memoranda: Destroy when two years old.

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[1] As an exception to standard practice on retention of out-of-service Official Personnel Folders the Canal agencies are authorized to retain the Official Personnel Folders of their former non-U.S. citizen employees for two years. Thereafter they are sent to the National Personnel Records Center in St. Louis, Missouri (35 CFR Parts 253-292). Some of these former employees now may be U.S. citizens or resident aliens of the United States who are granted access to the records under provisions of the Privacy Act. Questions from such individuals regarding notification procedures, access, and contest in connection with these records should be addressed to the Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000, who is the System Manager, or to the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

3. Length of Service: Destroy when one year old.

4. Reports pertaining to Incentive Awards: Destroy when three years old.

5. Incentive Award suggestion: Close files annually and destroy two years after break.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Personnel Policy and Programs, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-10

SYSTEM NAME:

Occupational Health Records, PCC/PR-10.

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RETENTION AND DISPOSAL:

Retained until employee terminates employment with the agency. Thereafter, retired to the Agency Records Center for disposition in accordance with Federal records retention schedules. Disposition of employee medical records are suspended until further notice.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Occupational Health Division, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-12

SYSTEM NAME:

Industrial Accident Prevention Supervisor/Unit Awards File, PCC/PR-12.

SYSTEM LOCATION:

Incentive Awards Unit, Bldg. 5553, Diablo Heights, Republic of Panama.

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RETENTION AND DISPOSAL:

Maintained while employee is in a hazardous-duty supervisory capacity. Destroy two years after approval or disapproval.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Personnel Policy and Programs, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/PR-13

SYSTEM NAME:

20/30/40 Safety Key Awards Files, PCC/PR-13.

SYSTEM LOCATION:

Incentive Awards Unit, Bldg. 5553, Diablo Heights, Republic of Panama.

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STORAGE:

Computer strip size 12½ by 3½ inches. Cards 3 by 8 inches. Magnetic tapes and disks and computer printouts and related documents.

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SAFEGUARDS:

Records maintained in metal card files and lockable metal filing cabinets. Access and use are restricted to authorized personnel. A combination of standard physical security measures, appropriate management information practices and computer system/network security controls are used to protect these records. Reports, tapes, and disks are kept in a locked cabinet or secure area when not in use. The stringent safeguards required by Office of Management and Budget (OMB) Circular A-71, Transmittal No. 1 are applied.

RETENTION AND DISPOSAL:

Paper records manually maintained. Records on active employee in the automated data base are retained as long as they are employed. Destroy when employees retire.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Personnel Policy and Programs, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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6. The following is the revised listing of inactive systems.

Title Listing of Inactive Panama Canal Commission Systems of Records.

PCC/AEPR-1 Probation and Parole Unit Child Custody Reports.
PCC/AEPR-2 Presentence and Pre-Parole Investigation Reports.
PCC-CZG/ADGS-1 Purchase Authority Cards.
PCC/AMRM-7 Records of Births, Deaths, and Marriages that occurred in the former Canal Zone.
PCC/AMSA-2 Employee Application for Outside Employment.
PCC-CZG/BRAE-1 Canal Zone Board of Registration for Architects and Professional Engineers Reference Files.
PCC-CZG/BRAE-2 Canal Zone Board of Registration for Architects and Professional Engineers Directory.
PCC-CZG/CACU-9 Vehicle Registration for RP-Series License Plates.
PCC-CZG/CACU-10 U.S. Immigration and Naturalization Service U.S. Citizenship Certificate Application and Appointment Records.
PCC-CZG/CACU-12 Immigration Detention Orders.
PCC-CZG/CALS-4 Civil and Amateur Radio Operator and Station License files.
PCC-CZG/CALS-7 Driver's License Investigatory File.
PCC-CZG/CALS-8 Motor Vehicle and Motorboat Registration and Operator's License File.
PCC-CZG/CALS-11 Official Permits to Have or Carry Firearms.
PCC-CZG/CAPL-14 Inmate Trust Fund File.
PCC-CZG/CAPL-20 Driver's License Revocation Lists.
PCC-CZG/CAPS-2 Case Investigations.
PCC/ECCN-2 Contractor Employee Payroll Records.
PCC/FMAP-2 Payroll System for Vessel Employees.
PCC-CZG/FVGA-2 Cash Register Receipt Shortages.
PCC-CZG/GE-1 Visa records. (STATE-39)
PCC/GSPL-1 Law Enforcement Case Report Files.
PCC/GSPL-4 Convict Files.
PCC/GSPL-5 Prisoner Record Cards.
PCC/GSPL-6 Police Photo Files.
PCC/GSPL-7 Fingerprint File.
PCC/GSPL-10 Master Name File.
PCC/GSPL-15 Complaints Against Policemen.
PCC/GSPL-16 Traffic Accident Reports.
PCC/GSPL-18 Prisoner Property Record.

PCC/GSSP-1 Expert and Consultant Records.
PCC/GSSS-1 Vessel Employee Records.
PCC-CZG/HL-1 Health, Medical, Dental, and Veterinary Records Systems.
PCC-CZG/HL-2 Medical Administration System Exempt.
PCC-CZG/HL-3 Medical Administration System—Non exempt.
PCC/PR-14 Arrest Record File.
PCC-CZG/SC-4 Refugee Records.

7. The following inactive systems are revised as follows:

PCC-CZG/ADGS-1

SYSTEM NAME:

Purchase Authority Cards, PCC-CZG/ADGS-1

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to court officials for the purpose of compiling jury duty rosters. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC/AEPR-1

SYSTEM NAME:

Probation and Parole Unit Child Custody Reports, PCC/AEPR-1.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of U.S. District Court for the District of the Canal Zone and Administrative Office of the U.S. Courts. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

PCC/AEPR-2

SYSTEM NAME:

Presentence and Pre-Parole Investigation Reports, PCC/AEPR-2.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of U.S. District Court for the District of the Canal Zone and Administrative Officer of the U.S. Courts. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

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PCC/AMRM-7

SYSTEM NAME:

Records of Births, Deaths, and Marriages that occurred in the former Canal Zone, PCC/AMRM-7.

SYSTEM LOCATION:

Records Management Branch, Administrative Services Division, Balboa Heights, Republic of Panama.

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RETRIEVABILITY:

By name, date of birth, death or marriage, and number of certificate.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/AMSA-2

SYSTEM NAME:

Employee Application for Outside Employment, PCC/AMSA-2.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Request should be addressed to either of addressees designated in Notification Procedures, preceding.

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PCC-CZG/BRAE-1

SYSTEM NAME:

Canal Zone Board of Registration for Architects and Professional Engineers Reference Files, PCC-CZG/BRAE-1.

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SYSTEM LOCATION:

Federal Records Center, East Point, Georgia.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or which would reveal the identity of confidential sources, or is testing or examination material is exempt from certain subsections of 5 U.S.C 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

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PCC-CZG/BRAE-2

SYSTEM NAME:

Canal Zone Board of Registration for Architects and Professional Engineers Directory, PCC-GZG/BRAE-2.

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SYSTEM LOCATION:

Federal Records Center, East Point, Georgia.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC-CZG/CACU-9

SYSTEM NAME:

Vehicle Registration for RP-Series License Plates, PCC-CZG/CACU-9.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC-CZG/CACU-10

SYSTEM NAME:

U.S. Immigration and Naturalization Service U.S. Citizenship Certificate, PCC-CZG/CACU-10.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons born outside the United States who are requesting United States citizenship certificates issued by the Immigration and Naturalization Service pursuant to one or more of the statutes referred to in the authority portion of this notice.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC-CZG/CACU-12

SYSTEM NAME:

Immigration Detention Orders, PCC-CZG/CACU-12.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC-CZG/CALS-4

SYSTEM NAME:

Civil and Amateur Radio Operator and Station License files, PCC-CZG/CALS-4.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed upon request to the Federal Communications Commission, local U.S. military frequency control coordinators, Government, State and local radio licensing authorities. Information may also be disclosed to licensing agencies of foreign governments where the applicant is claiming reciprocal licensing privileges in order to obtain a Canal Zone or foreign radio operator's license. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC-CZG/CALS-7

SYSTEM NAME:

Driver's License Investigatory File, PCC-CZG/CALS-7.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC-CZG/CALS-8

SYSTEM NAME:

Motor Vehicle and Motorboat Registration and Operator's License File, PCC-CZG/CALS-8.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC-CZG/CALS-11

SYSTEM NAME:

Official Permits to Have or Carry Firearms, PCC-CZG/CALS-11.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who applied for, or were issued official permits to have or carry firearms in the Canal Zone.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division,

Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC-CZG/CAPL-14

SYSTEM NAME:

Inmate Trust Fund File, PCC-CZG/CAPL-14.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who were serving sentences in the Canal Zone Penitentiary who were enrolled in the Inmate Trust Fund program.

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SAFEGUARDS:

Maintained in file cabinet. Access and use are restricted to authorized personnel.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC-CZG/CAPL-20

SYSTEM NAME:

Driver's License Revocation Lists, PCC-CZG/CAPL-20.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who had their driving privileges revoked in the Canal Zone.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

* * * * *

PCC-CZG/CAPS-2

SYSTEM NAME:

Case Investigations, PCC-CZG/CAPS-2.

* * * * *

SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

* * * * *

PCC/ECCN-2

SYSTEM NAME:

Contractor Employee Payroll Records, PCC/ECCN-2.

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SYSTEM LOCATION:

Agency Records Center, Bldg. 42-D, Diablo, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/FMAP-2

SYSTEM NAME:

Payroll System for Vessel Employees, PCC/FMAP-2.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC-CZG/FVGA-2

SYSTEM NAME:

Cash Register Receipt Shortages, PCC-CZG/FVGA-2.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC-CZG/GE-1 (STATE-39)

SYSTEM NAME:

Visa Records, PCC-CZG/GE-1 (STATE-39).

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for visas; aliens who may be eligible to receive visas.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

* * * * *

PCC/GSPL-1

SYSTEM NAME:

Law Enforcement Case Report Files, PCC/GSPL-1.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been subjects of police investigations, including persons who have committed crimes, or were alleged to have committed crimes; persons witnessing or reporting criminal activities; missing persons; and persons filing official complaints about the conduct of other persons when such conduct is not a violation of law.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

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PCC/GSPL-4

SYSTEM NAME:

Convict Files, PCC/GSPL-4.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

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PCC/GSPL-5

SYSTEM NAME:

Prisoner Record Cards, PCC/GSPL-5.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who had been arrested by the Canal Zone Government Police on or before September 30, 1979, or by the Panama Canal Commission Police between October 1, 1979 and March 31, 1982.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

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PCC/GSPL-6

SYSTEM NAME:

Police Photo Files, PCC/GSPL-6.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who had been arrested, booked, and photographed by the Canal Zone Government Police on or before September 30, 1979, or by the Panama Canal Commission Police between October 1, 1979 and March 31, 1982.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

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PCC/GSPL-7

SYSTEM NAME:

Fingerprint File, PCC/GSPL-7.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who had been fingerprinted, or whose prints had been provided to, the Canal Zone Government Police on or before September 30, 1979, or by the Panama Canal Commission Police between October 1, 1979 and March 31, 1982.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

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PCC/GSPL-10

SYSTEM NAME:

Master Name File, PCC/GSPL-10.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who had been reported missing; persons who had outstanding warrants; persons who had been arrested; persons about whom offenses had been reported to the police; and/or persons who had been involved in an incident coming to the attention of the the Canal Zone Government Police on or before September 30, 1979, or to the attention of the Panama Canal Commission Police between October 1, 1979 and March 31, 1982.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

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PCC/GSPL-15

SYSTEM NAME:

Complaints Against Policemen, PCC/GSPL-15.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Police personnel about whom written complaints had been submitted from citizens.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/GSPL-16

SYSTEM NAME:

Traffic Accident Reports, PCC/GSPL-16.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in traffic accidents which occurred in the Canal areas.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC/GSPL-18

SYSTEM NAME:

Prisoner Property Record, PCC/GSPL-18.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons whose personal property was held or seized by the police at the time of arrest or incarceration.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

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PCC/GSSP-1

SYSTEM NAME:

Expert and Consultant Records, PCC/GSSP-1.

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SYSTEM LOCATION:

Agency Records Center, Bldg. 42-D, Diablo, Republic of Panama.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

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PCC/GSSS-1

SYSTEM NAME:

Vessel Employee Records, PCC/GSSS-1.

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SYSTEM LOCATION:

Logistical Support Division, New Orleans Branch, Bldg. 601-5-A, Panama Canal Commission, 4400 Dauphine Street, New Orleans, Louisiana 70146-6800.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former crew members of the S.S. Cristobal.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Logistical Support Division, New Orleans Branch, Bldg. 601-A, Panama Canal Commission, 4400 Dauphine Street, New Orleans, Louisiana 70146.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000 Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

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PCC-CZG/HL-1

SYSTEM NAME:

Health, Medical, Dental, and Veterinary Records Systems, PCC-CZG/HL-1.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

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4. To provide basis for administrative and professional decisions regarding the coordination with U.S., foreign, and international health agencies in disease prevention and control, including information related to zoonotic and agricultural disease; inspection, surveillance, and control of food products; and international quarantine measures.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000 Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates, when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding. Procedures for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

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PCC-CZG/HL-2

SYSTEM NAME:

Medical Administration System Exempt, PCC-CZG/HL-2.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000 Rules are published in 35 CFR Part 10.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates, when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding. Procedures for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

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PCC-CZG/HL-3

SYSTEM NAME:

Medical Administration System—Non exempt, PCC-CZG/HL-3.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

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2. To insurance companies and sponsoring agencies, organizations, or foreign governments for the purpose of documenting treatment or billings.

3. To officials of other agencies, foreign governments, and private organizations in connection with treatment and professional assistance in

child abuse cases and in connection with adoption, foster home, and other social service programs; and

4. To United States, foreign and international health officials and agencies, including the Communicable Disease Center, in connection with the reporting of human and animal communicable diseases.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates when medical treatment was rendered, or other specific information applicable to the inquiry that may assist in identification. Rules are published in 35 CFR Part 10.

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PCC/PR-14

SYSTEM NAME:

Arrest Record File, PCC/PR-14.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who had been arrested, fingerprinted, photographed for violations of law. Also includes those persons who were required to appear in Magistrates Court for traffic violations.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000. Rules are published in 35 CFR Part 10.

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PCC-CZG/SC-4

SYSTEM NAME:

Refugee Records, PCC-CZG/SC-4.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who were granted temporary refuge in the Canal Zone because of civil disturbance or natural disaster or because they were seeking political asylum.

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SYSTEM MANAGER(S) AND ADDRESSES:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011-5000 Rules are published in 35 CFR Part 10.

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[FR Doc. 87-29941 Filed 12-30-87; 8:45 am]
BILLING CODE 3640-04-M

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Programs—Postal Service/Federal Creditor Agencies

AGENCY: United States Postal Service.

ACTION: Notice of Matching Program—U.S. Postal Service/Department of Housing and Urban Development, Veterans Administration, Small Business Administration, Department of Agriculture, and Department of Education.

SUMMARY: The United States Postal Service is providing notice that it intends to conduct continuing matching programs to identify postal employees who are delinquently indebted to the Federal Government under programs administered by the Department of Housing and Urban Development, Veterans Adminstration, Small Business Administration, Department of Agriculture and Department of Education. The Postal Service will act as the matching agency and compare its payroll records against delinquent debtor records provided by those creditor agencies. Debts not voluntarily repaid will be subject to collection pursuant to the Debt Collection Act of 1982.

DATE: It is anticipated that matches with the Small Business Administration, Department of Agricultural and Department of Education will begin in or about January 1988.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268-5158.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 permits a federal agency to offset the salaries of its employees who owe delinquent debts to the Federal Government when payment of those debts has not been made voluntarily. A Government-wide effort is currently underway to identify employees who are delinquent debtors and to recoup those debts. The Postal Service plans to participate in this effort by acting as the matching agency for all computer matches of its employee data that may be conducted against the delinquent debtor records of requesting creditor agencies. The five major creditor agencies whose debtor records are being matched in accordance with this notice are: U.S. Department of Housing and Urban Development (HUD), Veterans Administration (VA), Small Business Administration (SBA), Department of Agriculture (USDA) and Department of Education (ED). Initial matches under this program have already been made with HUD (pursuant to an earlier program as described at 49 FR 32138, August 9, 1984) and with the VA (as described at 51 FR 30934). Initial matches with SBA, USDA and ED and follow-up matches with the five named agencies with be conducted as further described in the "Report" below.

Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this Notice has been provided to both Houses of Congress and to the Offices of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS)/Department of Housing and Urban Development, Veterans Administration, Small Business Administration, Department of Agriculture, and Department of Education.

a. *Authority:* 39 U.S.C. 404; 5 U.S.C. 5514(a).

b. *Program Description:* An above-named creditor agency will submit its file of delinquent debtors identified by name and social security account

number (SSAN) to the USPS. Using SSAN, the USPS will match that file against its payroll system file (USPS 050.020, Finance Records—Payroll System), identifying employees who are alleged delinquent debtors under a Federal program administered by the creditor agency. For those individuals common to both tapes (i.e., "hits"), the USPS will provide to the creditor agency the following data elements: name, SSAN, date of birth, home address and work address.

The validity of "matched" employee/debtor information will be verified by the creditor agency. Those individuals who do not have a current repayment plan in effect may be subject to salary offset pursuant to the Debt Collection Act of 1982 (DCA) if the claim of indebtedness is not resolved through the due process procedures afforded by the DCA. Those procedures require the creditor agency to give the alleged debtor thirty days written notice of its determination of the debt and an explanation of the individual's rights under the Act which include an opportunity to inspect and copy Government records relating to the debt, an opportunity to enter into a repayment agreement, and a hearing on the validity of the debt and terms of its repayment.

The USPS Inspection Service may participate in the investigation of hits and establish investigative case files within the parameters of Privacy Act systems USPS 080.010, "Inspection Requirements Investigative File System" (last published in 48 FR 10975 of March 15, 1983).

c. *Records to be Matched:* Each match under this program will compare records within the USPS' payroll system file (USPS 050.020, Finance Records—Payroll System, most recently published in 52 FR 6251 of March 2, 1987). Disclosure of information for purposes of this program is authorized by that system's routine use No. 34.

d. *Period of the Match:* Initial matches with SBA, USDA and ED are expected to occur in or about January 1988. Subsequent matches with any of the five named creditor agencies will be conducted as described above with no further notice, but no more often than semiannually.

2. *Security:* Each match will be conducted in accordance with a written agreement between the USPS and the creditor agency. The agreement will call for maintenance of exchanged data in such a manner as to restrict access to only those individuals who have a legitimate need to see or review it in order to accomplish the official purpose of the matching program, and storage of hard copy records in locked desks or file cabinets and automated records in limited access computer facilities.

f. *Disposition of Records:* Data exchanged will be used only for the purpose of this matching program and will not be derivatively disclosed. Tapes will be returned immediately upon completion of the matching operation and information about individuals verified as "non-hits" will be destroyed immediately.

g. *Other Comments:* No changes will be made to an individual's payments or benefits without first providing due process to the individual concerned.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-30014 Filed 12-30-87; 8:45 am]

BILLING CODE 7710-12-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, January 14, 1988, from 10:00 a.m. to 5:00 p.m. and on Friday, January 15, 1988, from 8:30 a.m. to 12:00 noon. The meeting will be held in the New Hampshire III room of the Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW. The agenda for the meeting will include the following topics: Commission activities related to a relative value scale for Medicare; specialty differentials; diagnostic services with little physician input; alternative processes for updating the fee schedule; utilization review; assignment and the participating physician program; and capitation. Other topics may be covered, if time permits.

ADDRESS: The Commission is located at Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 87-30007 Filed 12-30-87; 8:45 am]

BILLING CODE 6820-SE-M

PRESIDENT'S COMMISSION ON COMPENSATION OF CAREER FEDERAL EXECUTIVES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Compensation of Career Federal Executives will be held Wednesday, January 13, 1988, from 9:30 a.m. to 12 Noon (e.s.t.) in the Conference Room, Suite 5H-09, 5th floor, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

This is a working meeting of the Commission to consider various measures pertaining to the SES compensation issue.

The meeting is open to the public and oral comments will be accepted as time permits. Persons wishing to receive further information on this meeting or who wish to submit written or oral statements concerning matters to be discussed should contact Stephen A. Gleason, Executive Director, President's Commission on Compensation of Career Federal Executives, Room 5554, OPM Building, 1900 E Street, NW., Washington, DC 20415 (202) 632-8703.

Date: December 16, 1987.

Jonna Lynne Cullen,

Chairman.

[FR Doc. 87-30066 Filed 12-30-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25209; File No. SR-CBOE-87-50]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on October 23, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposal replaces existing Interpretation and Policy .02 to Rule 11.1 with a new options exercise policy. It also adds new Interpretation .03, .04 and

.05. The new proposed provisions are italicized.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exercise of Option Contracts

Rule 11.1 . . . Interpretations and Policies

.02 An exercise instruction memorandum must be prepared and time stamped for the exercise of all option contracts not automatically exercised pursuant to Clearing Corporation Rules. The preparation, time stamping or submission of an exercise instruction memorandum prior to the purchase of such contracts shall be deemed a violation of this Rule.

.03 Clearing Members must follow the procedures of the Clearing Corporation when exercising index option contracts issued or to be issued in any account at the Clearing Corporation. Members and member organizations must also follow the procedures set forth below:

(a) For all contracts exercised, an "exercise advice" must be delivered by the member or member organization in such form or manner prescribed by the Exchange to a place designated by the Exchange no later than 3:15 p.m. (CT) on that day;

(b) Subsequent to the delivery of an "exercise advice", should the market-maker, customer or firm determine not to exercise all or part of the advised contracts, the member or member organization must also deliver an "advice cancel' in such form or manner prescribed by the Exchange to a place designated by the Exchange no later than 3:15 p.m. (CT) on that day;

(c) The preparation, time stamping or submission of an "exercise advice" prior to the purchase of the contracts to be exercised shall be deemed a violation of this Rule;

(d) The failure of any member or member organization to follow the procedures in this Interpretation .03 may be referred to the Business Conduct Committee and result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Committee; and

(e) The above procedures do not apply to expiring series on the business day prior to expiration.

.04 The exercise cutoff time pursuant to Rule 11.1(b) for index option contracts shall be 5:30 p.m. (CT) on the business day immediately prior to expiration.

.05 This rule is subject to Rules 6.2 (Trading Rotations), 6.6 (Unusual Market Conditions) and 24.7 (Trading Halts or Suspensions).

II. Procedures of the Self-Regulatory Organization

On October 19, 1987, the Exchange's Office of the Chairman approved the filing of this proposed rule change. The Exchange's contact person is Frederic M. Krieger, Associate General Counsel at (312) 786–7465.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change are to clarify the index exercise advice procedures and require the submission of such advices for all exercises. Violations have occurred due to the complexity of the rule regarding the calculation of the quantity for which an exercise advice was to be submitted and the requirements for time stamping exercise instruction memoranda and exercise advice forms. The calculation of the quantity to exercise involves aggregating accounts under common control, even though each of the aggregated individuals did not exercise more than 24 contracts.

The proposed rule does not substantively change the intent of the previous rule. The exercising of cash settled index options after the close of trading is still prohibited. The rule has been rewritten to provide additional clarity. In Interpretation .02 the Exchange identifies the need to prepare and time stamp exercise instruction memoranda after the contracts to be exercised have been purchased. This requirement has been separated from the advice form interpretation because it applies to all exercise instruction memoranda.

Interpretation .03 contains the requirement that an index exercise advice must be submitted for all index option contracts that are to be exercised. The procedures to follow for cancelling such advices and the requirements regarding time stamping are also explained. Finally, the inclusion of a disgorgement amount, as part of the Business Conduct Committee fine, states existing fining authority and reminds members of this possibility. Interpretation .04 is consistent with the prior rule but is listed separately for the purpose of its application to the exercise of all index options.

Interpretation .05 is new, stating existing Exchange interpretation that the cut-off time provision for exercise advice forms is subject to the authority of the Exchange to halt trading, open trading, and conduct rotations. Thus, if trading is halted, the Exchange may restrict exercises, and if trading is extended (for example, for a closing trading rotation under Rule 6.2), exercise advice forms, may be received during such a rotation.

The proposed rule change is consistent with the provision of the Securities Exchange Act of 1934 and, in particular, section 6(b)(5) thereof, in that the rule change is designed to enforce just an equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregong. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be

available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1988.

Dated: December 17, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority

Jonathan G. Katz,

Secretary.

[FR Doc. 87-30058 Filed 12-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25218; File No. SR-Phlx-87-33]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on November 9, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("Phlx" or the "Exchange") pursuant to Rule 19b-4, hereby proposes the following rule change: (Brackets indicate deletions, *italics* indicate additions.)

OPTIONS RULES

Certain Types of Orders Defined

Rule 1066 (a) through (h) No change.

. . . Commentary .01 No change.

. . . *Commentary .02 For options on foreign currency, a spread order may consist of different numbers of contracts (representing different amounts of underlying currency), so long as the amounts of the underlying currency do not differ by a ratio of more than three to one. Similarly, for options on foreign currency, a straddle or combination order may consist of different numbers of puts and calls (representing different amounts of foreign currency), so long as the amounts of the underlying currency represented by the puts and calls do not differ by a ratio of more than three to one. The Foreign Currency Options Committee shall have the authority to specify the ratio or ratios above one-to-one up to three-to-one that are acceptable for the entry of the ratio spread, straddle and combination orders.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to allow PHLX market participants to more effectively utilize foreign currency options contracts as risk hedging instruments. The foreign currency options markets tend to attract and be utilized by sophisticated institutional and corporate investors in part due to the nature of the instruments and the tremendous size of the underlying currency markets. Among other things, this has meant that, rather than rely solely on one-to-one spreads and other multi-part orders, foreign currency options traders frequently effect ratio orders, in which different numbers of contracts may be purchased or sold on each leg of a multi-part order. Most commonly, ratio positions are established because a trader intends to hold a fully hedged position. Where the two legs of the order have different "deltas", different numbers of contracts must be published or sold on each leg to establish a hedged position.

During ten trading sessions in February 1987, the PHLX Market Surveillance Department surveyed several floor brokers to determine the extent to which ratio orders were received by them. In aggregate, in 29.5% of the instances surveyed, spread, straddle or combination ratio orders were received.[1]

Historically, the Commission reluctantly has permitted the exchanges to extend priority for spreads and other multi-part orders over orders on the limit order Book. The preponderance of limit orders come from small public investors, while spreads, straddles and combinations generally reflect large professional orders. Therefore, the Commission's reluctance to accord priority to multi-part orders over previously entered limit orders arises from the concern that priority trading rules for multi-part orders would give trading priority to professionals, and thus be contrary to the interests of public investors. Nevertheless, the Commission has allowed one leg of a spread, straddle or combination order to be executed at the established bid or offer, thus taking priority over a booked customer or other crowd order at that bid or offer, provided that the other leg of the order is simultaneously executed at a price which is better than the established bid or offer. Executing the other leg of the order at a better price than the established bid or offer will improve the market on at least one side. In this regard, the Commission has accorded these orders priority over previously entered customer limit orders which may have the result in that these spreads, straddles and combination orders take priority over the book or the crowd. The Commission has allowed such priority for multi-part orders partially in recognition of the fact that, if priority were not granted, the multi-part order would not be executed. Not permitting such priority, however, would likely have no effect on whether the customer limit order would be filled.

We believe that there should not be a concern that a significant number of previously entered public customer limit orders will fail to receive executions as the result of the rule. By view of the highly sophisticated nature of most foreign currency options investors, there are not a substantial number of limit orders placed on the books of any of the foreign currency options specialists on PHLX. A recent census of the specialist books indicated that, on average, there are 20 booked orders per American style currency options class (virtually none in the European style options). Most of these orders were substantially away from the current market in the options.

The proposed rule change would place a cap of three-to-one on permissible

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[1] These orders were handled in a variety of ways. Several orders were executed as a one-to-one order, with the balance of the excess on the unfilled leg executed separately. That is, a 200 contract buy/100 contract sell ratio spread would be executed as a 100 contract spread and a separate 100 contract buy order. Other orders were executed as two separate unhedged orders. Others were not executed. This figure understates the potential benefit of the rule, because it is likely that many persons interested in effecting a ratio transaction do not enter an order on that basis because ratio orders are accorded no status and receive no priority under current PHLX rules.

ratio orders. This is to prevent orders whereby a trader seeking priority over an order on the book (or in the crowd) could, for example, restate an order to buy 100 calls as a ratio spread to buy 100 calls and sell 1 out-of-the-money call. Floor participants indicate that a maximum ratio of three-to-one should meet satisfactorily the vast preponderance of investor needs.

To further guard against abuse, the proposed rule authorizes the Foreign Currency Options Committee to specify the ratios that would be permitted under the rule. Preliminarily, the Committee's Rules Subcommittee has determined that it would be appropriate to start by allowing just two kinds of ratio orders: Two-to-one and three-to-two. The reason for this limitation is to prevent floor traders from having an undue advantage over orders entered from off the floor. For example, if a 200 by 100 ratio spread were entered from off the floor, two floor participants that wished to trade at that same ratio without permitting the off-floor order to participate could reconfigure their transaction as a 201 by 100 ratio spread. Limiting permissible ratio spreads to the most commonly used ratios will minimize any risk of abuse. Overall, the Exchange believes the proposal will not pose any noticed risks of harm to public investors.

By contrast, the benefits of the rule would be significant. As noted above, approximately 30% of customer spread, straddle and combination orders were placed as ratio orders currently, even without specific rules in place allowing either the execution of ratio orders or priority for such executions.

Accordingly, the PHLX believes that the ability to utilize ratio orders and other sophisticated ratio spreading strategies will increase liquidity and facilitate opportunities for risk hedging and arbitrage activities leading to a more efficiently priced foreign currency options market. The proposed rule change is consistent with section 6(b)(5) of the Exchange Act, in that it will facilitate transactions in securities and protect investors and the public interest while being designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1988.

Dated: December 23, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-30059 Filed 12-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16192; 811-4687]

Delaware Group State Tax-Free Fund, Inc.; Notification of Investment Company Deregistration

December 23, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Delaware Group State Tax-Free Fund, Inc.

Relevant 1940 Act Section: Order requesting deregistration under section 8(f) and Rule 8f-1

Summary of Application: Applicant seeks an order declaring that Applicant has ceased to be an investment company.

Filing Date: The application was filed on November 30, 1987.

Hearing on Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC on January 15, 1988, by 5:30 p.m. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Commerce Square, Philadelphia, PA 19003.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney, (202) 272-3026 or Brion R. Thompson, Special Counsel, (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On June 2, 1986, Applicant registered as an open-end, non-diversified management investment company under the 1940 Act. Applicant's initial public offering of its shares commenced on August 21, 1986.

2. On July 16, 1987, Applicant's Board of Directors (the "Board") approved a merger of Applicant into DMC Tax-Free Income USA, Inc. ("DMC"), another investment company registered under the 1940 Act (File No. 811-2850). Applicant states that when the Board approved the merger it considered several factors such as: the size and expected growth of Applicant, the yield of Applicant in comparison with the after-tax yield of DMC, and the potentially adverse effect on Applicant's shareholders of certain recently enacted changes in New York State personal income taxes. Applicant further states that its Board and officers consist of the same individuals who serve as DMC's directors and officers and will continue to serve as directors and officers of the surviving corporation.

3. A majority of Applicant's shareholders also approved the merger on October 21, 1986 at a special meeting called for such purpose. On October 26, 1987, the effective date of the merger, Applicant had 727,744.988 shares of common stock, par value .01 per share with a net asset value of $8.12 per share. The shareholders of Applicant received in exchange for their shares that number of full and fractional shares of DMC, which had an aggregate net asset value as of the effective date of the merger equal to the net asset value of the shares of the Applicant being surrendered.

4. Applicant has not retained any assets and there are no investment securities retained by Applicant. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

5. Applicant incurred certain expenses in connection with the merger, such as printing, mailing of proxy statements to its shareholders and holding a special shareholders meeting which were ultimately borne by Delaware Management Company, Inc., the investment manager. DMC bore the cost of supplying its printed prospectus.

6. Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant has no other outstanding liabilities and is not a party to any litigation or administrative proceeding. Applicant filed the Agreement and Articles of Merger with the Maryland Department of Assessment and Taxation on October 26, 1987 and merged out of existence on that same date under Maryland State law.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-30060 Filed 12-30-87;8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24540]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); General Public Utilities Corp., et al

December 23, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 19, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issue of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation, et al. (70-3816)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its subsidiaries, Jersey Central Power & Light ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), P.O. Box 16001, Reading, Pennsylvania 19640, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, (collectively, "Utility Subsidiaries"), have filed a post-effective amendment to their declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

By order dated February 11, 1986 (HCAR No. 24016), the Utility Subsidiaries were authorized to make additional capital contributions to their wholly owned subsidairy, Saxton Nuclear Experimental Corporation ("Saxton") throught December 31, 1987 which, when added to contributions previously made, would not exceed an aggregate amount of $11.5 million. As of September 30, 1987, the Utility Subsidiaries had made capital contributions to Saxton aggregating approximately $11,016,000. Saxton requires additional cash capital contributions to wind up its affairs, to monitor and dispose of its properties or to place and maintain such properties in a safe condition and to obtain any and all necessary permits and approval from governmental agencies and others. It is estimated that these costs for the period January 1, 1988 through December 31, 1989 will be approximately $1.5 million.

The Utility Subsidiaries now propose to make additional capital contributions to Saxton, from time-to-time through December 31, 1989, in an aggregate amount not to exceed $13 million, in the following proportions: JCP&L, 44%; Met-Ed, 32%; and Penelec, 24%.

Public Service Company of Oklahoma (70-6827)

Public Service Company of Oklahoma ("PSO"), 212 East 6th Street, Tulsa, Oklahoma 74119, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to section 6(a), 7, 9(a), 10 and 12 of the Act and Rules 43 and 54 thereunder.

By order dated November 30, 1976 (HCAR No. 19777). PSO was authorized to acquire all the outstanding common stock of Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, to transfer to Ash Creek all of its existing coal interest in exchange for Ash Creek's common stock, and to make short-term loans to Ash Creek to finance its fuel programs. By order dated January 3, 1986 (HCAR No. 23982), PSO was authorized to finance Ash Creek through December 31, 1987 in the maximum principal amount outstanding at any one time of $2,972,500.

PSO now requests an extension of its authorization to finance Ask Creek through December 31, 1989 in the maximum principal amount of $2,972,500 outstanding at any time. Said amount includes $400,000 and $425,000 to cover

estimated budgeted expenditures during 1988 and 1989, respectively. It is estimated that borrowings outstanding as of December 31, 1987 will be approximately $2,345,000.

Jersey Central Power & Light Company (70–7263)

Jersey Central Power & Light Company ("Jersey Central"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, a wholly owned subsidiary of General Public Utilities Corportion, a registered holding company, has filed an application pursuant to section 6(b) of the Act and Rule 50 thereunder.

On July 3, 1986 (HCAR No. 24143), a notice was issued in this matter on a proposal by Jersey Central to issue and sell through December 31, 1987 up to $100 million of additional first mortgage bonds (Bonds") and up to $100 million of additional shares of cumulative preferred stock. As a consequence of Jersey Central's inability to complete the record, an order has not issued in connection with this proposal. Jersey Central has filed an amendment to its original proposal and now proposes to issue and sell Bonds for cash, from time-to-time through December 31, 1988, for a term of 10 to 30 years in an aggregate principal amount of up to $100 million. Jersey Central proposes to sell the Bonds through competitive bidding pursuant to Rule 50 or, alternatively, in accordance with the Commission's Statement of Policy in HCAR No. 22623 (September 2, 1982). Jersey Central may request at a later date an exception from competitive bidding requirement in the event that circumstances and market conditions change.

Southern Indiana Gas and Electric Company (70–7451)

Southern Indiana Gas and Electric Company ("SIGECO"), 20–24 N.W. Fourth Street, Evansville, Indiana 47741, an exempt holding company, has filed an application pursuant to sections 9(a)(2) and 10 of the Act.

SIGECO proposes to acquire from the holders thereof (except MPM Investment Corporation) all of their holdings of the outstanding common stock of Horizon Investments, Inc. ("Horizon"), which owns 100% of the common stock of Hoosier Gas Corporation ("Hoosier"), a gas-utility company, and all of the outstanding common stock of MPM Investment Corporation ("MPM"), which owns 33⅓% (the remaining shares) of the Horizon common stock.

SIGECO is an Indiana public-utility company engaged in the generation, transmission, and distribution of electric energy to retail residential, commercial, and industrial customers in a southwestern region of Indiana. It is also engaged in the purchase, distribution, transportation, and sale of natural gas in Evansville, Indiana, and 38 nearby communities and their environs. It is a public-utility holding company by virtue of its ownership of 33% of the common stock of Community Natural Gas Company, Inc., a small gas utility company operating in Southwestern Indiana. SIGECO is exempt under Rule 2 from all of the provisions of the Act except section 9(a)(2). Through its wholly owned subsidiary, Southern Indiana Properties, Inc., SIGECO also engages in certain nonutility businesses. Southern Indiana Group, Inc. ("SIGI"), an Indiana corporation, is a wholly owned subsidiary of SIGECO and is presently not engaged in any business.

Horizon is a closely held Indiana corporation which owns 100% of the common stock of Hoosier and has no other significant assets. Hoosier is an Indiana public-utility company engaged in the gas utility business. Its gas service area is adjacent to SIGECO's gas service territory. MPM is a closely held Indiana corporation which owns 33⅓% of common stock of Horizon. MPM has no other significant assets.

The terms of the proposed acquisition were arrived at after arm's-length negotiations with Horizon. Horizon and NPM are to be merged with and into SIGI, with SIGI as the surviving corporation. In the contemplated merger, the issued and outstanding shares of Horizon and MPM would be converted into and become a right to receive that number of shares of (i) SIGECO common stock, (ii) SIGECO preferred stock, or (iii) both SIGECO common and preferred stock, in such proportions as the shareholders of Horizon and MPM shall have elected having an aggregate value of $14,000,000, reduced by the outstanding principal balance at the date of conversion ("Closing Date") of the term indebtedness of Horizon to The Indiana National Bank; provided that the shares of Horizon common stock owned by MPM shall not be converted into rights to SIGEO Shares but shall be automatically cancelled on the Closing Date so that two-thireds (⅔) of the aggregate value of SIGECO shares issuable pursuant to the merger shall be issued to the shareholders of Horizon other than MPM and one-third (⅓) of such shares shall be directly issuable to the shareholders of MPM, in accordance with the respective elections of all such shareholders. For this purpose, the SIGECO common stock shall be valued at $35 per share, and the SIGECO preferred shall be valued at $100 per share, regardless of the actual trading price, if any, of SIGECO shares on the Closing Date.

SIGECO asserts that the proposed transaction will benefit all concerned by tending towards the economical and efficient development of an integrated gas operation. The acquisition of all of the Horizon stock and related transactions have been approved by the Indiana Public Utility Commission.

American Electric Power Corporations, Inc. (70–7465)

American Electric Power Corporation, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 thereunder.

AEP proposes to make the following amendments to the Restated Certificate of Incorporation, and to solicit proxies from its shareholders for approval of those amendments at its annual meeting to be held April 27, 1988.

1. Eliminate or limit the personal liability of the directors of AEP to AEP or its shareholders for damages for breach of fiduciary duty to the fullest extent permitted by the New York Business Corporation law as it exists on the date hereof or as it may hereafter be amended.

2. Increase the authorized number of shares of AEP's Common Stock, $6.50 par value, from 225,000,000 to 300,000,000.

3. Provide that certain minimum price and procedural requirements be met by any party which acquires 5% or more of AEP's Common Stock and then seeks to accomplish a merger or other business combination or transaction, unless certain shareholder or director voting requirements are otherwise satisfied.

AEP also proposes to amend its By-Laws by action of the Board of Directors on April 27, 1988, immediately following the annual meeting of shareholders; (i) To eliminate the present right of shareholders of AEP owning at least 25% of AEP's Common Stock to call a special meeting of shareholders; and (ii) to permit special meetings of shareholders to be held outside the State of New York.

The Columbia Gas System, Inc. (70–7474)

The Columbia Gas System, Inc. ("Columbia") 20 Montchanin Road, Wilmington, Delaware 19807, a registered hold company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

Columbia requests authorization to acquire on the open market from time-

to-time through December 31, 1989 up to 2% of its outstanding shares of common stock ("Common Stock"), $10 par value per share, and for the potential reissue of such Common Stock to fulfill stock options exercised under Columbia's Long-Term Incentive Plan, to fulfill stock purchase requirements under Columbia's Dividend Reinvestment Plan, and for such other purposes as may be approved by the Commission upon request by Columbia. As of October 31, 1987, 2% of Columbia outstanding shares of Common Stock constitute 891,000 shares.

Funds for the purchase of the shares will be obtained from internally generated cash and from financing authorized by the Commission. Columbia proposes to retain a brokerage firm to act as agent in purchasing the Common Stock on Columbia's behalf.

Central and South West Corporation (70-7479)

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Dallas, Texas 75201, a registered holding company, has filed a declaration pursuant to section 12(c) of the Act.

CSW proposes to purchase and retire shares of its outstanding common stock in open market and negotiated transactions through December 31, 1989. In no event would CSW purchase more than 10% of such shares issued and outstanding as of September 30, 1987. Purchases would be made only if CSW determined that it was in its best interest to do so. Funds for such purchases would be obtained solely from available internally generated funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-30063 Filed 12-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16190; File No. 811-2942]

Kemper Investors Life Insurance Company Variable Annuity Account B

December 23, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application pursuant to section 8(f) of the Investment Company Act of 1940 ("1940 Act").

Applicant: Kemper Investors Life Insurance Company Variable Annuity Account B ("Applicant").

Relevant 1940 Act Sections: Deregistration order requested under section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 5, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on January 18, 1988. Request a hearing in writing, giving the nature of your interest and the reason for your request. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney at law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549; Kemper Investors Life Insurance Company Variable Annuity Account B, 120 S. LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a unit investment trust registered under the Investment Company Act of 1940, was established pursuant to California law on May 10, 1979 by Kemper Investors Life Insurance Company, depositor.

2. A registration statement on Form S-6 for the variable annuity contracts to be issued by Applicant was filed on August 3, 1979.

3. The registration statement filed on Form S-6 never became effective and no public offering of securities was ever made.

4. Applicant represents that it has no assets or liabilities, is not a party to any litigation or administrative proceeding, and that it has made no sales of securities of which it is the issuer.

5. Applicant further represents that it is not now engaged in, nor proposes to engage in, any business activity other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-30061 Filed 12-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No IC-16191; File No. 812-7995]

Lutheran Brotherhood Variable Insurance Products Company, et al.

December 23, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Lutheran Brotherhood Variable Insurance Products Company ("Company"), LBVIP Variable Insurance Account II (the "Account"), LBVIP Series Fund ("Fund"), Inc., and Lutheran Brotherhood Securities Corp ("LBSC") (collectively referred to as "Applicants").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rule 6e-2(b)(15) thereunder.

Summary of Application: Applicants seek an order to the extent necessary to permit the sale of shares of the Fund to both variable annuity and variable life insurance separate accounts of the Company and its affiliates.

Filing Date: The application was filed on November 5, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 18, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Otis F. Hilbert, 625 Fourth Avenue South, Minneapolis, MN 55415.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, (202) 272-

2026 or Lewis B. Reich, Special Counsel, (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations and Statements

1. The Company is a stock life insurance company organized under the laws of the State of Minnesota. The Account, a separate account of the Company, is registered under the 1940 Act as a unit investment trust. LBSC, an indirect wholly-owned subsidiary of the Company, is the principal underwriter for the Account.

2. The Company and the Account intend to issue variable life insurance contracts as defined in paragraph (c)(1) of Rule 6e-2 under the 1940 Act, funded through the Account. The contract will permit only a single premium payment. The contract provides for life insurance and the accumulation of value under the contract on a variable basis. The Applicants represent that the contract satisfy the requirements of paragraph (a) of Rule 6e-2 under the Act.

3. Assets of the Account will be invested in shares of the Fund, a diversified management investment company registered under the 1940 Act. The Fund is a series company currently offering four separate portfolios. For each portfolio of the Fund there is a corresponding sub-account of the Account. Shares of each portfolio will be sold without sales charge to the Account and to other separate accounts of the Company and its affiliates. Applicants propose to offer Fund shares to the separate accounts of LBVIP and its affiliates which issue either variable annuity contracts or scheduled or flexible premium variable life insurance contracts.

4. Rule 6e-2 under the 1940 Act provides certain exemptions from the 1940 Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b) (15), however, precludes mixed funding. Applicants have requested exemptive relief to the extent necessary to permit shares of the Fund to be sold for mixed funding. Applicants propose that the requested relief extend to a class consisting of variable life separate accounts investing in the Fund (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in the Fund because the Fund offers its shares to variable annuity separate accounts.

5. Applicants assert that granting the request for relief to engage in mixed funding will benefit variable contract owners by eliminating a significant portion of the cost of establishing and administering separate funds and by allowing for the development of larger pools of assets resulting in greater cost efficiencies. Applicants assert that the portfolios of the Fund will not be managed to favor or disfavor any particular type of insurance product.

6. Applicants request an exemption from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rule 6e-2(b)(15) thereunder to the extent necessary to permit the sale of the Fund shares to both variable annuity and variable life insurance separate accounts subject to the provisions of clauses (i) through (iv) of Rule 6e-2(b)(15) and the conditions set forth below.

7. Applicants submit that there is no policy reason why the exemptions provided by Rule 6e-2(b)(15) should not apply to the Fund solely because variable annuity separate accounts of the Company as well as the Account will invest in Fund shares. Applicants submit that the relief requested is not inconsistent with proposed amendments to Rule 6e-2 which permit "mixed funding" of variable annuity and variable life separate accounts under certain conditions.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The Board of Directors of the Fund, constituted with a majority of disinterested directors, will monitor the Fund for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders investing in the Fund and interests of variable life contractholders (including owners of the contracts).

2. The Company agrees that it will be responsible for reporting any potential or existing conflicts to the directors of the Fund.

3. If a material irreconcilable conflict arises, the Company will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the variable life contracts (including the contracts).

For the reasons stated above, Applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-30062 Filed 12-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16193; 812-6895]

Applications for Exemption; Security First Trust et al.

December 23, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Security First Trust ("Trust"), Security First Life Insurance Company ("Security First"), Security First Life Separate Account A and Security First Variable Life Account, Fidelity Standard Life Insurance Company ("Fidelity Standard") and Fidelity Standard Life Separate Account, and certain Life Insurance Companies and their Separate Accounts registered under the 1940 Act which may invest in the Trust.

Relevant 1940 Act Sections: Exemptions requested under section 6(c) from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of the Trust to be sold to and held by registered variable annuity and variable life insurance Separate Accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was fined on October 13, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 18, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Richard C. Pearson, Esquire, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 272-2058 or Special Counsel Lewis B. Reich, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Trust, an open-end, diversified, management investment company organized as a Massachusetts business trust, consists of three separate series of shares: the Bond Series, the Money Market Series, and the Growth and Income Series. At present, Trust shares are offered to Separate Accounts of Security First, Fidelity Standard and Capitol Life in connection with the issuance of variable annuity contracts.

2. The Trust proposes to offer its shares to Security First Variable Life Account, which will offer variable life contracts under Rule 6e-3(T). In the future, the Trust may offer its shares to other registered Separate Accounts of both affiliated and unaffiliated insurance companies offering variable annuity contracts, or single, scheduled, or flexible premium variable life insurance contracts ("contracts") relying on either Rule 6e-2 or 6e-3(T).

3. Rules 6e-2 and 6e-3(T) of the 1940 Act provide certain exemptions with respect to variable life insurance contracts. However, Rule 6e-2(b)(15) precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. "Mixed funding" is the use of the shares of one investment company to fund both variable life insurance and variable annuity separate accounts. "Shared funding" is the use of the shares of one investment company to fund separate accounts of unaffiliated life insurance companies. Applicants propose that the relief granted by Rules 6e-2(b)(15) and 6e-3(t)(b)(15) from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act be extended to a class of insurance companies and their registered Separate Accounts which may use the Trust as an investment medium to fund contracts to the extent necessary to permit shares of the Trust to be sold in connection with both mixed and shared funding, subject to the conditions set forth in the application and summarized below.

4. Mixed and shared funding will benefit contract owners by eliminating the cost of establishing and administering separate portfolio investment companies. The Trust will be managed in pursuit of the stated objectives of the Series and consistent with their policies, and will not be managed to favor or disfavor a particular type of contract or insurance company.

5. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment advisor or principal underwriter of any registered investment company if an affiliated person of that company is subject to an enumerated disqualification. Rules 6e-2(b)(15) (i) and (ii), and 6e-3(T)(B)(15) (i) and (ii), provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company. The partial relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15) from the requirements of section 9(a) in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants believe that it is unnecessary to apply section 9(a) to the large number of individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund as the funding medium for variable contracts, and allege that applying the requirements of section 9(a) merely because of mixed and shared funding would serve no regulatory purpose.

6. The language of Rules 6e-2(b)(15) and 6e-3(T)(b)(15) recognizes that variable life insurance contract owners are entitled to pass-through voting privileges. To the extent the SEC continues to interpret the 1940 Act to require pass-through voting privileges, participating insurance companies will vote shares of the Trust held in their Separate Accounts in a manner consistent with instructions received from their contract owners. Rules 6e-2 and 6e-3(T) provide exemptions from this pass-through voting requirement in limited situations. Participating insurance companies also will be responsible for assuring that each of their Separate Accounts participating in the Trust calculates voting privileges in a manner consistent with other variable annuity or variable life Separate Accounts.

7. Applicants will be subject to the undertakings proposed as conditions to receipt of exemptive relief. These conditions will be set forth in agreements entered into by participating insurance companies with respect to participation in the Trust.

Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. A majority of the Trust's Board shall consist of persons who are not "interested persons" of the Trust, as defined by section 2(a)(19) of the Act, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Trustees then the operation of this condition shall be suspended (a) for a period of 45 days if the vacancy or vacancies may be field by the Trust's board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of contractowners of all Separate Accounts investing in the Trust. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (f) a decison by an insurer to disregard the voting instructions of contractowners.

3. The insurance companies whose Separate Accounts invest in the Trust ("participating insurance companies") shall report any potential or existing conflicts to the Trust's Board. Participating insurance companies will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each

participating insurance company to inform the Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all participating insurance companies under their agreements governing participation in the Trust.

4. If it is determined by a majority of the Board of the Trust, or a majority of its disinterested members, that a material irreconcilable conflict exists, the relevant insurance companies shall, to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to eliminate the irreconcilable material conflict, including: (1) Withdrawing the assets allocable to some or all of the Separate Accounts from the Trust or any Series and reinvesting such assets in a different investment medium, including another Series of the Trust, or submitting the question whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (2) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a participating insurance company's decision to disregard contractowner voting instructions and that decision represents a majority position or would preclude a majority vote, the participating insurance company may be required, at the Trust's election, to withdraw its Separate Account's investment in the Trust and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict, and to bear the cost of such remedial action, will be a contractual obligation of all participating insurance companies under their agreements governing participation in the Trust. A majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Trust be required to establish a new funding medium for any variable contract. No insurer will be required to establish a new funding medium for any variable annuity or variable life insurance contract, if an offer to do so has been declined by vote of majority of contract owners materially adversely affected by the irreconcilable material conflict.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all participating insurance companies.

6. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

7. Participating insurance companies will provide pass-through voting privileges to all variable contractowners to the extent the Commission continues to interpret the Act to require pass-through voting in such cases. Participating insurance companies shall be responsible for assuring that each of their Separate Accounts participating in the Trust calculates voting privileges in a manner consistent with other variable annuity or variable life Separate Accounts. The obligation to calculate voting privileges in this manner shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Trust.

8. The Trust shall disclose in its prospectus that (1) shares of the Trust are offered in connection with mixed and shared funding, (2) mixed and shared funding may present certain conflicts of interest, and (3) the Board will monitor for the existence of any material conflicts and determine what action, if any, should be taken. The Trust will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

9. If and to the extent Rules 6e-2 and 6e-3(T) are amended, or Rule 6e-3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the Order requested in this application, then the Applicants shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent such rules are applicable.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-30064 Filed 12-30-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Brevard County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project, Apollo Hickory, in Brevard County, Florida.

FOR FURTHER INFORMATION CONTACT: D. B. Luhrs, District Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7239.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project to construct an improved alignment of State Road 5 from the intersection of Apollo II Blvd. and State Road 5 in Palm Bay to the intersection of County Road 511 and State Road 5 in the City of Melbourne, a distance of approximately 6.7 miles, was issued on August 1, 1985 and published in the August 8, 1985 **Federal Register**. A notice of availability of the Draft Environmental Impact Statement was published in the July 17, 1987 **Federal Register**. The FHWA, in cooperation with the Florida Department of Transportation, has since determined that the project as proposed in the Draft Environmental Impact Statement will be terminated. The northernmost 0.36-mile segments of the project, Aurora Road between Stewart Avenue and US-1 (SR-5), will be implemented based upon a Finding of No Significant Impact.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 21, 1987.

J. R. Skinner,

Division Administrator, Tallahassee, Florida.

[FR Doc. 87-30003 Filed 12-30-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bank Secrecy Act; Magnetic Tape Filing of Currency Transaction Reports

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: The Department of Treasury is making permanent the pilot program announced last March (52 FR 10183, March 30, 1987) in which participating financial institutions may report on magnetic media currency transactions as required by the Bank Secrecy Act. Such magnetic media filing must include all the information required to be provided on paper forms.

EFFECTIVE DATE: December 31, 1987.

ADDRESS: Requests for specifications should be addressed to: Chief, Currency and Banking Reports Division, Internal Revenue Service Data Center, 1300 John Lodge Drive, Detroit, MI 48226, Attention: Phyllis A. Goldsworthy, CTR Magnetic Filing Coordinator.

FOR FURTHER INFORMATION CONTACT: Phyllis A. Goldsworthy, CTR Magnetic Filing Coordinator, (313) 226-3293.

SUPPLEMENTARY INFORMATION: Under the Bank Secrecy Act, and the regulations promulgated thereunder, the Department of Treasury requires designated financial institutions to file reports of currency transactions over $10,000 on form prescribed by the Secretary of the Treasury. 31 CFR 103.22 and 103.26. Until recently, the only form of reporting has been paper filing on the Currency Transaction Report (Form 4789).

However, on March 30, 1987 (52 FR 10183), Treasury announced a pilot program in which participating financial institutions could report currency transactions on magnetic media (tape filing). The major purposes of the program were to evaluate the benefits of magnetic filing, increase the accuracy of the data being reported while reducing processing costs, gauge the receptivity of the financial institutions to this method of filing, and to identify and test the modifications to Treasury systems and procedures necessary for magnetic filing. Treasury hoped that non-paper filing would provide cost and other advantages to the government and participating financial institutions. Treasury noted that, based on the pilot test results, it might consider making the program permanent.

There was a highly favorable response to the pilot program from the financial community. Treasury received over 280 requests for information following publication of the **Federal Register** Notice. Fourteen were software vendors and/or service bureaus representing several thousand additional institutions. Of the 45 organizations that made application to file magnetically during the pilot program, which runs through December, 1987, 25 organizations had passed the acceptance testing standards and were certified to file magnetically by the end of July, 1987. Several banks examined the benefit of participating in the magnetic filing program. Their analysis revealed that, in the long run, an automated filing system will yield considerable benefits to the financial institutions.

Because the pilot test confirmed that this method to input would provide cost benefits and other advantages to the Government and the participating financial institutions, Treasury has decided to make permanent the option for financial institutions to file CTRs by magnetic media. Institutions which were previously accepted into the pilot program need not reapply for acceptance into the permanent program. Institutions that applied under the pilot program but failed the acceptance test may, if they desire, reapply under this permanent program. Filing by magnetic media is voluntary, and financial institutions may continue to file the paper CTRs if they do not wish to participate in this program.

Treasury will not furnish the software required for magnetic media filing. Treasury will accept magnetic media CTRs only from financial institutions that have applied to and been accepted by the Internal Revenue Service Data Center in Detroit, Michigan. Approval is contingent upon successful completion of an acceptance test to be administered by the Data Center. All information regarding the acceptance test, including the date by which it must be completed, may be obtained by writing to the Detroit Data Center for specifications. Magnetic media reports must contain all the information currently required on paper CTRs and must be in the format prescribed in the specifications. All magnetic media submissions must be accompanied by a transmittal document signed by an official of the financial institution attesting to the completeness and accuracy of the information transmitted.

The magnetic media filing will affect only the form in which financial institutions file CTRs; requirements of 31 CFR Part 103 will continue to apply in their entirety to participating institutions. An individual financial institution's participation may be terminated at any time at the option of Treasury. Upon termination of a financial institution from a program, that institution must immediately recommence filing paper CTRs.

Dated: December 21, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87-30004 Filed 12-30-87; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 251
Thursday, December 31, 1987

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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 8, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30150 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., January 8, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30151 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 15, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30152 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., January 15, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30153 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 22, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30154 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., January 22, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30155 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., January 22, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30156 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 29, 1988.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–30157 Filed 12–29–87; 2:31 pm]

BILLING CODE 6351-01-M

COUNCIL ON ENVIRONMENTAL QUALITY

DATE, TIME, AND PLACE: Wednesday, February 17, 1988, 10:00 a.m., Council on Environmental Quality Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC 20503.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. The Council on Environmental Quality has held a series of public meetings on the issues of stratospheric ozone depletion and global warming. To date, the Council has heard from experts concerning the scientific aspects of the problem and the human health and biological impacts.

At this meeting, the Council will be hearing from Dr. Robert Worrest. Dr. Worrest will address the aquatic impacts of stratospheric ozone depletion and global warming.

This meeting was originally scheduled for December 16, 1987, but was cancelled because of unforeseen circumstances.

2. Other matters may be discussed.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC. 20503; Telephone: (202) 395–5754.

A. Alan Hill,

Chairman.

[FR Doc. 87–30140 Filed 12–29–87; 2:03 pm]

BILLING CODE 3125-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 6, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. 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. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: December 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-30168 Filed 12-29-87; 4:01]

BILLING CODE 6210-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1397]

TIME AND DATE: 10 a.m. (e.s.t.), Monday, December 21, 1987.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA ITEM: Consideration of proposed power rate reduction.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires that this meeting be called at the time set out above and that no earlier announcement of this meeting was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Approved.

C. H. Dean, Jr.,

Director and Chairman.

Dated: December 18, 1987.

John B. Waters,

Director.

[FR Doc. 87-30119 Filed 12-29-87; 12:56 pm]

BILLING CODE 8120-01-M

federal register

Thursday
December 31, 1987

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 70, 500, 514, and 571
Sponsored Compounds in Food-Producing Animals; Criteria and Procedures for Evaluating the Safety of Carcinogenic Residues; Final Rule

Availability of Guidelines for Human Food Safety Evaluation; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 500, 514, and 571

[Docket No. 77N-0026]

Sponsored Compounds in Food-Producing Animals; Criteria and Procedures for Evaluating the Safety of Carcinogenic Residues; Animal Drug Safety Policy

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing procedures and minimum criteria to ensure the absence of significant concentrations of cancer-causing residues in the edible products of food-producing animals to which drugs, food additives, or color additives have been administered. The procedures and criteria are contained in final regulations and revised guidelines. The procedures and criteria implement the DES Proviso, an exception to the Delaney anticancer clause, which, in relevant part, permits approval of the use of a carcinogenic compound in food-producing animals, provided that the concentration of any residue remaining in edible tissues is so low that it would not present any significant risk of cancer to people.

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Benson, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 1985 (50 FR 45530), FDA reproposed regulations governing the approval of carcinogenic compounds to be used in food-producing animals, and made available a series of guidelines for implementing the regulations (50 FR 45556). The final regulations, adopted in this document, contain several changes from the reproposal. FDA has deleted from the regulations, and placed in a guideline, specific reference to the extrapolation procedure and the confidence limit to be used in quantifying the risks posed by carcinogenic compounds (see paragraph 25, below). The agency has also included in the final regulations a section on implementation, which was proposed in amended form in 1983 (see Section XII, below). The agency has also substituted the word "chronic" for "lifetime" in defining the kinds of carcinogenicity tests required (see paragraph 7, below), has deleted reference to the regulation of compounds whose test results are equivocal (see paragraph 13, below), and has made a minor change in the definition of the term "target tissue" (see paragraph 34, below).

This preamble explains the changes that have been made, and responds to comments submitted on the 1985 reproposal. FDA has also made minor revisions in the guidelines for implementing the regulations. A separate notice published elsewhere in this issue of the **Federal Register** announces their availability.

The final regulations include a new Subpart E in 21 CFR Part 500, which is titled "Regulation of Carcinogenic Compounds Used in Food-Producing Animals." The new regulation applies to drugs, food additives, and color additives that are to be administered to animals. FDA is also making conforming amendments to regulations in 21 CFR Part 70 (color additives), Part 514 (animal drugs), and Part 571 (animal food additives).

I. Introduction

A. Background and Purpose

The Federal Food, Drug, and Cosmetic Act (the act) contains three Delaney, or anticancer, clauses: Sections 409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B) (21 U.S.C. 348(c)(3)(A), 360b(d)(1)(H), and 376(b)(5)(B)), pertaining to food additives, new animal drugs, and color additives, respectively. These clauses prohibit approval of substances that have been shown to induce cancer in man or animals. However, each clause contains an exception that permits administration of such substances to food-producing animals where "no residue" will occur in food products. For example, section 512(d)(1)(H) of the act states that the prohibition against approval of a carcinogenic animal drug:

> * * * shall not apply with respect to such drug if the Secretary finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice (i) such drug will not adversely affect the animals for which it is intended, and (ii) no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary by regulations, which regulations shall not be subject to subsections (c), (d), and (h)), in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals; * * *.

Application of the exception, termed the "DES Proviso," hinges therefore on the finding of "no residue" of the substance in edible products.

As a practical matter, however, FDA has been unable to conclude that no trace of any given substance will remain in edible products. The new procedures, therefore, provide an operational definition of "no residue." That is, the procedures are designed to permit the determination of the concentration of residue of a carcinogenic compound that presents an insignificant risk of cancer to the consuming public. That concentration corresponds to a maximum lifetime risk of cancer to the test animal on the order of 1 in 1 million. Thus, the procedures provide for a quantitative estimation of the risk of cancer presented by the residues of a carcinogenic compound proposed for use in food-producing animals. "No residue" remains in food products when conditions of use, including any required preslaughter withdrawal period or milk discard time, ensure that the concentration of the residue of carcinogenic concern in the total diet of people will not exceed the concentration that has been determined to present an insignificant risk.

FDA emphasizes that a 1 in 1 million level of risk does not mean that 1 in every 1 million people will contract cancer as a result of this regulation. Rather, given the assumptions in current risk assessment methodologies, in all likelihood no one will contract cancer as a result of this regulation. A 1 in 1 million level represents (1) a 1 in 1 million increase in risk over the normal risk of cancer to the test animal and (2) a lifetime—not annual—risk. Furthermore, because of a number of assumptions used in the risk assessment procedure and the extrapolation model used, FDA expects that the lifetime risk to an individual will be between 1 in 1 million and a much lower level.

Further, before FDA will approve the compound, an analytical method must be available that can accurately and dependably measure the carcinogenic residues of the compound at a concentration corresponding to that estimated to result in an insignificant potential risk to humans. This operational definition of "no residue" thereby makes the DES Proviso operable, since otherwise no carcinogenic substances could be approved for use in food-producing animals.

The legal theory being applied here is that each statutory provision is to be given effect. That is, if FDA were to interpret the DES Proviso literally, the proviso would be inoperable. This legal theory, therefore, differs from the application to the Delaney Clause of the *de minimis* doctrine, i.e., that the law

does not concern itself with trifling matters. Further discussions of the statutory background and FDA's interpretation of the DES Proviso are contained in the 1985 reproposal, and are incorporated by reference in this document.

B. History of These Rulemaking Proceedings

Before 1973, FDA did not have a consistently applied system for showing the safety of carcinogenic compounds proposed for use in food-producing animals or for invoking the DES Proviso to the Delaney Clause. In the **Federal Register** of July 19, 1973 (38 FR 19226), FDA published a proposal to establish "the minimum standards for determining the acceptability of assay methods used to assure the absence of residues [of carcinogenic concern] in edible products of food-producing animals." The proposal was the agency's first attempt to provide a consistent and predictable approach (1) to approve methods of measurement for the application of the DES Proviso and, therefore, (2) to demonstrate the safety of carcinogenic compounds for use in food-producing animals.

In the **Federal Register** of February 22, 1977 (42 FR 10412), the Commissioner of Food and Drugs promulgated final regulations based on the 1973 proposal. The Commissioner also solicited comments on four specific issues: (1) Acceptable level of risk, (2) comparative metabolism, (3) regulation of endogenous compounds, and (4) methods of determining an assay's lowest limit of reliable measurement.

On May 12, 1977, the Animal Health Institute (AHI) filed a complaint in the United States District Court for the District of Columbia alleging, among other things, that the regulations violated the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) because the regulations were not republished for comment. The court agreed with AHI's contention because it found that the 1977 final rule was significantly different from that proposed in 1973. The court remanded the case to FDA for further consideration. The court did not suggest that FDA's basic approach was suspect. The court, however, requested FDA specifically to consider questions raised by AHI regarding the technical feasibility of the regulations. The court recommended that FDA repropose the regulations.

FDA revoked the regulations on May 26, 1978 (43 FR 22675), and on March 20, 1979 (44 FR 17070), reproposed them for public comment. The 1979 proposal contained an evaluation of and response to AHI's criticisms, the court's questions, and the substantive comments filed on the final rule. The reproposal was also supported by an extensive administrative record. Furthermore, in an effort to promote the submission of well-directed comments, FDA held a public hearing on the proposal on June 21 and 22, 1979 (44 FR 23538, April 29, 1979; 44 FR 26899, May 8, 1979). A transcript of the hearing has been made a part of the administrative record of this proceeding.

Finally, as described above, in the **Federal Register** of October 31, 1985 (50 FR 45530), FDA reproposed the regulations and made available a series of guidelines for implementing the regulations (50 FR 45556).

II. Overview of the Regulations and Guidelines

The regulations and guidelines provide an operational definition of "no residue." In addition, they identify the procedures and the criteria that if followed will permit the approval of carcinogenic compounds intended for use in food-producing animals, provided that the level of any residue remaining in edible tissues is so minimal that it would not present any significant risk of cancer. FDA emphasizes that the final regulations pertain to only one potential adverse effect: carcinogenicity. Every sponsored compound must also be evaluated for other potential adverse effects, which are not the subject of the regulations, but which are the subject of the guidelines.

The first step in the evaluation of any compound proposed for use in animals is the "threshold assessment," FDA's pivotal determination as to whether carcinogenicity testing is necessary for a sponsored compound. The threshold assessment is conducted under the authority of the general safety provisions of sections 409, 512, and 706 of the act. Although the 1977 and 1979 versions of the regulations included the threshold assessment, the 1985 reproposal and the final regulation merely refer to the threshold assessment (§ 500.80 (b) and (c)). The Threshold Assessment Guideline contains the procedures and criteria FDA uses in making the threshold assessment. See Section III of this preamble.

If, after conducting the threshold assessment, FDA determines (also under the authority of the general safety provisions) that carcinogenicity testing (chronic feeding studies) of the compound in laboratory animals is necessary, FDA will request the sponsor to test the parent compound ("parent" compound refers to the sponsored compound itself, the compound that is to be administered to the target animal). FDA will also request testing of any metabolites (degradation products resulting from breakdown of the parent compound by enzymes or physiological fluids) identified by the agency to be of carcinogenic concern (§ 500.80(b)).

To determine whether metabolites are produced, FDA requires metabolism studies to identify and quantify metabolites. The Guideline for Metabolism Studies and for Selection of Residues for Toxicological Testing provides guidance for such testing, as well as for selection of residues that will be subjected to toxicological (carcinogenicity) testing. The guideline also provides that, as an alternative to separate toxicological testing of each such metabolite, FDA will compare metabolite profiles from tissues of target and test animals and will determine whether the test for the parent compound has adequately tested the metabolites by autoexposure. (The autoexposure approach assumes that the treated animals are exposed, by their own metabolism, to metabolites of the administered compound.) In any event, FDA may require separate studies on a metabolite if it appears that the metabolite has not been adequately tested and is likely to have carcinogenic potency greater than the parent compound. See Section IV of this preamble.

The sponsored compound and any metabolites selected for separate carcinogenicity testing will be subjected to oral, chronic, dose-response studies in two test animal species. See 21 CFR 500.80(b), Section V of this preamble, and the Guideline for Toxicological Testing. If the data from the chronic tests do not demonstrate carcinogenicity from either the parent compound or metabolites, the sponsored compound is not subject to the regulations (§ 500.84(b)). If, on the other hand, the data collected demonstrate carcinogenicity, 21 CFR Part 500, Subpart E, provides that FDA will evaluate the data on the quantitative aspects of the carcinogenicity of the compound and its metabolites. The agency will use a statistical extrapolation procedure, from which it will determine the concentration of the residue of carcinogenic concern that corresponds to a maximum lifetime risk to the test animal of 1 in 1 million. That concentration of residue will be considered safe and will be permitted in the total diet of people. Thus, FDA will consider that "no residue" of the compound remains in food products when conditions of its use will ensure that the permitted concentration of residue will not be exceeded. Because

the total human diet is not derived from food-producing animals, FDA will make corrections and thereby establish the concentration of residue that will be permitted in each specific edible tissue of treated animals. ("Edible tissue" includes muscle, fat, and organ tissue, as well as milk and eggs, where appropriate.) See 21 CFR 500.84(c), Section VI of this preamble, the Guideline for Toxicological Testing, and the Guideline for Establishing a Tolerance.

The regulations then provide that the sponsor of the compound must develop a reliable and practical assay method, referred to as the "regulatory method," to monitor the permitted concentration of residues in the edible tissues of treated animals (§ 500.88). Because it is unnecessary for the method to measure each tissue and each residue (parent compound and metabolite), the regulations provide for identification of a target tissue and a marker residue. The regulatory method must be capable of measuring, in the target tissue, a specified concentration of the marker residue. If the concentration found is no higher than the specified level, that fact will be taken as confirmation that "no residue" will be found in any of the tissues. See § 500.86, Sections VII and VIII of this preamble, and the Guideline for Approval of a Method of Analysis for Residues.

The final step in the procedures is the determination of when the concentrations of residues of carcinogenic concern in the edible tissue of the treated animals deplete to the permitted concentrations. This information allows for the determination of the last time before marketing an animal may be administered the sponsored compound, e.g., the withdrawal time. See 21 CFR 500.84(c)(2), Section IX of this preamble, and the Guideline for Establishing a Withdrawal Period.

General Comments on the 1985 Reproposal

FDA received a total of 11 comments on the reproposal. The comments are discussed in this section, and in succeeding sections of this preamble.

1. Several comments noted that FDA did not refer to several recently published reports on regulatory philosophy and risk assessment, including the Office of Science and Technology Policy's (OSTP) report, entitled "Chemical Carcinogens: A Review of the Science and Its Associated Principles" (50 FR 10373, March 14, 1985) (Ref. 1) and the April 1985 report to the Secretary, Department of Health and Human Services (DHHS), from the Executive Committee, DHHS Committee to Coordinate Environmental and Related Programs (CCERP), entitled "Risk Assessment and Risk Management of Toxic Substances" (Ref. 2). The comments urged that FDA adopt the guiding principles for the performance of risk assessments as discussed in these reports.

FDA has reviewed the OSTP and CCERP reports and concluded that they are consistent with the 1985 reproposal. Therefore, FDA has decided that the 1985 reproposal does not need to be revised in light of the reports. Further, while the reports stated general principles, FDA must adopt procedures for making risk assessments on specific substances, and has done so in these final regulations and guidelines.

A related comment suggested that FDA establish a broad-based advisory panel to assist FDA in its efforts to stay abreast of current science.

FDA anticipates that the ongoing activities of OSTP and the National Toxicology Program (NTP) on chemical carcinogens will make significant contributions to risk assessment methodology. In addition, FDA itself, notably through its National Center for Toxicological Research, is conducting research on the assumptions involved in risk assessment methodology. Some of this research is described in Action Plan Phase I and Phase II. As a participant in these activities, FDA will stay abreast of current thinking on chemical carcinogens. FDA fully realizes that the science of risk assessment will mature and that FDA must continually focus on the principles of proper risk assessment to meet its regulatory responsibilities. Thus, FDA does not believe that a separate advisory panel is necessary.

2. One comment contended that FDA's interpretation of the DES Proviso violates the "no residue mandate" because it allows carcinogenic residues in animal products. However, the comment proposed a plan under which residues presenting an insignificant level of risk would be permitted in certain circumstances. Under the comment's proposal, if residues of a substance were found by available technology, FDA would have to ban the substance. If, on the other hand, available technology did not detect a residue, FDA would perform a risk assessment to determine what level of residue would pose a significant risk. An assay method sensitive enough to detect that level would be required.

FDA rejects the comment as illogical. Under the proposal made in the comment, whether a risk assessment would be performed would depend on pure chance; that is, whether an assay method of sufficient sensitivity to detect residue happened to be available. If so, the substance would be banned without a determination of a level presenting a significant risk. If not, a risk assessment would then be conducted. Thus, the comment's proposed plan would be even less logical than using the lowest limit of detection capability, an option that FDA has rejected for reasons explained in the preamble to the reproposal (50 FR 45532).

3. One comment contended that the DES Proviso "commands" the approval of a carcinogenic drug meeting its provisions. The comment went on to argue that, because no animal drug has been approved under the risk assessment criteria contained in the 1985 reproposal, the legitimacy of the criteria is questionable.

The DES Proviso is merely an exception to the Delaney Clause—it cannot be said to "command" approval of any drug, but sets criteria which, if met, will allow use of a carcinogenic drug, provided that the terms of the general safety clause are also satisfied. The final regulations and guidelines allow sponsors of compounds for use in food-producing animals to invoke the provisions of the DES Proviso by defining FDA's interpretation of "no residue" in applying the law. The sponsor seeking approval of a substance has the burden of proving that the substance is safe and therefore must show, for a carcinogen, that there will be "no residue" as here defined. Further, the person claiming the benefit of a statutory exception for its product has the burden of establishing that the product is within the scope of the exception. See, e.g., *United States* v. *An Article of Device * * * Toftness Radiation Detector * * *,* 731 F.2d 1253, 1261 (7th Cir.), *cert. denied,* 469 U.S. 882 (1984); *United States* v. *Bodine Produce Co.,* 206 F. Supp. 201, 211 (D. Ariz. 1962). The burden of proving the safety of a carcinogenic compound is rigorous. This heavy burden is appropriate in light of the uncertainties involved in determining the mechanism of carcinogenesis, and FDA's statutory mandate to protect the public health. FDA's criteria for risk assessment, contained in the regulations and guidelines, reflect this burden. The legitimacy of the criteria must be evaluated in this context, not by whether sponsors choose to attempt to meet the criteria.

4. Several comments contended that the 1985 reproposal would be significantly strengthened if it made a clear distinction between the scientific function of risk assessment and the

social value judgments involved in risk management, especially in view of the multiple conservatisms contained in the procedures and criteria, presumably because of the different functions served by the two concepts.

The term "risk assessment" is generally recognized to mean the characterization of potential adverse health effects on human health from environmental hazards. "Risk assessment" includes several elements: description of the potential adverse health effects based on an evaluation of the results of epidemiological, clinical, toxicological, and environmental research; extrapolation from those results to predict the type and estimate the extent of health effects in humans under given conditions of exposure; judgments as to the number and characteristics of persons exposed at various intensities and for various durations; and judgments on the existence and extent of public health risks presented by such exposure. "Risk assessment" also includes characterization of the uncertainty inherent in the process of inferring risk.

The term "risk management" is generally recognized to mean the process of evaluating alternative regulatory actions and selecting among them. Thus, risk management, as carried out by a regulatory agency, is the decisionmaking process that includes the use of value judgments to determine the acceptability of health risks under a given statutory scheme.

In fact, the regulations and guidelines do include aspects and criteria that differentiate between "risk assessment" and "risk management." For example, the data collection steps clearly are a part of risk assessment. The choice of a permitted level of risk on the other hand, although involving consideration of the results of risk assessment, primarily involves elements of risk management. Similarly, the procedure for establishing a withdrawal period involves elements of risk assessment (the interpretation of residue depletion data) and risk management (the application of the tolerance limit to the residue depletion data to set an appropriate withdrawal period). Where risk assessment and risk management decisions overlap, FDA believes that no useful purpose is served by having the final regulations differentiate between the two approaches. FDA does believe, however, that it is important to understand the interplay between the risk assessment and risk management aspects of the final regulations and to recognize that the seemingly precise numbers derived from a risk assessment are in part the product of reasonable scientific and policy judgments.

5. One comment suggested that for the risk management decisions that accompany the regulations to be "socially sound," it is essential that the scientific bases, i.e., the risk assessment aspects, be grounded on information that is as accurate and complete as possible. The comment contended that the 1985 reproposal contemplates a number of "worst case" assumptions and will rely on equivocal data. The comments argue that the 1985 reproposal would result in a "risk value" much less than the 1 in 1 million lifetime level of risk specified. One comment concluded that such worst case analyses are necessary, but should be accompanied by a full scientific evaluation, including presentation of ranges in the concentrations of the residues that would correspond to a 1 in 1 million risk that would result from use of different plausible mathematical procedures for risk extrapolation, a full characterization of risk based on judgments concerning mechanistic, pharmacokinetic and other biological factors, and a sensitivity analysis.

Generally, FDA does not disagree with the comments. If, in a given risk assessment, FDA can make more plausible and realistic assumptions than those that the agency would ordinarily use, FDA will rely on such information. The waiver section of the final regulations and FDA's reliance on guidelines show FDA's intent to be flexible when evaluating scientific data. See also the section on "Uncertainties in Quantitating Risk Assessment" in the 1985 reproposal (50 FR 45542–45543).

6. Two comments argued that the use of the term "residue" in the definition of "residue of carcinogenic concern" in § 500.82(b) of the 1985 reproposal (final § 500.82(b)) must be limited to residues of the parent compound and may not include metabolites of the parent compound. The comments argued that this limitation is required by the language of the Delaney Clause and the DES Proviso, which, in the case of section 512(d)(1)(H) of the act, refers to "such drug." The comments argued that section 512(d)(2)(A) of the act, which refers to the consumption of "such drug and of any substance formed in or on food because of the use of such drug" directs the evaluation of metabolites under the general food safety clause (section 512(d)(1)(A) of the act). The comments contended that this limitation was accepted by the court in *Hess & Clark* v. *FDA*, 495 F.2d 975, 991 (D.C. Cir. 1974), and was incorporated in FDA's policy for evaluating the safety of constituents of food and color additives (see 47 FR 14464, 14468–14469; April 2, 1982), under which impurities are deemed not to be food or color additives.

FDA disagrees. The DES provision in section 512(d)(1)(H) of the act states that a new animal drug application (NADA) for a carcinogenic new animal drug may not be approved unless there is a finding (among other findings) that "no *residue* of such drug will be found * * * in any edible portion of [the treated] animals after slaughter or in any food yielded by or derived from the living animals" (emphasis added). The same language appears in the DES Provisos contained in the food and color additive sections of the act. FDA has consistently interpreted the word "residue" in the DES Proviso to include whatever was caused to be added to the edible products, whether it was the administered compound (parent compound) or one of its metabolites. The agency has applied that interpretation on a case-by-case basis for a number of years. See, e.g., 42 FR 10412, February 22, 1977; Commissioner's Notice of Hearing on Furazolidone, 49 FR 34972–34973, September 4, 1984; and Commissioner's DES Decision, 44 FR 54852, 54868–54869, September 21, 1979. It is necessary to take metabolites into account because people will consume not only the sponsored compound but, in all likelihood, will also consume the metabolites of the compound (see Section IV below). These metabolites may be more potent than the parent compound. Under these circumstances, to interpret the DES Proviso as not applying both to the carcinogenic compound and its metabolites would contradict the statutory plan for evaluating the safety of substances to which people are directly exposed.

Moreover, the *Hess & Clark* decision does not, as the comment suggested, address the issue of whether the DES Proviso applies solely to the parent compound. Although the court noted that the Delaney Clause might have been inapplicable because the detected residues may not have been DES residues (495 F.2d at 991), the reference was to the possibility that the residues might have been impurities caused by the assay method (495 F.2d at 992, 993). In fact, the court held the Delaney Clause inapplicable in that case "without regard to the composition of the residues" because residues had not been detected using an approved method (495 F.2d at 991).

Finally, FDA's policy for evaluating the constituents of food and color

additives is inapplicable. Under that policy, impurities are treated not as food or color additives but as constituents of those substances. Thus, impurities are not subject to the Delaney Clause.

Under this policy, FDA will approve an additive if the additive as a whole (including its impurities) has not been shown to cause cancer in appropriate testing, provided that FDA finds (using risk assessment) that exposure to the impurities from use of the additive is safe under the general safety clause. This policy was upheld in *Scott* v. *Food and Drug Administration*, 728 F.2d 322 (6th Cir. 1984), because, among other things, it is consistent with the language of section 706, which refers both to the pure dye and impurities in section 706(b)(5)(A)(iv), but which refers only to the color additive in section 706(b)(5)(B), the Delaney Clause provision.

Section 512 makes no similar distinction between parent compounds and metabolites. Nor is there a basis for such a distinction because, unlike the constituents of additives, metabolites are not present in the original compound but are produced by the enzyme systems of the animal to which they are administered. Therefore, they occur separately in the edible products that humans consume.

III. Threshold Assessment

When considering whether a compound proposed for use in food-producing animals is safe within the meaning of the general food safety clause, FDA determines whether the compound has the potential to contaminate the edible tissues of food-producing animals with residues that, if consumed, would present a risk of cancer to people. However, FDA will not require carcinogenicity testing of every sponsored compound. The procedures by which FDA determines whether carcinogenicity testing is necessary are explained in the Threshold Assessment Guideline. This guideline is made available through a notice published elsewhere in this issue of the **Federal Register.**

The Threshold Assessment Guideline offers a decision-tree approach for deciding whether the sponsored compound should be tested for carcinogenicity. The guideline is based on the assumption that the potential of a sponsored compound to present a risk of cancer to people includes two primary elements: (1) The potential carcinogenicity of the compound and (2) the exposure of people to residues of the compound.

When considering the potential carcinogenicity of the sponsored compound, FDA will evaluate the structure of the parent compound and its relationship to the structure of known carcinogens as well as data from short-term genetic toxicity tests and from subchronic toxicity tests performed on the compound. FDA will also evaluate any other relevant information concerning the potential carcinogenicity of the compound.

When considering the potential exposure of people to residues of the compound, FDA will evaluate both the frequency of exposure to residues and the amount of residue ingested during a single exposure. As a measure of the frequency of exposure of people to the compound in food from food-producing animals, FDA will consider the extent of use of the compound in animal husbandry. As a measure of the amount of residue of a compound ingested by a person during a single exposure, FDA will use the results of a residue depletion study on the compound, which takes into account the duration of treatment, the dose administered, the time of treatment in relation to slaughter, and the contribution of various edible tissues to the total diet of people.

After all information is evaluated, FDA will follow the decision elements of the threshold assessment guideline to determine whether it will request carcinogenicity testing.

If FDA does not request testing for carcinogenicity, these final regulations do not apply to the compound. It is possible that subsequent testing that is performed under the general food safety requirements of the act and that is necessary for approval of the product may indicate that the compound possesses the potential to be carcinogenic. Such a finding may result in a request by FDA for carcinogenicity testing.

Comments submitted on the threshold assessment are discussed in a document that is on file under Docket Number 83D–0288. See notice of availability of revised guidelines, published elsewhere in this issue of the **Federal Register.**

IV. Studies To Identify Residues of Toxicological Concern

The DES Provisos specify that no residue of a carcinogenic compound that is administered to animals shall occur in edible products. The compound that is administered to food-producing animals is not necessarily the substance or substances that will be present in the edible products of the treated animals. This is because the enzymatic systems and physiological fluids of an animal can act upon a compound administered to the animal and produce new substances, which are commonly referred to as metabolites or degradation products. The amounts of these substances in edible animal products will be a complex function of the rate and extent of absorption of the parent compound, the rate and extent of the metabolism of the absorbed parent compound, and the rate of excretion of the parent compound and metabolites (Refs. 3 through 6).

Because the structures of metabolites can vary greatly from that of the parent compound, the toxicological properties of these metabolites can also vary. In many instances, a metabolite can be less toxic than the parent compound. However, in other instances, a metabolite can be more toxic than the parent compound (Refs. 7, 8, and 9).

The total residue of the sponsored compound in edible animal products will consist of the parent compound, free (unbound) metabolites, and metabolites that are covalently bound to endogenous molecules, e.g., protein molecules that are already in the animal's cells. The relative and absolute amounts of each residue will vary among the tissues according to the pattern of administration and depletion and the time following the last administration of the sponsored compound to the animal. Because different components of the total residue may possess dissimilar toxicological potential, a compound cannot be shown to be safe until the sponsor has collected information on the amount, persistence, and chemical nature of the total residue in the edible products of the treated animals.

Section 500.80(b) states that if FDA concludes on the basis of the threshold assessment that a sponsor shall conduct carcinogenicity testing on the sponsored compound, FDA will also determine whether and to what extent the sponsor shall conduct carcinogenicity testing on metabolites of the sponsored compound. FDA has prepared a "Guideline for Metabolism Studies and for Selection of Residues for Toxicological Testing" which identifies the extent of metabolite quantification, identification, and testing that FDA believes is necessary for a showing of safety. (This guideline is made available through the notice published elsewhere in this issue of the **Federal Register.**) For example, the guideline permits reliance upon autoexposure testing to the extent scientifically appropriate in an effort to eliminate the need to conduct separate testing on individual metabolites.

If FDA requires that a sponsored compound be subjected to carcinogenicity testing, a sponsor will be required to test the parent compound in

chronic bioassays. FDA uses the information on the amount, persistence, and chemical nature of the metabolites in target animals to select those metabolites of the parent compound that must also be subjected to carcinogenicity testing. FDA will compare data submitted by the sponsor on the metabolites of the compound in target and test animals and will use scientific judgment in determining the adequacy of autoexposure to test metabolites of the sponsored compound. FDA may still require separate toxicity studies if a metabolite is not adequately tested through autoexposure and is likely to have carcinogenic potential greater than the parent compound.

Comments on this portion of the regulations are discussed in a document that is on file under Docket Number 83D–0288. See notice of availability of revised guidelines published elsewhere in this issue of the **Federal Register.**

V. Chronic Toxicity Testing

A. Introduction

The sponsored compound and any metabolites selected for separate carcinogenicity testing must be subjected to oral, chronic dose-response studies in two test animal species (§ 500.80(b)). The purpose of these studies is to determine whether the compounds under test are carcinogenic and, if so, to establish the concentration that will satisfy FDA's operational definition of no residue.

B. Comments on the 1985 Reproposal

7. Three comments were concerned with FDA's description of bioassays in the second sentence of § 500.80(b). One comment requested that this sentence be revised to delete the word "lifetime" and insert the phrase "chronic, dose response studies of appropriate duration * * *" in lieu of "lifetime, dose-response studies." Another comment contended that this sentence was too restrictive for a regulation and did not allow for advances in the science of carcinogenicity testing. This comment suggested that the sentence be revised to read "the bioassays that a sponsor conducts must be appropriate to assess carcinogenicity and to determine the quantitative aspects of any carcinogenic response." The third comment suggested that the reference to chronic bioassays be deleted entirely from the regulations.

FDA agrees that the term "lifetime" is not appropriate for the regulation, and has substituted the term "chronic" for "lifetime" but has made no other changes in § 500.80(b). In this context, FDA will interpret the word "chronic" to mean the length of time recognized in the scientific community as necessary to adequately test the compound. It is well recognized in the scientific community (see OSTP principles 6, 8, 15, 16, and 19 (Ref. 1)) that the chronic bioassay is currently the best way to test the carcinogenicity of a compound. Thus, it is appropriate to utilize that term in the final regulations. Although FDA will use all the evidence available when making decisions on the carcinogenicity of a compound, more weight will be accorded to the results from chronic bioassays than to the other evidence in the foreseeable future. In the event of dramatic advances in the science of risk assessment, FDA will propose appropriate regulatory modifications or respond to petitions.

8. Several comments objected to the definition of carcinogenicity that FDA stated that it would follow (50 FR 45540), claiming that it was a purely statistical definition with no biological basis. One comment also suggested that FDA specify the type of statistics used to analyze the chronic bioassays. The comment also suggested that when considering the statistical significance of the results of the bioassay, FDA should apply a p-value of 0.01 for a common tumor and p-value of 0.05 for a rare tumor.

The comments have misconstrued the definition that was stated in the 1985 reproposal. That definition does not refer only to a statistically significant increase. FDA stated in the 1985 reproposal (50 FR 45540, paragraph 23) that it considers both the statistical and biological significance of the data in its review. To clarify this matter FDA intends to use as a guide the definition of carcinogenicity of the Interdisciplinary Panel on Carcinogenicity which states (Ref. 10):

> The carcinogenicity of a substance in animals is established when administration in adequately designed and conducted studies results in an increase in the incidence of one or more types of malignant (or, where appropriate, a combination of benign and malignant) neoplasms in treated animals as compared to untreated animals maintained under identical conditions except for exposure to the test compound. Determination that the incidence of neoplasms increases as the result of exposure to the test compound requires a full biological, pathological, and statistical evaluation. Statistics assist in evaluating the biological conclusion, but a biological conclusion is not determined by the statistical results.

This definition is consistent with OSTP's principles (Ref. 1) and NTP's recommendations (Ref. 11). In addition, in a situation in which the scientific evidence as a whole will allow FDA to conclude that a tested compound is carcinogenic when it causes benign tumors only or decreases the time it takes for tumors to develop, FDA will regulate that compound as a carcinogen under the Delaney Clause.

FDA will determine, on a case-by-case basis, the most appropriate statistical tests to use in its evaluation of the results of a chronic bioassay. Normally FDA uses the Cochran-Artimage test for trends and, occasionally, the agency uses the Fisher Exact test. In its statistical analysis, FDA will normally use the p-values for common and rare tumors as suggested in the comment and as used by NTP (Ref. 12).

9. Several comments suggested that FDA reconsider its position that it will evaluate only increases in the frequencies of a given tumor in a chronic bioassay. These comments argued that it is scientifically indefensible to ignore a statistically significant decrease in tumors.

In the preamble to the 1985 reproposal (50 FR 45540), FDA stated that when bioassay results show both statistically significant increases and decreases in tumor types, it will emphasize the increase in frequency of a given type of tumor. It is not uncommon for a chemical agent under study to lower the rates of tumors at some anatomical sites (Ref. 13). In many cases the agent's effects on mortality or weight gain explain the decrease. FDA will evaluate the tumor data using an age-adjusted analysis to minimize problems associated with differential mortality in the study. As for weight gain, the nutritional status of the animals is known to affect the rate of tumor production (Ref. 13). Thus, a dose above the maximum tolerated dose may decrease the incidence of tumors because of the decreased weight gain. Therefore, FDA will not use data from doses above the maximum tolerated dose for quantitative risk assessment purposes.

10. Many comments maintained that FDA's procedures, as discussed in the preamble to the 1985 reproposal (50 FR 45540), would not distinguish a "carcinogen" from a "pseudocarcinogen." Several of these comments objected to FDA's position that it will not disregard positive results from chronic bioassays in which an excessive dose of the test substance was administered. Other comments stated it was scientifically indefensible for FDA to consider results from studies using nonoral routes of exposure or unique test animals. Several of these comments urged that FDA consider the

mechanism of action and pharmacokinetics and adopt a "weight-of-the-evidence" approach similar to that contained in OSTP principle 25 (Ref. 1).

As stated in paragraph 9, FDA will not use data from a dose above the maximum tolerated dose for quantitative risk assessment purposes. However, in the threshold assessment FDA will not disregard positive results (excess tumors) from experiments that use a nonoral route of exposure, excessive doses, or unique test animals. At the very least, these results raise questions concerning the safety of the compound that must be resolved by more definitive testing. However, negative results from any other, more adequate studies would provide a basis for approval of the compound and would therefore take precedence over the results from compromised studies such as the three types of studies listed above, in determining the carcinogenicity of a compound. FDA already uses a weight-of-the-evidence approach similar to that contained in OSTP principle 25 when determining the carcinogenicity of a compound and will consider all data submitted by the sponsor that deal with mechanism of action and pharmacokinetics. For example, in the case of a synthetic sex steroid, FDA will not use the risk assessment procedure in these final regulations if tumors are observed only in endocrine-sensitive tissue and no adverse data are obtained from the battery of genetic toxicity tests. See the Guideline for Toxicological Testing, which is made available through a notice published elsewhere in this issue of the **Federal Register.**

11. One comment proposed that FDA consider a compound carcinogenic only when it gave a positive response in at least two species of test animals.

FDA does not agree. Failure to replicate results across species should not be taken as indicative of a negative finding. It is well known that the target organs for established carcinogens frequently differ from species to species, possibly due to variations in metabolism (Ref. 13). For this reason, FDA requires testing in two species.

12. One comment stated that it is not always scientifically defensible to combine benign and malignant tumors in the evaluation of a chronic bioassay.

FDA agrees that it is not always appropriate to combine benign and malignant tumors. In its analysis of a chronic bioassay, FDA uses the NTP guidelines for combining benign and malignant tumors (Ref. 14).

13. Several comments objected to FDA's proposal to regulate compounds with "equivocal" test results as carcinogens (proposed § 500.84(a)) because this approach is both scientifically unsound and in conflict with the language of the Delaney Clause.

FDA's statement that it would regulate as carcinogens those compounds with "equivocal" test results has been misinterpreted. FDA proposed in the 1985 notice that a compound that had not been demonstrated to be a carcinogen, but that showed questionable results, could be approved provided there were adequate dose-response data upon which to make a reasonable estimate of the risks presented by exposure to the compound. Thus, the substance would have been regulated at the sponsor's request as a carcinogen, while the sponsor was conducting additional chronic testing to resolve the issue of carcinogenicity. The comments apparently believed that FDA was proposing that, even if a compound was not shown to be a carcinogen, FDA would in all cases regulate it as a carcinogen if the initial data are equivocal. This was not FDA's intention. In any event, to remove confusion in the area, FDA has deleted any reference to "equivocal tests" in these final regulations.

14. A comment contended that FDA's 1985 reproposal did not provide for the use of human epidemiological data in its risk assessment process, nor even admit its value.

The contention is incorrect. In its 1985 reproposal (50 FR 45544, paragraph 37), FDA stated that it would accept risk estimates based on appropriate epidemiological data when the data are relevant to a decision on the approval of a compound proposed for use in food-producing animals. This approach is consistent with OSTP recommendations (Ref. 1).

VI. Operational Definition of No Residue

A. The Level of Risk

The 1973 proposal suggested that a permitted level of risk for test animals (and thus for man) was 1 in 100 million over a lifetime. Many comments argued that this level of risk was unnecessarily conservative. FDA agreed and, in the preamble to the final rule, published on February 22, 1977 (42 FR 10412), the agency concluded that the 1 in 100 million level of risk was unduly limiting without substantial compensation in terms of public health. Accordingly, FDA established a new level of risk in the final rule—1 in 1 million. In its March 20, 1979, notice (44 FR 17070), FDA also proposed the 1 in 1 million level of risk as the most appropriate benchmark level.

No comments on the 1979 proposal disagreed with FDA's determination that risks on the order of 1 in 1 million present an insignificant risk to the public. In fact, comments contended that higher levels (e.g., 1 in 100,000 or 1 in 10,000) might also present insignificant risks. In the October 31, 1985, reproposal (50 FR 45541), FDA evaluated these comments and concluded that there was a clear consensus that risks on the order of 1 in 1 million were insignificant, though the same degree of consensus did not obtain for potentially higher levels of risk.

Comments on the 1985 Reproposal

15. Comments on the 1985 reproposal also contended that the 1 in 1 million level is not a reasonable benchmark upon which to assess risk. One comment contended that the most compelling argument against the 1 in 1 million level is the fact that FDA acknowledged in the 1985 reproposal that the actual risk presented by that level is probably some place between 1 in 1 million and a much lower indeterminable level. Comments urged FDA to reconsider the propriety of the 1 in 1 million level.

In FDA's view the permitted level of risk must meet at least two criteria: (1) It must not significantly increase the human cancer risk and (2) it must be high enough to permit the use of carcinogenic animal drugs, food additives, and color additives as contemplated by Congress (44 FR 17092, March 20, 1979). FDA believes that in light of the uncertainties that accompany making a decision as to the most appropriate level of risk, continuing to rely on the benchmark of 1 in 1 million is the most reasonable and defensible course to take.

16. Several comments contended that the 1 in 1 million level of risk is unreasonably low in light of the levels of risk to which society is routinely exposed. One comment contended that risk levels of 1 in 100 to 1 in 10,000 are common and are routinely "ignored, unknown or accepted by society." The comment went on to state that a single individual willingly engages in a broad spectrum of activities that have a wide range of risk levels and that, therefore, different individuals have equally diverse acceptable ranges of risk. Thus, any small risk is lost among the "great variability" of multiple sources of risk.

Data concerning people's perceptions of various risks and how these perceptions come into play in determining what risks are acceptable and what risks are not may help provide

a supporting basis for determining the level of risk that is permitted in a social perspective. Standing alone, however, these data on risk perception and acceptance, while relevant to the formulation of public policy, are of limited value in determining from a scientific perspective that level which clearly represents no significant risk to the public health. Moreover, the data provide no empirical basis upon which to assess whether a "small risk" is "lost" among other competing risks. In addition, as discussed in the 1985 reproposal (50 FR 45541 at paragraph 27) there are important distinctions between risks individuals voluntarily accept and risks to which all individuals may be involuntarily subjected to in the food supply.

17. Several comments contended that it is inappropriate to establish a specific level of risk in the regulations. Comments argued that a specific level deprives FDA of flexibility in decisionmaking in developing its risk assessment procedures. The comments also contended that setting such a level implies an unrealistic degree of precision not supported by current science.

FDA agrees that the degree of risk presented by low concentrations of residues in food cannot be precisely calculated. Therefore, FDA relies on the 1 in 1 million level of risk as a benchmark because there is general agreement that the 1 in 1 million level represents an insignificant level of risk for any compound (see 50 FR 45541). As noted elsewhere in this preamble, no comments on the 1979 proposal or 1985 reproposal disagree with FDA's determination that the 1 in 1 million level presents an insignificant risk to the public.

There are also practical considerations. As discussed in the 1985 reproposal (50 FR 45541 at paragraph 26), if no specific permitted level of risk is adopted, then sponsors would receive no guidance about the likelihood of approval of a compound during the expensive stage of drug development. An unstructured ad hoc approach would be contrary to the interests of the public health and could result in inequitable treatment of sponsors.

Finally, the waiver provision and FDA's commitment to use an alternative risk assessment procedure when scientifically justified will ensure that FDA has sufficient flexibility to deal with a unique situation.

18. One comment said that the result of FDA's risk estimate will not be the expected excess of deaths from cancer due to exposure to the substance, because the bioassay does not measure the actual change in mortality due to exposure to the test substance.

The comment appears to have misunderstood FDA's position. The 1985 reproposal states (50 FR 45541) that FDA's risk estimate determines that concentration which will cause no more than one in a million excess tumors, not deaths, over the lifetime of the test animal due to the test substance. This risk estimate is not an actuarial risk based on the actual incidence of an event; rather, it represents an "upper bound" potential risk. As noted above, FDA believes the actual risk will lie somewhere between this risk estimate and zero. In all likelihood, no additional tumors will result.

B. Analysis of Animal Carcinogenesis Data

FDA's interpretation of the DES Proviso where "no residue" is construed to mean "no significant risk" requires an assessment of the risk anticipated from a known carcinogen as a function of the dose. Experiments designed to observe responses in the range of interest (that is, 1 in 1 million) would require impossibly large populations of test animals. Therefore, some method is required to extrapolate data from the standard chronic bioassays, which use much smaller and more manageable numbers of animals, to the range of interest. Because the mechanism of chemical carcinogenesis is not sufficiently understood, none of the available statistical extrapolation procedures has a fully adequate biological rationale. Matters are further complicated by the fact that the dose-response relationships assumed by the various procedures diverge substantially in the projections of risks presented in the range below the lowest dose tested.

FDA's objective has been to select an extrapolation procedure that is well supported by current science to protect the public health. FDA continues to believe that its objectives are best met by a nonthreshold, linear-at-low-dose extrapolation procedure that determines the upper limit of the risk. However, for reasons explained below, FDA has removed reference to the extrapolation procedure and the confidence limit from the regulations and has placed them in a guideline.

Comments on the 1985 Reproposal

19. A comment contended that it was improper to use the concept of the total lifetime dose in the risk assessment procedure because no exposure after the last irreversible step in the initiation/promotion sequence has any effect on the development of cancer in the subject.

FDA is not using the total lifetime dose in its risk extrapolation procedure but rather the concept of continuous exposure. The comment offered no guidance on how to identify the dose required to reach the last irreversible step in the carcinogenic process. In the absence of a demonstration of the dose required to reach the "last irreversible step," FDA will continue to use the concept of the continuous exposure in its assessment of risk.

20. A comment contended that it was improper for FDA to refer to its risk assessment as an upper 95 percent confidence limit estimate when many additional conservatisms were used that greatly increased the magnitude of the confidence limit. Another comment stated that the level of uncertainty involved in a particular risk assessment must be fully disclosed.

If FDA applied the 95 percent confidence limit to the total risk assessment, then the first comment would be well taken. However, FDA applies the 95 percent confidence limit only to the tumor data. FDA believes this approach is necessary to account for the variability in the quantitative results obtained in the bioassay. (See 50 FR 45542, 45544, and 45554.) With respect to the second comment, because a confidence limit cannot be calculated for several aspects of the risk assessment, FDA cannot provide a precise estimate of the uncertainty in the risk assessment. For example, FDA does not know (1) the carcinogenic potency of each metabolite which occurs as a residue, (2) the effect of intermittent dosing on the carcinogenic potency, (3) whether people will be as sensitive to the carcinogen as the most sensitive rodent species, and (4) the extent to which the compound will be used in animal husbandry. These problems preclude making a precise estimate of the uncertainty of the overall risk calculation. However, because of the conservative assumptions used in the risk assessments, FDA believes that the numerical estimates of risks that it uses represent a reliable assessment of the upper limit of risk.

21. A comment contended that FDA completely misunderstood the "superb bioassay" example set out in the preamble to the 1985 reproposal (50 FR 45542). The basis for this contention was that FDA found the risk to the public to be 1 in 200 in that example and simply overlooked the interpolation step when it did its analysis.

The comment, like the one in paragraph 20, is based in part on the misconception regarding the upper 95 percent confidence limit. Moreover, the

comment misunderstands FDA's use of the example in question. FDA did not find the risk to the public to be 1 in 200, but stated (50 FR 45542) that "at the 99 percent confidence level the lifetime risk of cancer to the *test animal was less than* approximately 1 in 200" (emphasis supplied). Under the circumstances of the original example, FDA would conclude that the substance under test was not carcinogenic. Thus, a risk assessment procedure would not be appropriate.

22. A comment contended that the maximum likelihood estimate, which is derived from an extrapolation based on the actual number of tumors observed in the test animals, is the most probable estimate of risk and, therefore, is the most reliable estimate for the calculated safe dose. The comment also contended that the record of these rulemaking proceedings does not support the requirement for the use of the upper 95 percent confidence limit on the tumor data, which results in a permitted concentration that is lower than would be obtained if the extrapolation were done using the actual number of tumors observed in the test animals. Another comment stated the FDA should calculate the maximum likelihood estimate as well as the upper and lower bound estimate of the risk.

FDA does not agree that the maximum likelihood estimate is the most reliable estimate to be used to calculate the safe dose. The maximum likelihood estimate does not take into account the biological variability associated with the tumor response. FDA believes that it is essential to take this variability into consideration and will use the upper 95 percent confidence limit on the tumor data from the bioassay when calculating the permitted concentration of residue. As noted below, however, FDA has removed from the regulation reference to the upper 95 percent confidence limit, and has placed it in a guideline.

As the comment stated, the maximum likelihood estimate and the lower bound estimate of risk can be calculated. These calculations, however, would serve no useful purpose in the context of these final regulations. The regulations present a procedure to ensure the absence of significant concentrations of cancer-causing residue in animal-derived food. Using the maximum likelihood estimate, FDA's objective would be satisfied only about 50 percent of the time. Using the lower 95 percent confidence limit, FDA's objective would be satisfied only 5 percent of the time.

With regard to the use of the upper 95 percent confidence limit, FDA believes that the 95 percent level is necessary to provide adequate assurance that the risk will not be underestimated. The agency has consistently called for the use of confidence limits when analyzing tumor data. See 38 FR 19227, July 19, 1973; 42 FR 10412, February 22, 1977; 44 FR 17091, March 20, 1979; and 50 FR 45543, October 31, 1985. However, FDA has lowered the confidence limit it will use. The agency originally advocated using the upper 99 percent confidence limit. In the 1985 reproposal (50 FR 45543), FDA first proposed using the upper 95 percent confidence limit. In FDA's view, using the 95 percent value rather than the 99 percent value provides for a more reasonable estimate of the permitted concentration of residue.

23. A comment contended that the Gaylor-Kodell procedure cited in the 1985 reproposal (50 FR 45543) has a fatal logical flaw of producing higher risk values as the number of low-dose, no-effect data points obtained from the bioassays increases. The basis for this contention was FDA's use of the upper 95 percent confidence limit on the tumor data. This same comment took issue with FDA's statement that the Gaylor-Kodell procedure uses data from all of the dose levels of the experiment to determine the upper confidence limit and to estimate the risk.

The basis for this comment was the misconception that FDA's use of the upper 95 percent confidence limit on the tumor data meant that FDA assumes that the tumor response rate was 5 percent at the lowest tested dose. Dr. Gaylor, the coauthor of the extrapolation method cited by FDA in the 1985 reproposal, submitted during the comment period information in response to the contentions of this comment. FDA agrees with Dr. Gaylor's response. Dr. Gaylor explained that the permitted concentration would in fact increase as the number of low dose data points with no tumors are obtained:

> It is apparent * * * that there is a grave misunderstanding of how low dose risk estimates are calculated and the impact that low experimental doses have on the risk estimates.
>
> As correctly stated in the [1985 reproposal (50 FR 45543)], the procedure uses the bioassay data from all the doses to establish an upper confidence limit on a fitted dose response curve in the experimental dose range. These upper confidence limits have the property of becoming diminishingly smaller at lower doses and approach zero as the dose approaches zero. As lower doses are added with zero tumor responses, the upper confidence limit approaches zero more rapidly. Contrary to the statement by * * *, the addition of low doses generally will not increase risk estimates much because there is little surety in zero responses at doses below the experimental resolution ability dictated by the relatively small numbers on animals per dose. On the other hand, the observance of zero or low tumor rates at increasingly higher dosages indicates lower carcinogenic potency and results in lower estimates of risk as more zero tumor responses are obtained. To illustrate, consider the two examples given in Table 1. For the first example, the proportion of animals with tumors are linear in dose and curved for the second example. In both cases, zero tumor responses are observed at low doses. For ease of illustration, the highest dose is normalized to one. Note that larger "safe" doses are allowed as additional zero response low doses are added.
>
> Since estimates of tumor rates below 1% are generally imprecise, it is recommended that the extrapolation should not begin from a dose with less than an estimated tumor rate of 1% (ED01). Thus, low dose linear extrapolation would begin at the ED01 or lowest experimental dose, whichever is larger. This modification was suggested by Farmer, J.H., Kodell, R.L., and Gaylor, D.W., Estimation and extrapolation of tumor probabilities from a mouse bioassay with survival/sacrifice components, Risk Analysis, 2, 27–34, 1982. For the above examples, the estimated "safe" doses are about the same whether they are extrapolated from the lowest experimental dose or the ED01.

TABLE 1—OBSERVED PROPORTION OF ANIMALS WITH TUMORS AND CALCULATION OF ESTIMATED "SAFE" DOSES FOR RISKS OF LESS THAN ONE IN A MILLION

Doses	Proportion of animals with tumors							Upper 95% confidence limit at lowest dose [1]	Estimated "safe" dose [2]
	0	0.01	0.05	0.1	0.2	0.5	1.0		
Linear	0/50					5/50	10/50	.150	3.3×10^{-6}
	0/50				2/50	5/50	10/50	.061	3.3×10^{-6}

TABLE 1—OBSERVED PROPORTION OF ANIMALS WITH TUMORS AND CALCULATION OF ESTIMATED "SAFE" DOSES FOR RISKS OF LESS THAN ONE IN A MILLION —Continued

Doses	Proportion of animals with tumors							Upper 95% confidence limit at lowest dose [1]	Estimated "safe" dose [2]
	0	0.01	0.05	0.1	0.2	0.5	1.0		
	0/50	.....	.....	1/50	2/50	5/50	10/50	.031	3.3×10^{-6}
	0/50	.....	0/50	1/50	2/50	5/50	10/50	.015	3.4×10^{-6}
	0/50	0/50	0/50	1/50	2/50	5/50	10/50	.003	3.4×10^{-6}
Curved	0/50	.....	.....	.....	.....	2/50	10/50	.105	4.8×10^{-6}
	0/50	.....	.....	.....	0/50	2/50	10/50	.024	8.5×10^{-6}
	0/50	.....	.....	0/50	0/50	2/50	10/50	.010	10.4×10^{-6}
	0/50	.....	0/50	0/50	0/50	2/50	10/50	.004	11.4×10^{-6}
	0/50	0/50	0/50	0/50	0/50	2/50	10/50	.001	11.6×10^{-6}

[1] Upper 95% confidence limits were obtained by fitting the multistage model to the data by the procedure given by Howe, R.B., and Crump, K.S., "Global 82: A Computer Program to Extrapolate Quantal Animal Toxicity Data to Low Doses," K.S. Crump and Co., Inc., Ruston, LA.
[2] The estimated "safe" dose is obtained by linear extrapolation from the upper confidence limit at the lowest experimental dose to zero. For a maximum risk of one in a million, "safe" dose = lowest experimental dose x 10^{-6}/upper confidence limit.

24. In response to the information supplied by Dr. Gaylor, a supplementary comment stated that neither the 1985 reproposal nor the reference cited by FDA in the 1985 reproposal explained that the extrapolation should not start from a dose that produces less than a 1 percent response.

FDA agrees. As discussed in paragraph 25, FDA has clarified its position on the extrapolation procedure.

25. Several comments recommended that the specific reference to the Gaylor-Kodell method (Ref. 15) and the confidence limit used be deleted from proposed § 500.84(c) and placed in guidelines because risk assessment methods are undergoing rapid development. Several of these comments offered alternative wording for § 500.84(c). Several comments also recommended that specific methods replace the Gaylor-Kodell method. Among those cited were the modified Gaylor-Kodell method (Ref. 16), the Park-Snee method (Ref. 17) or Williams-type tests based on no-effect levels, and the unconstrained multihit model. Another comment recommended that the sponsor be permitted to select the extrapolation procedure which makes the most effective use of the data that are assembled. This latter comment did not state the criteria that should be used to judge whether the data were used effectively.

For the reasons stated in the comments, FDA agrees that the specific reference to the extrapolation procedure and the confidence limit should be removed from the regulations and placed in a guideline, and has revised § 500.84(c) accordingly. The extrapolation procedure and the confidence limit are now incorporated into the Guideline for Toxicological Testing.

After carefully considering the comments on the alternative extrapolation procedures, FDA has decided to adopt as a guideline the modified Gaylor-Kodell procedure (Farmer-Gaylor-Kodell, Ref. 16), using the upper 95 percent confidence limit on the tumor data. FDA's decision is consistent with OSTP principle 26 (Ref. 1). Of course, the inclusion of this extrapolation procedure in the Guideline for Toxicological Testing does not preclude a sponsor from proposing use of an alternative extrapolation procedure in an individual case. See 21 CFR 10.90.

FDA has adopted the Farmer-Gaylor-Kodell method primarily because the procedure makes no assumptions about the mechanism of carcinogenicity. The multistage and multihit procedures are based on assumptions about the biological mechanisms involved in the transformation of a normal cell into a neoplastic cell. The Park-Snee and the Williams-type test approach also make assumptions about the mechanism of carcinogenicity in that they are based on the estimation of the "no effect level."

More importantly, the use of the Park-Snee method with the modifiers proposed in the comment could result in a permitted concentration of a carcinogen 1,000,000 higher than for a noncarcinogen with the same "no observed effect level." For example, assume that (1) chronic testing of compound A resulted in liver carcinomas and kidney damage; (2) the no-observed-effect level (NOEL) for kidney damage was 100 parts per billion (ppb); (3) the estimated NOEL, using a threshold model, was 100 ppb for liver carcinomas; (4) liver carcinomas were the only tumors found; (5) liver carcinomas were found only in one sex and one species of test animals; (6) there was a negative human epidemiological study for compound A; (7) the estimated benefit to society would be over $100 million; and (8) possible catastrophic effects would be less than 100 deaths. The acceptable daily intake for the noncarcinogenic effect (kidney damage) would be 1 ppb (100 divided by the safety factor of 100 used for the chronic study). Using the adjustment factors for the Park-Snee method proposed in the comment and the proposed safety factor of 100, the S_0 (see "definitions," § 500.82) for the carcinogenic effect (liver carcinomas) would be 1,000,000 ppb. The calculation would be: the estimated NOEL (100 ppb) divided by the safety factor (100) times the factor for the number of positive assays (10 for one sex/species) times the factor for the type of tumor (100 for mouse rat liver) times the factor for human data (10 for negative results in humans) times the society benefit factor (10 for over $100 million) times the factor for catastrophe possible (10 for less than 100 deaths).

FDA therefore finds that the Park-Snee method, as proposed in the comment, is not acceptable. If this method were used, a carcinogenic effect would very likely be treated less stringently than a noncarcinogenic effect. In addition, the method as proposed could allow people to be exposed to a greater concentration of the substance than were the laboratory animals that were tested.

With regard to the comment that the sponsor be allowed to select the extrapolation procedure which makes the most effective use of the data, as stated above, a sponsor is not precluded

from proposing use of an alternative extrapolation procedure. Sponsors will have greater flexibility in that regard now that FDA has removed the particular method from the regulation. However, FDA believes it important to specify the method that it will ordinarily use, so that sponsors can plan accordingly. The agency also wishes to reiterate its position that a linear extrapolation method that uses all of the data in the experimental dose range is preferable. For reasons stated above and at 50 FR 45543, the agency believes that the Farmer-Gaylor-Kodell method is the best among those methods currently available.

C. Derivation of the Concentration of the Residue of Carcinogenic Concern That Will Be Defined as No Residue

As used in these regulations, S_o means the concentration of total residue of carcinogenic concern of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million. (Total residue includes the parent compound and all metabolites.) These final regulations are based on the assumption that if the S_o concentration of residue occurs in the total human diet, no significant increase in the risk of cancer to people will result. In some cases, a sponsor will have tested a metabolite, in addition to the sponsored compound, for carcinogenicity. In these instances, FDA will assume that the most potent carcinogen of those tested poses the greatest potential carcinogenic threat among the residues. In such instances, the total residue of carcinogenic concern will not be permitted to exceed the concentration of the most potent carcinogen that corresponds to the 1 in 1 million risk. In other words, the concentration of the most potent carcinogen that corresponds to 1 in 1 million risk will be the S_o.

Because the total human diet is not derived from food-producing animals, FDA will make corrections for food intake in determining the concentration of residue of carcinogenic concern that will be permitted in edible animal tissue (see the Guideline for Establishing A Tolerance, which is made available through a notice published elsewhere in this issue of the **Federal Register**). The result of the calculation (the S_m) is the concentration of total residue of carcinogenic concern that FDA will permit in each edible tissue. See § 500.84(c)(2).

Comments on the 1985 Reproposal

26. A comment contended that there is no support for the requirement for the use of the lowest calculated safe dose among all tested substances (S_o), data from all separate bioassays, and data from each separate anatomical site where tumors occur. The comment stated that the regulation should require consideration of applicability of the animal bioassay results to human safety and the reliability of the tumor endpoint for low-dose extrapolation in arriving at the most scientifically appropriate residue level for designation as S_o.

It is not known which laboratory species is the most reliable predictor of human risk. For this reason, FDA will continue to use the lowest calculated safe dose when making safety decisions on sponsored compounds. This approach is consistent with OSTP principles 1, 2, 3, 8, and 25 (Ref. 1).

As part of the scientific review of the bioassay, FDA makes decisions on the appropriateness of the animal bioassay and the reliability of the specific tumor endpoint. As the definition of a carcinogen used bv FDA (see paragraph 8 above) achieves the objectives requested in the comment, FDA does not believe that the regulations need revision.

27. A comment suggested that § 500.84(c)(2) be revised to delete the reference to the calculation of an S_m for each edible tissue. The reason given for this change was to place the specific procedures in guidelines and not in the regulation.

FDA is not revising proposed § 500.84(c)(2) as the comment suggests because the section emphasizes that FDA will make corrections for the fact that the entire diet usually will not contain residue of a new animal drug, a food additive, or a color additive. The agency believes that it is important to establish, in the regulations, that, as a part of the correction procedure, it will designate an S_m for each edible tissue.

VII. Studies To Select Marker Residue and Target Tissue

Before the use of a carcinogenic compound can be approved, FDA must determine that a practical and reliable assay is available to measure the residue of carcinogenic concern at the concentration that is within the operational definition of no residue. One approach to this problem would be to require assays that can be used to measure every residue (parent compound and metabolite) in each of the various edible tissues. Because the number of residues is likely to be large and is likely to occur in several edible tissues in each animal, such an approach would be impractical. There is another, far more practical approach which does not violate any safety principle. This alternative approach uses the concepts of marker residue and target tissue. These concepts are described in § 500.86.

A marker residue is a residue whose concentration is in a known quantitative relationship to the concentration of the residue of carcinogenic concern in the last tissue in which the latter residue has depleted to its permitted concentration. The marker residue can be the sponsored compound, any of its metabolites, or a combination thereof for which a common assay can be developed. The marker residue can be a carcinogenic or a noncarcinogenic residue.

The target tissue is the edible tissue selected to monitor for residues in the target animal (the production class of animal in which the substance is to be used after approval). If the concentration of marker residue in the target tissue does not exceed the permitted concentration, FDA is assured that the concentration of residue of carcinogenic concern is below the S_m for each edible tissue. Therefore, FDA's operational definition of no residue will have been satisfied for all of the animal's edible tissues.

When a compound is to be used in milk- or egg-producing animals, milk or eggs will be a target tissue in addition to one tissue selected for the edible carcass. If a compound is used in both milk- and egg-producing animals, both milk and eggs must be target tissues, in addition to the tissue selected for the edible carcass. This is necessary because milk and eggs enter the food supply independently. In all of these cases, it may be necessary to select a marker residue for milk or eggs that is different from the marker residue selected for the target tissue representing the edible carcass.

Application of the concepts of marker residue and target tissue requires an experimental determination of the quantitative relationship among the residues that might serve as marker residues in each of the various edible tissues that might serve as target tissues. These relationships can change during the time period following the last treatment with the compound (the beginning of the withdrawal period). Therefore, the sponsor must measure the depletion of potential marker residues in the potential target tissue or tissues starting after the last treatment with the compound and continuing until the total residue of carcinogenic concern has reached S_m for that tissue. FDA will use the residue depletion profiles and the regulatory method to determine the R_m for the marker residue. The R_m is the

concentration of the marker residue in the target tissue at the time the concentration of the total residue of carcinogenic concern is equal to S_m in the last tissue to deplete to S_m.

Comments on the 1985 Reproposal

28. Comments stated that the requirement in proposed § 500.86(b) to determine the concentration and relative percentages of the parent compound and individual metabolites in all edible tissues was an unnecessary burden. Proposed § 500.86(b) stated "For each edible tissue, the sponsor shall also measure the depletion of one or more potential marker residues until the concentration of the residue of carcinogenic concern is at or below S_m." These comments suggested that these determinations should be required only for the target tissue.

FDA agrees that the data usually need not be obtained for all tissues. In fact, in most instances FDA has requested complete information regarding metabolism in only the target tissue. However, FDA will ask for data from additional tissues if necessary to answer outstanding safety questions. Accordingly, FDA has revised § 500.86(b) to read as follows: "In one or more edible tissues, the sponsor shall also measure the depletion of one or more potential marker residues until the concentration of the residue of carcinogenic concern is at or below S_m."

29. One comment stated that § 500.86(a) was too rigid because it implied that the sponsor would have to develop a chemical (as distinguished from a radiochemical) method for each edible tissue in order to measure the depletion of residue in that tissue until its concentration was at or below S_m. The comment argued that, in the past, such information was obtained from a study with the radiolabeled drug.

FDA did not mean to imply in § 500.86(a) that the sponsor would have to develop a chemical method for measuring residues in each edible tissue. FDA will accept data from studies using a radiolabeled drug to make this showing, as discussed in greater detail in the guidelines.

VIII. Regulatory Method

Under the regulations, FDA will approve a carcinogenic compound for use in food-producing animals if the concentration of residue of carcinogenic concern satisfies the operational definition of no residue, and if a method is available that can reliably measure that concentration of residues in edible animal products (21 CFR 500.88). The criteria for determining whether a method is acceptable are described in the "Guideline for Approval of a Method of Analysis for Residues." This guideline is made available through a notice published elsewhere in this issue of the **Federal Register.**

30. One comment stated that § 500.88(b) implied that the R_m would be used as the action level for each edible tissue.

The comment appears to have confused the definitions of R_m and S_m. Sections 500.82 and 500.88 state that R_m applies only to the marker residue in the target tissue. Thus, the R_m will not be used as an action level for each edible tissue.

IX. Withdrawal Period

The regulations define the preslaughter withdrawal period or the milk discard time for a sponsored compound as the period of time required, after the last administration of the sponsored compound, for the concentration of the marker residue to deplete to R_m in the target tissue (§§ 500.84(c) and 500.86(c)). The preslaughter withdrawal period or milk discard time must be compatible with actual conditions of livestock management and be reasonably certain to be followed in practice. Because of the way in which the regulations define marker residue, target tissue, and R_m, the use of the sponsored compound in accordance with the prescribed preslaughter withdrawal period or milk discard time will ensure that unacceptable levels of a carcinogenic residue will not be present in human food derived from treated animals. The data required and the procedure for determining the preslaughter withdrawal period or the milk discard time are described in the "Guideline for Establishing a Withdrawal Period." This guideline is made available through a notice published elsewhere in this issue of the **Federal Register.**

Comments submitted on this portion of the regulation are discussed in a document that is on file under Docket Number 83D-0288. See notice of availability of revised guidelines published elsewhere in this issue of the **Federal Register.**

X. Compliance

The approved regulatory method will be used to monitor the concentration of the marker residue in the target tissue of slaughtered animals. Information and data from monitoring will be used by FDA in conjunction with the U.S. Department of Agriculture (USDA) in a comprehensive effort to assure the safety of food from food-producing animals. If the concentration of the marker residue is found above the R_m in target tissue, the remainder of the carcass may contain violative residues (residues in excess of S_m for that tissue) and the carcass may be seized under 21 U.S.C. 334 as adulterated under 21 U.S.C. 342(a). In appropriate circumstances, the articles may also be detained under the Poultry Products or Meat Inspection Acts (see 21 U.S.C. 451 et seq. and 601 et seq.). Violations may subject those responsible to injunction or criminal prosecution under 21 U.S.C. 332 and 333, respectively.

Information gathered from residue monitoring can assist both FDA and USDA in identifying producers who customarily submit for slaughter animals that are adulterated within the meaning of the act. Among other things, this information may be helpful in detaining, for prophylactic investigation, herds or flocks from such producers. Finally, information regarding the rate and level at which residues above safe concentrations in edible tissue occur may support formal FDA action under the appropriate section of the act to withdraw the approval of the sponsored compound.

No comments on compliance were received.

XI. Waiver of Requirements

Section 500.90 provides that, in response to a petition or on his or her own initiative, the Commissioner may waive the requirements of the regulations in whole or in part. However, that section states that the Commissioner will not waive the requirement under § 500.88 for a regulatory method, which is a statutory requirement in the case of animal drugs. Nevertheless, the possibility always exists that the agency may be precluded from enforcing a statutory requirement. In the special circumstances attending estradiol-containing products in cattle, for example, FDA decided that imposing the requirement for a regulatory method for estradiol would be legally inappropriate because doing so would yield a result so unreasonable that it "could not be thoroughly attributed to Congressional design." *United States* v. *Rutherford*, 442 U.S. 544, 545 (1979). This exception is very narrow, however, and is rarely capable of being met.

Section 500.90 states that a petition for a waiver may be filed by any person who would be adversely affected by the application of the requirements to a particular compound. The petition shall explain and document why the requirements from which waiver is requested are not reasonably applicable to the compound, and describe the alternative procedures that have been,

or could be, followed to ensure that use of the compound will not contaminate human food with residues whose consumption could present a risk of cancer to people. The petition must clearly set forth the reasons and supporting information that demonstrate why the alternative procedures will provide an adequate basis for concluding that approval of the compound satisfies the requirements of the anticancer provisions of the act. If the Commissioner determines that waiver of any of the requirements of proposed Subpart E of 21 CFR Part 500 is appropriate, the Commissioner will state the basis for the determination in the regulation approving marketing of the sponsored compound, or in the preamble to the regulation.

FDA received no comments on this section of the regulation.

XII. Implementation

In the **Federal Register** of February 11, 1983 (48 FR 6361), FDA issued an amended proposal to revise § 500.98, which was the implementation section of the regulations proposed in 1979. As in the case of the previous proposal, the amended proposal in § 500.98 stated that the regulations would apply to all new applications and petitions, including supplemental applications and amended petitions, as well as to approved compounds under certain circumstances. Also, as in the case of the 1979 proposal, the 1983 amended proposal provided that the regulations would apply to applications and petitions that were pending before the agency at the time the regulations were adopted. The preamble to the 1983 amended proposal stated, as had previous preambles, that the regulations' procedures had been applied on a case-by-case basis in the past and would continue to be so applied until the regulations were finally adopted.

However, the 1983 amended proposal included a revision of the proposed regulation in that it provided for an exception in the case of drugs that were the subject of pending applications and that met certain criteria as of March 20, 1979 (the "pipeline" criteria). Sponsors of drugs meeting those criteria could request an exception from Subpart E. The preamble stated that, until final adoption of the regulation, FDA would apply the "pipeline" policy on a case-by-case basis. However, sponsors claiming "pipeline" status were advised to submit letters supporting the claims by February 1984. Although the implementation section was not explicitly included in the regulation that was reproposed in 1985, the preamble to the reproposed regulation stated that comments would again be accepted on § 500.98 as proposed in 1983.

These final regulations incorporate § 500.98 (redesignated § 500.92). Several changes, described in the following paragraphs, have been made from the proposed regulation issued in 1983, however. These changes have been made primarily to conform the implementation section to the change in Subpart E, described above, that removed the threshold assessment from Subpart E, so that Subpart E applies after FDA has determined that a compound must be subject to carcinogenicity testing.

FDA has deleted the "pipeline" provision, which relates primarily to the threshold assessment; further, it is unlikely, in view of the passage of time, that any drug that has not yet been approved could meet the pipeline criteria. In addition, the provision concerning previously approved compounds (§ 500.92(b)) has been narrowed in several respects. It has been revised to state that certain portions of the regulation will be applied where an approved compound has been shown to cause cancer, or is a suspect carcinogen. A provision of proposed § 500.92(b) that applied to compounds for which insufficient information was available to determine whether residues present a risk of cancer has been deleted as inappropriate because Subpart E no longer contains the threshold assessment requirement. For the same reason, and to simplify the regulation, FDA has deleted § 500.98(d). That section provided for the publication of notices and issuance of letters, for the establishment of time frames for the submission of data, and for the withdrawal of approvals of compounds that had been determined to be carcinogens, or for which more information is required. However, FDA will continue to publish notices and issue letters establishing appropriate requirements and deadlines and will proceed to withdraw approvals under pertinent sections of the act and regulations.

Section 500.92(a) as proposed and adopted states that Subpart E applies to supplemental applications for approved new animal drugs. The specific circumstances under which FDA will apply the threshold assessment and Subpart E to supplemental applications are described in FDA's supplemental policy for animal drugs. See 42 FR 64367; December 23, 1977.

31. One comment stated that FDA should extend the dates for eligibility for "pipeline" status from March 20, 1979, to the date of promulgation of final regulations, urging that the agency could not apply the regulations retroactively to pending applications.

As explained above, the regulations no longer contain the threshold assessment requirement, and the "pipeline" proposal has been deleted. Further, as explained in the 1985 proposal (50 FR 45549), FDA has used the proposed regulations as a guideline for determining whether a sponsored compound is shown to be safe. This action is consistent with FDA's regulations (see 21 CFR 10.90). Therefore, sponsors have been on notice of FDA's case-by-case application of the regulation for a number of years. Accordingly, any inequity that might have resulted is minimized. Under the circumstances, application of the provisions of the regulation to pending applications is legally permissible. See, e.g., section 512(d)(1)(A) of the act, which requires tests by all methods reasonably applicable to show whether a drug is safe, and section 512(e)(1)(B) of the act, which requires withdrawal of an approval when tests by methods not deemed reasonably applicable when the application was approved show that the drug is not shown to be safe. See also *SEC* v. *Chenery*, 332 U.S. 194 (1947); *Tennessee Gas Pipeline Co.* v. *FERC*, 600 F.2d 1094 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 920 (1980).

32. One comment contended that FDA could not apply the regulation retroactively to approved substances. As explained in the previous paragraph, the fact that the regulation does not contain a requirement for threshold assessment minimizes the impact of the regulations on approved substances. Further, FDA will not apply the operational definition of "no residue" and related sections of Subpart E to an approved compound in the absence of new evidence that the substance is a carcinogen. See § 500.92(b)(2). Also, FDA will not require metabolism studies and chronic bioassays unless there is new evidence that the substance is a suspect carcinogen. See § 500.92(b)(1). Section 512(e)(1)(B) of the act states that approval of a drug may be withdrawn if tests by new methods, or tests by methods not deemed reasonably applicable when the application was approved, show that the drug is not shown to be safe. Thus, the act itself provides for application of the new regulation to approved applications.

33. Another comment stated that FDA should modify the eligibility criteria to assure that "old drugs," i.e., those drugs marketed legally without an approved application are not subject to the

regulations even if the "old drug" was later declared to be a "new drug."

FDA disagrees because the agency believes this comment suggests an approach that would be contrary to the public health, and inconsistent with FDA's administration of the act over the years.

XIII. Additional Comments on the Proposed Regulations

34. One comment stated that "target tissue" was poorly defined in § 500.82. The comment suggested that the term "target tissue" should be changed to "target animal derived food" so as to include eggs and milk.

FDA's definition of "target tissue" was meant to include eggs and milk. To clarify the definition, FDA has modified the definition to read as follows: "The edible tissue selected to monitor for residues in the target animals, including, where appropriate, milk or eggs."

35. One comment suggested that the term "residue of carcinogenic concern," which is defined in § 500.82, be changed to "residue of concern" and that the definition include all toxicological endpoints, i.e., all responses of toxicological significance that are observed in the test animals.

FDA emphasizes that these final regulations pertain to only one adverse effect: Carcinogenicity. Therefore, it is appropriate for the term "residue of carcinogenic concern" to be used in the final regulations. Because the guidelines deal with both carcinogenic and noncarcinogenic compounds, however, the term "residue of toxicological concern" is used in those documents to include all potential adverse effects of a compound.

36. A comment suggested that the word "milk" in "milk discard time" in § 500.82 be changed to "food" to avoid excluding eggs.

FDA does not approve drugs for use in laying hens if they require an "egg discard time" because animal husbandry practices have demonstrated that this is not practical or not generally believed to be followed in practice. Therefore, it is not necessary to revise § 500.82.

XIV. Conclusion

The regulations and the implementing guidelines are designed to ensure that edible tissues derived from animals treated with sponsored compounds are safe. All sponsored compounds will be evaluated under the general safety provisions of the act. Sponsored compounds shown by adequate testing to be carcinogenic will be regulated under Subpart E of 21 CFR Part 500.

Executive Order 12291 and the Regulatory Flexibility Act require economic impact analyses of regulations that are likely to have significant consequences on the overall regulated industry or on particular sections of it. In the economic impact analysis prepared for the 1979 proposal, FDA concluded that the expenses of conducting the biological studies and developing the regulatory method of analysis would be several million dollars for each carcinogenic compound. Without this testing, however, the carcinogenic compound could not be approved. In the economic analysis prepared for the 1985 reproposal, FDA reached similar conclusions. However, because FDA is unlikely to receive requests to approve a large number of carcinogenic compounds, these final regulations will not impose an annual effect on the economy of $100 million or more, the threshold value established by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA has considered the effect that these final regulations would have on small entities including small businesses and has determined that to date no small firm has sponsored a compound that would be subject to this rule. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action. The economic and regulatory flexibility analyses are on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Sections 500.86, 500.88, 500.90, and 514.1(b)(7) of this final rule contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements in §§ 500.86, 500.88, and 500.90 were approved and assigned OMB control number 0910-0228; in § 514.1(b)(7), 0910-0032.

References

The following information has been placed on display in the Dockets Management Branch (address above), and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Office of Science and Technology Policy, "Chemical Carcinogens: A Review of the Science and Its Associated Principles," 50 FR 10373, March 14, 1985.

2. Committee to Coordinate Environmental and Related Programs (CCERP), "Risk Assessment and Risk Management of Toxic Substances," Report to the Secretary, Department of Health and Human Services, April 1985.

3. Gillette, J.R., "Other Aspects of Pharmacokinetics," *Handbook of Experimental Pharmacology*, edited by O. Eichler, A. Farah, H. Herken, and A.D. Welch, Vol. XXVIII/3, pp. 35-85. 1975.

4. Gillette, J.R., "Activating Systems Characteristics and Drawbacks—Comparisons of Different Organs, Tissues, Problems with Toxication—Detoxication Balance in Various Tissues, Extrapolation from *in vitro* to *in vivo*. Pharmacokinetics, Absorption, Distribution, Excretion, Metabolism," *In vitro Metabolic Activation in Mutagenesis Testing*, edited by F.J. deSerres, J.R. Fouts, J.R. Bend, R.M. Philpot, Elsevier/North-Holland Biomedical Press, Amsterdam, pp. 13-54, 1976.

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6. Mercer, H.D., J.D. Baggot, and R.A. Sams, "Application of Pharmacokinetic Methods to the Drug Residue Profile," *Journal of Toxicology and Environmental Health*, 2:787-801, 1977.

7. Williams, R.T., *Detoxication Mechanisms*, Wiley, New York, 1959.

8. Nelson, S.D., M.R. Boyd, and J.R. Mitchell, "Role of Metabolic Activation in Chemical-induced Tissue Injury," *ACS Symposium Series*, No. 44, edited by D.M. Jerina, pp. 155-185, 1977.

9. "Biological Reactive Intermediates: Formation, Toxicity, and Inactivation," edited by D.J. Jollow, J.J. Kocsis, R. Snyder, and H. Vainio, Plenum Press, New York, 1977.

10. Interdisciplinary Panel on Carcinogenicity, "Criteria for Evidence of Chemical Carcinogens," *Science*, 225:682-687, 1984.

11. National Toxicology Program, "Levels of Evidence of Carcinogenicity Used To Describe Evaluative Conclusions for NTP Long-term Toxicology and Carcinogenesis Studies; Request for Comments," 51 FR 2579-2582; January 17, 1986, and "Notice of Modifications in the Levels of Evidence of Carcinogenicity Used to Describe Evaluative Conclusions for NTP Long-term Toxicology and Carcinogenesis Studies," 51 FR 11843-11844; April 7, 1986.

12. Haseman, J.K., "A Re-examination of False Positive Rates for Carcinogenic Studies," *Fundamentals of Applied Toxicology*, 3:334-339, 1983.

13. National Toxicology Program, Board of Scientific Counselors, "Report of the NTP Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation," 1984.

14. McConnell, E.E., H.A. Solleveld, J.A. Swenberg, and G.A. Boorman, "Guidelines for Combining Neoplasms for Evaluation of Rodent Carcinogenesis Studies," *Journal of*

the National Cancer Institute, 76:283–289, 1986.

15. Gaylor, D.W., and R.L. Kodell, "Linear Interpolation Algorithm for Low Dose Risk Assessment of Toxic Substances," *Journal of Environmental Pathology and Toxicology*, 4:305–312, 1980.

16. Farmer, J.H., R.L. Kodell, and D.W. Gaylor, "Estimation and Extrapolation of Tumor Probabilities from a Mouse Bioassay with Survival/Sacrifice Components," *Society for Risk Analysis*, 2:27–34, 1982.

17. Park, C.N., and R.D. Snee, "Quantitative Risk Assessment: State-of-the-Art for Carcinogens," *The American Statistician*, 37:427–441, 1983.

List of Subjects

21 CFR Part 70

Color additives, Cosmetics, Drugs, Labeling, Packaging and containers.

21 CFR Part 500

Animal drugs, Animal feeds, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Part 514

Administrative practice and procedure, Animal drugs.

21 CFR Part 571

Administrative practice and procedure, Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Parts 70, 500, 514, and 571 are amended as follows:

PART 70—COLOR ADDITIVES

1. The authority citation for 21 CFR Part 70 is revised to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376).

2. Part 70 is amended in § 70.50 by adding new paragraph (c), to read as follows:

§ 70.50 Application of the cancer clause of section 706 of the act.

* * * * *

(c) *Color additives for use as an ingredient of feed for animals that are raised for food production.* Color additives that are an ingredient of the feed for animals raised for food production and that have the potential to contaminate human food with residues whose consumption could present a risk of cancer to people must satisfy the requirements of Subpart E of Part 500 of this chapter.

PART 500—GENERAL

3. The authority citation for 21 CFR Part 500 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)).

4. Part 500 is amended by adding a new Subpart E, to read as follows:

Subpart E—Regulation of Carcinogenic Compounds Used in Food-Producing Animals

Sec.
500.80 Scope of this subpart.
500.82 Definitions.
500.84 Operational definition of no residue.
500.86 Marker residue and target tissue.
500.88 Regulatory method.
500.90 Waiver of requirements.
500.92 Implementation.

Subpart E—Regulation of Carcinogenic Compounds Used in Food-Producing Animals

§ 500.80 Scope of this subpart.

(a) The Federal Food, Drug, and Cosmetic Act requires that sponsored compounds intended for use in food-producing animals be shown to be safe and that food produced from animals exposed to these compounds be shown to be safe for consumption by people. The statute prohibits the use in food-producing animals of any compound found to induce cancer when ingested by people or animals unless it can be determined by methods of examination prescribed or approved by the Secretary (a function delegated to the Commissioner of Food and Drugs under § 5.10 of this chapter) that no residue of that compound will be found in the food produced from those animals under conditions of use reasonably certain to be followed in practice. This subpart provides an operational definition of no residue and identifies the steps a sponsor of a compound shall follow to secure the approval of the compound. FDA guidelines contain the procedures and protocols FDA recommends for the implementation of this subpart. These guidelines are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for these guidelines should be identified with Docket No. 83D-0288.

(b) If FDA concludes on the basis of the threshold assessment that a sponsor shall conduct carcinogenicity testing on the sponsored compound, FDA will also determine whether and to what extent the sponsor shall conduct carcinogenicity testing on metabolites of the sponsored compound. The bioassays that a sponsor conducts must be oral, chronic, dose-response studies and must be designed to assess carcinogenicity and to determine the quantitative aspects of any carcinogenic response.

(c) If FDA concludes on the basis of the threshold assessment or at a later time during the approval process that the data show that the sponsored compound and its metabolites should not be subject to this subpart, FDA will continue to consider the compound for approval under the general safety provisions of the act for risks other than cancer.

(d) This subpart does not apply to essential nutrients.

§ 500.82 Definitions.

(a) The definitions and interpretations contained in section 201 of the act apply to those terms when used in this subpart.

(b) The following definitions apply to this subpart:

"Act" means the Federal Food, Drug, and Cosmetic Act (sections 201–901, 52 Stat. 1040 et seq. as amended (21 U.S.C. 301–392)).

"Essential nutrients" means compounds that are found in the tissues of untreated, healthy target animals and not produced in sufficient quantity to support the animal's growth, development, function, or reproduction, e.g., vitamins, "essential" minerals, "essential" amino acids, and "essential" fatty acids. These compounds must be supplied from external sources.

"FDA" means the Food and Drug Administration.

"Marker residue" means the residue selected for assay whose concentration is in a known relationship to the concentration of the residue of carcinogenic concern in the last tissue to deplete to its permitted concentration.

"Preslaughter withdrawal period" or "milk discard time" means the time after cessation of administration of the sponsored compound for the residue of carcinogenic concern in the edible product to deplete to the concentration that will satisfy the operational definition of no residue.

"Regulatory method" means the aggregate of all experimental procedures for measuring and confirming the presence of the marker residue of the sponsored compound in the target tissue of the target animal.

"R_m" means the concentration of the marker residue in the target tissue when the residue of carcinogenic concern is equal to S_m in the last tissue to deplete to its permitted concentration.

"Residue" means any compound present in edible tissues of the target animal which results from the use of the sponsored compound, including the sponsored compound, its metabolites, and any other substances formed in or on food because of the sponsored compound's use.

"Residue of carcinogenic concern" means all compounds in the total

residue of a demonstrated carcinogen excluding any compounds judged by FDA not to present a carcinogenic risk.

"S_m" means the permitted concentration of residue of carcinogenic concern for a specific edible tissue.

"S_o" means the concentration of the test compound in the total diet of test animals that corresponds to a maximum lifetime risk of cancer in the test animals of 1 in 1 million. For the purpose of this subpart, FDA will also assume that this S_o will correspond to the concentration of residue of carcinogenic concern in the total human diet that represents no significant increase in the risk of cancer to people.

"Sponsor" means the person or organization proposing or holding an approval by FDA for the use of a sponsored compound.

"Sponsored compound" means any drug or food additive or color additive proposed for use, or used, in food-producing animals or in their feed.

"Target animals" means the production class of animals in which a sponsored compound is proposed or intended for use.

"Target tissue" means the edible tissue selected to monitor for residues in the target animals, including, where appropriate, milk or eggs.

"Test animals" means the species selected for use in the toxicity tests.

"Threshold assessment" means FDA's review of data and information about a sponsored compound to determine whether chronic bioassays in test animals are necessary to resolve questions concerning the carcinogenicity of the compound.

§ 500.84 Operational definition of no residue.

(a) On the basis of the results of the chronic bioassays and other information, FDA will determine whether any of the substances tested are carcinogenic.

(b) If FDA concludes that the results of the bioassays do not establish carcinogenicity, then FDA will not subject the sponsored compound to the remainder of the requirements of this subpart.

(c) For each sponsored compound that FDA decides should be regulated as a carcinogen, FDA will analyze the data from the bioassays using a statistical extrapolation procedure.

(1) For each substance tested in separate bioassays, FDA will calculate the concentration of the residue of carcinogenic concern that corresponds to a maximum lifetime risk to the test animal of 1 in 1 million. FDA will designate the lowest value obtained as S_o.

(2) FDA will consider that "no residue" of the compound remains in the edible tissue when conditions of use of the sponsored compound, including any required preslaughter withdrawal period or milk discard time, ensure that the concentration of the residue of carcinogenic concern in the total diet of people will not exceed S_o. Because the total diet is not derived from food-producing animals, FDA will make corrections for food intake. FDA will designate as S_m the concentration of residue of carcinogenic concern that is permitted in a specific edible product.

§ 500.86 Marker residue and target tissue.

(a) For each edible tissue, the sponsor shall measure the depletion of the residue of carcinogenic concern until its concentration is at or below S_m.

(b) In one or more edible tissues, the sponsor shall also measure the depletion of one or more potential marker residues until the concentration of the residue of carcinogenic concern is at or below S_m.

(c) From these data, FDA will select a target tissue and a marker residue and designate the concentration of marker residue (R_m) that the regulatory method must be capable of measuring in the target tissue. FDA will select R_m such that the absence of the marker residue in the target tissue above R_m can be taken as confirmation that the residue of carcinogenic concern does not exceed S_m in each of the edible tissues and, therefore, that the residue of carcinogenic concern in the diet of people does not exceed S_o.

(d) When a compound is to be used in milk- or egg-producing animals, milk or eggs must be the target tissue in addition to the tissue selected to monitor for residues in the edible carcass.

(Information collection requirements approved by the Office of Management and Budget under number 0910-0228)

§ 500.88 Regulatory method.

(a) The sponsor shall submit for evaluation and validation a regulatory method developed to monitor compliance with FDA's operational definition of no residue.

(b) The regulatory method must reliably measure and confirm the identity of the marker residue in the target tissue at concentrations equal to and above R_m.

(c) FDA will publish in the **Federal Register** the complete regulatory method for measuring the marker residue in the target tissue in accordance with the provisions of sections 409(c)(3)(A), 512(d)(1)(H) and (i), and 706(b)(5)(B) of the act.

(Information collection requirements approved by the Office of Management and Budget under number 0910-0228)

§ 500.90 Waiver of requirements.

In response to a petition or on the Commissioner's own initiative, the Commissioner may waive, in whole or in part, the requirements of this subpart except those provided under § 500.88. A petition for this waiver may be filed by any person who would be adversely affected by the application of the requirements to a particular compound. The petition shall explain and document why the requirements from which a waiver is requested are not reasonably applicable to the compound, and set forth clearly the reasons why the alternative procedures will provide the basis for concluding that approval of the compound satisfies the requirements of the anticancer provisions of the act. If the Commissioner determines that waiver of any of the requirements of this subpart is appropriate, the Commissioner will state the basis for that determination in the regulation approving marketing of the sponsored compound.

(Information collection requirements approved by the Office of Management and Budget under number 0910-0228)

§ 500.92 Implementation.

(a) This Subpart E applies to all new animal drug applications, food additive petitions, and color additive petitions concerning any compound intended for use in food-producing animals (including supplemental applications and amendments to petitions).

(b) This Subpart E also applies in the following manner to compounds already approved:

(1) For those compounds that FDA determines may induce cancer when ingested by man or animals, i.e., suspect carcinogens, §§ 500.80(b), 500.82, and 500.90 apply.

(2) For those compounds that FDA determines have been shown to induce cancer when ingested by man or animals, §§ 500.82 through 500.90 apply.

PART 514—NEW ANIMAL DRUG APPLICATIONS

5. The authority citation for 21 CFR Part 514 continues to read as follows:

Authority: Secs. 512(i), (n), 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b(i), (n), 371(a)); 21 CFR 5.10, 5.11.

6. Part 514 is amended in § 514.1 by revising the introductory text of paragraph (b)(7) and by revising paragraph (b)(7)(ii) and by adding a

parenthetical statement at the end of the section, to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(7) *Analytical methods for residues.* Applications shall include a description of practicable methods for determining the quantity, if any, of the new animal drug in or on food, and any substance formed in or on food because of its use, and the proposed tolerance or withdrawal period or other use restrictions to ensure that the proposed use of this drug will be safe. When data or other adequate information establish that it is not reasonable to expect the new animal drug to become a component of food at concentrations considered unsafe, a regulatory method is not required.

* * * * *

(ii) A new animal drug that has the potential to contaminate human food with residues whose consumption could present a risk of cancer to people must satisfy the requirements of Subpart E of Part 500 of this chapter.

* * * * *

(Information collection requirements approved by the Office of Management and Budget under number 0910-0032)

7. Section 514.111 is amended by adding new paragraph (a)(10), to read as follows:

§ 514.111 Refusal to approve an application.

(a) * * *

(10) The drug fails to satisfy the requirements of Subpart E of Part 500 of this chapter.

* * * * *

PART 571—FOOD ADDITIVE PETITIONS

8. The authority citation for 21 CFR Part 571 continues to read as follows:

Authority: Secs. 409, 701, 52 Stat. 1055–1056 as amended, 72 Stat. 1785–1788 as amended (21 U.S.C. 348, 371).

9. Part 571 is amended by adding new § 571.115, to read as follows:

§ 571.115 Application of the cancer clause of section 409 of the act.

Food additives intended for use as an ingredient in food for animals that are raised for food production and that have the potential to contaminate human food with residues whose consumption could present a risk of cancer to people must satisfy the requirements of Subpart E of Part 500 of this chapter.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: October 23, 1987.

[FR Doc. 87-29828 Filed 12-30-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82D-0080]

New Animal Drugs and Food Additives Derived From a Fermentation; Availability of Guideline for Human Food Safety Evaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of a revised guideline that describes the tests that the sponsor may conduct to establish safe conditions of use in food-producing animals of a product that is derived from a fermentation that produces a drug and is administered as a complex mixture. This product could contain toxic components that are not readily isolated and identified and that might remain as residues in edible animal products. The guideline also describes the criteria used by FDA to evaluate the results of these tests. FDA invites interested persons to submit written comments on the guideline.

DATE: Written comments on the guideline may be submitted at any time.

ADDRESS: The guideline is available for public examination at, comments may be submitted to, and individual copies may be obtained from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your request.)

FOR FURTHER INFORMATION CONTACT: Robert W. Benson, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: Over the years, FDA has approved for use in animal feed a number of antibiotics that are marketed as unpurified or partially purified products. The tolerances for most of these products were established from bioassays performed on the pure antibiotic. This regulatory approach assumes that the antibiotic is the most toxic substance in the product. FDA no longer considers this regulatory approach adequate. The drug portion of these products is typically 1 to 25 percent, leaving 75 to 99 percent of the product uncharacterized.

The criteria and procedures described in "General Principles for Evaluating the Safety of Compounds used in Food-Producing Animals" (50 FR 45556; October 31, 1985, Docket No. 83D-0288) assume that the sponsored product is extensively characterized and that any component can be readily isolated, identified, and subjected to the testing described. However, the sponsored products addressed in the guideline that is the subject of this notice are complex mixtures that may contain the organism, its cellular debris and metabolic products, and residual substrate and nonsubstrate material. This mixture could contain toxic components that are not readily identifiable and that might remain as residues in edible animal tissues. The guideline was developed to provide an acceptable procedure for evaluating the safety of these incompletely characterized, multicomponent products.

FDA has reviewed the comments submitted on the guideline. FDA's responses to these comments are available for public examination at the Dockets Management Branch (address above). This guideline has been combined with the other guidelines concerned with the human food safety evaluation of sponsored compounds used in food-producing animals (Docket No. 83D-0288). The complete series of revised guidelines is made available through a notice published elsewhere in this issue of the **Federal Register**. The guideline is available for public examination at the Dockets Management Branch (address above).

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding this guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number 83D-0288. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 24, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-29827 Filed 12-30-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83D-0288]

Sponsored Compounds Used in Food-Producing Animals; Availability of Guidelines for Human Food Safety Evaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of revised guidelines that describe the tests that the sponsor of a new animal drug or a food or color additive may conduct to establish safe conditions of use of the compound in food-producing animals. These guidelines apply to human food safety, not to target animal safety. FDA invites interested persons to submit written comments on the guidelines.

DATE: Written comments on the guidelines may be submitted at any time.

ADDRESS: The guidelines are available for public examination at, comments may be submitted to, and individual copies may be obtained from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your request.)

FOR FURTHER INFORMATION CONTACT: Robert W. Benson, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: FDA is required by the general safety provisions of sections 409, 512, and 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 360b, and 376) to determine whether each food additive, new animal drug, or color additive proposed for use in food-producing animals is safe for those animals and whether the edible products derived from treated animals are safe for people. The pertinent regulations implementing the statutory provisions are found at 21 CFR Part 70, § 514.1, and Part 570.

The sponsor of the compound is required to furnish to FDA the scientific information necessary for demonstrating that the residues of the sponsored compound in the edible products of treated animals are safe. FDA has developed a series of guidelines to inform sponsors of the type of scientific information FDA believes will provide an acceptable basis for making the safety determination. The individual guidelines are:

I. Guideline for Metabolism Studies and for Selection of Residues for Toxicological Testing.
II. Guideline for Toxicological Testing.
III. Guideline for Threshold Assessment.
IV. Guideline for Establishing a Tolerance.
V. Guideline for Approval of a Method of Analysis for Residues.
VI. Guideline for Establishing a Withdrawal Period.
VII. Guideline for New Animal Drugs and Food Additives Derived from a Fermentation.

FDA made the first six guidelines available through a notice published in the **Federal Register** of October 31, 1985

(50 FR 45556). FDA made the seventh guideline available through a notice published in the **Federal Register** of August 24, 1982 (47 FR 36968). FDA has reviewed the comments submitted on the guidelines. FDA's responses to these comments are available for public examination at the Dockets Management Branch (address above). At this time FDA is making available revised guidelines.

A sponsor may rely upon the guidelines with the assurance that they describe procedures acceptable to FDA (see 21 CFR 10.90). Of course, if a sponsor believes that alternative procedures are also applicable, the guidelines do not preclude a sponsor from pursuing those alternative procedures. Under such circumstances, however, FDA encourages the sponsor to discuss the propriety of alternative procedures in advance with FDA to prevent the expenditure of money and effort on activity that may later be deemed to be unacceptable.

The guidelines are available for public examination at the Dockets Management Branch (address above). Individual copies may be obtained from that office.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the guidelines. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 24, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-29829 Filed 12-30-87; 8:45 am]

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federal register

Thursday
December 31, 1987

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1917
Grain Handling Facilities; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1917

[Docket H-117]

Grain Handling Facilities

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule contains minimum requirements for the control of fires, grain dust explosions, and other safety hazards associated with grain handling facilities. Employees in these facilities have been and continue to be exposed to fires and explosions. Additionally, employees are exposed to other safety hazards such as the dangers of entry into bins, silos, and tanks. The requirements in this standard are intended to decrease the number and mitigate the effects of fires and explosions, and to control other known safety hazards in grain handling facilities.

EFFECTIVE DATE: This final rule becomes effective March 30, 1988, except for the information collection requirements contained in § 1910.272 (d) and (i) which are subject to Office of Management and Budget approval. The Department will announce the effective date for these requirements when approval is obtained.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION: In this preamble, OSHA identifies sources of information submitted to the record by an exhibit number (Ex. 14). When applicable, comment numbers follow the exhibit in which they are contained (Ex. 14: 1). If more than one comment within an exhibit is cited, the comment numbers are separated by commas (Ex. 14: 1, 2, 3). The page number is also cited if other than page one (p. 2). The transcript of the hearing is cited by the page number (Tr. 49) followed by the identification of the day of the hearing (Tr. 49-6/12). Exhibits and transcripts are separated by semicolons (Ex. 1; Ex. 2; Tr. 49-6/12).

I. Background

Fires and explosions have occurred in grain handling facilities for many years, and such occurrences have been reported for almost two centuries (e.g., Ex. 9: 40, 136; Tr. 136-6/12).

In order for a fire to occur, it is necessary to have fuel (e.g., grain dust), heat (ignition source), and oxygen (air). Additionally, if the elements for a fire occur simultaneously with confinement and sufficient fuel (grain dust) suspended in air, a primary (or initial) explosion will occur.

In a grain handling facility, the primary explosion may result in shaking loose an adequate amount of dust accumulations into the air, causing one or more secondary (or subsequent) explosions. Secondary explosions can be far more destructive than the primary explosion.

National attention was focused on the destructiveness of explosions in grain handling facilities when a series of devastating explosions occurred in these facilities in late 1977 and early 1978. During December 1977, 59 deaths and 49 injuries resulted from explosions (Ex. 9: 27). Various interested groups, including the Congress, the grain handling industry, trade organizations, unions, federal agencies and others, responded to these tragedies in various ways.

Congress has held several hearings on the matter of fires and explosions in grain handling facilities. The hearings included an examination of the causes and prevention of grain elevator explosions (Ex. 9: 22), and a review of research on methods of preventing fires and explosions in grain elevators. Also, as a result of several Congressional requests, the General Accounting Office conducted a study which scrutinized various aspects of grain dust explosions (Ex. 9: 28). Issued in 1979, the study recommended that the Department of Labor evaluate the adequacy of the coverage of grain elevators in the OSHA general industry standards (29 CFR Part 1910).

The National Grain and Feed Association (NGFA), a major industry trade association whose "membership is comprised of 1,300 companies and 46 affiliated state and regional grain and feed associations that include more than 10,000 grain and feed companies nationwide" (Ex. 14: 1472), issued guidelines in 1978 (Ex. 9: 50) to assist association members in improving fire and explosion safety. NGFA has also held several industry conferences that have resulted in the publication of compilations of information concerning elevator design (Ex. 9: 51), elevator dust control (Ex. 9: 52), and retrofitting and constructing of grain elevators (Ex. L-1).

In addition, NGFA established the Fire and Explosion Research Council in 1978 which has maintained a continuing program of research activity. NGFA submitted seventeen research documents (Exs. 81 through 96; Ex. 98) resulting from this research activity to the rulemaking record and noted the sale of approximately 3,500 of these reports (Ex. 189, p. 2).

Another industry trade association has maintained a continuing program directed towards enhancing safety and health in grain handling facilities. In October 1977, the Grain Elevator and Processing Society (GEAPS) sponsored a symposium on grain dust explosions (Ex. 9: 49). Also, with assistance from an OSHA training grant, GEAPS conducted an analysis of the grain industry safety and health training needs (Ex. 9: 47, issued in 1981) which has led to the development of materials focusing on the identified training needs (see Exs. 33; 36; 39; 80; and 130).

Unions have been active in increasing the safety and health awareness of its members working in the grain industry through training and education efforts (American Federation of Grain Millers and Allied Industrial Workers of America). For example, the President of the American Federation of Grain Millers remarked (Tr. 74-6/26):

> In the pursuit of workplace safety and health, we have worked closely with the AFL-CIO, Food and Allied Service Trades Department in sponsoring a comprehensive training and educational program for our membership. In the last six years, this program has reached over 1,500 of our stewards and union officials in all states where we have membership.

Also, the AFL-CIO received an OSHA training grant to assist in the development of a training program for the American Federation of Grain Millers (Ex. 9: 84).

In 1977, thirteen inspectors of the U.S. Department of Agriculture's (USDA) Federal Grain Inspection Service (FGIS, the agency responsible for the quality, grading and weighing of grain for export) were killed in grain elevator explosions. This loss prompted USDA to set up a special task force on grain elevator safety and explosions. The task force issued a report in 1979 which includes a historical overview of fire and explosion experience in grain elevators and mills, and contains numerous recommendations to prevent dust explosions in these facilities (Ex. 9: 27). In addition, USDA participated in the sponsorship of two symposiums (Ex. 9: 23, 37), supported contract efforts of the National Academy of Sciences to study the causes and prevention of fires and explosions in grain elevators and mills (discussed later in this notice), and established a tracking system for grain dust explosions.

The National Institute for Occupational Safety and Health (NIOSH), established under the Occupational Safety and Health Act of 1970 to conduct research, among other duties, published in 1983 the results of an investigation of worker safety in grain elevators and feed mills. The study, "Occupational Safety in Grain Elevators and Feed Mills" (Ex. 9: 136 p. vi), was conducted to:

> * * * develop safe work practices and engineering controls which could be used to reduce the number of accidents and injuries in the workplace and to train workers in the identification and awareness of hazards and their control.

While work progressed on this study, NIOSH also supported the contract efforts of the National Academy of Sciences (discussed later in this notice).

OSHA also directed efforts and resources toward improving the safety and health of employees in this industry. In January 1978, OSHA issued and widely distributed the Grain Elevator Industry Hazard Alert for the purpose of providing employers, employees, and other officials with available information on safety and health hazards associated with the storage and distribution of grain. A listing of free OSHA onsite consultative services available to employers was included with this Alert.

Another step taken by OSHA in 1978 was the initiation of a contract with the National Academy of Sciences (NAS) to study the causes and prevention of grain elevator fires and explosions (later expanded to include mills). OSHA initiated the contract because it believed it was important to increase the understanding of the problem of fires and explosions, as well as to obtain recommendations on corrective actions. Support for this contract was provided by OSHA, NIOSH, and USDA.

Recommendations for first, second, and third priority actions intended to reduce the frequency and severity of explosions, were contained in the NAS report "Prevention of Grain Elevator and Mill Explosions" (Ex. 9: 40 pp. 10 through 12). The NAS panel believed (Ex. 9: 40 p. 10):

> * * * that the first-priority actions should be implemented in *all* facilities and that the second- and third-priority actions should be implemented to the extent possible depending on the specific facility.

The first priority recommendations included such items as continuing research on dust concentrations in legs; establishment of a housekeeping program, preventative maintenance program, and permit procedures for hot work; implementation of a system for indicating belt slippage and misalignment, a method to check the temperature and vibration of bearings, and a means for extracting foreign materials from grain; and, the grounding of conveying and electrical equipment. As discussed later in this notice, these recommendations constitute many of the requirements contained in the final standard.

In an effort to share information resulting from the NAS contract, USDA and OSHA have distributed many copies of the NAS reports to interested persons and groups throughout the country and placed copies in various technical information systems. For example, OSHA distributed approximately 4,000 copies of the primary NAS report, "Prevention of Grain Elevator and Mill Explosions."

On February 15, 1980, OSHA published in the **Federal Register** a request for comments and information, and notice of public meetings, concerning the safety and health hazards in grain handling facilities (45 FR 10732). Although contract efforts with NAS were underway, OSHA wanted to provide interested persons and groups an early opportunity in the rulemaking to provide views, data, and information regarding the content of a standard, should one be developed.

Responses to the notice were to be received by May 5, 1980, but due to numerous requests, the comment period was extended to June 30, 1980 (45 FR 21265). OSHA received more than 200 comments, and over 2000 pages of testimony resulted from public meetings held in Superior, WI; New Orleans, LA; and Kansas City, MO, in April–May 1980. As with the NAS reports, the information resulting from this notice helped OSHA to focus on those factors which would have the greatest potential for decreasing the number and mitigating the effects of fires and explosions in grain handling facilities.

Over the last several years, OSHA has received numerous communications regarding the inadequacy of current OSHA standards to address the hazards of grain handling facilities, and requesting the development of a specific standard for grain handling facilities. In fulfilling its mission of assuring insofar as possible that the nation's employees have a safe and healthful workplace, OSHA believed that available evidence supported the need for a standard and that adequate data and information existed upon which a standard could be based. Accordingly, on January 6, 1984, OSHA published a notice of proposed rulemaking on grain handling facilities (49 FR 996). Written comments, objections and hearing requests in response to the proposed standard were to have been received by March 9, 1984. At the request of numerous commenters, the period for receiving written comments was extended until June 8, 1984 (49 FR 6923).

In addition to requests to extend the comment period, OSHA received numerous requests to conduct a public hearing on the proposed standard. The hearing requests were submitted by various interested persons and organizations and addressed a broad range of issues. Consequently, OSHA published a notice on April 17, 1984, announcing the scheduling of a public hearing to receive testimony on the proposed standard; the availability of a supplemental economic analysis; and a request for written comments on certain issues that were of special concern to OSHA (49 FR 15093). These issues concerned extending the compliance period for housekeeping for small elevator facilities and small feed mills; the size of grate openings; and means of emergency escape in facilities. While OSHA asked for views and data on these specific issues, testimony was invited on all aspects of the proposed standard since hearing requests addressed a broad range of issues.

The hearings on the proposed standard for grain handling facilities were held in Washington, DC (June 12–14); Kansas City, MO (June 19–21); Minneapolis, MN (June 26–28); and Dallas, TX (July 10–12).

The Administrative Law Judge presiding at the hearings allowed certain specified times upon the completion of the hearings for participants to submit additional data and for filing of post-hearing comments and briefs. Additional data was to be submitted by October 10, 1984, and post-hearing comments and briefs were to be submitted by November 26, 1984. The Administrative Law Judge certified the public record for the proposed rule to the Assistant Secretary of Labor for Occupational Safety and Health on April 23, 1985.

The public record for grain handling facilities consists of material submitted to the OSHA Docket Officer by either OSHA or the public including the following:

1. Comments and testimony received in response to the request for comments and information and notice of public meetings (February 15, 1980; 45 FR 10732).
2. Comments submitted in response to the notice of proposed rulemaking (January 6, 1984; 49 FR 996).
3. Background materials collected by OSHA.

4. Preliminary regulatory impact and regulatory flexibility analysis, as well as the supplemental economic analysis.

5. Notices of intention to appear at the public hearings.

6. Transcripts of the public hearings.

7. Post hearing submissions.

The views of a wide range of employees, businesses, labor unions, trade associations, state officials and other interested parties are represented in the public record.

OSHA received more than 5000 comments in response to the notice of proposed rulemaking. In addition to these numerous comments, the hearing resulted in more than 3000 pages of testimony, numerous submissions of data, as well as post-hearing comments and briefs.

A substantial amount of data and information were contributed and views expressed during the rulemaking. Several major issues were raised consistently throughout the comments and testimony including the following:

1. The need for a standard;

2. Whether the standard should exclude certain segments of the grain handling industry from the standard (e.g., feed mills, small feed mills, flour mills, country elevators, processing facilities) based on alleged differences in operations and/or decreased risk to employees;

3. The economic impact of the proposed standard; and

4. The need for modification of the provisions contained in the proposed standard.

The record for this rulemaking is extensive and OSHA appreciates the time and effort expended by interested parties to ensure that as much information as possible was available to the Agency for purposes of making decisions on the final standard. In analyzing the record and preparing this final document, OSHA has carefully reviewed all of the information received, and has considered the concerns expressed by all of the parties participating in this rulemaking.

II. Agency Action

The record indicates that fire and explosion hazards in grain handling facilities have existed for many years. For example, Premo Chiotti, co-author of a literature survey on dust explosions, stated in an address to the Grain Elevator and Processing Society (GEAPS) International Symposium on Grain Dust Explosions in October 1977 (Ex. 9: 49 p. 14):

> In all of the recorded history of industrial dust explosions in the United States, grain elevators rank first in number of occurrences, people injured, and amount of property damage.

Chiotti also noted (p. 16):

> An average of 6.7 grain elevator dust explosions per year occurred in the nine years between 1938 and 1946. The following nine year period, 1947 through 1955, marked a brief lull in these disasters with an average of two explosions per year. However, the late fifties witnessed an increased frequency in grain elevator explosions, a trend which has continued to the present time.

Additionally, the record indicates that fires and explosions in grain handling facilities continue to occur. For example, the National Institute for Occupational Safety and Health in its technical guidelines for occupational safety in grain handling (Ex. 9: 136 p. 23) indicated:

> A recently updated USDA compilation includes 434 explosions in U.S. grain-handling facilities in the 25-year period from 1958 through 1982 which resulted in 776 injuries and 209 deaths. Yearly explosions ranged from a high of 45 incidents during 1980 to a low of 8 incidents during 1961 and 1965. The number of deaths per year ranged from 0 to 65, but normally was 8 or less. Chiotti and Verkade and the USDA both reported the lack of an accurate, comprehensive, and uniform reporting system, indicating that many additional incidents may not have been recorded.

More recent data from USDA for 1983 shows 13 explosions, no deaths and 14 injuries; for 1984, 20 explosions, nine deaths and 29 injuries; and for 1985, 22 explosions, four deaths and 20 injuries. (Additional examples of incident information supporting the need for a standard may be found in the record in the following exhibits: Ex. 9: 6, 14, 15, 18, 27, 33, 49, 90.)

In supporting the need for a safety standard based on the fire and explosion experience of the industry, a representative from the Oil, Chemical and Atomic Workers, whose membership includes grain workers, (Tr. 589–6/13), remarked:

> * * * the history of work in this industry has been a long and sometimes tragic story. For years, workers in elevators and other grain handling facilities have been "held hostage" to the fear of a devastating explosion or fire which might snuff out their lives, or worse, leave them disfigured, disabled and psychologically scarred from the unimaginable tragedy of being burned.

Another union group, the Food and Allied Services Trades Department, stated (Ex. 213, p. 3):

> Fortunately for workers, the record of the grain handling rulemaking contains extensive evidence and testimony which supports and requires OSHA to issue a meaningful final regulation.

However, various commenters and persons testifying from the industry stated their belief that the industry has made significant advances in recent years toward the resolution of the problem of fires and explosions in grain handling facilities and, consequently, have questioned the need for a standard (e.g., Ex. 14: 1112, 1135, 1213, 1424, 1436, 1635, 2056, 2081, 2119, 2487, 2529, 2803, 2896, 3024, 3484, 3604, 3634, 3939; Ex. 215). For example, the National Grain and Feed Association (Ex. 14: 1472 p. 2), stated:

> The industry has demonstrated its commitment to safety. This was accomplished without specific OSHA grain handling safety standards. A much more effective approach has been taken by the industry—through research, safety education and training programs. These programs provide the motivation to actually improve safety. OSHA's proposed safety standards and rules are not the answer—they could, in fact, detract from safety because they are in many instances misdirected, technically infeasible and costly.

Another commenter, representing Cargill, a large grain company, (Ex. 14: 1845), observed:

> Given the industry's concerted efforts to improve elevator safety and its long-term safety record, the proposed rules are especially troublesome.

However, the Food and Allied Service Trades Department took the position that (Ex. 213, p. 3):

> The record demonstrates: the need for a comprehensive standard for all segments of the grain handling industry; the need for a specific level of dust to be included in the standard's housekeeping provision; the inadequacy of sweeping once a shift for dust control; and the feasibility of a standard in all areas of the industry.

OSHA acknowledges the efforts of the industry directed toward improving safety in grain elevators, and commends these industry efforts, which include the GEAPS training programs and the NGFA's research program. The Agency also fully endorses the importance of training and education, as evidenced by the inclusion of training provisions in the proposed and final standard. Further, OSHA believes a continuing research program will be of overall benefit to the whole industry. However, OSHA believes that these approaches alone are not sufficient to deal with the risks of fires and explosions in grain handling facilities.

As discussed previously, certain elements are necessary for a fire or explosion to occur. The record indicates that the elements of air, dust, and confinement continuously exist in grain handling facilities and the additional

element of an ignition source either exists or may be readily introduced into all grain handling facilities. OSHA's expert witness on dust, Mr. Murray Jacobson, stated (Tr. 125–6/12):

> Potential dust explosion hazards exist wherever combustible dusts are made, handled, processed or accumulated, and dust explosions have occurred persistently in a wide variety of industries including the agricultural, mining, plastics, chemicals and metals.

The National Academy of Sciences (NAS) observed (Ex. 9: 40 pp. 21, 32) that three elements for explosions always exist in grain elevators and mills—air, dust, and confinement. Further, NAS noted that ignition sources will always exist or be brought into these facilities.

Finally, the National Institute for Occupational Safety and Health asserted (Ex. 9: 136 p. 3) that the danger of fires and explosions is "ever-present in the industry because of the physical characteristics of organic dust that is generated while handling and processing grain."

Based on the record, therefore, it is OSHA's position that the elements necessary for fires and explosions exist continually in grain handling facilities; and, OSHA has concluded that the potential of fires and explosions resulting from these elements presents a significant risk to employees in these facilities.

OSHA indicated in the notice of proposed rulemaking (49 FR 996) that the death and injury experience described in the record was compelling evidence that OSHA needed to take action to reduce or eliminate deaths and injuries and, accordingly, determined there was a need for a mandatory standard to mitigate the problem of fires and explosions and other safety hazards in this industry.

Also, OSHA believes that the standards contained in the OSHA General Industry Standards (29 CFR Part 1910) have been, and continue to be, inadequate in reducing death and injuries to employees in the grain handling industry. Further, certain hazards that pose risks to employees in grain handling facilities are not directly addressed at all by the current General Industry Standards. These hazards include grain dust explosions and fires; entry into bins, silos and tanks; and the hazards of being caught inadvertently in moving machinery.

The available data indicate that the problems of fires and explosions continue to persist, and that the voluntary methods suggested by the industry, while beneficial, have not been successful in eliminating the significant risk to employees.

OSHA carefully evaluated what control measures in grain handling facilities would reduce the number and mitigate the effects of fires and explosions in grain handling facilities and would, consequently, reduce exposure of employees to the risk of injury or death. OSHA determined that several of the elements necessary for fires and explosions would be very difficult if not impossible to control (air, confinement). OSHA also determined that the remaining elements, ignition sources and dust, could be controlled to a greater extent.

The National Academy of Sciences stated (Ex. 9: 40, pp. 31, 32):

> To forestall a dust explosion it is necessary to prevent the sequence of events that can lead to the simultaneous occurrence of the conditions for an explosion * * *. Some of these conditions are always present and some occur from time to time and their frequency of occurrence can be reduced; however, none can be totally eliminated.
>
> Since none of the conditions can be totally eliminated there is no single, simple process for preventing explosions. On the other hand, applying what is known about the hazard can reduce the risk to a more tolerable level.
>
> Since grain dust is the fuel for an explosion, decreasing the amount of dust present at all points in a grain-handling structure is the most important "mechanical" step to be taken and will produce the greatest results.
>
> Reducing the number of ignition sources to a minimum is the second most important method of prevention. Like dust, sources of ignition always will exist in or be brought into an elevator.

OSHA's expert witness on explosions in grain handling facilities, Dr. C.W. Kauffman, noted at the hearing (Tr. 138, 162–6/12):

> Air is ubiquitous and the scale of required inerting would be quite large * * * confinement can be dealt with most easily during construction of a facility.
>
> We know what to do, we know why the explosions occur, and it's simply a question of taking care of these ignition sources and the dust available.

OSHA agrees with these comments and believes that the control of fuel (dust control) and the control of ignition sources in grain handling facilities can be effective in reducing the hazard of fires and explosions. OSHA has also determined that these control methods are both technologically and economically feasible, and they are being included in the final standard.

OSHA drew upon available data and information to develop the proposed standard and included safety controls and measures OSHA believed would be technologically and economically feasible, would be effective in decreasing the number and mitigating the effects of fires and explosions, and would be effective in reducing employee injuries and deaths resulting from these hazards. OSHA's expert witness on the grain industry, Robert Hubbard, stated his belief (Tr. 215–6/12):

> This proposed regulation is not lengthy or complicated. I believe it contains those things which loss control programs should include, and I believe it will be effective and feasible.

Another OSHA witness, Leland Hall, who for many years was employed by a grain facility insurer, was asked if the implementation of the required precautions of the proposal would have a significant effect in reducing fires and explosions throughout the industry. The witness responded, "If they are properly installed and properly used, yes" (Tr. 406–6/13).

Additionally, Factory Mutual Research Corporation submitted the following comment (Ex. 14: 51):

> In general our philosophy and recommendations for property damage parallel those in this proposed standard by OSHA.

As discussed in the notice of proposed rulemaking (49 FR 998), information available to OSHA (Ex. 9: 16, 17, 18, 19, 136) also indicated the existence of safety hazards other than fire and explosion hazards in grain handling facilities, i.e., those associated with entry into bins, silos and tanks and the repair and maintenance of mechanical systems. Accordingly, OSHA included criteria in the proposal which addressed these safety hazards. While these hazards may not be unique to this industry, present OSHA standards do not adequately address these hazards. Therefore, OSHA believes minimum precautions are appropriate, and such precautions are included in the final standard.

In conclusion, OSHA has determined that the hazards associated with fires and explosions in grain handling facilities have existed for many years; that employees continue to be exposed to the hazard of fires and explosions as well as to other hazards; that incident information and other relevant information and data demonstrate that these hazards pose significant risks to employees in grain handling facilities; and, that feasible control measures are available that will reduce these risks of employees being injured or killed. The final standard reflects this determination and contains provisions which address the hazards of: Fires and explosions (dust control, ignition source control, employee emergency action, etc.); bin entry (permit, bin entry precautions, etc.); and, moving

machinery (lock-out and tag-out procedures, and training).

OSHA is convinced that compliance with the final standard provisions, in conjunction with current General Industry Standards, will mitigate many of the hazards present in the grain handling industry. As a result, OSHA believes the risk of death or injury to employees in this industry will be significantly reduced.

III. Summary and Explanation

This section contains an analysis of the record evidence and policy decisions pertaining to certain general issues of the standard, as well as the various provisions of the standard.

The Occupational Safety and Health Act (OSH Act) defines an occupational safety and health standard as a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

Under section 6(b) of the OSH Act, the Secretary (of Labor) may by rule promulgate, modify or revoke any occupational safety and health standard in a prescribed manner. One consideration concerns the national consensus standards. Section 6(b)(8) of the OSH Act states that:

> Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the **Federal Register** a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

In this instance, there exist three separate national consensus standards which address the prevention of fires and explosions in grain facilities. These are the American National Standards Institute/National Fire Protection Association (ANSI/NFPA) standards 61B, grain elevators and facilities handling bulk raw agricultural commodities; 61C, feed mills; and 61D, the milling of agricultural commodities for human consumption. These consensus standards prescribe requirements for safety to life and property from fire or explosions, and apply only to facilities on which construction was begun after the consensus standards were published. They contain no provisions for preexisting facilities.

The OSHA final standard differs in several ways. OSHA has developed a single standard to apply to all grain handling facilities, including existing facilities, which addresses only employee safety, and not property protection. Further, the final standard, in addition to addressing fires and explosions, addresses other safety hazards (e.g., bin entry).

OSHA believes that this final rule will reduce the number of employees injured and killed in existing and new grain handling facilities due to fires and explosions, and will reduce the number of employees injured and killed due to other safety hazards. Therefore, OSHA believes this final standard will better effectuate the purposes of the OSH Act.

One general objection received during this rulemaking concerned the use of the phrase "the employer shall assure" in numerous provisions of the proposed standard (e.g., Ex. 14: 7, 20, 401, 1112, 1849, 1871, 2115, 2119; Tr. 397–6/21).

This language was intended to draw attention to the employer's obligation under the OSH Act to comply with occupational safety and health standards promulgated by OSHA.

While, in light of the objections, OSHA is deleting this introductory phrase, it is important to note that the employer's obligation as noted remains the same.

Scope: Paragraph (a). In paragraph (a), OSHA identified the scope of the proposed standard. The proposed standard contained requirements for the control of fires, explosions and other known safety hazards associated with grain handling facilities in general industry and maritime employments. Based on the record, OSHA has made several changes to this paragraph.

OSHA received numerous comments and testimony (e.g., Ex. 14: 1472, 1849, 1871, 2135, 3025, 3251) regarding the terminology "hazards associated with grain handling facilities in general industry and maritime employments." Commenters noted that the implied distinction that some employees in grain handling facilities are maritime employees would be confusing to employers and employees.

For example, one commenter, the Grain Elevator and Processing Society (Ex. 14: 1849 p. 6), stated:

> The terms "grain handling facilities" and "maritime employments" should be deleted. The basic purpose of grain handling facilities is to receive, store and ship bulk raw grain. Employees at grain handling facilities are not maritime employees * * *. GEAPS suggests that these terms be deleted.

Another commenter, from Continental Grain Company (Ex. 14: 3251 p. 3), remarked:

> We believe the statement of scope should end with "grain handling facilities" and the reference to general industry and maritime employments should be deleted. The location of a grain handling facility, either inland or on water, has no direct bearing on the meaning of a grain handling facility.

Finally, the United States Brewers Association Inc. (Ex. 14: 2135) added:

> To consider grain handling facilities that are located in ports or on navigable waterways as "maritime employment" sets a confusing, redundant and contradictory definition to a grain handling facility with the basic purpose of receiving, storing and shipping bulk raw grain.

OSHA's intended purpose in specifying maritime employments was to assure that interested persons were aware that facilities included in the coverage of the marine terminal standard (29 CFR Part 1917) would be subject to the grain handling facilities standard. However, OSHA did propose to incorporate the grain handling facilities standard by reference (§ 1917.1(a)(2)(ix)) into the marine terminal standard, which makes the terminology "maritime employment" unnecessary. Therefore, OSHA has eliminated the terminology from the final standard to eliminate potential confusion. The standard applies to grain facilities regardless of their location inland or on or near water.

With respect to the incorporation by reference of the grain standard into the marine terminal standard, several commenters (Ex. 14: 1112; 1472; 1849; 1871) suggested that duplicating or conflicting requirements may exist in the marine terminal and the grain standards. Additionally, they contended that employers and employees may be unnecessarily confused unless OSHA clarifies which standard takes precedence. For example, a commenter from Continental Grain Company (Ex. 14: 3251 p. 3) stated:

> We strongly suggest that OSHA clarify that innovations found in 1910.272 [the grain standard] take precedence over all similar requirements found in 1917. Without doing so, OSHA will be creating monumental compliance problems for grain elevator operators located on waterways, increasing the cost of compliance and most importantly, detracting from effective safety efforts.

The Grain Elevator and Processing Society (Ex. 14: 1849 p. 6) remarked:

> GEAPS suggests that it be made clear that the provisions of 1910.272 will take precedence over any requirements of 1917 which address the same or similar hazards.

OSHA's intention is that the grain standard takes precedence inside the grain handling facility over other provisions in the marine terminal standard (as it does with regard to other provisions in Part 1910 for facilities in general industry) for the specific hazards the grain standard addresses.

For example, the provisions in the grain standard for entry into bins, silos and tanks supersede provisions in the marine terminal standard as they relate to entry into bins, silos and tanks (§ 1917.23). Those subjects not specifically addressed by the provisions of the grain standard would be covered by the marine terminal standard if applicable (e.g., § 1917.117, Manlifts).

Additionally, OSHA would like to make it clear that grain handling facilities in agriculture, i.e., establishments which are primarily engaged in the production of crops or livestock, such as farms or feed lots, are not covered by this final standard.

Application: Paragraph (b). In paragraph (b), Application, OSHA proposed that the standard apply to all grain elevators (including those that are adjuncts to mills), dust pelletizing plants, feed mills, rice mills, flour mills, and corn and soybean milling operations, although some provisions were applicable only to grain elevators (such as provisions for grain dryers and bucket elevators).

OSHA invited comment in the notice of proposed rulemaking on various aspects of the applicability of the standard as proposed. One aspect of concern was the appropriateness of covering diverse types of operations by a single standard. It has been suggested that because the function, design, equipment, and conditions in mills vary significantly from those of a grain elevator, they should not be included in the same standard. For example, the National Institute for Occupational Safety and Health observed in its study concerning grain elevators and feed mills (Ex. 9: 136, pp. 6, 7):

Incoming grain is generally received by truck or rail, or in some cases, from an adjacent grain elevator. Receiving operations in mills are very similar to those in grain elevators. However, receiving areas tend to be smaller, are less likely to have facilities such as truck dump platforms, and generally have much lower handling rate capacities.

Grain and feed handling is accomplished by bulk conveyors and bucket elevators. Systems are generally much smaller and slower than those in grain elevators. Drag and screw conveyors are used more extensively and some ingredients may be transferred pneumatically.

Dust-control equipment may be provided in areas of high dust generation, such as receiving areas. Dust generation tends to be much less in feed mills than in grain elevators because of slower grain transfer speeds, less grain handled, and the tendency to use enclosed conveyors.

Many participants in the rulemaking (e.g., Ex. 14: 96, 1025, 1304–1307, 1413, 1575–1581, 1604, 1845, 1880, 2135, 2245, 2787–93, 3596, 3724, 4017; Tr. 614–6/14; Tr. 646–6/14) stated that feed mills and/or other mills (and processing plants) should not be included in a standard with grain elevators. They asserted that segments of the grain industry differ widely in operations, conditions and risks. For example, one commenter from Cargill (Ex. 14: 1845 p. 2) noted:

As a starting point, the proposal should be revised to exclude feed mills, flour mills and other milling and processing operations. Grain and processed commodities are different substances, and grain-handling operations are very different from milling. Each industry has its own, different safety requirements, and the two should not be lumped together in standards of this sort.

Further, the United States Brewers Association (Ex. 14: 2135) remarked:

This standard should apply only to facilities or portions of facilities that are engaged in the handling (receiving, storing and shipping) of bulk raw grain that has not or is not being processed or milled.

The inclusion of milling and processing operations expands the scope of the standard into areas with different operations, equipment and working conditions. * * * The broad application of this standard would do little to prevent grain elevator explosions and result in vague and complex language which would make compliance difficult for operations unique to producing grain products.

Numerous commenters also addressed the various *differences* between mills and grain elevators. For example, the American Feed Manufacturers Association (Ex. 212, pp. 14,15) indicated:

* * * feed manufacturing facilities typically operate at a much slower speed and have a smaller capacity than a grain elevator. Feed mills generally run year round with little seasonal change allowing for more systematic and scheduled maintenance of equipment.

* * * feed mills typically use a myriad of ingredients, most of which are much less explosive than grain dust. Some of the ingredients are inert fire retardants, such as limestone and bentonite. Other non-explosive and non-flammable ingredients include salt, dicalcium phosphate, monocalcium phosphate, and trace minerals. Feed mills also use a large number of non-flammable liquid ingredients such as molasses, mineral oil, and water soluble ingredients which further reduce the explosibility or flammability of the grain and its dust generation potential. The pelleting process commonly used in feed manufacturing necessitates the inclusion of steam or water to the ingredients, further reducing the risk of explosion or fire.

Raw bulk grain is only a small part of the total ingredient mix used in a feed mill. Soybean meal, animal by-products such as meat and bone meal, dehydrated alfalfa, corn gluten meal, beet pulp, and sugar are just a few of the many major ingredients used to produce livestock and poultry feed. All of these ingredients are significantly less explosive and flammable than bulk grain dust.

A commenter from Continental Grain Company (Ex. 14: 3251, p. 5) observed:

A small number of older feed mills * * * may have a separate and distinct segment where bulk raw grain is received and stored. These segments, if meeting the definition of a grain elevator could be covered by the standard. The manufacturing operation which principally involves mixing and pelletizing, uses a number of non-grain ingredients including vitamins, drug additives, liquids such as molasses, minerals, salt, etc., all of which are combined with the ground grain product to make animal feed. These ingredients and any dust liberated from them do not present the problem associated with grain dust. These areas (feed mills) should not be included in the application of the standard. Unless a specific separate segment can be identified as a grain elevator, feed mills should *not* be included under this standard.

A representative from AgriBasics Company (Ex. 14: 4180) noted:

One of the major differences between these two facilities is that most feed mills probably handle somewhere between 25 and 50% grain, whereas grain elevators handle 100% grain.

Grain elevators move grain and its component contaminates at speeds in the neighborhood of 40–50,000 bushels an hour where feed mills normally are content with 5–10,000 bushels per hour.

The Millers' National Federation (Ex. 14: 1524 p. 7), which has indicated that it represents 80% of the flour milling capacity in the United States, remarked:

A flour mill and grain elevator are very dissimilar in design, construction and function. A grain elevator unintentionally creates dust as grain is handled. A flour mill intentionally grinds and sifts wheat to produce flour. In order for processing equipment to function smoothly, the temperature and humidity within a flour mill must be controlled. To separate the endosperm from the wheat bran and germ, the wheat must be dampened (tempered) with steam or water to about 18% moisture. All working areas must be kept free of dust to prevent infestation and to produce a wholesome product. Both FDA and the Department of Agriculture have stringent housekeeping and infestation standards which apply to mills.

It has also been suggested that mills have a smaller risk of death and injury from explosions than grain elevators and, therefore, should not be included in the same standard with grain elevators.

OSHA performed an analysis of the risks due to explosions associated with various segments of the grain handling industry for the period 1974 through 1984. The following table derives from data available to OSHA and contains the number of facilities, employees,

explosions, deaths, and injuries associated with each grain industry segment for this period (1974–1984).

Type facility	Number	Full-time employees	Explosions	Deaths	Injuries
Grain elevators	14,000	79,395	186	141	368
Feed mills	9,000	80,674	32	16	96
Soybean mills	80	2,000	5	0	1
Flour/other grain products	360	11,400	3	1	10
Rice mills	68	4,400	3	1	2
Totals:	23,508	177,869	229	159	477

If all mills are combined into a single category, the totals for this eleven year period are: 43 explosions, 18 deaths, and 109 injuries. The totals for grain elevators for the same period are: 186 explosions, 141 deaths, and 368 injuries. A simple comparison of this data reveals that the totals associated with mill explosions are three to four times lower than those associated with grain elevator explosions.

OSHA also calculated the average number of deaths and injuries resulting from explosions for this eleven year period. For mills these figures are: 18 (deaths) and 109 (injuries)/11 (years) or, an average of 11.54 deaths and injuries per year resulting from mill explosions. For grain elevators these figures are: 141 (deaths) and 368 (injuries)/11 (years) or, an average of 46.27 deaths and injuries per year resulting from grain elevator explosions.

In further analysis, the Agency computed an explosion incident rate per 100 full-time workers for grain elevators and for mills. It is important to note that comparison of these rates with incidence rates of other industries would not be valid because these grain facility rates reflect the risks associated only with explosions and not other safety hazards. However, these rates are useful in comparing the relative risks between segments within the grain handling industry (i.e., mills compared with grain elevators). Using the data contained in the above table, the incident rate per 100 full-time workers can be computed by using the Bureau of Labor Statistics (BLS) formula. The BLS occupational incidence rates are computed on the basis of 100 workers, each working 2,000 hours a year. The formula is as follows.

$(N/EH) \times 200{,}000 =$ incidence rate per 100 full-time workers where

N = number of injuries and illnesses (including deaths) or lost workdays.

EH = total hours worked by all employees during calendar year.

200,000 = base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year)

Using this formula, the incidence rate per 100 full-time workers for deaths and injuries (from explosions only) for 1974–1984 period would be for grain elevators:

$46.27/(79{,}395 \times 2000) \times 200{,}000 = .058$

and, for mills:

$11.54/(98{,}474 \times 2000) \times 200{,}000 = .012$

For ease of comparison, these rates can also be expressed in terms of 100,000 full-time workers. This results in an incidence rate of 58 per 100,000 full-time employees for grain elevators, compared to an incidence rate of 12 per 100,000 full-time employees for mills. This analysis indicates that the risk of an employee death or injury resulting from an explosion is almost five times greater in grain elevators than in mills.

OSHA has concluded from its risk analysis, and from information submitted to the record, that there is a significant risk of harm to employees working in grain elevators and mills. However, OSHA has also concluded that operational differences between mills and grain elevators, result in different and lower, but still significant, risks for mills.

In mills, grain handling rate capacities are generally lower than grain elevators. Bulk conveyors and bucket elevators are usually smaller and slower then those in grain elevators. Because of slower grain transfer speeds and less grain handled, dust generation tends to be less in mills than in grain elevators.

To reflect these differences in operation and in the relative risks of fires and explosions, the application of the final standard is somewhat different for mills than it is for grain elevators. The final standard does not impose specific requirements on bucket elevators (process legs) in mills; and, although mills are required to have a written housekeeping program, the ⅛ inch action level for dust accumulations (described later) does not apply to mills.

During this rulemaking, much has been made of the argument that small elevator facilities have a lower accident and injury rate from explosions and fires than do larger facilities, and should therefore be subject to less stringent or no regulation. The available data are not sufficient to permit an accurate estimate of the relative risks in large and small elevators. While OSHA was able to calculate death and injury incidence rates (based on hours worked) for elevators and mills, it is not possible to make such calculations by size of facility. The discussions of accident and injury experience by size have focused on annual numbers of explosions, deaths or injuries. For example, OSHA estimates there are about eight small explosions (defined as an explosion with fewer than 15 casualties) per year among the 12,000 grain elevators with a capacity of less than one million bushels, compared with about ten per year among the 2,000 facilities with a capacity of 1 million or more bushels. Thus, the risk of explosion in the larger elevators appears to be about eight times higher than the risk in small elevators.

The use of an entire year as a basis for determining the severity of hazards in the grain industry, however, tends to understate the hazards for much of the industry, primarily for small facilities. While large grain handling facilities, such as export elevators, operate virtually all year long (with exceptions due to weather conditions, such as on the Great Lakes), and employees are exposed to fire and explosion hazards throughout the year, many so-called "country elevators" operate primarily during harvest seasons, with short periods of intensive effort. Correspondingly, when these efforts are concluded, the facility essentially goes down to a much lower and safer level of activity and some go out of operation for perhaps months at a time. The effect of this pattern of operation on accident and injury data is to take several months of intensive operation and average the

accidents and injuries of the partial year over the full 12-month period, thus, providing a significant underestimate of incidence rates for the small elevators.

During periods of intense operation, when elevators are receiving and moving grain, OSHA has concluded that the *potential* risks of death and injury from fires or explosions are similar for both small and large grain handling facilities. The fact that small facilities may shut down for significant periods during the year does not obscure the fact that workers face the same hazards during grain handling periods in small facilities as they face in large facilities.

Another misleading aspect of the available data involves the emphasis on injuries and fatalities to the exclusion of total numbers of fires and explosions. OSHA recognizes that many fires and explosions occur in grain handling facilities which, fortunately, do not result in injury or death to employees. There are many factors involved in explaining this phenomenon, such as findings that the employees are simply at a different part of the facility when the dust ignites. There is nothing predictable about whether a grain handling facility will have a fire or explosion when employees are at any given place within the facility. The only constant is that the fires and explosions take place when the facility is or has been moving grain, and dust has been liberated from the grain stream. Employees are at some part of the facility during that activity, and it is largely a matter of chance that exposes some employees to the explosion and spares others. As the NAS report made clear, and as Murray Jacobsen testified at the hearing, there is no way to predict when an explosion will take place, once all the elements of a grain dust explosion are present in a facility. Thus, it is necessary to look beyond the numbers of injuries and fatalities alone in order to determine the true magnitude of fire and explosion hazards to employees in grain handling facilities. Because of the chance element involved with employee exposure to the hazards, OSHA must view any fire or explosion at a grain handling facility as having the potential to injure or kill employees. Accordingly, it is the total number of fires and explosions that occur in grain handling facilities, both large and small, and not just the reported numbers of deaths and injuries, that provide a complete picture of the risks to which grain handling employees are exposed.

After careful consideration of these factors, OSHA has concluded that the *potential* risks of death and injury from fires or explosions are similar for both small and large grain handling facilities.

OSHA requested information on how to reduce the high cost of compliance for small facilities without reducing the protections afforded by the standard. Country elevators, the category of elevators comprising the smallest elevators, make up the vast majority of all grain elevators. OSHA specifically defined a small elevator facility in the proposal in order to provide special consideration to smaller facilities. OSHA defined a "small elevator facility" as a grain elevator which has less than one million bushel storage capacity and which had less than a four million bushel throughput during the previous 12 month period. Using this criteria, it was estimated that of a total 11,200 elevators (not including mill elevators), some 9,500 elevators fit the definition of "small elevator facility." It was further estimated that of the 11,200 elevators, 10,400 had less than ten employees. A survey conducted under the auspices of the National Grain and Feed Association estimates that the average number of employees in country elevators is five (Ex. 44 p. 5), and the National Institute for Occupational Safety and Health estimates between two and four employees.

In addition to certain considerations given to all elevators in the proposal (such as delayed compliance with certain provisions), OSHA also proposed a three year delay for a small elevator facility to comply with the major housekeeping provision in the proposed standard to mitigate the economic impact on small elevators. Many participants in the rulemaking representing country elevators (not all of which would meet the proposal's definition of small elevator facility) objected to being included in the application of the standard. Many of these participants also argued that if OSHA did determine that their facilities would be covered by the final standard, then special considerations should be given to country elevators, including various modifications of the standard and delaying the effective date of the standard for three years (e.g., Ex. 14: 114, 124–135, 138–165, 1032, 1433, 1470, 2196, 3395).

Participants in the rulemaking cited several reasons for their belief that country elevators should not be covered by the grain handling standard, or at a minimum, be given special considerations under the standard. Participants contended that country elevators are different than larger elevators (slower speed and smaller capacities) and, consequently, have fewer explosions; that the proposed standard would not decrease the number of fires and explosions and, therefore, would not improve employee safety and health; and, that country elevators would bear a disproportionate cost of the standard based on risks and this cost may well be economically devastating.

Various participants in the rulemaking agreed with the Office of Management and Budget's (OMB) observations regarding the coverage of country elevators in the standard (e.g., Ex. 14: 1444, 1470, 1841, 2115, 2119, 3265). OMB remarked (Ex. 14: 104 p. 25):

> * * * Risk rates are substantially higher in the large elevator segments * * * than in the other segments of the industry * * *. It is important to understand the reason for this difference in risk rates between segments in order to properly tailor the final regulation to the hazard environment of the industry.

Further, OMB noted (p. 26) that:

> * * * analysis suggests that the standard should only be applied to large- or high-throughput elevators. This segment is where significant risk exists.

Numerous participants suggested alternative ways of defining small elevators (e.g., Ex. 14: 59, 72, 1833, 1853, 1874, 2115, 2119, 2563, 4078, 4179; Tr. 285, 333–6/21; Tr. 122–7/10). One commenter, Quincy Soybean Company (Ex. 14: 17), suggested that a small elevator facility be defined as:

> * * * a grain elevator which has less than one million bushel storage capacity *or* less than a four million bushel annual throughput. Throughput will be based on the most recent three year average.

Further, many participants suggesting an alternative to OSHA's definition for small elevator facility recommended that these facilities be exempted from coverage under the standard, or at a minimum, that coverage be delayed for several years (e.g., Ex. 14: 114, 124–135, 1433, 2099, 2813–2838, 3075, 3126, 3597). One of these commenters, Northwest Agri-Dealers Association (Ex. 14: 1470, p. 4), remarked:

> It is the recommendation of Northwest Agri-Dealers Association that country elevators be exempt from these standards. The definition of a country elevator should be a facility having less than 2.5 million bushels storage or a throughput of less than 10 million bushels.

Another commenter, Pomeroy Grain Growers, Inc. (Ex. 14: 2196), stated:

> I therefore support the suggestion made by some others that these standards not apply to small grain and feed elevators.

Further, the commenter noted (p. 2):

If these regulations must apply to anyone, all effective dates should be set at least 3 years after publication of final standards.

The predominant recommendation from commenters was to exempt elevators with a 2.5 million bushel capacity or a ten million bushel throughput (e.g., Ex. 14: 116–120, 1433, 1470, 1874, 2099, 3075, 3126, 3395, 3700; Tr. 94, 281–6/27; Tr. 9–6/28). Commenters based their recommendation on a 1978 amendment to the Clean Air Act exempting from coverage elevators with a 2.5 million bushel storage capacity. One commenter (Ex. 14: 2115), who recommended an exemption for elevators with a 2.5 million bushel permanent storage capacity and more than a ten million throughput, suggested that facilities which might later expand beyond the 2.5 million bushel capacity should still retain the exemption.

As discussed above, OSHA believes that employees in grain facilities of all sizes are exposed to similar risks from fires and explosions (as well as to other known safety hazards). In its technical guidelines (Ex. 9: 136 p. 3) NIOSH noted:

Fires and explosions in these facilities have been reported in this country and abroad for almost 200 years. This danger is ever-present in the industry because of the physical characteristics of organic dust that is generated while handling and processing grains.

NAS observed after studying the causes and prevention of fires and explosions in grain elevators and mills (Ex. 9: 40 p. 13):

The panel found that the potential for grain dust explosions existed in every elevator and mill it visited. An extrapolation to the approximately 15,000 elevators existing in this country at present indicates the potential magnitude of the problem.

In the Agency Action section of this preamble, OSHA expressed its belief that based on the record a standard needs to be developed to assure, to the extent possible, safe and healthful working conditions in all grain facilities, and that the standard can be feasible. Therefore, OSHA does not agree that smaller elevators should be completely exempted. OSHA has been persuaded by participants in the rulemaking, however, that special considerations should be given to smaller elevators based on considerations of feasibility.

Further, OSHA believes that a grain elevator with a 2.5 million bushel capacity is a large facility regardless of whether it is termed a country, terminal, or export elevator. The NAS study (Ex. 9: 40 p. 17) observed:

Elevators vary in size from 400,000 to 800,000 bushels for the average storage capacity of country elevators (some may be smaller or considerably larger) * * * to an average of about 4 million for those terminal elevators registered under the Uniform Storage Agreement in 1978 * * *. Eighty-seven percent of export elevators have a storage capacity greater than 2 million bushels, with some exceeding a 10 million bushel capacity * * *.

NIOSH (Ex. 9: 136 p. 3) noted:

Storage capacities vary widely; however, country elevators typically have capacities of 100,000 to 1,000,000 bushels * * *. Inland terminals and export terminals are normally the largest facilities, reaching capacities of over 10,000,000 bushels.

OSHA has decided to retain the less than one million bushel storage capacity as a reasonable representation of a small elevator. However, for the reasons noted in the discussion of risks above, OSHA is not using this figure to provide a total exemption from coverage for small elevators. Rather, as discussed with regard to paragraphs (p)(5) through (p)(7) below, this size is used to provide relief from specific equipment requirements in the final standard .

OSHA has decided to eliminate the use of throughput as a determining factor for small facilities. One commenter, Landmark, Inc. (Ex. 14: 3265 p. 11), observed:

A through-put test would place elevators in constant jeopardy of being found "country elevators" one day and "regulated elevators" the next. Regulations cannot be based upon such a vacillating standard. Thus, Congress wisely chose to predicate its definition on storage capacity of elevators (which is fixed) as opposed to through-put (which is variable). [Reference to the Clear Air Act]

OSHA fully agrees with this observation and accordingly has eliminated "throughput" as a determining factor of what constitutes a small elevator facility.

As indicated, one of the most pressing concerns raised by representatives of country elevators was the economic burden imposed by the requirements of the standard on smaller facilities. Commenters and persons testifying contended that they would bear a disproportionate cost of the standard based on risks in these facilities and that these costs would be difficult for smaller facilities to absorb. For example, one commenter, ICM Grain Company (Ex. 14: 3024), noted:

We strongly support the concept of a safer industry and a safe workplace for our employees. However, it is critical that we emphasize the tremendous impact this proposed standard will have on the overall Agri-Business Community. This aspect seems to have been overlooked. The proposed standards will affect farmer-producers and all who supply goods and services to them. We ask that you give much greater attention to this aspect of the standards.

U.S. Congressman Tom Tauke (Ex. 14: 3177) indicated:

We certainly agree that every effort must be made to minimize the number of deaths and injuries in these facilities. However, I am concerned that the expenditure of the funds necessary to bring the industry into compliance will require an excessive initial investment and such a large annual operating cost that many facilities will be hard-pressed to continue.

Additionally, the National Grain and Feed Association (Ex. 14: 1472 pp. 8–9) remarked:

The preamble to the proposed rules states that there is a "considerably lower likelihood of death in small facilities." Yet the total cost of the standard proposed by OSHA would be highest for small facilities. Many of these facilities will have to cease operations if the standard, as proposed, is adopted.

OSHA must recognize the extreme economic burden of the proposed standard upon smaller and many existing facilities and provide economic relief in the form of exemptions, grandfathering and time extensions for compliance.

Finally, The Hall Grain Company (Ex. 14: 382), also concerned about the economic impact, stated:

There must be a balance between proposals and safety that results in a commonsense approach which will benefit the safety of the worker while not crippling the employer. After all, if you put the employer out of business and the employee loses his job, nothing has been accomplished * * *.

(See other examples Ex. 14: 12, 24, 382, 420, 1425,1472, 1586, 1836, 1874, 2081, 2099, 2115, 2141, 2526, 3013, 3261, 3527, 3700, 4149; Tr. 285–6/21; Tr. 4, 5–6/28).

Commenters have convinced OSHA that special practical considerations must be given to smaller elevators based on the Agency's concerns about the economic feasibility of the proposal. It was not OSHA's intention to so burden smaller elevators that their very existence was threatened. U.S. Congressman Byron L. Dorgan (Ex. 14: 3178 p. 1, 2) remarked:

* * * I urge strongly that OSHA develop a two-tiered grain dust standard that will allow the country elevators in this country to comply with the standard and be a safer work place without imposing intolerable investment that could ultimately bankrupt many of them.

OSHA agrees with this commenter and has incorporated a two-tiered system for certain provisions in the final standard based on the permanent storage capacity of the facility, making it unnecessary to retain the definition of "small elevator facility" as proposed in

§ 1910.272(c)(10). In the final standard OSHA is allowing grain elevators with less than one million bushel permanent storage capacity greater flexibility and an increased use of alternatives in the requirements for bucket elevators (discussed later in this notice). OSHA believes these separate considerations will relieve the excessive burden on small elevators while still enhancing employee safety and health.

Definitions: Paragraph (c). Paragraph (c) contains the definitions of terms as they are used in this section. Three proposed definitions have been deleted from the final standard, and one new definition has been added. Therefore, it is necessary to renumber the proposed paragraphs as follows:

Proposal	Final
(c)(1) Acute debilitating health effects.	Deleted.
(c)(2) Choked leg	Retained as (c)(1).
(c)(3) Fugitive grain dust	Retained as (c)(2).
(c)(4) Grain elevator	Retained as (c)(3).
(c)(5) Hot work	Retained as (c)(4).
(c)(6) Inside bucket elevator	Retained as (c)(5).
(c)(7) Jogging	Retained as (c)(6).
(c)(8) Lagging	Retained as (c)(7).
(c)(9) Partially-inside bucket elevator.	Deleted.
(c)(10) Small elevator facility	Deleted—new term "permit" (c)(8).

Paragraph (c)(1) of the proposal defined the term "acute debilitating health effects." Several commenters (e.g., Ex. 14: 1849, 2135, 2803, 3024) supported the concept represented by the term, but believed that the term itself was misleading and confusing. For example, one commenter, The Andersons (Ex. 14: 3284 p. 3), stated:

> This definition is confusing and is used only once throughout the standard. It would seem better to use the words of the definition rather than the term at the one location it is used in the standards.

OSHA has decided to accept this suggestion in order to eliminate any confusion in the meaning of terms. Accordingly, the term "acute debilitating health effects" has been deleted and the language used in the definition of the term has been included in paragraph (g)(1)(iii) of the final standard.

Paragraph (c)(1) of the final standard defines the term "choked leg." The proposal defined this term as:

> A condition of material buildup in the bucket elevator that results in the stoppage of material flow and bucket movement.

Several commenters (e.g., Ex. 14: 1849, 2135, 2803) noted that a sentence should be added to the definition for "choked leg" or "jogging" to clarify that partially or fully-loaded buckets do not constitute a choked leg as long as bucket movement is not prevented. One commenter, Bunge Corporation (Ex. 14: 1112 pp. 8–9), remarked:

> * * * recognition should be given to the accepted practice of starting and stopping a leg in order to resume operations after the material responsible for the choked condition has been cleared from the head and boot sections of the leg, even though the buckets themselves have not been emptied.

The National Grain and Feed Association (Ex. 14: 1472) added:

> Simply having grain in the buckets of the up-leg should not be defined as part of a choked leg condition, as which the proposed definition now implies. Emptying grain from the up-leg is not necessary for safe restarting of the leg; bucket elevators are designed to be able to start up under full load.

It was not the intent of OSHA to define a partially or fully-loaded up-leg as a "choked leg," as long as the condition did not prevent bucket movement. OSHA is adding a sentence to the proposed definition for "choked leg" to clarify its intent.

Additionally, the term "choked leg" is contained in the definition for "jogging." OSHA believes that adding a sentence to the proposed definition for "choked leg" will clarify any misunderstanding with respect to what the Agency considers to be "jogging," as well as what the Agency considers to be a "choked leg."

Accordingly, the following sentence has been added to the definition for the term "choked leg":

> A bucket elevator is not considered choked that has the up-leg partially or fully loaded and has the boot and discharge cleared allowing bucket movement.

Paragraph (c)(2) of the final standard defines the term "fugitive grain dust," and is a modification of the proposed definition. The proposal defined the term "fugitive grain dust" as follows:

> The dust particles which result from the breakage and handling of grain and grain products which are 400 microns in size or smaller and which are emitted from the stock handling system.

Several commenters (e.g., Ex. 14: 73, 1833, 3024, 3264) questioned OSHA's reason for specifying 400 microns as the upper limit for dust particle size. These commenters suggested that 74 microns be specified as the upper limit for dust particle size because this would be consistent with the Bureau of Mines Report of Investigation–5753, "Explosibility of Agricultural Dusts." The commenters also contended that 74 microns tended to be the upper limit for dust particle size with respect to explosion sensitivity.

OSHA would like to clarify any misunderstanding of the Bureau of Mines Report of Investigation–5753 (BOM–5753). This report describes tests that were conducted with different agricultural commodities. Most of these tests were conducted with dust particles that could pass through a 200 mesh sieve (74 microns or less). However, the report did not *define* dust as being 74 microns or smaller, nor did it infer that 74 microns was the upper limit for dust particle size in regards to explosion sensitivity. As a matter of fact, one of the authors of BOM–5753, Murray Jacobson, was an OSHA witness at the Washington, DC hearing. In his testimony (Tr. 126–6/12) he stated:

> A dust has been defined as any finely divided solid material passing through a No. 40 U.S. Standard sieve which would have an apparent diameter of 425 micrometers or less.
>
> Tests in the laboratory indicate that industrial dust, coarser then 425 micrometers, did not materially contribute to the pressure produced in the explosion vessel.

Other studies (e.g., Ex. 9: 121, 131) suggest that dust particles as large as 500 microns may be the upper limit with respect to explosion sensitivity. Although there is some disagreement about the upper limit of dust particle size in relation to *explosion sensitivity*, evidence contained in the record demonstrates that larger or coarser particles (ranging up to 425 microns) can *contribute* to an explosion. For example, Mr. Jacobson (Tr. 127–6/12) stated:

> * * * it's highly unlikely that all the particles in a sample of dust collected in an operating plant would have uniform diameter, but rather would contain proportions of finer particles.
>
> And in an explosion propagating through these fines, a contribution to the combustion is made by the relatively coarse particles even though the latter may be too large to sustain the flame propagation themselves.

Further, OSHA is concerned with dust *fires* as well as dust *explosions*. An accumulation of dust, consisting of dust particles which are 425 microns or smaller in size, not only can contribute to an explosion, but also can be the source of a fire. Consequently, OSHA believes that accumulations of dust particles that are combustible and 425 microns or smaller in size need to be addressed by the housekeeping provisions of the final standard.

It should be noted that "425 microns" corresponds to the maximum sized particle that will pass through a U.S. Standard 40 mesh sieve. The proposal inadvertently identified this particle size as "400 microns" instead of "425 microns."

Accordingly, the final standard defines the term "fugitive grain dust" as follows:

Combustible dust particles, emitted from the stock handling system, of such size as will pass through a U.S. Standard 40 mesh sieve (425 microns or less).

The proposal defined the term "Grain elevator" as:

A facility engaged in the receipt, handling, storage, and shipment of bulk raw agricultural commodities such as corn, wheat, oats, barley, sunflower seeds, and soybeans.

No substantive comment was received with respect to this definition, and it has been retained in the final standard as proposed.

The proposal defined the term "hot work" as work involving electric or gas welding, cutting, brazing, or similar flame producing operations. No substantive comment was received with respect to this definition and it has been retained in the final standard as proposed.

The proposal contained definitions for the terms "inside bucket elevator" and "partially-inside bucket elevator." OSHA made a distinction between these two terms in order to propose less stringent requirements for those bucket elevators partially inside the grain elevator structure, compared to those completely inside the grain elevator structure. However, OSHA received extensive comment and testimony questioning the appropriateness of this approach (e.g., Ex. 14: 14, 1135, 1874, 3284; Tr. 156–7/10; Tr. 691–6/14).

The thrust of these comments and testimony was that substantial confusion, not intended by the proposal, would result if these two definitions were retained in the final standard. As an alternative, it was suggested that OSHA delete the term "partially-inside bucket elevator" from the final standard and only define what the Agency considers to be an "inside bucket elevator." With this approach, OSHA would regulate those bucket elevators the Agency considers to be *inside* the grain elevator structure; all other bucket elevators would be considered *outside* the grain elevator structure and would not be addressed by the final standard.

OSHA did not intend that this standard cover any bucket elevator which is outside the grain elevator structure. The Agency believes that locating bucket elevators outside the grain elevator structure is one of the most positive steps that can be taken to lessen the impact of an explosion should one occur in the bucket elevator. The comments and testimony have convinced OSHA that the term "partially-inside bucket elevator" may be confusing and misleading with respect to those bucket elevators that the Agency intends to address in the standard.

Therefore, OSHA has deleted the term "partially-inside bucket elevator" from the final standard, and revised the term "inside bucket elevator" to describe more specifically those bucket elevators that the Agency believes need to be addressed by the final standard.

With respect to the definition for "inside bucket elevator," it was asserted that it is not necessary to graphically describe a bucket elevator and its functions as contained in the proposal. In this regard, ICM Grain Company (Ex. 14: 3024 p. 3) stated:

In the definition of "Inside Bucket Elevator" there is no real need for the attempt to graphically describe a bucket elevator. Everyone directly involved or associated with the grain industry knows what a bucket elevator is.

The purpose of the definition should be to designate what is meant by "inside" rather than what is meant by the term "Bucket Elevator."

OSHA agrees with this comment and has revised the definition to specify what the Agency considers to be an *inside* bucket elevator instead of describing what is meant by the term "bucket elevator."

OSHA realizes that there are some bucket elevators that are located almost totally *outside* the grain elevator structure, except for a small portion of the leg that is located inside the grain elevator structure. OSHA is not addressing these bucket elevators in the final standard because there is a reduced level of employee exposure to fire and explosion hazards in these situations. It is the intent of the Agency to address only those bucket elevators which are located *principally inside* the grain elevator structure, because if an explosion occurs in them, it is these bucket elevators that pose the greatest risk to employees. OSHA received many suggestions, consistent with this intent, which were useful in describing what the Agency considers to be an "inside bucket elevator."

A number of commenters (e.g., Ex. 14: 1112, 1472, 2115, 2119) suggested that the definition for "inside bucket elevator" contain the following two points for clarity: (1) An inside bucket elevator should be defined as having more than 20% of the total leg height inside the grain elevator structure; and, (2) Bucket elevators with legs passing only through rail or trunk dump sheds should not be considered an inside bucket elevator. For example, the Iowa Grain and Feed Association (Ex. 14: 1833 p. 2) stated:

* * * we feel that the use of an "outside leg" may be one of the biggest steps an elevator operator can take to lessen the impact of any explosion in the leg area. Therefore, we would urge the Agency to recognize the safety potential of such legs by exempting any leg with more than 80% of the casing above grade located outside the facility. The result of such a change in definition would be to insure that those that are located principally inside the facility are regulated, as they pose the largest potential danger.

The Farmers Elevator Association of Minnesota (Ex. 14: 1874 p. 2) asserted:

* * * only bucket elevators having more than 20% of the above grade casing located inside the grain facility should be considered "inside" bucket elevators.

Continental Grain Company (Ex. 14: 3251 p. 7) added:

Bucket elevators passing only through rail or truck sheds should be considered outside bucket elevators since they only pass through a partially enclosed structure, generally providing sufficient space for venting. This concept is consistent with OSHA's position on housekeeping where truck and rail sheds with two open ends are exempt from housekeeping regulations.

The description of an "inside bucket elevator" suggested by these comments reflects OSHA's own position with respect to those bucket elevators that need to be addressed by the final standard.

Consequently, in paragraph (c)(5) of the final standard, OSHA has used the suggestions contained in these comments to define the term "inside bucket elevator" as follows:

A bucket elevator that has the boot and more than 20% of the total leg height (above grade or ground level) inside the grain elevator structure. Bucket elevators with leg casings that are inside (and pass through the roofs) of rail or truck dump sheds, with the remainder of the leg outside the grain elevator structure, are not considered inside bucket elevators.

Paragraph (c)(6) of the final standard contains the definition of the term "jogging." As discussed previously, the final standard clarifies those conditions OSHA considers to be a choked leg. With this clarification, it is not necessary to change the proposed definition of the term "jogging." Accordingly, paragraph (c)(6) of the final standard defines the term "jogging" as repeated starting and stopping of drive motors in an attempt to clear choked legs.

The proposal defined the term "lagging" as a covering on drive pulleys used to increase the coefficient of friction between the pulley and the belt. No substantive comment was received with respect to this definition and it has been retained in the final standard as proposed.

The proposed definition for the term "partially-inside bucket elevator," as discussed previously, has been deleted from the final standard.

Also, as discussed previously, OSHA has eliminated the need for defining a small elevator facility. Consequently, the proposed term "small elevator facility" is no longer used, and has been deleted from the final standard.

Paragraph (c)(8) of the final standard defines the term "permit." The meaning of this term was contained in the text of the proposed standard. However, since the explanation of the term is for informational purposes, OSHA believes that it is more appropriate to add a definition of this term to paragraph (c), rather than retain it in the text of the final standard. Therefore, paragraph (c)(8) of the final standard defines the term "permit" as a certificate of permission to perform identified work operations that is signed and dated by the employer or the employer's representative.

Emergency action plan: Paragraph (d). Paragraph (d) of the final standard contains requirements for an emergency action plan. The proposal required employers to develop and implement an emergency action plan in accordance with 29 CFR 1910.38(a), except that the plan did not have to be written. It is important to note that § 1910.38(a) requires the emergency action plan to be in writing, except for employers with 10 or fewer employees.

This proposed requirement to implement an emergency action plan received widespread support from commenters and witnesses testifying at the informal public hearings (e.g., Ex. 14: 1416, 1472, 1849, 1871; Tr. 269–6/21). However, a large number of commenters and hearing participants (e.g., Ex. 14: 21, 123, 1833; Tr. 16–7/12) asserted that the emergency action plan should be in writing. These rulemaking participants contended that oral communication of the emergency action plan is ineffective, particularly in facilities with a large number of employees, and in those instances where there is a high rate of employee turnover. For example, USDA's Federal Grain Inspection Service (Ex. 14: 1851) remarked:

> The emergency action plan should be in writing. Employee turnover is high at some locations, and if a plan is not written, it may not be communicated to employees in a consistent manner.

Another commenter, the Alliance of American Insurers (Ex. 14: 55), stated:

> A quality emergency plan should be documented even if it consists of a single page. It has been our experience that an unwritten emergency plan is equivalent to having no plan at all.

OSHA has concluded from information contained in the record that it is imperative for employees to be aware of the actions they are to take during an emergency. Additionally, the record of this rulemaking has convinced OSHA that the most effective means of communicating this information to employees in larger grain facilities (i.e., those with more than 10 employees) is through implementation of a written emergency action plan.

Consequently, paragraph (d) of the final standard requires employers to develop and implement an emergency action plan meeting the requirements contained in § 1910.38(a). As noted previously for facilities with more than 10 employees, § 1910.38(a) requires employers to have a *written* emergency action plan; for those employers with 10 or fewer employees, OSHA believes that it is equally effective for the plan to be communicated orally to employees and the employer need not maintain a written plan.

Training: Paragraph (e). OSHA believes that employee training is a cornerstone of an effective safety program, and one of the most important steps employers can take to enhance employee safety. Additionally, not only OSHA, but virtually all participants in this rulemaking process consider an effective training program to be extremely valuable and necessary.

It was the intent of OSHA that there be a degree of consistency in the type, content, and frequency of training that employees receive. OSHA also realized, however, that employers need flexibility in designing their training programs.

Therefore, OSHA proposed performance-oriented training requirements that addressed the following: A minimum frequency for training and a need to train employees in general safety hazards associated with their work tasks, paragraph (e)(1)(i); training employees in those procedures and safety practices established by the employer, paragraph (e)(1)(ii); and, training employees in procedures for handling special tasks to which they may be assigned, paragraph (e)(2).

The performance-oriented approach and the elements of the proposed training requirements received widespread support from participants in this rulemaking process (e.g., Ex. 9: 135, 40; Ex. 14: 1416, 1470, 1851, 2517, 3024, 1112; Tr. 93–6/19; Tr. 267–68–6/21; Tr. 216–6/12).

However, several commenters (e.g., Ex. 14: 1472, 1871, 2115, 2135, 3024) suggested that proposed paragraphs (e)(1)(i) and (e)(1)(ii) be modified to indicate that employees be provided training only in those areas relevant to their job responsibilities and assignments. For example, Continental Grain Company (Ex. 14: 3251 p. 9) stated:

> This is a vital part of the Standard and as presently written, needs clarification. The paragraph should break-out training requirements into two sections: (1) Required training for general and specific safety hazards associated with each employee's work task and (2) training for employees assigned to infrequently performed or special tasks. This format more clearly follows the standard mode for employee training and will help ensure that necessary information on general hazards, fire and explosion protection and specific job task hazards are covered.

A second commenter, the Grain Elevator and Processing Society (Ex. 14: 1849 p. 9), asserted:

> GEAPS believes in training employees to recognize the hazards associated with their jobs. However, it should not be the intent of this standard to require training employees in all hazards related to grain handling facilities, but only those to which employees will be exposed by their responsibilities or assignments.

Additionally, the McLean County Service Company (Ex. 14: 2517 p. 2) remarked:

> The area of employee training is very vital to the industry and one of the most effective methods of increasing overall safe operations. However, it is our opinion that the employees need not receive training in all industry hazards, but only those hazards related to their specific job responsibilities and job assignments.

These comments have brought to the attention of OSHA a misunderstanding of the proposed training requirements that needs to be clarified. Actually, it was the intent of OSHA that training be provided to employees only in the areas related to their job assignments. This intent was reflected in the preamble to the proposed standard where OSHA stated, in part (49 FR 999):

> * * * current employees, and new employees prior to starting work, be trained in at least the recognition of and preventive measures for the *hazards associated with their work tasks* * * *. (emphasis added) Additionally, OSHA is proposing that the training include *where applicable* * * *. (emphasis added)

Because this intent was misunderstood by a number of commenters, OSHA has revised proposed paragraphs (e)(1)(i) and (e)(1)(ii) to relate the final standard

training requirements more specifically to job tasks of employees.

Paragraph (e)(1)(i) of the final standard contains training requirements with respect to *general* precautions associated with grain facilities, such as dust accumulations and common ignition sources.

Paragraph (e)(1)(ii) of the final standard contains training requirements with respect to the more *specific* procedures and safety practices applicable to *employees' job tasks.*

As noted previously in this preamble, paragraph (e)(2) of the proposal required employers to train employees in procedures for handling *special* tasks to which they may be assigned. In the absence of any negative comments, this provision has been retained in the final standard as proposed except for minor editorial modifications.

Hot work: Paragraph (f). Paragraph (f) of the proposal was titled "permit system" and contained requirements for the development and implementation of a permit system for both hot work and work requiring entry into bins, silos, and tanks. However, the proposal did not require a permit for hot work performed in welding shops authorized by the employer.

The record strongly supports the concept of a permit system, as well as implementing appropriate precautions before performing hot work or work requiring entry into bins, silos and tanks. A large number of commenters (e.g., Ex. 14: 45, 211, 1871, 1880, 2135), however, suggested that paragraph (f) contain only those requirements pertaining to hot work, and that the title of paragraph (f) be changed from "permit system" to "hot work." It was also suggested that hot work and bin entry be addressed separately, and that all requirements concerning bin entry be contained in paragraph (g).

According to the Kansas Grain and Feed Dealers (Ex. 14: 2119 p. 3):

> This section could more appropriately be titled 'Hot work' since this section addresses primarily hot work. Also, the permit suggestions covering bin entry could be included in section (g).

USDA's Federal Grain Inspection Service (Ex. 14: 1851 p. 2) stated:

> Since section (g) of the standards covers requirements for entering bins, etc., the permit system proposed for this activity should be included in section (g), and section (f) should be retitled 'Hot work'.

Another commenter, the California Grain and Feed Association (Ex. 14: 2803 p. 3), remarked:

> CGFA recommends that the title and focus of this section be changed to 'Hot work'. Since the requirements of this section deal primarily with hot work, to avoid confusion it should be stated as such. Additionally, permits for hot work and entry into bins, silos and tanks should be separate.

OSHA agrees with these commenters and, for clarity, has retitled paragraph (f) of the final standard as "Hot work permit." Additionally, permit requirements for bin entry have been relocated from paragraph (f) to paragraph (g) of the final standard ("Entry into bins, silos, and tanks").

As noted previously in this preamble, OSHA did not propose to require a permit for welding shops authorized by the employer. The purpose of a permit is to assure that the employer is aware of the hot work being performed (particularly when performed by contractors), and that appropriate safety precautions have been taken prior to beginning the work. Since welding shops authorized by the employer are locations specifically designated and suited for hot work operations, OSHA believed it unnecessary to require a permit for these locations.

However, several commenters and hearing participants (e.g., Ex. 14: 1112, 1416, 1472, 3024; Tr. 166–6/12; Tr. 158–7/10) suggested that, in addition to welding shops, there are other areas and circumstances where it is unnecessary to require a permit for hot work. It was asserted that there are locations *outside* and away from the grain facility where explosion hazards do not exist, and that a permit should not be required for such locations when authorized by the employer.

It was also asserted that there are circumstances where the employer, or the employer's representative, is present during the work procedure. It was contended that in such circumstances, a permit would not be necessary since it is the employer or employer's representative who normally would authorize the permit.

Based on the remarks of these rulemaking participants, OSHA agrees that in addition to authorized welding shops, there are other areas and circumstances where a hot work permit is not necessary. Therefore, paragraph (f)(1) of the final standard contains three exceptions to the requirement for a hot work permit. These are: (i) Where the employer or the employer's representative (who would otherwise authorize the permit) is present while the hot work is being performed; (ii) in welding shops authorized by the employer; and (iii) in hot work areas authorized by the employer which are located outside of the grain handling structure.

OSHA also proposed that hot work operations must meet the safety precautions contained in § 1910.252(d). Even though employers are currently required to comply with these safety precautions, OSHA believed it would be appropriate to reference § 1910.252(d) in the grain standard itself to emphasize the importance of these safety precautions. Since OSHA did not receive any adverse comments with respect to these safety precautions, this requirement has been retained in the final standard as paragraph (f)(2), except for editorial modifications clarifying OSHA's intent that the permit is a certification by the employer authorizing the work to be performed, rather than a recordkeeping burden.

Entry into bins, silos, and tanks: Paragraph (g). Paragraph (g) of the proposal contained several safety precautions that were to be implemented when employees enter bins, silos, and tanks.

An analysis of the record indicates that employers and employees alike are aware of the importance of implementing certain safety precautions before entry is made into bins, silos, and tanks. Additionally, there was little disagreement with the types of precautions proposed by OSHA, although excellent suggestions were made to improve and clarify some of the proposed provisions.

Many commenters did object, however, to the scope of coverage of this proposed paragraph. It was asserted that OSHA did not clarify what it meant by "bins, silos, and tanks" and, as a result, the scope of this proposed paragraph would include *all* bins, silos, and tanks including "flat storage" facilities. These commenters (e.g., Ex. 14: 1845, 1867, 2517, 3264, 3284) contended that not all bins, silos, and tanks present entry hazards. For example, one commenter, North Pacific Grain Growers Inc. (Ex. 14: 1026 p. 2), stated:

> Many bins, tanks, and silos, such as large diameter steel or concrete tanks and flat storage buildings, do not present an entry hazard.

A second commenter, Terminal Grain Corp. (Ex. 14: 18), added:

> Bin, silo, and tanks should be more clearly defined so as to exclude flat storage buildings with no bottom draw-off. The dangers represented in this section do not exist in conventional flat storage buildings which usually have large doorways and are at ground level.

The Heart of Georgia Peanut and Gin Company (Ex. 14: 1424 p. 2) remarked:

> Many bins connected with grain facilities, e.g., flat storage and large diameter steel or concrete bins with ground level entry, present no entry hazards.

OSHA agrees with these commenters to the extent that those large diameter tanks and flat storage buildings which are not entered from the top do not pose the same hazards as taller, cylindrical structures where ingress and egress are difficult, and where the quality of the atmosphere within such structures may be uncertain.

Therefore, in order to focus more specifically on those structures that pose entry hazards to employees, OSHA has added the following statement to paragraph (g) of the final standard:

> This paragraph applies to employees entering bins, silos, or tanks. It does not apply to employees entering flat storage buildings or tanks where the diameter of such structures is greater than the height, unless entry is made from the top of the structure.

Paragraph (g)(1) of the proposal required certain precautions to be taken before employees enter bins, silos, or tanks. These precautions have been modified in the final standard to reflect information contained in the record.

As discussed previously in this preamble, OSHA concurs with those commenters who suggested that requirements for a hot work permit be contained in paragraph (f) of the final standard, and that requirements for a "bin entry" permit be contained in paragraph (g) of the final standard. Accordingly, paragraph (g)(1)(i) of the final standard contains requirements for a permit, and reads as follows:

> The employer shall issue a permit for entering bins, silos, or tanks unless the employer or the employer's representative (who would otherwise authorize the permit) is present during the entire operation. The permit shall certify that the precautions contained in this paragraph (§ 1910.272(g)) have been implemented prior to employees entering bins, silos, or tanks. The permit shall be kept on file until completion of the entry operations.

Paragraph (g)(1)(i) of the proposal ((g)(1)(ii) of the final standard) required equipment to be either disconnected or locked-out and tagged if it presented a danger to employees inside bins, silos, or tanks. Several rulemaking participants (e.g., Tr. 144–6/19; Ex. 14: 1849, 2119, 2135, 3025) expressed concerns that this proposed requirement did not provide enough flexibility for providing protective measures with respect to equipment. For example, ICM Grain Company (Ex. 14: 3024 p. 15) said:

> Disconnections, locking out and tagging are not the only means of providing protection. Provision should be made to allow blocking off or protection by other means or methods determined by employers.

Another commenter, the California Grain and Feed Association (Ex. 14: 2803 p. 4), stated:

> CGFA supports protecting employees working inside confined spaces from equipment which present a danger. Specifying how employers are to do this does not provide adequate operational flexibility or allow for administrative controls.

OSHA agrees with these commenters that more flexibility is needed in this requirement to permit additional measures to protect employees from equipment when inside bins, silos, or tanks. Therefore, paragraph (g)(1)(ii) of the final standard reads as follows:

> All mechanical, electrical, hydraulic, and pneumatic equipment which present a danger to employees inside bins, silos, or tanks shall be disconnected, locked-out and tagged, blocked-off, or prevented from operating by other means or methods.

Paragraph (g)(1)(ii) of the proposal addressed testing of the atmosphere within a bin, silo, or tank for toxic conditions or for conditions of oxygen deficiency. Paragraph (g)(1)(iii) of the proposal contained protective measures to be taken if these conditions were present.

It was asserted that the manner in which these two proposed provisions were written could result in a misunderstanding of when atmospheric testing was required. Several commenters (e.g., Ex. 14: 1849, 2135, 2803, 3264) suggested combining these two proposed provisions to eliminate any confusion.

OSHA wants to assure that protective measures contained in proposed paragraph (g)(1)(iii) directly reflect the atmosphere testing requirements contained in proposed paragraph (g)(1)(ii). To eliminate any misunderstanding, therefore, OSHA has combined these two proposed paragraphs into a single paragraph of the final standard, (g)(1)(iii).

Paragraph (g)(1)(ii) of the proposal stated, in part:

> The atmosphere within a bin, silo, or tank shall be tested for the presence of combustible gases, vapors, and toxic agents *when there is reason to believe they may be present* (emphasis added).

OSHA received several remarks and suggestions concerning the phrase: "when there is reason to believe they may be present." Some rulemaking participants (e.g., Tr. 28–6/21) suggested that this provision be changed to read, "when the *employer* has reason to believe" (emphasis added). This change was suggested to eliminate any confusion with respect to who would make the decision. It was the intent of OSHA that the employer make this decision. This provision of the final standard has been modified to reflect this intent.

Other commenters (e.g., Ex. 14: 42, 50) asserted that the "reason to believe" phrase should be deleted because it was vague and did not provide adequate protection.

OSHA disagrees with these commenters. In other industries, employees may have to enter *unfamiliar* (confined) spaces that may contain toxic substances in unknown concentrations. In those circumstances, it is imperative that the atmosphere of such spaces be tested before employees enter them.

However, this is not the case in the grain industry. Employers and employees are generally *familiar* with the bins, silos, and tanks at their own facility, and employees may enter the same bin, silo, or tank occasionally for cleaning and other purposes. Not only is there familiarity with the physical limitations of these spaces, but with the contents as well (e.g., Ex. 14: 1026, 1424, 1470, 1635, 1849). Employers will be aware of the type of grain stored, the number of times the grain has been turned-over, the amount of aeration of the grain, and whether or not the grain has been recently fumigated.

There are certain obvious situations where the atmosphere of these spaces must be tested, such as a silo containing grain which has been recently fumigated. The National Grain and Feed Association (Ex. 14: 1472 p. 12) stated:

> Hazardous atmospheres are not present unless fumigants are applied at the grain handling facility.

Because of the familiarity with the bins, silos, and tanks at their own facility, OSHA believes that employers can make appropriate decisions with respect to testing of the atmosphere within these spaces. Therefore, the phrase: "when the employer has reason to believe they may be present" has been retained in paragraph (g)(1)(iii) of the final standard.

Additionally, paragraph (g)(1)(iii) of the final standard contains protective measures (ventilation and/or the use of respirators) that must be taken if the quality of the atmosphere within a bin, silo, or tank does not meet certain specified criteria. These protective measures are the same as those contained in the proposal except that the provision concerning respirators, (g)(1)(iii)(B), has been modified to clarify OSHA's intent that the use of respirators is an alternative to ventilation only for toxic and oxygen-deficient atmospheres—not for atmospheres containing combustible gases or vapors.

Paragraph (g)(2) of the proposal required employees to wear a body

harness with lifeline or use a boatswain's chair (meeting the requirements of Subpart D of 29 CFR Part 1910) when entering bins, silos, or tanks from the top.

Several commenters (e.g., Ex. 14: 1026, 1424, 1867) contended that this proposed provision is unnecessary for very large tanks and flat storage buildings. As noted previously in this preamble, however, this issue has been clarified since this paragraph of the final standard does not apply to these types of spaces unless entered from the top.

One commenter (Ex. 14: 3251) disagreed with a boatswain's chair being a substitute for a body harness with lifeline because no protection would be provided should the lowering device for the chair fail or the line attached to the chair fail. This commenter suggested that a lifeline and harness is needed in addition to the boatswain's chair.

The use of a boatswain's chair was not intended to be a substitute for a body harness and lifeline but, instead, an additional means to enter a bin, silo, or tank from the top. As noted previously, this proposed provision required the boatswain's chair to meet the requirements contained in Subpart D of 29 CFR Part 1910. It is important to note that one of the provisions contained in Subpart D requires that employees using a boatswain's chair also wear a safety belt and lifeline (§ 1910.28(j)(4)). Therefore, while OSHA appreciates and concurs with this commenter's suggestion, this proposed provision already incorporated the necessary protection.

Other commenters (e.g., Ex. 14: 2135, 2803, 3024, 3264) asserted that it is unnecessary to require the use of a body harness and lifeline for *all* situations where bins, silos or tanks are entered from the top. These commenters contended that in some situations it would be impractical and too restrictive to use a harness with lifeline or boatswain's chair. As an alternative, it was suggested that if certain other specified precautions were implemented, that OSHA not require the use of a harness with lifeline or boatswain's chair. For example, the Grain Elevator and Processing Society (Ex. 14: 1849 p. 12) remarked:

> * * * the requirement for a body harness with a lifeline or a boatswain's chair in subsection (g)(2) is an operationally restrictive and impractical requirement for some situations. Specifically, employees are required to enter large storage tanks and buildings from time-to-time to "walk the top of the grain" for conditioning purposes. In these instances, several employees may be inside the storage area at one time. The horizontal distance they may have to travel from the point of entry would make the use of lifeline or boatswain's chair ineffective or impractical. While GEAPS recognizes the need to protect employees from flowing grain, other means or methods such as those specified in the other subsections may minimize more appropriately the potential hazard. GEAPS suggests that the use of a lifeline or boatswain's chair not be required when "all precautions specified in subsections (g) (1), (3), (4), (5), (6) and (7) have been taken."

OSHA strongly disagrees with these commenters. Employees are exposed to hazards whenever they enter a bin from the top, regardless of whether grain movement is taking place. It is certainly clear to OSHA, and recommended by various comments, that employees must never be permitted to walk or stand on grain, as correctly noted by some of these commenters, while the grain is flowing (being drawn-off at the bottom, moved by auger, etc.). OSHA has addressed this hazard by mandating controls on equipment in paragraph (g)(1)(ii) of the final standard. However, the record also contains descriptions of many incidents where fatalities have occurred when grain was not flowing (e.g., Ex. 9: 18 pp. 12, 14, 15, 20, 89, 92). These incidents indicate that bin entry is hazardous whether or not grain is being moved in the bin.

Additionally, while OSHA believes that it is necessary to implement the other "bin entry" provisions contained in the final standard, the Agency does not consider these other provisions to be an equally protective *substitute* for the use of a body harness with lifeline or boatswain's chair. The incident data contained in the record has convinced OSHA that employees must wear a body harness with lifeline or use a boatswain's chair in all instances where bins, silos, or tanks are entered from the top.

Consequently, paragraph (g)(2) of the final standard reads as follows:

> When entering bins, silos or tanks from the top, employees shall wear a body harness with lifeline, or use a boatswain's chair that meets the requirements of Subpart D of this Part.

Paragraph (g)(3) of the proposal required an observer, equipped to provide assistance, to be stationed outside the bin, silo, or tank being entered by an employee. This proposed paragraph also required that communications be maintained between the observer and the employee entering the bin, silo, or tank.

OSHA did not receive any substantive comments with respect to this provision, and paragraph (g)(3) of the final standard remains the same as that which was proposed except for minor editorial modifications.

Paragraph (g)(4) of the proposal required rescue equipment to be provided that is specifically suited for the bin, silo, or tank being entered.

Paragraph (g)(5) of the proposal required the employee, acting as observer, to be trained in rescue procedures including notification methods for obtaining additional assistance.

OSHA did not receive any substantive comments with respect to these two provisions and, therefore, paragraphs (g)(4) and (g)(5) of the final standard remain the same as those which were proposed.

Paragraph (g)(6) of the proposal required an employee, trained in cardio-pulmonary resuscitation (CPR), to be available to provide assistance. OSHA proposed that an employee be trained in CPR because suffocation is a major potential hazard to employees entering bins, silos, and tanks. An employee with this training would be of extreme benefit if an incident occurred.

While recognizing the value of CPR, some rulemaking participants (e.g., Tr. 28–29–6/21; Tr. 181–182–7/10; Tr. 275–6/21; Ex. 14: 2119, 1472) disagreed that it should be mandatory. These commenters believe that such a requirement could result in a liability problem for the employee administering the CPR and that it could be particularly burdensome for smaller facilities.

For example, Bunge Corporation (Ex. 14: 1112 p. 13) stated:

> Subparagraph (g)(6) is particularly burdensome for smaller facilities which may have only two employees. It raises some liability questions for the CPR-trained employee as well as the employer.
> * * * We question that it is reasonable to expect a continuing level of competence from grain elevator workers, as opposed to medical technicians and trained emergency personnel. (Note that Bunge is in favor of CPR Training and offers it to employees at several facilities on a *voluntary* basis. We are, nevertheless, opposed to a *mandatory* standard.)

Although OSHA is not convinced that a mandatory CPR provision would pose liability problems, the Agency is concerned with any additional burdens that may be placed on smaller facilities. The record has convinced OSHA that a CPR-trained employee, available to provide assistance, may not always be economically or logistically feasible, especially for those facilities with a small number of employees.

Accordingly, the proposed CPR requirement has not been included in the final standard. It is important to

note, however, that an employee or employees must be trained in first aid at those facilities where emergency medical services are not available in the near vicinity (§ 1910.151).

Paragraph (g)(7) of the proposal prohibited employees from entering a bin, silo, or tank underneath a bridging condition, or underneath a buildup of grain or grain products on the sides of a bin, silo, or tank. The record contains the description of many "bin entry" fatalities (e.g., Ex. 9: 18) which have occurred as a result of this practice. OSHA did not receive any adverse comments with respect to this provision, and it has been retained in the final standard as proposed except for minor editorial changes to clarify that employees also shall not enter bins, silos, or tanks "where a build-up of grain products on the sides could fall and bury them." Additionally, the designation of this provision has been changed from (g)(7) to (g)(6) since the provision for CPR has not been included in the final standard.

Contractors: Paragraph (h). OSHA proposed requirements concerning contractors to assure that the contractors were aware of both the hazards associated with the work being performed at the facility, and the actions to be taken during emergencies.

Paragraph (h)(1) of the proposal required the employer to inform contractors performing work at the facility of any potential fire and explosion hazards. This proposed provision also required the employer to inform contractors of the applicable safety rules of the facility. This proposed provision was well supported by the record with the exception that several commenters (e.g., Ex. 14: 1416, 1871, 3264, 2135) disagreed with the use of the term "any." To avoid ambiguity, it was suggested that the term "any" be changed to "known." For example, Gold Kist Inc. (Ex. 14: 1880 p. 5) stated:

> We also suggest that reference to "any" potential fire and explosion hazard be replaced by *known* potential fire and explosion hazards to relieve the burden on the employer of addressing unrecognized or hypothetical hazards.

Another commenter, The Andersons (Ex. 14: 3284 p. 4), remarked:

> The intent of this standard appears to be consistent with industry practice. However, the duty of the employer to inform the contractor of any potential fire and explosion hazard is so broad that compliance is impossible. The word "any" should be changed to "known."

In addition, Continental Grain Company (Ex. 14: 3251 p. 14) asserted:

> The reference to "any potential fire" should be changed to read * * * "of potential fire and explosion hazards related to the contractor's work/work area."
>
> To cover all potential fire/explosion hazards, i.e. ignition sources, etc., would be unnecessarily burdensome, time consuming and would only detract from the specific precautions which contractor personnel must be aware of and follow to perform their specific work.

OSHA agrees with these commenters that the use of the term "known" is more appropriate than the term "any" when referring to potential fire and explosion hazards in this provision. OSHA also agrees that informing contractors of fire and explosion hazards should be more specifically related to the work and work location of the contractor.

Therefore, paragraph (h)(1) of the final standard reads as follows:

> The employer shall inform contractors performing work at the grain handling facility of known potential fire and explosion hazards related to the contractor's work and work area. The employer shall also inform contractors of the applicable safety rules of the facility.

Paragraph (h)(2) of the proposal required employers to explain the applicable provisions of the emergency action plan to contractors. This provision was well supported by the record, and OSHA did not receive any adverse comments with respect to this proposed provision. Accordingly, paragraph (h)(2) of the final standard remains the same as that which was proposed.

Housekeeping: Paragraph (i). OSHA proposed four provisions with respect to housekeeping. These provisions addressed the following: (1) Implementation of a housekeeping program; (2) implementation of one of three alternative methods for reducing dust accumulations; (3) use of compressed air or other means to blow dust from ledges, walls, and other areas; and, (4) handling of grain or product spills.

Some of these proposed provisions were very controversial, and the information OSHA received regarding these proposed provisions constituted a major portion of this rulemaking record. Proposed paragraph (i)(2), concerning the three alternative methods for reducing dust accumulations, alone resulted in literally thousands of comments and hundreds of pages of testimony.

Before discussing the proposed housekeeping provisions in detail, OSHA first would like to address and clarify the issue of whether OSHA placed too much emphasis on dust control. This issue arose because the potential costs associated with the proposed housekeeping provisions (which many commenters alleged to be significant when compared to other proposed provisions), together with the voluminous amount of information generated on this subject, led many rulemaking participants (e.g., Ex. 14: 1423, 1849, 1867, 2803; Tr. 14–6/28) to believe that OSHA was placing too much emphasis on dust control. For example, a witness for the National Grain and Feed Association (Tr. 7–6/21) remarked:

> OSHA continues to place an undue emphasis and reliance upon minimizing dust as the most effective and fundamental means for reducing the number of fires and explosions. On the contrary, housekeeping addresses only one of the four explosion elements, fuel.

The North Pacific Grain Growers Inc. (Ex. 14: 1026), one of the commenters, asserted:

> Housekeeping is an important part of an overall safety program. Housekeeping addresses only one of four explosion elements—the fuel. If undue emphasis is placed on only one element—grain dust—all available funds will be directed to this single explosion factor.

The Heart of Georgia Peanut & Gin Company (Ex. 14: 1424) stated:

> By placing undue emphasis on one element of the explosion phenomenon—fuel—OSHA is diverting attention away from other, equally practical and effective safety techniques.

Another commenter, Northwest Terminal Elevator Association (Ex. 14: 1871 p. 4), remarked:

> NWTEA recognizes the importance of dust control as part of a comprehensive program to reduce the likelihood of a fire or explosion and to minimize the potential for secondary explosions. However, research has shown that controlling the ignition sources may be the most practical and effective way to prevent fires and explosions from occurring in the first place.
>
> By focusing the standard primarily on housekeeping—controlling the fuel sources for secondary explosions—OSHA has greatly undervalued the effectiveness of controlling ignition sources as an effective means to reduce the likelihood of a primary explosion.

There is widespread agreement throughout this rulemaking record that it is the *secondary* explosions that cause most of the deaths, injuries, and devastation, and, by controlling dust accumulations, the risk and magnitude of secondary explosions will be reduced. OSHA, therefore, does not believe it placed too much emphasis on dust control.

OSHA believes that the proposal presented a balanced approach in

dealing with the various elements associated with grain facility fires and explosions, and has adopted this approach in the final rule, as well. OSHA considers all of the provisions of the standard to be important. No one provision, implemented by itself, will eliminate the hazards associated with grain handling facilities. It is the position of OSHA that the final standard must be, and is, an integrated standard—where implementation of all of the provisions, *together*, is necessary in order to have a positive impact on the safety of employees in grain handling facilities.

OSHA would now like to focus its discussion on the specific housekeeping provisions contained in the proposal.

Paragraph (i)(1) of the proposal stated:

> The employer shall develop and implement a housekeeping program consisting of a dust control and removal method or combination of methods which will minimize fugitive grain dust accumulations inside grain handling facilities on ledges, floors, equipment, and other exposed surfaces.

Some commenters (e.g. Ex. 14: 2803, 3264) suggested that the word "minimize" be deleted because it may have a different meaning to different people. As a result, it was contended that the proposed provision may create confusion and be difficult to enforce. As discussed below, OSHA has revised this proposed provision and deleted the term "minimize" to eliminate any confusion and to make the provision more performance-oriented.

There were also some suggestions regarding the wording of this proposed provision, as well as disagreement concerning what constitutes an *effective* housekeeping program. However, unions, grain elevator operators, employees, and trade associations *did* agree on the importance of implementing a housekeeping program (e.g., Ex. 9: 27, 40; Ex. 14: 123, 1635, 1879, 2119, 2803, 3284; Ex. 196; Ex. 213). In fact, *OSHA did not find any comments in the record that opposed the concept of implementing a housekeeping program.*

Although there was widespread support for a housekeeping program, an OSHA analysis of the record did reveal a commonality in suggested changes with respect to the proposed provision. These suggestions were: The housekeeping program should be in writing; *all* facilities should have a housekeeping program; and, the housekeeping requirements should be performance-oriented.

The following comments exemplify these suggestions:

> It is important, of course, that each facility, large or small, have an ongoing housekeeping plan as part of its maintenance and safety program (North Pacific Grain Growers, Inc., Ex. 14: 1026 p. 2).
>
> GEAPS supports the development of a performance-oriented dust control program as a key element of an effective fire and explosion management program. While each facility should be required to implement a dust control program, it is imperative that the program requirements of the standard be performance-oriented. To be effective, the dust control program must address the diverse and unique operational and design characteristics of the individual facilities (Grain Elevator and Processing Society, Ex. 14: 1849 p. 13).
>
> NWTEA supports requiring an effective dust control program as part of a facility's overall program of fire and explosion risk management. However, to be effective, this program must recognize the unique characteristics of the individual facility in terms of design as well as type of commodity handled and facility size and throughput. To do so will require operational flexibility, and therefore, a totally performance-oriented standard (Northwest Terminal Elevator Association, Ex. 14: 1871 p. 5).
>
> We oppose the establishment of arbitrary criteria. It is important only that a facility develop and implement a written housekeeping program that specifies the areas and frequency of checking and cleaning by using sweeping, dust control or a combination of methods to reduce dust accumulations (Farmers Elevator Association of Minnesota, Ex. 14: 1874 p. 3).
>
> OSHA's intent for good housekeeping within the industry is certainly consistent with recommended industry practice. However, the choice of rather arbitrary standards does not seem appropriate. It would be better if OSHA would require each elevator to develop a written housekeeping program that would include a measurable standard of what is considered an acceptable amount of grain dust for each specific area within each individual facility (The Andersons, Ex. 14: 3284 p. 4).

In reference to an industry proposal that facilities have a written, performance-oriented housekeeping program, counsel for the National Grain and Feed Association (Tr. 63–6/21) said:

> This proposal would produce probably the most enforceable regulation that OSHA has on its books because what the employers are required to do is written down. If he hasn't done it, it is right there. It is going to be very difficult for him to contest a violation if he hasn't complied with his own plan that he has set down.

OSHA has been convinced that *all* grain facilities should implement a housekeeping program because of its recognized importance in controlling dust. After analysis of the record, OSHA has also concluded that it is important that the housekeeping program be in writing because it establishes the planned actions that the employer expects to be taken in relation to dust control; it provides a measure of compliance with respect to those planned actions; and, it apprises employees of their duties and responsibilities for controlling dust in the grain handling facility.

Further, OSHA agrees with those rulemaking participants who suggested that the housekeeping requirements be performance-oriented. The Agency believes it is important for the employer to have the necessary flexibility to choose the most economical and feasible dust control method, or combination of methods, that will best reduce dust accumulations.

To reflect these considerations, therefore, paragraph (i)(1) of the final standard reads as follows:

> The employer shall develop and implement a written housekeeping program that establishes the frequency and method(s) determined best to reduce accumulations of dust on ledges, floors, equipment, and other exposed surfaces.

Paragraph (i)(2) of the proposal required implementation of one of the following three alternatives: ⅛ inch action level (i.e., when dust accumulations reach ⅛ inch, action must be initiated to remove such accumulations); once per shift cleaning; or, installation of a pneumatic dust control system.

This proposed provision received an enormous amount of criticism. There was criticism of the three alternatives, as well as criticism of the approach that required implementation of one of only three specified alternatives for reducing dust accumulations.

In addition to their objections to proposed paragraph (i)(2), many rulemaking participants focused their discussions on the issue of what would constitute an effective housekeeping provision. From these discussions emerged two groups with opposite opinions: Proponents of a ⅛ inch action level; and opponents of this action level who believed that a performance-oriented provision without an action level would be more effective.

The proponents of the ⅛ inch action level contended that the record contains abundant evidence that hazardous dust accumulations are currently unregulated; that dust conditions are not similar (some grain facilities are spotless—some are not); and, that an effective housekeeping provision is necessary to correct these conditions.

These proponents agree with the concept that the housekeeping provision should be performance-oriented to facilitate the use of any combination of methods to reduce dust accumulations. However, they also believe that such a provision must contain a "target level"

with respect to dust accumulations to mandate the *initiation* of appropriate measures when dust accumulations reach that specified target level (e.g., Tr. 223–6/12; Tr. 580–6/12; Tr. 33–7/10; Tr. 258–6/19; Tr. 202–7/11; Ex. 213).

The following are only a few examples of the many statements reflecting this group's position concerning the need for a specified level of dust accumulation:

At the plant where we work, I feel there's a specific need for regulations on dust control because management consistently contradicts itself on housekeeping. A supervisor was talking to me, just two of us, one day, and told me that housekeeping was number one until it got in the way of production (Charles Ross, Tr. 206–207–6/19).

The ⅛ inch level, although not completely eliminating the hazards for explosion, would tend to make a work environment a much safer place.

Unless OSHA sets specific levels, this standard would have little effect. Who for example would be the judge of what a hazardous accumulation of dust was, or what does it mean to control these accumulations?

As you have heard, within our own city, conditions vary from elevator to elevator. It's not fair that some plants are safer than others. All workers should be entitled to a safe workplace (Joe Viggiano, Tr.103, 106–6/26).

We also heard testimony from another member who stated "our biggest problem is dust. I work in the elevator out there and we have probably two to three inches of dust on beams and floors." Dust conditions in our elevators are clearly not consistent. Some are spotless and some are not (Howard W. Roe, Tr. 90–6/19).

I will not repeat the previous statement of our General President, Robert Willis, but I will echo his concern for the need for an action level in the standard which will most adequately assure, to the extent feasible, the highest degree of safety protection of the employee. Without a specific set of criteria set out in the standard, such as the target level, the important provisions on dust control will be unenforceable, vague, and open to wide interpretation (Larry Barber, Tr. 96–6/26).

* * * But what does good housekeeping mean? In some of our facilities, it means no dust at all. In others, it has a very different criterion. There is an obvious need for a better, more effective and clearer standard * * *.

Of the three options OSHA provides in this provision, the first, the 1/8th inch action level, would provide the greatest measure of safety, for it sets out specific criteria that employers must meet. This is the true performance approach. An approach that sets criteria, but does not dictate the means by which it shall be achieved (Robert Willis, Tr. 76–77–6/26).

The proponents of the ⅛ inch action level also contend that the record demonstrates that secondary explosions are not inevitable and can be prevented. The following is one example given to support this contention and concerns the Nebraska Fire Marshal's report about the Blue Valley grain elevator explosion in Tamore, Nebraska (Ex. 213 p. 21):

There were no secondary explosions in this elevator explosion. A primary explosion was ignited in the bucket leg by a hot bearing (they had no detection device). The report states that: "It was noted from the investigation, that this elevator was a clean elevator. It is felt that part of this is due to the positive air displacement system that is maintained in the tunnel area of the elevator. This creates an air pressure within the tunnel area that forces the dust to stay within the leg and the conveyor system, keeping dust from filtering out of these areas throughout the rest of the elevator. It is felt that this, in fact, did help hold down the amount of damage and destruction that resulted from this explosion."

To summarize this position, proponents of the ⅛ inch action level believe that any provision for dust control must be performance-oriented, but must contain the ⅛ inch (or less) action level to establish an identifiable and specific criterion by which to judge performance. They contend that such a provision would not only promote a consistent level of safety among grain elevator housekeeping programs, but also, would result in eliminating or reducing the effects of secondary explosions.

Opponents to the ⅛ inch action level contended that a dust level should not be specified because tests have demonstrated that dust accumulations (test medium was corn starch) of as little as 1/100 of an inch can fuel the spread of a flame front, and an action level of 1/100 of an inch is not obtainable or practicable (e.g., Tr. 8–9–6/21; Tr. 129–7/11; Tr. 261–7/11; Ex. 14: 1423, 1833, 2803). They also asserted that, instead of an action level, a performance-oriented requirement to implement a housekeeping program would be more effective (e.g., Ex. 14: 1849, 1112, 2119, 1871, 3024; Tr. 48–50–6/21; Tr. 26–27–7/11). The following statements are only a few examples that express this position:

Another research project, entitled "Dust Explosion Propagation in Simulated Grain Conveyor Galleries", performed by Factory Mutual Research Corporation, found that less than 1/100th of an inch of grain dust is sufficient to fuel the spread of a flame front.

Clearly a 1/100th-inch action level is not obtainable or practicable in an operating facility.

The NGFA believes that OSHA's housekeeping proposal must be redirected, if it is to be cost-effective in improving safety. The NGFA opposes the establishment of arbitrary housekeeping criteria, including the three so-called housekeeping "options" proposed by OSHA. However, the NGFA does believe that grain handling facilities should develop and implement a written housekeeping program that specifies the area and frequency of checking and cleaning by using sweeping, dust control or a combination of methods to reduce dust accumulations (National Grain and Feed Association, Ex. 14: 1472 p.21; 27).

OSHA may be creating a false sense of security for the grain industry and its employees. It is neither technically nor economically feasible to completely rid an elevator of grain dust and no level of grain dust is "safe"—even less than 1/100 of an inch of dust has been shown to support flame propagation (Northwest Terminal Elevator Association, Ex. 14: 1871 p. 4).

As a matter of fact, the industry has information to suggest that as little as 1/100 of an inch of dust can support a grain dust explosion (Northwest Agri-Dealers Association, Ex. 14: 1470 p. 4).

It is common knowledge that dust levels far below ⅛" will support an explosion. Setting a level of ⅛" or even less will only provide a sense of false security for our employees. We recommend that OSHA's proposed housekeeping program be deleted and that it be replaced with the following: "Each facility shall develop and implement a written housekeeping program that describes areas and frequency of cleaning" (Cargill Commodity Marketing Division, Ex. 14: 1416).

Research conducted by the industry has shown that dust layers of less than 1/100th of an inch can support flame propagation.

OSHA would do well to substantially recast this section to allow each facility to simply develop and implement a performance-oriented written housekeeping program that describes the areas to be cleaned and the frequency of the cleanings (Cargill, Tr. 261–262–7/11).

The opponents to the ⅛ inch action level (as well as many other rulemaking participants) also believed that the housekeeping program should specifically address "critical areas" (e.g., Ex. 14: 2135, 2517, 3024, 3025, 3264; Tr. 86–6/19; Tr. 222–6.12; Tr. 68–6/21; Tr. 182–183–7/10).

These "critical areas" are described as those areas around or near known potential ignition sources that should be cleaned first. For example, a witness for the Grain Elevator and Processing Society at the Kansas City hearing (Tr. 18–19–6/28) remarked:

* * * the program should focus dust control on or around known ignition sources where dust accumulations may present a hazard.

The National Grain and Feed Association (Ex. 14: 1472 p. 27) stated:

Because the location of the layered dust plays a role in the propagation of an explosion, a housekeeping program could identify the need for more frequent housekeeping near potential ignition sources or areas adjacent to operating machinery. Attention could be directed toward dust accumulations on equipment which has the greatest potential for overheating or malfunctions or towards dust accumulations

in areas around and adjacent to bucket elevators, enclosed conveyors, etc.

Another commenter, Continental Grain Company (Ex. 14: 3251 p. 17), asserted:

> Primary emphasis for both control of dust and ignition sources must be placed at areas identified as more hazardous.
>
> We suggest that if OSHA wishes to maintain a provision for housekeeping, that it specify employers identify areas for primary housekeeping emphasis based on identification of known ignition sources such as bucket elevators, major bearings and sources of frictional heat. These areas should receive primary emphasis for housekeeping and dust control.

In summary, opponents of the ⅛ inch action level contended that no level should be specified because, based on research, dust accumulations much less than ⅛ inch (as little as 1/100 of an inch) are recognized as hazardous, and specification of the ⅛ inch level could give employees a false sense of security.

Instead, they suggest a performance-oriented housekeeping provision that addresses the frequency and methods to be used to control dust accumulations, particularly in "critical areas."

Based on its evaluation of the record, OSHA has determined that the final standard should contain: A performance-oriented provision for housekeeping; establishment of critical areas as priority areas for housekeeping; and, the use of a ⅛ inch action level in these priority areas. The following discussion focuses on each of these elements.

Performance-oriented housekeeping provision: A performance-oriented provision specifies a goal, but does not specify the means of reaching that goal. OSHA agrees with this approach with respect to housekeeping. The goal is to reduce dust accumulations, but specific means of reaching that goal need not be mandated by OSHA. This will provide the employer the flexibility needed to utilize the method(s) best suited for reducing dust accumulations at a particular facility. This performance-oriented approach is reflected in paragraph (i)(1) of the final standard.

Critical housekeeping areas: While it is OSHA's position that housekeeping be performed throughout the entire grain facility, the Agency also believes there are critical areas in certain facilities (where known potential ignition sources exist) that require priority attention with respect to housekeeping. OSHA prefers to describe these as "priority housekeeping areas" rather than critical areas. Based on the record, and the importance of controlling dust accumulations in these areas, OSHA believes that it is necessary to address specifically these priority housekeeping areas in the housekeeping program.

Rulemaking participants (e.g., Ex. 14: 3251, 1472, 1849; Tr. 68–6/21) were very helpful in identifying certain areas that present significant fire and explosion hazards because of the presence of ignition sources and dust generating equipment and operations. As a result of this input, OSHA has determined that three areas constitute priority housekeeping areas and must be addressed by all grain elevator housekeeping programs. These three areas are: Areas within 35 feet of inside bucket elevators; enclosed areas containing grinding equipment; and, enclosed areas containing grain dryers located inside the facility.

OSHA believes it is important to establish a minimum distance between an inside bucket elevator (the location of potential *ignition sources*) and dust accumulations (which can provide the *fuel* for a fire or explosion). Such a requirement is not unique to this standard. One example of the establishment of such a minimum distance is found in the current standards on hot work (welding and cutting) in § 1910.252(d)(2)(vii)). That provision provides for separation of ignition sources from fuel sources, before welding and cutting operations begin (ignition sources), by requiring the removal of all combustible materials (fuel sources) within 35 feet of the operations. OSHA believes that it is reasonable to require a like distance (35 feet) in grain facilities between inside bucket elevators (the location of potential "ignition sources") and dust accumulations ("fuel source"), and to establish that 35 foot area as a priority housekeeping area.

The use of an action level in priority areas is a departure from the proposal since the action level in the proposal applied to any 200 square foot area in the entire facility. Limiting the action level to priority areas around and near known ignition sources, instead of any 200 square foot area in the facility, will significantly reduce the area regulated by the ⅛ inch action level and will be less of an economic burden than the approach proposed. Additionally, this approach more directly focuses on the hazard of dust accumulations around ignition sources and, consequently, will enhance employee safety.

Appropriateness of mandating a ⅛ inch action level: OSHA proposed a ⅛ inch *action* level—not a "safe" level. As discussed in the proposal (49 FR 1000–1001), OSHA does not consider, nor has it ever implied, that a ⅛ inch dust accumulation is safe. Instead, the Agency considers dust accumulations of ⅛ inch to be a recognized hazard, and a level which can be feasibly measured and controlled—particularly in priority housekeeping areas.

Much of the opposition to a ⅛ inch action level was based on the results of a research project performed for the National Grain and Feed Association (NGFA) by the Factory Mutual Research Corporation (Ex. 96). As discussed above, it was contended that the results of the tests performed showed that dust accumulations as little as 1/100 of an inch can fuel the spread of a flame front. While some rulemaking participants disagreed with certain technical aspects of this research (e.g., Ex. 206; Ex. 213), the fact remains that this research shows, and a vast majority of the industry agrees, that dust accumulations which are much less than ⅛ inch are recognized as hazardous (e.g., Tr. 261–7/11; Tr. 8–9–6/21; Tr. 129–7/11; Ex. 14: 1416, 1423, 1472, 1871, 3024, 2803). This only buttresses OSHA's position that a dust accumulation of even ⅛ inch is a recognized hazard, and a level at which (and preferably before) corrective action must be taken.

It is interesting to note that Factory Mutual Research Corporation, which performed the tests for the NGFA, *also recommended an action level*—one even less than that proposed by OSHA:

> Tests have shown very small amounts of combustible dusts are sufficient to propagate an explosion. We are aware of the economic implications of decreasing the OSHA recommended ⅛ in. of dust accumulations further, but still feel that it is too high. The Factory Mutuals recommend that 1/16 of an inch be the minimum (Ex. 14: 51).

Even though dust accumulations of ⅛ inch are well recognized as hazardous, numerous situations have been documented in the record where dust accumulations were recognized to be well in excess of ⅛ inch, yet no corrective action was taken. For example:

Q. How deep does the dust get at that point?

A. Three days ago I saw it two feet deep.

Q. What area of the facility was that?

A. The turnhead. That is my responsibility to clean it. We were busy and I couldn't get to it (Donald Spoeneman, Tr. 319–6/20).

Mr. Murra: Well, in the North elevator basement where the main tank valves and the main legs are going up there, I've seen as much as, oh, five or six inches of dust when you come back after the housekeepers have not been working (Jim Murra, Tr. 168–6/19).

We do transfer grain, and we store grain in our plant. And the dust

accumulation amounts to quite a bit, anywhere from zero to a foot at times, and there are times when you don't know whether to sweep or just get the hell out of the place. That's how bad it gets (Rick Krause, Tr. 133–6/26).

There are places that the dust exceeds maybe an inch or so in depth. These areas have not been cleaned in a very long time and won't be unless these regulations are enforced (Donald Baldridge, Tr. 204–6/19).

A. The headhouse is the worst. It's the worst area of the elevator * * *.

Q. How deep would the dust be up on the headhouse?

A. It could probably get three to five inches in one day (Rick Krause, Tr. 145–6/26).

So, when the dust systems don't work, we just keep on keeping on it and after 8 or 10 or 12 or 14 hours of moving grain around, you are looking at three or four inches of dust, maybe two or three feet of dust. It scares me (Donald Spoeneman, Tr. 305–6/20).

Because there is documented evidence in the record that corrective action is not always being taken when hazardous accumulations of dust exist in priority housekeeping areas, it is OSHA's position that mandating an action level for priority housekeeping areas is necessary. The record also contains substantial support for an action level at priority housekeeping areas (e.g., Ex. 14: 58, 3024, 2803, 3025, 3264; Tr. 48–49–6/21), rather than the proposed approach of imposing a ⅛ inch action level over any 200 square foot area in the entire facility.

The record has convinced OSHA that the proposed approach of using the 200 square foot area as the criterion for initiating corrective action is unnecessary. This is because such an approach could result in problems with measurement and with economic feasibility, and would not focus dust control at the most potentially hazardous locations. Instead of the proposed approach, OSHA believes that the approach contained in the final standard of imposing a ⅛ inch action level at *priority housekeeping areas* will not only mandate correction of a recognized hazardous accumulation of dust at the areas of highest potential for ignition, but will also provide a measure of compliance that will promote a more consistent level of safety among housekeeping programs.

It has been said (e.g., Ex. 215; Ex. 14: 588, 1026, 1423, 1472, 1470, 1853) that the ⅛ inch level of dust accumulations is not based on scientific evidence; that this level would be difficult to measure; and, therefore, specification of such a level would be arbitrary and capricious. It is true that there is no scientific evidence that dust accumulations of ⅛ inch constitute a safe level. However, the proposed ⅛ inch action level was based on recommendations prepared by Factory Mutual and the Canadian Grain Handling Association several years earlier as a maximum level of grain dust in grain handling facilities (Ex. 9: 69, 111). Further, as discussed previously, OSHA does not consider dust accumulations of ⅛ inch to be a safe level but a level which is a recognized hazard. OSHA does not believe it arbitrary nor capricious to mandate corrective action when a recognized hazard exists.

Additionally, while some rulemaking participants suggest that the action level should be less than ⅛ inch, OSHA remains convinced that a dust accumulation of ⅛ inch is the minimum that can be feasibly controlled and easily measured. Measurement can consist of using a simple measuring device such as a ruler or tape measure.

Accordingly, OSHA has concluded that it is necessary to mandate a ⅛ inch action level for dust accumulations at priority housekeeping areas. Whereas the proposed action level concept would have applied to all locations in all grain handling facilities, OSHA has determined that the action level is more appropriately limited to grain elevators, and further to specific areas within such elevators, because their potential ignition sources cannot be readily identified and controlled with any certainty or comprehensiveness, and has determined that these specific areas are the ones involved in the majority of the explosions.

The final rule concentrates on "priority housekeeping areas" for grain elevators, and applies a ⅛ inch action level to such areas; when dust accumulations exceed ⅛ inch anywhere in these areas, the employer is required to take action under the housekeeping program to remove such accumulations. The priority housekeeping areas include those areas surrounding the equipment used to transport grain throughout the facility, namely, the inside bucket elevator, grinding equipment, and grain dryers. It is not possible to isolate all individual points within the bucket elevator which could constitute ignition sources. Where possible, ignition sources are identified and specific control measures established, such as belt alignment indicators. However, because of the uncertainty as to specific ignition sources and the methods for controlling them, it is necessary to maintain low levels of dust around grain elevator equipment in order to reduce the potential for dust to ignite or explode. The ⅛ inch level is by no means a "safe" level for grain dust; it is considered by OSHA to be a reasonable action level which meets the constraints of feasibility, while providing protection to employees. The standard does not specify the means to be used by the employer in removing accumulations above ⅛ inch from the priority housekeeping area. The written housekeeping program allows the employer flexibility in determining the type or combination of dust removal method(s) to employ. The standard only requires that such method "best reduce" grain dust accumulations. This criterion is to be evaluated based on the totality of relevant factors in the facility, including number of priority housekeeping areas, number of shifts operated, and facility size.

One argument against the ⅛ inch action level is that it is not a "safe" level for grain dust. Industry has argued that because lesser accumulations of dust are hazardous, OSHA should not set ⅛ inch or *any other* criterion for dust removal. This argument says, in essence, that because an "action level" low enough to prevent all grain dust explosions is clearly not feasible, OSHA should not set an action level at all. This argument is not persuasive. Based on explosivity alone, and the need to control dust accumulations in areas with known potential ignition sources, an action level below ⅛ inch would be supportable, since grain dust has been demonstrated to be explosive in levels as low as 1/64 inch. However, one of OSHA's constraints in regulating safety and health hazards is the feasibility of the standards that it promulgates. OSHA's choice of a ⅛ inch action level for priority housekeeping areas is not based on a finding that this level will eliminate the significant risk of explosions and fires in grain handling facilities. Rather, it is based on the Agency's determination that, at least in priority housekeeping areas, there is a need to control dust accumulations to some objective criterion that can be readily measured, and to assure that when dust concentrations reach that criterion, clean-up efforts are instituted under the housekeeping program. A ⅛ inch action level will not eliminate the risk; however, OSHA believes that it is necessary to apply some limit to dust accumulations in priority areas, and a ⅛ inch action level has been demonstrated to be feasible in most facilities in which it will be applied. Lower action levels have been considered by OSHA, but the Agency does not believe that such levels are feasible. The record indicates that application of a ⅛ inch action level in

priority housekeeping areas will substantially reduce the risks of fires and explosions in areas where known potential ignition sources exist.

There are several incentives for reducing dust levels in grain elevators. Besides the obvious benefits resulting from improved safety, there are also economic incentives. Decreased amounts of dust mean less time needed for housekeeping, and decreased labor costs. Additionally, grain elevator operators should be aware of new regulations of the U.S. Department of Agriculture concerning constraints placed upon returning dust to the stock handling system.

The best approach for handling the ⅛ inch action level is for the grain elevator operator to implement measures to prevent dust accumulations from reaching ⅛ inch in the first place. There are several dust control methods any of which, when implemented properly, can be effective in preventing dust accumulations from reach ⅛ inch.

Regardless of the method used, the grain elevator operator should, first, analyze the entire stock handling system to identify the location of dust emissions. Holes in spouting, casings of bucket elevators, drag conveying systems, screw augers, etc., should be repaired or patched to prevent any leakage.

One method of controlling dust emissions is to enclose the conveying system, pressurizing the general work area, and providing a lower pressure inside the enclosed conveying system. Although this method is effective in controlling dust emissions from the conveying system, it is imperative to provide adequate access to the inside of the enclosure to facilitate frequent removal of dust accumulations.

A frequently used method of controlling dust emissions is a pneumatic dust collection system. It is important, however, that the system be *designed properly* and *installed properly*. When installing a new or upgraded pneumatic dust control system, the grain elevator operator should require an acceptance test to ensure that the system is operating as intended and designed.

Aspiration of the leg, as part of a pneumatic dust collection system, is another effective method of controlling dust emissions. Aspiration of the leg consists of a flow of air across the entire boot, which entrains the liberated dust and carries it up the up-leg to take-off points. With proper aspiration, dust concentrations in the leg can be lowered below the lower explosive limit.

The use of edible oil sprayed on or into a moving stream of grain is another method that can be used to control dust emissions. Tests performed using this method have shown that the oil treatment is *very effective* in reducing accumulations of dust in the work areas. Recent research and improvements in the use of oil additives have made this process more effective and more economically competitive.

The grain elevator operator is encouraged to carefully evaluate the various methods available to reduce dust accumulations. This is because when designed, implemented, inspected, and maintained properly, these methods can be effective in preventing dust accumulations from even reaching the ⅛ inch action level; and, can greatly reduce the need for manual labor to remove the dust.

While the final rule incorporates the ⅛ inch action level, it also provides an alternative to that level for employers who can demonstrate and assure that their housekeeping program provides equivalent safety. OSHA recognizes that any housekeeping program which allows dust accumulations of greater than ⅛ inch cannot provide "equivalent safety" unless additional steps are taken to reduce the combustibility of the accumulated dust. For example, it may be possible to treat the grain stream with oil additives which inhibit the combustibility of any dust which is emitted from the grain handling system. The record indicates that such additives are already available and in use for various types of grain, and that they can be highly effective in both reducing the amount of dust generated and reducing the combustibility of that dust. It may also be possible to "wet down" the areas of dust accumulation, using either an oil- or water-based solution, in a manner similar to that used in controlling the combustibility of coal dust in mining operations. The standard allows for the use of such means of controlling the combustibility of grain dust, or any other means which may be developed in the future, if the employer can demonstrate that it will provide protection equivalent to the removal of grain dust accumulations whenever such accumulations exceed ⅛ inch. OSHA believes that this provision will allow for the development of new and improved methods of preventing dust accumulations from igniting or exploding. In brief, the standard requires that the grain elevator employer either comply with the action level, removing grain dust accumulations whenever they exceed ⅛ inch in depth, or employ an alternative method. Where an alternative method is used, and accumulations of greater than ⅛ inch of grain dust are allowed to remain without being cleaned up, the employer must demonstrate that those accumulations do not pose a greater fire or explosion hazard than would exist if they were removed.

The record indicates that OSHA needs to be concerned with both primary and secondary explosion hazards in grain handling facilities. It is self-evident that prevention of primary explosions will necessarily eliminate secondary explosions as well. OSHA believes that the approach set forth in the final rule, which focuses primarily on the areas in which primary explosions are most likely to occur, will be effective in reducing the number of such primary explosions. The standard is much more detailed in its requirements for these areas, which are designated as "priority housekeeping areas," than it is for other areas in the grain handling facility. It must be noted, however, that the written housekeeping program must be developed and implemented for the entire facility, and not just for priority housekeeping areas. This is intended to assure that dust accumulations are periodically removed throughout the facility to minimize the possibility of a secondary explosion in the event that a primary explosion takes place. As will be noted below, OSHA believes that regardless of the steps taken by the standard to control potential ignition sources and dust accumulations near those sources, it is not possible to identify and control all possible sources of grain dust ignition. The Agency believes that the standard accomplishes this goal within the limits of feasibility, and that the supplemental dust control requirements in priority housekeeping areas will further reduce the risk of secondary explosions.

In controlling the risk of primary explosions, it is necessary to concentrate on both the fuel for such explosions, grain dust, and the potential ignition sources which could touch off explosions. As was stressed by industry representatives throughout the rulemaking proceeding, control of ignition sources is central to the prevention of primary explosions. Ideally, if one could first identify and then control all such potential ignition sources that are present in a grain handling facility, it would be possible to prevent all primary explosions in that facility, regardless of the amount of grain dust that had accumulated. For certain types of grain handling facilities, such as feed mills, it is possible to narrow down the potential ignition sources sufficiently, and to formulate appropriate control methods for such sources The vast majority of explosions

in feed mills can be traced almost exclusively to the grinding equipment used in the facilities, and to the presence of tramp metal and other foreign materials, such as tools, which get into the grain stream. For these types of facilities, OSHA believes it is possible to prevent primary explosions without imposing specific dust accumulation limits in priority housekeeping areas, because the potential ignition sources can be identified and controlled. In the case of feed mills, the standard controls the potential ignition sources, namely, the grinding equipment, by requiring means for the removal of foreign materials from the grain and by requiring an effective preventive maintenance program. Unlike grain elevators, mills have potential ignition sources that are readily identifiable with some specificity, and that are amenable to specific control measures. This is not to say that there are no such readily identifiable ignition sources in grain elevators; indeed, the standard does identify several specific ignition sources such as overheated bearings and misaligned belts, and prescribes appropriate control measures. However, as the NAS report clearly illustrates (Ex. 9:40), the number of potential ignition sources to be found in a bucket elevator is not readily quantifiable, and not all such sources are identifiable, even after an explosion has taken place. The efforts of the grain industry to identify and control these sources, and to carry out research projects directed at developing safer grain transport systems within grain elevators, are laudatory; however, because of the nature of the hazard and illusiveness of the potential ignition sources, an approach which concentrates solely on ignition sources cannot succeed, and must incorporate dust control measures as well. The final rule provides the kind of balanced program of dust control and ignition control that the Agency envisioned when it began this rulemaking effort. For facilities in which virtually all potential ignition sources can be identified and controlled, the standard provides for this to be accomplished, and supplements these efforts with a general written housekeeping program. The Agency recognizes that the controls specified in the standard assume a general level of housekeeping to remove dust, since large quantities of accumulated dust can result in fires and explosions from sources of ignition which would not normally be considered to be significant. OSHA believes that if the known potential ignition sources in these facilities can be effectively controlled, there is minimal need to supplement the general housekeeping program with an "action level."

Another reason for not imposing more stringent housekeeping requirements on mills in this standard is that such facilities are already subject to requirements of the Food and Drug Administration (FDA) which address sanitation of food contact and non-food-contact surfaces. These requirements, which are found in Title 21 of the Code of Federal Regulations, cover the manufacture of animal feeds and food for human consumption. For example, Subpart B of 21 CFR Part 110 contains provisions for "good manufacturing practice" involving buildings and facilities used for the production of food for human consumption. Paragraph (c) of § 110.37 provides, in part, that:

> All utensils and product-contact surfaces of equipment shall be cleaned as frequently as necessary to prevent contamination of food and food products. Non-product-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to minimize accumulation of dust, dirt, food particles, and other debris * * *

Because regulations of this type are directed at the cleanliness of food and feed products, and not at employees' working conditions, they are in no way preemptive of OSHA's regulatory authority under section 4(b)(1) of the OSH Act. However, they do have the side effect of reducing the potential for dust fires and explosions by not permitting accumulations of dust on surfaces in mill facilities. OSHA believes that the active involvement of FDA in the manufacturing process of food and feed mills significantly reduces the degree to which an OSHA grain handling standard needs to specify housekeeping procedures for such facilities.

By contrast, however, it should be noted that by express exception in § 110.19, the good manufacturing practice provisions for food for human consumption do not apply to establishments engaged solely in the harvesting, storage, or distribution of raw agricultural commodities which are ordinarily cleaned, prepared, treated or otherwise processed before being marketed to the consuming public. Thus, the requirements of Subpart B of 21 CFR Part 110 are not applicable to grain elevators. The ameliorating effects of such FDA regulations, therefore, are not achieved for grain elevators, but are applicable only to mills.

FDA also regulates sanitation in animal feed additives and drugs used in medicated feeds. Although these regulations are not directly applicable to the grain itself, they are important to OSHA's regulation of mills in two ways: First, they are concerned with keeping the feed from becoming adulterated by the work environment and equipment, and with preventing cross-contamination between batches of product. This involves additional equipment cleaning procedures which reduce the likelihood that grain dust will be allowed to accumulate anywhere in the facilities. For example, in Subpart B of 21 CFR Part 225, § 225.65(b) requires that all equipment that comes in contact with medicated feed be subject to "all reasonable and effective procedures to prevent unsafe contamination of manufactured feed." These procedures must, where appropriate, consist of physical means (vacuuming, sweeping, or washing), flushing, and/or sequential production of feeds. Second, these regulations indicate the wide range of additives that feed manufacturers handle in manufacturing animal feed products, and the care that must be taken in providing adequate sanitation. As noted earlier, most of these additives, particularly those which are provided in liquid form, greatly reduce the ability of a grain mixture to generate combustible dust as it is transported through the mill. This, together with the control of ignition sources, greatly reduces the need for housekeeping, and makes it unnecessary for OSHA to establish priority housekeeping areas for mills.

To summarize paragraphs (i)(1) and (i)(2) of the final standard, paragraph (i)(1) applies to all grain handling facilities and requires the development and implementation of a written housekeeping program. Paragraph (i)(2) applies only to grain elevators, and requires that the housekeeping program address priority housekeeping areas. When any dust accumulation exceeds ⅛ inch at priority housekeeping areas, designated means or methods must be initiated to remove such accumulations immediately.

Paragraph (i)(3) of the proposal addressed the use of compressed air to blow dust from ledges, walls, and other areas which are difficult to reach. It was the intent of OSHA to permit this practice only after certain precautions had been implemented. To assure that there is no misunderstanding with respect to its intent, OSHA has made minor modifications to the proposed language of this paragraph. Consequently, paragraph (i)(3) of the final standard reads as follows:

The use of compressed air to blow dust from ledges, walls, and other areas shall only be permitted when all machinery that presents an ignition source in the area is shut-down, and all other known potential ignition sources in the area are removed or controlled.

Paragraph (i)(4) of the proposal stated that grain or product spills would not be considered grain dust accumulations, but required that procedures for removing such spills be addressed by the housekeeping program. OSHA did not receive any adverse comments regarding this provision. Therefore, paragraph (i)(4) of the final standard reads the same as that which was proposed.

Grate openings: Paragraph (j). This paragraph of the proposal required that receiving-pit feed openings be covered by grates, and that the openings in the grates be no larger than 2½ inches by 2½ inches unless a magnet is used to remove ferrous material from the grain stream.

OSHA proposed the use of magnets as an alternative to grate openings having to be 2½ inches in two dimensions (length and width). However, many rulemaking participants objected to this proposed requirement (e.g., Ex. 14: 7, 588, 1186, 1416, 1470, 1635, 1833, 1867, 1874, 3284). They contended that this provision would impact most of the industry because existing grates are 2½ inches in one dimension, but not both. They further contended that this provision would not only be costly, but also impractical with no increased benefit in safety. For example, one commenter, North Pacific Grain Growers Inc. (Ex. 14: 1026 p. 2), stated:

There is no scientific justification that shows a 2.5 inch square grate opening will provide greater safety than those now in use. The proposed grate size would severely impede grain flow of many commodities, increasing handling costs with no safety benefit.

Another commenter, from Cargill (Ex. 14: 1845 p. 3), remarked:

The 2.5 inch standard dictated in the proposal has no demonstrated safety advantage. Yet according to a recent survey by an industry organization, only about 8 percent of the industry could comply. If the proposal were modified to require only one dimension of the opening to meet the 2.5 inch standard, roughly 80 percent of the industry could be brought into compliance without significant impairment of the proposal's goal: the elimination of tramp metal in the grain stream.

Other commenters (e.g. Ex. 14: 1416, 1470, 1635, 1874, 2115, 2119, 3264) contended that the installation of magnets, as an alternative to the 2½ inch by 2½ inch grate opening requirement, would be costly and that there was no proof that the use of magnets would be effective in removing foreign objects and tramp metal from the grain stream.

After review of the record, OSHA has concluded that the installation of magnets is not an equally protective alternative to grates because magnets would not prevent nonferrous objects from entering the grain stream. Instead, it is OSHA's position that receiving-pit feed openings must be covered by grates, and that the grate openings must be of such size that large foreign objects will be prevented from entering the grain stream. The record has convinced OSHA that mandating grates with openings of 2½ inches (maximum) in width will accomplish these goals. Therefore, paragraph (j) of the final standard has been modified to read as follows:

Receiving-pit feed openings, such as truck or railcar receiving-pits, shall be covered by grates. The width of openings in the grates shall be a maximum of 2½ inches (6.35 cm).

Filter collectors: Paragraph (k). Paragraph (k)(1) of the proposal required fabric dust filter collectors, which are a part of a pneumatic dust collection system, to be equipped with a monitoring device that indicates when the filter becomes blinded. It also required that such indication be observable at a designated inspection or work location.

Several commenters (e.g., Ex. 14: 123, 1416, 1849, 1871, 1880) contended that they were unclear as to OSHA's definition of "blinded," and questioned the importance of requiring monitoring at a designated inspection or work location.

OSHA concedes that the term "blinded" may have been unclear. The intent of the term blinded was to require an indication whenever there was a pressure-drop across the surface of the filter, which is a sign that the filter collector is not functioning at its designed efficiency. The final standard incorporates this clarification. Additionally, OSHA believes that the sentence: "Such indication shall be observable at a designated inspection or work location," contained in the proposed provision, is no longer necessary since its intent will be accomplished by the preventive maintenance requirements (discussed below) contained in the final standard.

Consequently, paragraph (k)(1) of the final standard reads as follows:

Not later than (one year after the effective date of this standard), all fabric dust filter collectors which are a part of a pneumatic dust collection system shall be equipped with a monitoring device that will indicate a pressure drop across the surface of the filter.

Paragraph (k)(2) of the proposal addressed the location of filter collectors that are installed after the effective date of the final standard. The location of existing filter collectors would be "grandfathered." OSHA proposed three alternative locations for new filter collectors.

The first (and preferable) location proposed, (k)(2)(i), was outside of the facility. OSHA did not receive any negative comments with respect to this alternative, and it has been included in the final standard.

The second alternative location proposed, (k)(2)(ii), was: "In an area inside the facility protected by a fire or explosion suppression system." While some commenters supported locating a filter collector inside the facility if it were protected by an *explosion* suppression system, there was some disagreement with permitting it to be protected by a *fire* suppression system. For example, a commenter from the National Fire Protection Association (Ex. 14: 1756 p. 2) remarked:

Regarding use of suppression systems, the OSHA option will not provide the desired level of safety if fire suppression is allowed. A fire suppression system will not function rapidly enough to quench a deflagration and may not extinguish a fire fast enough to prevent a deflagration from occurring anyway. NFPA 61B only allows explosion suppression to be used.

Another commenter from the Alliance of American Insurers (Ex. 14: 55 p. 2) asserted:

Fire suppression systems such as automatic sprinklers, carbon dioxide flooding, and water spray are not equivalent to an explosion suppression system. The words "fire or" should be eliminated from this subparagraph.

OSHA agrees with these commenters that a *fire* suppression system would not be adequate in this type of situation since it would not activate fast enough to prevent an explosion. Therefore, OSHA has deleted the words "fire or" from paragraph (k)(2)(ii) of the final standard.

The third alternative location proposed by OSHA was:

Located in an area inside the facility provided with explosion venting to the outside and separated from other areas of the facility by construction having at least a one hour fire-resistance rating.

Several commenters (e.g., Ex. 14: 55, 58, 1756) disagreed with this proposed alternative location. They suggested that this provision follow the National Fire Protection Association's (NFPA)

Standard 61B, "Standard for the Prevention of Fires and Explosions in Grain Elevators and Facilities Handling Bulk Raw Agricultural Commodities," concerning filter collectors located inside buildings. These commenters contended that the approach taken in NFPA 61B is safer than that proposed by OSHA because the NFPA 61B approach requires venting to be applied to the collector itself, with ductwork to direct the overpressures and flames to the outside of the building. They asserted that this approach of direct venting of the collector would cause little damage to the collector, no damage to the room in which the collector is located, and no injury to employees who happen to be in the room at the time.

OSHA agrees with these commenters that this approach is more protective of employees than that proposed by OSHA. Therefore, paragraph (k)(2)(iii) has been modified to be more consistent with NFPA 61B, and reads as follows in the final standard:

> Located in an area inside the facility that is separated from other areas of the facility by construction having at least a one hour fire-resistance rating, and which is adjacent to an exterior wall and vented to the outside. The vent and ductwork shall be designed to resist rupture due to deflagration.

Preventive maintenance: Paragraph (1). Rulemaking participants recognized the importance of a preventive maintenance program in eliminating potential ignition sources, and considered preventive maintenance a valuable tool for keeping equipment functioning properly and safely (e.g., Ex. 14: 1416, 1849, 1871, 2803, 3024, 1472; Tr. 160–7/10; Tr. 42–6/27). OSHA also received excellent suggestions for modifying some of the proposed preventive maintenance provisions.

Paragraph (l)(1)(i) of the proposal required regularly scheduled inspection of certain mechanical and safety control equipment. Rulemaking participants supported this performance-oriented provision, except there were some suggestions with respect to making two changes for clarity (e.g., Ex. 14: 3251, 1416). First, it was suggested that the proposed phrase of "removal of ferrous objects" be changed to "grain stream processing equipment" because it describes the specific *equipment* which requires preventive maintenance, rather than the *process* of removing ferrous objects from the equipment. Second, it was suggested that the term "bucket elevator" be substituted for the proposed term of "elevator legs." It was asserted that the use of the term "bucket elevator" would be consistent with other provisions of the standard.

OSHA agrees with both of these suggestions and, for clarity, has made the suggested changes to paragraph (l)(1)(i) of the final standard.

Paragraph (l)(1)(ii) of the proposal required lubrication and other appropriate preventive maintenance of equipment to assure continued, safe operation. Several commenters (e.g., Ex. 14: 18, 1849, 2135, 3025, 3264) disagreed with the phrase, "to assure continued, safe operation" because they contended that employers cannot completely *assure* that a failure of equipment will not occur even through the best preventive maintenance program. Instead, it was recommended that the provision require lubrication and other appropriate maintenance to be performed in accordance with manufacturers' recommendations, or as determined necessary by prior operating records.

OSHA concurs with these commenters, and believes that the suggested changes reflect an industry practice considered to be effective when implemented.

Consequently, paragraph (l)(1) of the final standard reads as follows:

> The employer shall implement preventive maintenance procedures consisting of:
>
> (i) Regularly scheduled inspections of at least the mechanical and safety control equipment associated with dryers, grain stream processing equipment, dust collection equipment including filter collectors, and bucket elevators;
>
> (ii) Lubrication and other appropriate maintenance in accordance with manufacturers' recommendations, or as determined necessary by prior operating records.

Paragraph (l)(2) of the proposal addressed the "prompt correction" of certain conditions related to equipment problems. Several commenters (e.g., Ex. 14: 18, 1849, 1874, 3263) asserted that it is not always possible to correct certain equipment problems promptly, and that the alternative of removing the equipment from service should be permitted. For example, a commenter from the Bunge Corporation (Ex. 14: 1112 p. 18) remarked:

> The employer should be given the alternative of correcting the conditions listed in subparagraph (l)(2) or taking the equipment out of service.

Another commenter, from ICM Grain Company (Ex. 14: 3024 p. 18), stated:

> The term "promptly correct" used in this section is too operationally restrictive. Resources (parts or manpower) may not be available to allow prompt correction. Employers must be allowed the option of removing the equipment from service.

OSHA agrees that the employer should be permitted the alternatives of promptly correcting certain conditions or removing certain equipment from service. Accordingly, paragraph (1)(2) of the final standard has been modified to read as follows:

> The employer shall promptly correct dust collection systems which are malfunctioning or which are operating below designed efficiency. Additionally, the employer shall promptly correct, or remove from service, overheated bearings and slipping or misaligned belts associated with inside bucket elevators.

Paragraph (1)(3) of the proposal required the employer to implement a system for identifying the date, maintenance performed and/or results of the equipment inspection. OSHA considers such a system to be an important aspect of an effective preventive maintenance program for identifying problem equipment.

Several commenters (e.g., Ex. 14: 1849, 3024, 2803, 1874) contended that the *results* of routine inspections do not need to be reported since the important factor is that appropriate maintenance, if any, be performed.

OSHA concedes that performing the needed maintenance is what is important, not reporting the results of routine inspections. Further, while OSHA *recommends* an effective recordkeeping system which describes the maintenance that has been performed, the Agency also wants to minimize the amount of paperwork that the employer will have to perform. Consequently, this requirement is being modified so that the employer may *certify* that inspection of the equipment has been performed, rather than develop a recordkeeping system. Therefore, paragraph (1)(3) of the final standard has been modified to read as follows:

> A certification record shall be maintained of each inspection, performed in accordance with this paragraph (1), containing the date of the inspection, the name (signature) of the person who performed the inspection and the serial number, or other identifier, of the equipment specified in paragraph (1)(1)(i) of this section that was inspected.

The record contains evidence (Ex. 9: 19) of employees being killed or injured because of the inadvertent activation of equipment that is being repaired, serviced, or adjusted. Accordingly, paragraph (1)(4) of the proposal required the implementation of procedures, consisting of tags and locks, to mitigate this hazard.

OSHA did not receive any substantive comment with respect to this approach, and paragraph (1)(4) of the final

standard remains the same as that which was proposed.

Grain stream processing equipment: Paragraph (m). This paragraph of the proposal required employers to equip grain stream processing equipment (such as hammer mills, grinders, and pulverizers) with an effective means of removing ferrous material from the incoming grain stream.

OSHA did not find any rulemaking participants who disagreed with the intent of this proposed provision. Therefore, paragraph (m) of the final standard remains the same as that which was proposed, except for minor editorial changes relating to the "shall assure" term.

Emergency escape: Paragraph (n). The proposed emergency escape provisions were intended to recognize the difficulty existing facilities had in complying with the two means of egress requirements contained in 29 CFR Part 1910, Subpart E. As discussed in the preamble to the proposal (49 FR 1002), by definition, a means of egress consists of three distinct parts: The way of exit access, the exit, and the way of exit discharge (§ 1910.35(a)). With respect to the term "exit," fire-resistance rated enclosures are required for stairways used as exits (§ 1910.37(b)(1)).

Recognizing that most grain facilities could not "technically" meet the requirements for exits (e.g., fire-resistance rated stairway enclosures), OSHA decided to propose a requirement where facilities would have less compliance difficulty: Two "means of emergency escape." A means of emergency escape can consist of windows, emergency escape ladders, controlled descent devices, and other alternative measures—less stringent than requirements for an exit. OSHA believed that specifying two means of emergency escape would provide adequate egress because these means of escape can safely handle the small number of employees using them.

The emergency escape provisions were the most misunderstood provisions contained in the proposal. A large number of rulemaking participants (e.g., Ex. 14: 588, 1472, 1112, 1026, 1416, 1849, 1851, 2517) objected to the proposed emergency escape requirements because they incorrectly interpreted these proposed requirements to be more stringent than those contained in 29 CFR Part 1910, Subpart E. They contended that the proposal would require two "exits" (rather than two "emergency escapes" actually proposed by OSHA) from areas of the facility where it would be impossible for them to comply.

Even though OSHA clarified its intention further during the hearing phase of this rulemaking, there were still objections to the proposed provisions. Specifically, rulemaking participants (e.g., Ex. 14: 18, 123, 1871, 1880, 1883, 2517, 3025) asserted that the term "normally occupied" in proposed paragraph (n)(1) was unclear. Other rulemaking participants (e.g., Ex. 14: 1470, 1871, 1879, 2517, 3024, 3284) contended that it would still be difficult to comply with the two means of emergency escape requirements for certain areas of the facility, such as headhouses, scale floors, and tunnels. Also, some rulemaking participants (e.g., Ex. 14: 7, 18, 2803, 3024, 3264) disagreed with proposed provision (n)(2), concerning the separation of emergency escape routes, since this subject is already addressed in Subpart E.

Based on the information contained in the record, OSHA has concluded that galleries and tunnels should have two means of emergency escape because of their restrictive egress arrangements. However, the record has also convinced OSHA that existing grain elevators would have great difficulty in feasibly providing two emergency escapes from tunnels. Therefore, the final standard requires at least one means of emergency escape from tunnels in existing grain elevators. Tunnels in grain elevators constructed after the effective date of this standard, however, will be required to have at least two means of emergency escape.

OSHA has also concluded that scale floors and headhouses, because of their smaller size, do not have the same egress limitations as galleries and tunnels, and therefore, are not addressed by this provision of the final standard. However, scale floors and headhouses must still meet appropriate provisions of Subpart E.

Continuous-flow bulk raw grain dryers: Paragraph (o). The title of this proposed paragraph was "Bulk raw grain dryers." However, several commenters (e.g., Ex. 14: 1849, 1871, 2119) suggested that "continuous-flow" be added to the title because it would be a more accurate term for those dryers with which OSHA is concerned, and would separate these dryers from portable or batch type dryers that do not present the hazard of returning grain directly to the facility.

OSHA agrees with these commenters, and has changed the title of paragraph (o) of the final standard to the more accurate term of "continuous-flow bulk raw grain dryers."

Paragraph (o)(1) of the proposal required direct-heat dryers to be equipped with certain automatic controls. Paragraph (o)(1)(i) required automatic controls which would shut-off the fuel supply in case of power or flame failure or interruption of air movement through the exhaust fan. OSHA did not receive any adverse comments with respect to this provision, and paragraph (o)(1)(i) of the final standard remains the same as that which was proposed.

Paragraph (o)(1)(ii) of the proposal required automatic controls that would stop the grain from being fed into the dryer if the grain discharge mechanism became clogged, or excessive temperature occurred in the exhaust of the drying section.

OSHA did not receive many comments with respect to this proposed provision, but those who did comment, generally supported the last part of this provision which addressed stopping the grain from being fed into the dryer if excessive temperature occurred in the exhaust of the drying section. Some commenters (e.g., Ex. 14: 3251, 3264), however, disagreed with the first part of this proposed provision regarding stopping the grain from being fed into the dryer if the grain discharge mechanism became clogged. For example, a commenter from the National Grain and Feed Association (NGFA) (Ex. 14: 1472 p. 34) stated:

> While most grain dryers are equipped with devices to detect and prevent grain flow into the dryer when excessive temperatures are reached, very few are equipped with a device to detect a plugged condition in the grain discharge and subsequently stop grain from feeding into the dryer.
>
> * * * The device to detect the discharge plugged condition would only serve to duplicate the detection of excessive temperatures since the temperature device would soon be activated if grain flow through the dryer ceased. The NGFA recommends that OSHA delete the portion of the requirement which stipulates that grain dryers be equipped with a device that will detect a clogged condition in the grain stream exit.

After analysis of the information contained in the record, OSHA agrees with the recommendation of NGFA. Therefore, paragraph (o)(1)(ii) of the final standard reads as follows:

> * * * Will stop the grain from being fed into the dryer if excessive temperature occurs in the exhaust of the drying section.

Also, based on the record, OSHA has decided to allow employers three years to comply with paragraph (o)(1)(ii) of the final standard in order to obtain the required equipment.

Paragraph (o)(2) of the proposal addressed the location of those dryers installed after the effective date of the standard. OSHA did not receive any negative comments with respect to this provision and, therefore, paragraph

(o)(2) of the final standard remains the same as that which was proposed except for minor editorial changes.

Inside bucket elevators: Paragraph (p). Paragraph (p) of the proposal contained several requirements that were intended to mitigate hazards associated with inside bucket elevators. The record indicates (e.g., Ex. 9: 40, 52; Ex. 213; Tr. 254–6/21; Ex. 215) that inside bucket elevators are well recognized as potential ignition sources for primary explosions. As a result, OSHA received constructive criticism and helpful suggestions that were useful in developing the final standard requirements for inside bucket elevators.

OSHA also proposed delayed effective dates for several of the requirements in order to provide employers a sufficient phase-in period for implementing certain requirements, and requested comment on extending these dates because of the anticipated burden in complying with the provisions. While a few participants in the rulemaking believed the effective dates were too long (e.g., Ex. 14: 42), a significant number of participants believed that an inadequate amount of time was specified, and suggested extending effective dates for a variety of reasons (e.g., Ex. 14: 129, 629, 786, 1432, 1472, 1948, 2201, 2428, 2549, 3229, 3264, 3508, 3603, 3773; Ex. 189).

For example, a representative of the National Grain and Feed Association, Mr. Gary Barnett of Nabisco Brands, Inc. (Tr. 36, 37–6/21), stated:

> The bucket elevator requirements are among the most costly proposed in the standard. Many of the requirements will present both technical and economic burdens upon the grain industry.
>
> Because of the large number of devices that will need to be purchased and installed in bucket elevators, it is necessary that additional time be granted for the industry to meet any retained provisions * * *. Time extensions will be necessary to purchase and install devices and to make modifications to existing bucket elevators.

Another representative of the National Grain and Feed Association, Mr. James Maness (Tr. 78–6/21), added:

> * * * some of our members report that there are long delay times when they order this equipment—when they've ordered in mass—to get it and to get it installed.
>
> And it's even a greater delay time to get a qualified electrician, get this stuff put in, calibrate it, and make sure it's working correctly. And we think that's going to be a great inhibiting factor to putting that in.
>
> We think it's important in terms of the time extension. And I think it also points out the problems that they're going to have in getting the equipment overall and putting it in.

After careful analysis of the record, OSHA is convinced that several requirements concerning inside bucket elevators may pose substantial burdens for small grain elevators, and that a period of time may be needed for all employers to plan and implement these requirements.

Based on economic feasibility, equipment availability, and recommendations submitted to the record, OSHA has concluded that three years is an appropriate amount of time to phase-in those provisions that require installation of equipment or modification to the bucket elevator. Accordingly, several requirements for inside bucket elevators have a two year delayed effective date.

Paragraph (p)(1) of the proposal prohibited the practice of jogging bucket elevators to free a choked leg. Rulemaking participants agreed that this practice should be prohibited, as long as the Agency was clear in its intent of what constitutes a "choked leg." As discussed previously in this preamble, OSHA has clarified the meaning of "choked leg" in the definition of the term. Consequently, paragraph (p)(1) of the final standard remains the same as that which was proposed.

Paragraph (p)(2) of the proposal required elevator legs to be electrically grounded. Many commenters (e.g., Ex. 14: 18, 1416, 1424, 1635, 1851, 1865, 2135) objected to this proposed requirement, and asserted that it should be deleted from the final standard. It was contended that grounding concrete and wooden legs would be impossible and no evidence exists which suggests that electrostatics caused an explosion. For example, a commenter from Archer Daniels Midland Company (Ex. 14: 73 p. 2) stated:

> It is impossible to comply with the requirement regarding the grounding of elevator legs if the elevator legs are wooden.

A second commenter, from the North Dakota Grain Dealers Association (Ex. 14: 2115 p. 6), added:

> We know of no evidence that static electricity in bucket elevators is a problem, and therefore believe this section is unnecessary.

Another commenter, from GEAPS (Ex. 14: 1849 p. 17), remarked:

> Subsection (p)(2) should be deleted. Research has not shown that electrical grounding of legs will reduce the fire and explosion hazard. To our knowledge, no incidence of fire and explosion has been traced to lack of grounding as a cause. Additionally, this requirement is not practical or even possible for wooden or concrete legs.

The record indicates that a metal casing bucket elevator may be adequately grounded by nature of its construction, and OSHA agrees that grounding wooden and concrete bucket elevators would be difficult. These factors, together with a lack of conclusive evidence at this time that grounding would have a positive impact on preventing fires and explosions, have convinced the Agency to delete this proposed provision from the final standard. However, the Agency believes that a ground on the drive motor of the head pulley (which is required by the OSHA electrical standards in 29 CFR Part 1910 Subpart S), together with the requirement contained in paragraph (p)(3) of this section (discussed below), will adequately control these electrical hazards.

Paragraph (p)(3) of the proposal required belts and lagging to be conductive and to have a surface electrical resistance not to exceed 300 megohms. Several commenters (e.g., Ex. 14: 1871, 1879, 3025, 3264, 3284) suggested that the term "installed" be changed to "purchased" because this would allow the use of belts in stock.

OSHA agrees that employers should be permitted to use existing inventories of belts before they install belts specified by this provision. Therefore, this provision has been redesignated as (p)(2) in the final standard and reads as follows:

> All belts and lagging purchased after (the effective date of this standard) shall be conductive. Such belts shall have a surface electrical resistance not to exceed 300 megohms.

Paragraph (p)(4) of the proposal required installation of inspection "doors" to allow inspection of the head pulley, lagging, belt, and discharge throat of the elevator head section. It also required boot sections to be provided with "doors" for clean-out of the boot and for inspection of the boot pulley and belt.

A large number of rulemaking participants (e.g., Ex. 14: 1416, 1424, 1849, 1635, 3251) disagreed with the term "doors" because they contended other equally effective means of access would not be able to be used. For example, a commenter from Bunge Corporation (Ex. 14: 1112 p. 20) remarked:

> The requirements of subparagraph (p)(4) should be made more flexible by permitting any form of access which allows inspection, maintenance and cleaning.

A commenter from NGFA (Ex. 14: 1472 p. 38) stated:

> The inspection door provision needs to be made more performance oriented. Any access which would allow for inspection of the head or boot section of a bucket elevator, whether

it be a door, access panel or other means of visual and maintenance access, should be permitted.

OSHA not only agrees with these commenters, but it was actually the intent of the Agency that any means of access would be permitted if it allowed for inspection and maintenance of the head and boot sections.

Therefore, this provision has been redesignated as (p)(3) of the final standard, and has been modified to read as follows:

Not later than (three years after the effective date of this standard), all bucket elevators shall be equipped with a means of access to the head pulley section to allow inspection of the head pulley, lagging, belt, and discharge throat of the elevator head. The boot section shall also be provided with a means of access for clean-out of the boot and for inspection of the boot, pulley, and belt.

The proposed provision concerning bearings, proposed paragraph (p)(6), will be discussed next to reflect the actual order of provisions contained in the final standard.

Paragraph (p)(6) of the proposal required the employer to mount bearings externally to the leg casing or, as an alternative, required bearings mounted totally or partially inside leg casings to be equipped with a temperature monitoring device which could be read at a designated inspection or work location.

An OSHA analysis of the record indicates that rulemaking participants agree that bearings should be located externally to the leg casing. However, they asserted that it would be too costly to relocate existing bearings outside the leg casing. They also contended that OSHA's proposed alternative, a temperature monitoring device, was too restrictive because other equally effective means are available for monitoring bearings (e.g., Ex. 14: 56, 1424, 1865, 1871, 3024). For example, a commenter from Continental Grain Company (Ex. 14: 3251 p. 23) stated:

In place of the requirement for a temperature monitoring device, other equally if not more effective means for monitoring the condition of bearings are available. Infrared and particularly vibration monitoring devices have proven to be effective for identifying bearings which *could* become ignition sources.

Another commenter, from GEAPS (Ex. 14: 1849 p. 18), remarked:

Again the language of this subsection does not allow for operational flexibility to comply with the intent of the requirement. While temperature monitoring may be effective in some situations; vibration or shock pulse monitoring may prove equally adequate and more effective in preventing the hazard to begin with. Additionally, it is not clear what is meant by the term "device." Heat sensitive tape can be quite effective as a bearing hazard monitor.

These comments and other information contained in the record have convinced OSHA that there are other effective means to monitor bearings, and they should be recognized in the final standard. The Agency considers temperature monitoring devices, vibration monitoring, and infrared monitoring to be effective means to monitor bearings. Consequently, OSHA has redesignated this provision as (p)(4) of the final standard and has modified it to be more performance-oriented to read as follows:

Not later than (three years after the effective date of this standard), the employer shall:

(i) Mount bearings externally to the leg casing; or

(ii) Provide vibration monitoring, temperature monitoring, or other means to monitor the condition of those bearings mounted inside or partially-inside the leg casing.

Paragraph (p)(5) of the proposal required the employer to equip elevator legs with a motion detection device which initiates an alarm to employees when belt speed is reduced by no more than 15% of the normal operating speed, and shuts-down the leg when the belt speed is reduced by no more than 20% of the normal operating speed. This provision also proposed to require conveyor equipment which feeds the leg to be equipped with an interlock to shut-down these conveyors in the event that the leg they are serving is shut-down.

OSHA proposed that a motion detection device initiate an alarm at 15% of the normal operating speed to give some time for corrective action to be taken before the bucket elevator is automatically shut-down at 20% of the normal operating speed.

However, an analysis of the record suggests that double-set-point motion detection devices should not be mandated since the important factor is shut-down of the bucket elevator; this can be accomplished by a single-set-point motion detection device (e.g., Ex. 14: 7, 3251). Therefore, OSHA is requiring only that a motion detection device be installed which will shut-down the bucket elevator at, or before, a reduction of 20% of the normal operating speed.

Many rulemaking participants (e.g., Ex. 14: 56, 588, 1867, 2135, 2803, 3024, 1472) also objected to the "interlock" requirement of this proposed provision. It was contended that interlocking feed conveyors to shut-down when the bucket elevator shuts-down is more an operational than safety related function. It was also contended that it would be very costly to interlock conveyors with bucket elevators, as well as impractical for non-automated facilities.

OSHA agrees that the key issue is to shut-down the bucket elevator—not shut-down the conveyors feeding it. Although OSHA recommends interlocking conveyors with bucket elevators, where practical, the Agency believes this practice should be optional rather than mandatory. Accordingly, this provision has been modified to exclude the "interlock" requirement and paragraph (p)(5) of the final standard reads as follows:

Not later than (three years after the effective date of this standard), the employer shall equip bucket elevators with a motion detection device which will shut-down the bucket elevator when the belt speed is reduced by no more than 20% of the normal operating speed.

Paragraph (p)(7) of the proposal required the employer to equip elevator legs with a belt alignment monitoring device which initiates an alarm to employees when the belt is not tracking properly.

Many commenters (e.g., Ex. 14: 588, 1186, 1112, 1472, 1635, 2115) disagreed with this proposed provision and suggested that it be deleted because belt alignment monitoring is a new technology, and devices that are currently available are unreliable.

The record contains contradictory evidence with respect to the reliability of these devices, but OSHA continues to believe that vigilance in maintaining proper belt alignment is necessary in mitigating potential hazards associated with bucket elevators. Therefore, OSHA has decided to include a requirement for belt alignment monitoring in the final standard. It is important to note, however, that OSHA is permitting several alternatives (discussed below) to the requirements for both belt alignment monitoring devices and motion detection devices.

The record also contains suggested alternative devices to those proposed by OSHA for belt alignment monitoring. It was recommended that proximity switches and heat-activated friction-sensing devices be permitted as belt alignment monitoring devices. Actually, it was OSHA's intent to recognize these devices since they do, in fact, meet the proposed requirement for belt alignment monitoring devices.

Additionally, a commenter from Continental Grain Company (Ex. 14: 3251 p. 23) suggested that an effective alternative to belt alignment monitoring devices is the use of hydraulic boot

take-up systems that provide constant alignment adjustment of belts.

OSHA agrees that such a system is an effective alternative and the Agency permits such a system in the final standard as an alternative to a belt alignment monitoring device. Consequently, this provision concerning belt alignment monitoring devices has been redesignated as paragraph (p)(6) of the final standard and reads as follows:

Not later than (three years after the effective date of this standard), the employer shall:

(i) Equip bucket elevators with a belt alignment monitoring device which will initiate an alarm to employees when the belt is not tracking properly; or,

(ii) Provide a means to keep the belt tracking properly, such as a system that provides constant alignment adjustment of belts.

Throughout this rulemaking process OSHA has been interested in viable alternatives that would minimize the potential economic impact of the standard on grain elevators (particularly smaller grain elevators), while enhancing the safety and health of employees at these facilities. Several rulemaking participants (e.g., Ex. 14: 56, 2803, 3264; Tr. 150–6/27; Tr. 71–7/11; Tr. 210–6/27; Tr. 151–6/27) described their operations as including frequent inspection of bucket movement and tracking of the belt. It was suggested that since this inspection was so frequent, that it be considered an alternative to motion detection devices and belt alignment monitoring devices.

After careful consideration of the information contained in the record, OSHA has concluded that operators at smaller grain elevators can effectively inspect bucket movement and the tracking of the belt because of the fewer number of bucket elevators at these facilities. Therefore, OSHA has decided to recognize this type of inspection in smaller grain elevators as an alternative to motion detection devices and belt alignment monitoring devices.

Consequently, OSHA has included a new paragraph (p)(7), in the final standard which reads as follows:

Paragraphs (p)(5) and (p)(6) of this section do not apply to grain elevators having a permanent storage capacity of less than one million bushels, provided that daily visual inspection is made of bucket movement and tracking of the belt.

Paragraph (p)(8) of the proposal contained two alternatives for compliance with the provisions concerning bearings, motion detection devices, and belt alignment.

The first alternative, (p)(8)(i), consisted of equipping bucket elevators with an operational fire and explosion suppression system capable of protecting at least the head and boot section of the bucket elevator. The record reflects broad support for this proposed alternative and it has been included as paragraph (p)(8)(i) of the final standard.

The second proposed alternative, (p)(8)(ii), consisted of equipping bucket elevators with a pneumatic or other dust control system that keeps the dust concentration inside the leg casing below 50% of the lower explosive limit (LEL) at all times during operations.

The record contains information (e.g., Ex. 9: 41, 96) regarding the effectiveness of reducing the dust concentration inside the leg below the LEL. Some rulemaking participants (e.g., Ex. 14: 1833, 211), however, questioned the technical feasibility of this approach. Other rulemaking participants (e.g., Ex. 14: 18, 1416, 1849, 1971, 2803, 3264) disagreed with the proposed concentration of 50% below the LEL. They contended that it was important only that the concentration be kept below the LEL, and that 50% below the LEL was too stringent as well as unnecessary.

After careful review of the record, OSHA has concluded that reducing dust concentrations below the LEL in bucket elevators can be accomplished, and should be recognized as an alternative to paragraphs (p)(4), (p)(5), and (p)(6) of the final standard.

OSHA also concurs with commenters that 50% below the LEL may be too stringent. However, it is still the Agency's position that a margin of safety must be maintained to preclude the concentration from exceeding the LEL. Therefore, OSHA has decided to specify "25% below the LEL" as the margin of safety rather than 50% below the LEL.

There were other commenters (e.g., Ex. 14: 1849, 1871, 3284) who asserted that the phrase in this proposed provision, "pneumatic or other dust control systems" was too restrictive because it could be interpreted to mean that other equally effective "methods" would not be acceptable as alternatives.

OSHA did not intend to exclude any system or method that may be effective in reducing dust concentrations inside bucket elevators. In fact, the Agency believes that larger buckets, slower speeds, oil additives and other methods may be effective in reducing dust concentrations inside bucket elevators. Consequently, this provision of the final standard will recognize these other "methods" as acceptable alternatives.

Accordingly, this alternative has been modified to reflect the changes discussed above, and paragraph (p)(8)(ii) of the final standard reads as follows:

Bucket elevators which are equipped with pneumatic or other dust control systems or methods that keep the dust concentration inside the leg casing at least 25% below the lower explosive limit at all times during operations.

Appendices. OSHA included three appendices to § 1910.272 in the notice of proposed rulemaking. The appendices serve as nonmandatory guidelines to the standard, as well as providing other helpful information. Various commenters made suggestions regarding the appendices which have been incorporated to the extent possible. (See Ex. 14: 18, 50, 53, 73, 1849, 1851, 1871, 2135, 3264, 3284, 3670.)

IV. Summary of the Regulatory Impact and Regulatory Flexibility Analysis and the Environmental Impact Assessment

A. Regulatory Impact Analysis

This analysis has been performed in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The conclusions presented here were drawn from many sources including Arthur D. Little, Inc.; Booz, Allen, and Hamilton, Inc.; G.E.M. Consultants, Inc.; Midwest Research Institute; and the American Feed Manufacturers Association. These conclusions were also derived from information submitted by the Food and Beverage Trades Department of the AFL–CIO and the American Federation of Grain Millers. Finally, the analysis relied on comments submitted by grain elevator employees, employers, and equipment manufacturers. The following paragraphs summarize the methodology, benefits and costs, as well as economic and other impacts of the grain handling facilities standard on those sectors most likely to be affected.

(1) Industry Profile

The major sectors affected by the final standard are grain elevators and grain mills. The grain elevators that have similar economic and other characteristics are grouped into the following industry segments: country elevators, inland elevators, high-throughput inland terminal elevators, and export terminal elevators. The grain processing segments that will be affected by this standard include feed mills, flour mills, rice mills, dry corn mills, and dust pelletizing plants. The standard also covers facilities involved in soybean flaking operations and dry soycake grinding operations.

Grain Elevators (SICs 0723, 4221, 5153 and Others)—Country Elevators. There are about 13,200 country elevators, which are defined as those elevators with a storage capacity of less than 2 million bushels and a throughput ratio of less than three. Total storage capacity of all country elevators is about 7.1 billion bushels and employment is estimated at 70,800 full-time equivalent employees.

Country elevators primarily provide storage and purchasing services to farmers in their immediate areas. They may also provide services such as grain cleaning, drying, and blending (collectively known as grain conditioning).

The country elevator business is highly competitive and localized. These operations are primarily owned by individual family corporations or partnerships, farmer cooperatives, or large companies that own a network of facilities.

Inland-Terminal Elevators. Inland-terminal elevators are those with a storage capacity of more than 2 million bushels. They function primarily as seasonal long-term storage facilities. There are about 450 inland terminal elevators, with total storage capacity of approximately 1.5 billion bushels, or 3.4 million bushels per facility. The total employment in this sector is estimated at 6,100 full-time equivalent employees, or about 12.4 full-time employees and 8.3 part-time employees per establishment.

Many inland-terminal elevators have become obsolete because of elevator capacity limitations, difficulty in complying with air pollution control and other regulations, and changes in rail handling capabilities. In other instances, firms have made substantial investments in order to upgrade older facilities to meet the new operating requirements.

High-Throughput Inland Terminal Elevators. The operators of high-throughput terminal elevators are essentially grain merchandisers who provide few storage or drying services. These elevators are low-margin operations, and their profits are based on the ability to assemble grain at the least cost and to direct it toward profitable markets with minimum transportation costs.

There are about 250 high-throughput inland elevators in the U.S, with a total storage capacity estimated at 887.5 million bushels. They generally have storage capacities that are greater than 2 million bushels and almost all have storage capacities ranging from .5 million to 7 million bushels.

On average, there are an estimated 13.6 full-time employees and 6.1 part-time employees per establishment. Total employment is estimated at 3,700 full-time equivalent employees in this sector.

Export Terminal Elevators. There are about 75 export terminals in the United States. These typically have large storage capacities and high-throughput ratios and are located in areas where they can provide access for ships and barges for the export market. The total storage capacity of export elevators is estimated at 370.5 million bushels.

On average, an export elevator will employ 55.4 full-time employees and 11 part-time employees. There are an estimated 4,350 full-time equivalent employees in this sector.

Grain Mills—Prepared Feeds and Feed Ingredients (SIC 2048). The prepared feeds and feed ingredients sector is primarily engaged in the manufacture of animal feeds. Feed mills grind and process grain, grain byproducts, and oilseed meals in the production of animal feeds. There were slightly more than 9,000 feed mill facilities in the United States in 1984. About 900 mills produce over 50,000 tons per year, 2,000 mills produce between 15,000 and 49,999 tons per year, and 6,100 mills produce up to 14,999 tons per year.

There are an estimated 98,500 workers employed at feed mills. The average small feed mill has 5.03 full-time employees and 1.60 seasonal part-time employees who work about 10 weeks a year. Large feed mills employ 24.19 full-time employees and 2.86 seasonal employees 10 weeks a year.

Many mills are attached to country elevators. As a result, many employees work in both elevators and mills. OSHA estimates that 90 percent of the employees in small and medium-sized mills were included in its estimate of the number of employees in country elevators. That is, 57,353 of the estimated 63,726 full-time equivalent employees of small- and medium-sized mills would also be country elevator employees.

The feed industry is highly competitive, with price and service the most important determinants of feed purchase decisions. Feed processing and handling technology is not changing rapidly.

Oil Seed Processing (SICs and 2075). Soybean oil mills produce diverse products for various uses. The soybean processing industry includes establishments primarily engaged in the manufacture of soybean oil, and byproduct cake and meal. This industry converts soybeans that can be used as ingredients in human food or animal feeds.

The National Soybean Processors Association (NSPA) reports that about 80 processing plants operated in the United States during 1984. According to NSPA, there are approximately 25 production employees per facility.

Grain Processing (SICs 2041, 2044 and 2047). The firms that comprise SICs 2041, 2044, and 2047 include flour mills; rice mills; and dog, cat, and other pet food producers. According to Census of Manufacturers data [1, pp. 20 D–6 to 20 D–7], in 1985, there were 360 flour mills with 11,400 production employees and 70 rice mills with 4,400 production employees. There were also 285 dog, cat, and other pet food plants with 12,800 production employees.

(2) Nonregulatory Alternatives

The objective of OSHA's standard covering grain handling facilities is to reduce the rate of employee injury and death resulting from fires, explosions, and other workplace hazards such as unsafe entry into bins, silos, and tanks. OSHA believes that the present risk to employees in grain handling facilities is significant and that implementation of this final rule will prevent a substantial proportion of the work-related accidents. OSHA examined nonregulatory or other approaches for promoting adequate levels of workplace safety in grain handling facilities, including (1) economic forces generated by the private market system, (2) incentives created by Workers' Compensation premiums or the threat of private liability suits, and (3) related activities of other private or governmental agencies. As a result of this review, OSHA has determined that the need for government regulation stems from the significant risk of job-related injury or death caused by the inadequate rate of private hazard-abatement expenditure in grain handling facilities. Private markets fail to provide enough safety and health resources due to the lack of risk information, the immobility of labor, and the externalization of some of the social costs of worker injuries and deaths. Workers' Compensation systems do not offer an adequate remedy because the premiums do not reflect specific workplace risk, and tort liability claims are restricted by state statutes preventing employees from suing their employers. While certain voluntary and environmental standards exist, their scope and approach fail to provide adequate worker protection for all workers. Thus, OSHA has determined that a federal standard is necessary, and that its provisions will enhance competitive market forces by internalizing the societal costs of workplace accidents.

(3) Technological Feasibility

This analysis demonstrates that it is currently feasible to meet the requirements of each provision of the standard for grain handling facilities. Four basic steps were used to conduct this analysis. First, the technical requirements of the final provisions, as well as the compliance options available to the employer were examined. Second, the current work conditions in the facilities were considered. Third, the technologies required to comply with the individual provisions of the standard were identified. Fourth, the ability of suppliers to respond to increases in demand for materials and equipment, given the permitted compliance periods, was analyzed.

OSHA finds that compliance with the provisions covering an emergency action plan, training, hot work, contractors, preventive maintenance, and emergency escape do not require technological inputs. The other provisions, including housekeeping; entry into bins, silos, and tanks; grate openings; filter collectors; grain stream processing equipment; grain dryers, and inside bucket elevators do require technological inputs. OSHA has evaluated the technological feasibility of these latter provisions and finds them to be technologically feasible. In almost every case, evidence in the public docket shows that some elevators and mills are already using the equipment sucessfully. In addition, companies in other industries with similar material handling processes are already using the equipment successfully. Moreover, some provisions have delayed effective dates to assure the specific material and equipment will be available. OSHA therefore concludes that the provisions of the grain handling facilities standard are technologically feasible across all sectors covered by the standard.

(4) Estimated Costs of the Final Standard

This standard will result in increased costs to the industry. The estimated total annual cost of compliance for grain elevators ranges from $35.7 million to $63.1 million (see Table 1). For grain mills, this cost is $5.7 million (see Table 2). The low and high estimates for grain elevators result from the uncertainty surrounding the estimated cost of complying with the housekeeping provisions. These costs are less than the costs of the proposed rule because the ⅛-inch action level provision now applies to priority housekeeping areas in elevators.

TABLE 1.—TOTAL ANNUAL COMPLIANCE COSTS FOR GRAIN ELEVATORS BY PROVISION

[1985 dollars]

Provision	Total annual costs [1]
(d) Emergency alarm and action plan	144,600
(e) Training	1,867,500
(f) Hot work	254,600
(g) Bin entry	9,346,900
(h) Contractors	208,700
(i) Housekeeping ⅛-inch action level: [2]	
High estimate	44,722,500
Low estimate	17,276,300
(j) Grate openings	593,000
(k) Filter collectors	1,300
(l) Preventive maintenance	449,200
(m) Grain stream processing	0
(n) Emergency escape	0
(o) Continuous-flow bulk raw grain dryers	520,900
(p) Inside bucket elevator legs	5,007,700
Totals:	
High estimate	63,116,300
Low estimate	35,670,100

[1] Total annual costs equals annualized start-up and capital costs plus annual operating costs.

[2] The low estimate assumes one housekeeping pass per 8-hour shift. The high estimate assumes three housekeeping passes per 8-hour shift.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 2.—TOTAL ANNUAL COMPLIANCE COSTS FOR GRAIN MILLS BY PROVISION

[1985 dollars]

Provision	Total annual costs [1]
(d) Emergency action plan	67,100
(e) Training	469,900
(f) Hot work	131,600
(g) Bin entry	3,370,100
(h) Contractors	654,900
(i) Housekeeping program	35,900
(j) Grate openings	28,700
(k) Preventive maintenance	329,700
(l) Grain stream processing	629,700
Total	[2] 5,717,600

[1] Total annual cost equals annualized start-up and capital costs plus annual operating cost.

[2] Numbers may not sum due to rounding.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

The most costly provision for grain elevators is the provision requiring added housekeeping where dust accumulations exceed ⅛ inch at priority housekeeping areas. The total annual costs for this provision range from $17.3 million to $44.7 million, or from 48 percent to 71 percent of estimated total annual cost of compliance. The second most costly provision is bin entry, which is estimated at $9.3 million, or between 15 and 26 percent of the total costs of compliance. Finally, the third most costly provision is for inside bucket elevator legs, which is estimated at $5.0 million, or between 8 and 14 percent of the total costs of compliance.

The industry segment that will incur the largest percent of the total annual costs is the 10,603 country elevators with a capacity of less than 750,000 bushels. They are expected to incur costs of between $20.8 million and $32.9 million, or between $2,000 and $3,100 per facility. The industry segment that will incur the second largest percent of the total annual costs is the 1,193 country elevators with a storage capacity of 1,000,000 bushels or more. They are expected to incur costs of between $5.4 million and $10.2 million, or between $4,500 and $8,600 per facility.

The per facility costs are expected to be greatest for export terminal elevators that have a capacity of 1 million bushels or more. OSHA estimates that each of these 73 export terminals will incur annual costs of between $17,900 and $46,400. The two export terminal elevators with a capacity of less than 750,000 bushels will incur annual costs averaging between $15,600 and $44,100.

The most costly provision for grain mills is for bin entry, which is expected to cost $3.4 million, or 59 percent of the total compliance costs for mills. The second most costly provision pertains to briefing contractors, which is expected to cost about $0.7 million, or 11 percent of the total. Finally, the provision covering grain stream processing equipment is expected to cost more than $0.6 million, or 11 percent of the total.

The highest per facility costs are expected to be for medium-sized feed mills with a capacity of between 15,000 tons and 49,999 tons. OSHA expects that each of these 2,000 mills will incur annual costs of about $1,140. The next higher per facility costs are expected to be for the 900 large feed mills with a capacity greater than 49,999 tons. These mills each will incur annual costs of about $1,000.

As a partial offset to these compliance costs, the grain handling standard should provide financial benefits to the industry in terms of reduced property losses from explosions and fires. These financial benefits are estimated at $35.4 million annually. OSHA estimates that about 0.2 large explosions and 11.1 small explosions, 11.4 large fires, and 868 small fires will be prevented annually by the promulgation of the standard.

The expected property losses avoided as a result of the standard are estimated at $6.3 million for large explosions, $9.5 million for small explosions, $8.1 million for large fires, and $11.4 million for small fires. Property losses should decline about $16.9 million for large elevators, $13.9 million for small elevators, and almost $4.7 million for grain mills.

The total net annual cost of the grain handling facilities standard, after subtracting the expected property losses avoided, is estimated between $5.9 million and $33.4 million. These estimates are provided for small and large elevators and for mills as shown in Table 3.

(5) Estimated Benefits of the Final Standard

The standard for grain handling is designed to reduce the risk to employee safety and health. The benefits resulting from the standard are the fatalities, injuries, and illnesses that will be prevented from fewer explosions, fires, and other types of accidents. OSHA estimates that about 18 deaths and 394 injuries will be avoided annually as a result of the standard. OSHA does not endorse any particular value for deaths and injuries avoided. Based on the assumption however, that the value per death avoided equals $3.5 million and the value per injury avoided equals $34,100, then the estimated total value of benefits is $76.0 million.

About 7 deaths prevented result from fewer explosions and 2 deaths prevented result from fewer fires. Nine of the 18 deaths prevented would be from accidents other than fires and explosions. Of the 394 injuries prevented, about 274 result from a reduction in the number of fires, and only approximately 21 injuries prevented result from fewer explosions. An estimated 99 injuries prevented result from fewer accidents other than fires and explosions.

TABLE 3.—ANNUAL COST OF THE STANDARD

[1985 dollars]

Facility	Compliance cost [1]		Net cost [2]	
	Low	High	Low	High
Small elevators [3]	24,658,600	40,460,400	10,765,751	26,567,551
Large elevators	11,011,400	22,655,800	(5,849,025)	5,795,375
Mills	5,717,600	5,717,600	1,026,283	1,026,283
Total [4]	41,387,700	68,833,400	5,943,009	33,389,209

[1] The low estimate assumes that it is necessary to make one housekeeping pass per 8-hour shift. The high estimate is based on the need to make three housekeeping passes per 8-hour shift.
[2] Net cost estimate is the compliance cost less the property value losses avoided as a result of the standard.
[3] Small elevators are those with a grain storage capacity of less than 1 million bushels. Large elevators are all others.
[4] Totals may not sum due to rounding.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Of the nearly 18 deaths that will be prevented each year, from 6 to 7 deaths] will be avoided in small grain elevators, and about 7 deaths will be avoided in large grain elevators. Approximately 4 deaths will be avoided in grain mills. About 172 of the 394 injuries prevented will be in small grain elevators and 125 injuries will be prevented in large grain elevators. Approximately 97 injuries will be prevented in grain mills.

The first step in deriving the above estimate of annual benefits, was to determine the baseline level of risk by establishing the number of explosions, fires, and other accidents occurring in the grain handling industry each year. The baseline also established the number of deaths and injuries associated with these events.

The results show that, on average, almost 26 explosions, resulting in 12 deaths and 41 injuries, occur annually. Of this total, about 18 explosions, 9 deaths, and 25 injuries occur in grain elevators. About 25 of these 26 explosions were considered small (i.e., resulting in fewer than 15 casualties per explosion), and almost 18 of these small explosions were in grain elevators. About half of the 0.8 large explosions that occur annually occur in grain elevators. The remaining half are divided evenly between feed mills and other grain processing facilities.

OSHA's analysis also shows that there are about 27 major fires causing more than $100,000 damage per year in grain handling facilities, resulting in 3 to 4 deaths and 15 injuries per year. Most of these large fires (18.7) occur in grain elevators, resulting in from 2 to 3 deaths and 10.5 injuries per year. The number of small fires is estimated at 2,200 per year. Almost 1,400 small fires occur in grain elevators and 810 occur in feed mills and other grain processing facilities. There are no reports of deaths from minor fires but about 528 injuries result from these small fires per year. Most of these injuries from small fires (334 out of 528) occur in grain elevators.

This baseline also includes a large number of injuries and casualties occurring at grain handling facilities each year as a result of events other than fires and explosions. One of the most commonly occurring fatalities is suffocation in grain storage areas. OSHA estimates that 10 employees suffocate annually in grain storage bins in grain handling facilities; 6 to 7 suffocate in grain elevators. OSHA also estimates that about 3 deaths resulting from "other causes" are potentially avoidable each year. Lost workday injuries from other hazards are estimated at about 8,000 lost workday cases, or 5.84 cases per 100 full-time equivalents.

The second step in estimating benefits is to evaluate the source of risk for fires, explosions, and other accidents. Sources include bucket elevators, grain dryers, work areas, and "other." Data from the U.S. Department of Agriculture show that over 40 percent of all primary explosions occur in the bucket elevator legs, and an estimated 35 percent of all primary explosions occur in work areas. The percentage of known explosions in grain dryers and other locations is less. Data collected by OSHA show that about 43 percent of fires occur in work areas and 24 percent occur in bucket elevators. Again, the percentage of known fires in grain dryers and other locations is less.

The third and final step of this methodology was to estimate the

changes attributable to the standard. These estimated benefits of the final standard reflect the projected improvement over the current baseline of deaths and injuries. A summary of these benefits is provided in Table 4.

(6) Economic Impacts and Other Effects

OSHA has estimated that the economic impact of the final rule on grain handling facilities would not cause major market disruptions and therefore is economically feasible. Table 5 shows estimates of the ratio of annualized compliance costs to the 1983 net income of elevators by storage capacity and sales on the basis of these figures, OSHA estimates that from 77 to 129 facilities would experience net losses due to the standard. The effect on grain mills should be even smaller as the compliance cost as a percent of mill shipments is only about 0.02 percent. OSHA has also determined that the final rule would not have a disproportionate financial impact on a substantial number of small entities. OSHA has tailored the rule to minimize the costs on small entities while maximizing the level of benefits. For example, parts of the provision on inside bucket elevators do not apply to grain elevators that have a capacity of less than 1 million bushels.

B. Environmental Impact Assessment

The rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's (DOL's) NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

TABLE I-4.—SUMMARY OF ANNUAL BENEFITS OF THE GRAIN HANDLING STANDARD BY TYPE OF ACCIDENT AND SIZE AND TYPE OF FACILITY

Type of benefits	Small grain elevators	Large grain elevators	All grain elevators	Grain mills	Total
Number of deaths avoided:					
Fires	0.9	0.7	1.6	0.2	1.8
Explosions	1.2	5.1	6.3	0.7	7.0
Other accidents	4.3	1.4	5.7	3.3	9.0
Total	6.4	7.2	13.6	4.1	17.7
Number of injuries avoided:					
Fires	137.5	103.7	241.2	32.9	274.0
Explosions	5.4	11.8	17.3	3.4	20.7
Other accidents	29.5	9.3	38.8	60.6	99.4
Total	172.4	124.8	297.3	96.9	394.1
			(Dollars)		
Value of benefits: [1]					
Fires	7,786,483	6,071,732	13,858,215	1,700,059	15,558,274
Explosions	4,445,600	18,193,989	22,639,589	2,408,042	25,047,631
Other accidents	15,969.375	5,303,705	21,273,080	13,616,460	34,889,540
Total	28,201,458	29,569,426	57,770,884	17,724,561	75,495,445

[1] Assumes value per fatality avoided equals $3.5 million and value per injury avoided equals $34,100. Some numbers may not sum due to rounding.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 5.—RATIO OF ANNUALIZED COST TO 1983 NET INCOME OF ELEVATORS, BY STORAGE CAPACITY AND SALES (PERCENT)

Industry segment storage capacity (bushels)	Low-cost estimate	High-cost estimate
Less than $5 million in sales:		
Country elevators:		
≤750,000	4.86	7.68
750,000-999,999	3.57	6.89
>1,000,000	4.93	9.37
Inland terminals:		
≥2,000,000	2.90	5.02

TABLE 5.—RATIO OF ANNUALIZED COST TO 1983 NET INCOME OF ELEVATORS, BY STORAGE CAPACITY AND SALES (PERCENT)—Continued

Industry segment storage capacity (bushels)	Low-cost estimate	High-cost estimate
Greater than $5 million in sales:		
Country elevators:		
≤750,000	2.27	3.58
750,000-999,999	2.53	4.89
>1,000,000	2.61	4.96
Inland terminals:		
≥2,000,000	1.56	2.73
High throughput:		
≤1,500,000	2.88	7.68
1,500,000-2,499,999	4.13	10.27

TABLE 5.—RATIO OF ANNUALIZED COST TO 1983 NET INCOME OF ELEVATORS, BY STORAGE CAPACITY AND SALES (PERCENT)—Continued

Industry segment storage capacity (bushels)	Low-cost estimate	High-cost estimate
≥2,500,000	1.67	4.16
Export terminals:		
≤1,500,000	5.37	15.16
1,500,000-2,499,999	8.16	21.10
≥2,500,000	3.31	8.55

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, and U.S. Department of Agriculture [2;3].

Although safety standards rarely impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment, it is appropriate to examine whether the reduction of dust in grain handling facilities might alter the quality of the environment.

Grain dust emissions have been recognized as a significant contributor to air quality problems and grain dust emissions are covered under the Environmental Protection Agency's (EPA) National Ambient Air Quality Standards for Total Suspended Particulates under the Clean Air Act. In addition, various state implementation plans exist in an effort to comply with the EPA's national air quality standards. New, modified, or reconstructed grain facilities built after 1978 must also meet the criteria of EPA's National New Source Performance Standards. State and federal air pollution regulations are currently sufficient to cause dust control equipment to be in place in large and high-throughput grain handling facilities and to have some effect on dust control in medium-sized facilities. Most small facilities are able to meet emissions requirements without dust control equipment, but would be required to use such controls if they were to increase capacity and consequently increase emissions.

Although the removal of dust from the workplace might seem to contribute to the pollution of the ambient air surrounding grain handling facilities, this is not anticipated because of the need to comply with federal and state environmental air quality standards, and because direct capture systems are already in place to comply with these standards. Such controls include baghouses—which can attain a 99.9 percent efficiency factor—cyclones, or induced-draft or negative-pressure systems to capture particulates that would otherwise be vented directly to the ambient atmosphere. In addition, as employers can choose housekeeping control methods, it does not necessarily follow that these measures will automatically result in the venting of particulates to the ambient atmosphere. For example, local vacuuming would capture particulates without releasing them to the external environment. Such particulates might be disposed of as solid waste but frequently could be reentrained into the grain stream process. In other instances, there may be a periodic use of wet methods to control dust levels in these facilities, but this is not anticipated to result in any increased wastewater effluents or to have any significant effect on water quality.

In sum, the focus of the final standard is on reducing accidents and injuries by means of work practices and procedures, through the proper handling and use of equipment, training, preventive maintenance, housekeeping measures, and the implementation of emergency procedures. Such procedures and applications do not impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment.

References

1. U.S. Department of Commerce. Bureau of the Census. Census of Manufactures—Industry Series; Fats and Oils. MC 82-1-20 G. Washington, DC: Government Printing Office, March 1985.

2. U.S. Department of Agriculture. Agricultural Cooperative Service. Financial Profile of Cooperatives Handlers, $15 Million Sales or Larger. ACS Research Report No. 53. Washington, DC: U.S. Government Printing Office, January 1986.

3. U.S. Department of Agriculture. Agricultural Cooperative Service. Financial Profile of Cooperatives Handling Grain: First Handlers, $5 Million to $14.9 Million. ACS Research Report No. 55. Washington, DC: U.S. Government Printing Office, May 1986.

Lists of Subjects

29 CFR Part 1910

Fire prevention, Grain handling, Grain elevators, Occupational safety and health, Protective equipment, Safety, Welding.

29 CFR Part 1917

Longshoremen, Fire prevention, Grain handling, Grain elevators, Occupational safety and health, Protective equipment, Safety, Welding.

VI. The information collection requirements in the final standard are being considered by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501, et seq. These requirements will not take effect until they are approved by the Office of Management and Budget and are assigned a control number.

VII. State Plan States

The 25 states and territories with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g, because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These states are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming.

VIII. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 9-83 (48 FR 35736); and, 29 CFR Part 1911, 29 CFR Parts 1917 and 1910 are amended as set forth below.

Signed at Washington, DC, this 24th day of December 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

Part 1917 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 1917—MARINE TERMINALS

1. The authority citation for Part 1917 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; 29 CFR Part 1911.

2. Section 1917.1 is amended by adding a new paragraph (a)(2)(x) to read as follows:

§ 1917.1 Scope and applicability.

(a) * * *

(2) * * *

(x) Grain handling facilities. Subpart R, § 1910.272.

* * * * *

§ 1917.72 [Removed]

3. Section 1917.72 *Grain elevator terminals*, which is currently reserved is removed.

Part 1910 of 29 CFR is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

4. The authority citation for Subpart R of 29 CFR Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable. Sections 1910.261, 1910.262, 1910.265, 1910.267, 1910.268, 1910.269, 1910.272, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

5. Part 1910 of Title 29 of the Code of Federal Regulations is amended by adding a new § 1910.272 and Appendices A, B and C to § 1910.272 to read as follows:

§ 1910.272 Grain handling facilities.

(a) *Scope.* This section contains requirements for the control of grain dust fires and explosions, and certain other safety hazards associated with grain handling facilities. It applies in addition to all other relevant provisions of Part 1910 (or Part 1917 at marine terminals).

(b) *Application.* (1) Paragraphs (a) through (m) of this section apply to grain elevators, feed mills, flour mills, rice mills, dust pelletizing plants, dry corn mills, soybean flaking operations, and the dry grinding operations of soycake.

(2) Paragraphs (n), (o), and (p) of this section apply only to grain elevators.

(c) *Definitions.* (1) "Choked leg" means a condition of material buildup in the bucket elevator that results in the stoppage of material flow and bucket movement. A bucket elevator is not considered choked that has the up-leg partially or fully loaded and has the boot and discharge cleared allowing bucket movement.

(2) "Fugitive grain dust" means combustible dust particles, emitted from the stock handling system, of such size as will pass through a U.S. Standard 40 mesh sieve (425 microns or less).

(3) "Grain elevator" means a facility engaged in the receipt, handling, storage, and shipment of bulk raw agricultural commodities such as corn, wheat, oats, barley, sunflower seeds, and soybeans.

(4) "Hot work" means work involving electric or gas welding, cutting, brazing, or similar flame producing operations.

(5) "Inside bucket elevator" means a bucket elevator that has the boot and more than 20 percent of the total leg height (above grade or ground level) inside the grain elevator structure. Bucket elevators with leg casings that are inside (and pass through the roofs) of rail or truck dump sheds with the remainder of the leg outside of the grain elevator structure, are not considered inside bucket elevators.

(6) "Jogging" means repeated starting and stopping of drive motors in an attempt to clear choked legs.

(7) "Lagging" means a covering on drive pulleys used to increase the coefficient of friction between the pulley and the belt.

(8) "Permit" means the written certification by the employer authorizing employees to perform identified work operations subject to specified precautions.

(d) *Emergency action plan.* The employer shall develop and implement an emergency action plan meeting the requirements contained in § 1910.38(a).

(e) *Training.* (1) The employer shall provide training to employees at least annually and when changes in job assignment will expose them to new hazards. Current employees, and new employees prior to starting work, shall be trained in at least the following:

(i) General safety precautions associated with the facility, including recognition and preventive measures for the hazards related to dust accumulations and common ignition sources such as smoking; and,

(ii) Specific procedures and safety practices applicable to their job tasks including but not limited to, cleaning procedures for grinding equipment, clearing procedures for choked legs, housekeeping procedures, hot work procedures, preventive maintenance procedures and lock-out/tag-out procedures.

(2) Employees assigned special tasks, such as bin entry and handling of flammable or toxic substances, shall be provided training to perform these tasks safely.

(f) *Hot work permit.* (1) The employer shall issue a permit for all hot work, with the following exceptions:

(i) Where the employer or the employer's representative (who would otherwise authorize the permit) is present while the hot work is being performed;

(ii) In welding shops authorized by the employer;

(iii) In hot work areas authorized by the employer which are located outside of the grain handling structure.

(2) The permit shall certify that the requirements contained in § 1910.252(d) have been implemented prior to beginning the hot work operations. The permit shall be kept on file until completion of the hot work operations.

(g) *Entry into bins, silos, and tanks.* This paragraph applies to employees entering bins, silos, or tanks. It does not apply to employees entering flat storage buildings or tanks where the diameter of such structures is greater than the height, unless entry is made from the top of the structure.

(1) The following actions shall be taken before employees enter bins, silos, or tanks:

(i) The employer shall issue a permit for entering bins, silos, or tanks unless the employer or the employer's representative (who would otherwise authorize the permit) is present during the entire operation. The permit shall certify that the precautions contained in this paragraph (§ 1910.272(g)) have been implemented prior to employees entering bins, silos or tanks. The permit shall be kept on file until completion of the entry operations.

(ii) All mechanical, electrical, hydraulic, and pneumatic equipment which present a danger to employees inside bins, silos, or tanks shall be disconnected, locked-out and tagged, blocked-off, or prevented from operating by other means or methods.

(iii) The atmosphere within a bin, silo, or tank shall be tested for the presence of combustible gases, vapors, and toxic agents when the employer has reason to believe they may be present. Additionally, the atmosphere within a bin, silo, or tank shall be tested for oxygen content unless there is continuous natural air movement or continuous forced-air ventilation before and during the period employees are inside. If the oxygen level is less than 19.5%, or if combustible gas or vapor is detected in excess of 10% of the lower flammable limit, or if toxic agents are present in excess of the ceiling values listed in Subpart Z of 29 CFR Part 1910, or if toxic agents are present in concentrations that will cause health effects which prevent employees from effecting self-rescue or communication to obtain assistance, the following provisions apply.

(A) Ventilation shall be provided until the unsafe condition or conditions are eliminated, and the ventilation shall be continued as long as there is a possibility of recurrence of the unsafe condition while the bin, silo, or tank is occupied by employees.

(B) If toxicity or oxygen deficiency cannot be eliminated by ventilation, employees entering the bin, silo, or tank shall wear an appropriate respirator. Respirator use shall be in accordance with the requirements of § 1910.134.

(2) When entering bins, silos, or tanks from the top, employees shall wear a body harness with lifeline, or use a boatswain's chair that meets the requirements of Subpart D of this Part.

(3) An observer, equipped to provide assistance, shall be stationed outside the bin, silo, or tank being entered by an employee. Communications (visual, voice, or signal line) shall be maintained between the observer and employee entering the bin, silo, or tank.

(4) The employer shall provide equipment for rescue operations which is specifically suited for the bin, silo, or tank being entered.

(5) The employee acting as observer shall be trained in rescue procedures, including notification methods for obtaining additional assistance.

(6) Employees shall not enter bins, silos, or tanks underneath a bridging condition, or where a buildup of grain products on the sides could fall and bury them.

(h) *Contractors.* (1) The employer shall inform contractors performing work at the grain handling facility of known potential fire and explosion hazards related to the contractor's work and work area. The employer shall also inform contractors of the applicable safety rules of the facility.

(2) The employer shall explain the applicable provisions of the emergency action plan to contractors.

(i) *Housekeeping.* (1) The employer shall develop and implement a written housekeeping program that establishes the frequency and method(s) determined best to reduce accumulations of fugitive grain dust on ledges, floors, equipment, and other exposed surfaces.

(2) In addition, the housekeeping program for *grain elevators* shall address fugitive grain dust accumulations at priority housekeeping areas.

(i) Priority housekeeping areas shall include *at least* the following:

(A) Floor areas within 35 feet (10.7 m) of inside bucket elevators;

(B) Floors of enclosed areas containing grinding equipment;

(C) Floors of enclosed areas containing grain dryers located inside the facility.

(ii) The employer shall immediately remove any fugitive grain dust accumulations whenever they exceed ⅛ inch (.32 cm) at priority housekeeping areas, pursuant to the housekeeping program, or shall demonstrate and assure, through the development and implementation of the housekeeping program, that equivalent protection is provided.

(3) The use of compressed air to blow dust from ledges, walls, and other areas shall only be permitted when all machinery that presents an ignition source in the area is shut-down, and all other known potential ignition sources in the area are removed or controlled.

(4) Grain and product spills shall not be considered fugitive grain dust accumulations. However, the housekeeping program shall address the procedures for removing such spills from the work area.

(j) *Grate openings.* Receiving-pit feed openings, such as truck or railcar receiving-pits, shall be covered by grates. The width of openings in the grates shall be a maximum of 2½ inches (6.35 cm).

(k) *Filter collectors.* (1) Not later than March 30, 1989, all fabric dust filter collectors which are a part of a pneumatic dust collection system shall be equipped with a monitoring device that will indicate a pressure drop across the surface of the filter.

(2) Filter collectors installed after March 30, 1988 shall be:

(i) Located outside the facility; or

(ii) Located in an area inside the facility protected by an explosion suppression system; or

(iii) Located in an area inside the facility that is separated from other areas of the facility by construction having at least a one hour fire-resistance rating, and which is adjacent to an exterior wall and vented to the outside. The vent and ductwork shall be designed to resist rupture due to deflagration.

(l) *Preventive maintenance.* (1) The employer shall implement preventive maintenance procedures consisting of:

(i) Regularly scheduled inspections of at least the mechanical and safety control equipment associated with dryers, grain stream processing equipment, dust collection equipment including filter collectors, and bucket elevators;

(ii) Lubrication and other appropriate maintenance in accordance with manufacturers' recommendations, or as determined necessary by prior operating records.

(2) The employer shall promptly correct dust collection systems which are malfunctioning or which are operating below designed efficiency. Additionally, the employer shall promptly correct, or remove from service, overheated bearings and slipping or misaligned belts associated with inside bucket elevators.

(3) A certification record shall be maintained of each inspection, performed in accordance with this paragraph (l), containing the date of the inspection, the name of the person who performed the inspection and the serial number, or other identifier, of the equipment specified in paragraph (l)(1)(i) of this section that was inspected.

(4) The employer shall implement procedures for the use of tags and locks which will prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted, which could result in employee injury. Such locks and tags shall be removed in accordance with established procedures only by the employee installing them or, if unavailable, by his or her supervisor.

(m) *Grain stream processing equipment.* The employer shall equip grain stream processing equipment (such as hammer mills, grinders, and pulverizers) with an effective means of removing ferrous material from the incoming grain stream.

(n) *Emergency escape.* (1) The employer shall provide at least two means of emergency escape from galleries (bin decks).

(2) The employer shall provide at least one means of emergency escape in tunnels of existing grain elevators. Tunnels in grain elevators constructed after the effective date of this standard shall be provided with at least two means of emergency escape.

(o) *Continuous-flow bulk raw grain dryers.* (1) Not later than April 1, 1991, all direct-heat grain dryers shall be equipped with automatic controls that:

(i) Will shut-off the fuel supply in case of power or flame failure or interruption of air movement through the exhaust fan; and,

(ii) Will stop the grain from being fed into the dryer if excessive temperature occurs in the exhaust of the drying section.

(2) Direct-heat grain dryers installed after March 30, 1988 shall be:

(i) Located outside the grain elevator; or

(ii) Located in an area inside the grain elevator protected by a fire or explosion suppression system; or

(iii) Located in an area inside the grain elevator which is separated from other areas of the facility by construction having at least a one hour fire-resistance rating.

(p) *Inside bucket elevators.* (1) Bucket elevators shall not be jogged to free a choked leg.

(2) All belts and lagging purchased after March 30, 1988 shall be conductive. Such belts shall have a surface electrical resistance not to exceed 300 megohms.

(3) Not later than April 1, 1991, all bucket elevators shall be equipped with a means of access to the head pulley section to allow inspection of the head pulley, lagging, belt, and discharge throat of the elevator head. The boot section shall also be provided with a means of access for clean-out of the boot and for inspection of the boot, pulley, and belt.

(4) Not later than April 1, 1991, the employer shall:

(i) Mount bearings externally to the leg casing; or,

(ii) Provide vibration monitoring, temperature monitoring, or other means to monitor the condition of those bearings mounted inside or partially-inside the leg casing.

(5) Not later than April 1, 1991, the employer shall equip bucket elevators with a motion detection device which will shut-down the bucket elevator when the belt speed is reduced by no more than 20% of the normal operating speed.

(6) Not later than April 1, 1991, the employer shall:

(i) Equip bucket elevators with a belt alignment monitoring device which will initiate an alarm to employees when the belt is not tracking properly; or,

(ii) Provide a means to keep the belt tracking properly, such as a system that provides constant alignment adjustment of belts.

(7) Paragraphs (p)(5) and (p)(6) of this section do not apply to grain elevators having a permanent storage capacity of less than one million bushels, provided that daily visual inspection is made of bucket movement and tracking of the belt.

(8) Paragraphs (p)(4), (p)(5), and (p)(6) of this section do not apply to the following:

(i) Bucket elevators which are equipped with an operational fire and explosion suppression system capable of protecting at least the head and boot section of the bucket elevator; or,

(ii) Bucket elevators which are equipped with pneumatic or other dust control systems or methods that keep the dust concentration inside the bucket elevator at least 25% below the lower explosive limit at all times during operations.

(Information collection requirements contained in paragraphs (d) and (i) were approved by the Office of Management and Budget under Control Number .)

Note: The following appendices to § 1910.272 serve as nonmandatory guidelines to assist employers and employees in complying with the requirements of this section, as well as to provide other helpful information.

No additional burdens are imposed through these appendices.

Appendix A to § 1910.272 Grain Handling Facilities

Examples presented in this appendix may not be the only means of achieving the performance goals in the standard.

1. Scope and Application

The provisions of this standard apply in addition to any other applicable requirements of this Part 1910 (or Part 1917 at marine terminals). The standard contains requirements for new and existing grain handling facilities. The standard does not apply to seed plants which handle and prepare seeds for planting of future crops, nor to on-farm storage or feed lots.

2. Emergency Action Plan

The standard requires the employer to develop and implement an emergency action plan. The emergency action plan (§ 1910.38(a)) covers those designated actions employers and employees are to take to ensure employee safety from fire and other emergencies. The plan specifies certain minimum elements which are to be addressed. These elements include the establishment of an employee alarm system, the development of evacuation procedures, and training employees in those actions they are to take during an emergency.

The standard does not specify a particular method for notifying employees of an emergency. Public announcement systems, air horns, steam whistles, a standard fire alarm system, or other types of employee alarm may be used. However, employers should be aware that employees in a grain facility may have difficulty hearing an emergency alarm, or distinguishing an emergency alarm from other audible signals at the facility, or both. Therefore, it is important that the type of employee alarm used be distinguishable and distinct.

The use of floor plans or workplace maps which clearly show the emergency escape routes should be included in the emergency action plan; color coding will aid employees in determining their route assignments. The employer should designate a safe area, outside the facility, where employees can congregate after evacuation, and implement procedures to account for all employees after emergency evacuation has been completed.

It is also recommended that employers seek the assistance of the local fire department for the purpose of preplanning for emergencies. Preplanning is encouraged to facilitate coordination and cooperation between facility personnel and those who may be called upon for assistance during an emergency. It is important for emergency service units to be aware of the usual work locations of employees at the facility.

3. Training

It is important that employees be trained in the recognition and prevention of hazards associated with grain facilities, especially those hazards associated with their own work tasks. Employees should understand the factors which are necessary to produce a fire or explosion, i.e., fuel (such as grain dust), oxygen, ignition source, and (in the case of explosions) confinement. Employees should be made aware that any efforts they make to keep these factors from occurring simultaneously will be an important step in reducing the potential for fires and explosions.

The standard provides flexibility for the employer to design a training program which fulfills the needs of a facility. The type, amount, and frequency of training will need to reflect the tasks that employees are expected to perform. Although training is to be provided to employees at least annually, it is recommended that safety meetings or discussions and drills be conducted at more frequent intervals.

The training program should include those topics applicable to the particular facility, as well as topics such as: Hot work procedures; lock-out/tag-out procedures; bin entry procedures; bin cleaning procedures; grain dust explosions; fire prevention; procedures for handling "hot grain"; housekeeping procedures, including methods and frequency of dust removal; pesticide and fumigant usage; proper use and maintenance of personal protective equipment; and, preventive maintenance. The types of work clothing should also be considered in the program at least to caution against using polyester clothing that easily melts and increases the severity of burns, as compared to wool or fire retardant cotton.

In implementing the training program, it is recommended that the employer utilize films, slide-tape presentations, pamphlets, and other information which can be obtained from such sources as the Grain Elevator and Processing Society, the Cooperative Extension Service of the U.S. Department of Agriculture, Kansas State University's Extension Grain Science and Industry, and other state agriculture schools, industry associations, union organizations, and insurance groups.

4. Hot Work Permit

The implementation of a permit system for hot work is intended to assure that employers maintain control over operations involving hot work and to assure that employees are aware of and utilize appropriate safeguards when conducting these activities.

Precautions for hot work operations are specified in 29 CFR 1910.252(d), and include such safeguards as relocating the hot work operation to a safe location if possible, relocating or covering combustible material in the vicinity, providing fire extinguishers, and provisions for establishing a fire watch. Permits are not required for hot work operations conducted in the presence of the employer or the employer's authorized representative who would otherwise issue the permit, or in an employer authorized welding shop or when work is conducted outside and away from the facility.

It should be noted that the permit is not a record, but is an authorization of the employer certifying that certain safety precautions have been implemented prior to the beginning of work operations.

5. Entry Into Bins, Silos, And Tanks

In order to assure that employers maintain control over employee entry into bins, silos, and tanks, OSHA is requiring that the employer issue a permit for entry into bins, silos, and tanks unless the employer (or the employer's representative who would otherwise authorize the permit) is present at the entry and during the entire operation.

Employees should have a thorough understanding of the hazards associated with entry into bins, silos, and tanks. Employees are not to be permitted to enter these spaces from the bottom when grain or other agricultural products are hung up or sticking to the sides which might fall and injure or kill an employee. Employees should be made aware that the atmosphere in bins, silos, and tanks can be oxygen deficient or toxic.

Employees should be trained in the proper methods of testing the atmosphere, as well as in the appropriate procedures to be taken if the atmosphere is found to be oxygen deficient or toxic. When a fumigant has been recently applied in these areas and entry must be made, aeration fans should be running continuously to assure a safe atmosphere for those inside. Periodic monitoring of toxic levels should be done by direct reading instruments to measure the levels, and, if there is an increase in these readings, appropriate actions should be promptly taken.

Employees have been buried and suffocated in grain or other agricultural products because they sank into the material. Therefore, it is suggested that employees not be permitted to walk or stand on the grain or other grain product where the depth is greater than waist high. In this regard, employees must use a full body harness or boatswain's chair with a lifeline when entering from the top. A winch system with mechanical advantage (either powered or manual) would allow better control of the employee than just using a hand held hoist line, and such a system would allow the observer to remove the employee easily without having to enter the space.

It is important that employees be trained in the proper selection and use of any personal protective equipment which is to be worn. Equally important is the training of employees in the planned emergency rescue procedures. Employers should carefully read § 1910.134(e)(3) and assure that their procedures follow these requirements. The employee acting as observer is to be equipped to provide assistance and is to know procedures for obtaining additional assistance. The observer should not enter a space until adequate assistance is available. It is recommended that an employee trained in CPR be readily available to provide assistance to those employees entering bins, silos, or tanks.

6. Contractors

These provisions of the standard are intended to ensure that outside contractors are cognizant of the hazards associated with grain handling facilities, particularly in relation to the work they are to perform for the employer. Also, in the event of an emergency, contractors should be able to take appropriate action as a part of the overall facility emergency action plan. Contractors should also be aware of the employer's permit systems. Contractors should develop specified procedures for performing hot work and for entry into bins, silos, and tanks and these activities should be coordinated with the employer.

This coordination will help to ensure that employers know what work is being performed at the facility by contractors; where it is being performed; and, that it is being performed in a manner that will not endanger employees.

7. Housekeeping.

The housekeeping program is to be designed to keep dust accumulations and emissions under control inside grain facilities. The housekeeping program, which is to be written, is to specify the frequency and method(s) used to best reduce dust accumulations.

Ship, barge, and rail loadout and receiving areas which are located outside the facility need not be addressed in the housekeeping program. Additionally, truck dumps which are open on two or more sides need not be addressed by the housekeeping program. Other truck dumps should be addressed in the housekeeping program to provide for regular cleaning during periods of receiving grain or agricultural products. The housekeeping program should provide coverage for all workspaces in the facility and include walls, beams, etc., especially in relation to the extent that dust could accumulate.

Dust Accumulations

Almost all facilities will require some level of manual housekeeping. Manual housekeeping methods, such as vacuuming or sweeping with soft bristle brooms, should be used which will minimize the possibility of layered dust being suspended in the air when it is being removed.

The housekeeping program should include a contingency plan to respond to situations where dust accumulates rapidly due to a failure of a dust enclosure hood, an unexpected breakdown of the dust control system, a dust-tight connection inadvertently knocked open, etc.

The housekeeping program should also specify the manner of handling spills. Grain spills are not considered to be dust accumulations.

A fully enclosed horizontal belt conveying system where the return belt is inside the enclosure should have inspection access such as sliding panels or doors to permit checking of equipment, checking for dust accumulations and facilitate cleaning if needed.

Dust Emissions

Employers should analyze the entire stock handling system to determine the location of dust emissions and effective methods to control or to eliminate them. The employer should make sure that holes in spouting, casings of bucket elevators, pneumatic conveying pipes, screw augers, or drag conveyor casings, are patched or otherwise properly repaired to prevent leakage. Minimizing free falls of grain or grain products by using choke feeding techniques, and utilization of dust-tight enclosures at transfer points, can be effective in reducing dust emissions.

Each housekeeping program should specify the schedules and control measures which will be used to control dust emitted from the stock handling system. The housekeeping program should address the schedules to be used for cleaning dust accumulations from motors, critical bearings and other potential ignition sources in the working areas. Also, the areas around bucket elevator legs, milling machinery and similar equipment should be given priority in the cleaning schedule. The method of disposal of the dust which is swept or vacuumed should also be planned.

Dust may accumulate in somewhat inaccessible areas, such as those areas where ladders or scaffolds might be necessary to reach them. The employer may want to consider the use of compressed air and long lances to blow down these areas frequently. The employer may also want to consider the periodic use of water and hoselines to wash down these areas. If these methods are used, they are to be specified in the housekeeping program along with the appropriate safety precautions, including the use of personal protective equipment such as eyewear and dust respirators.

Several methods have been effective in controlling dust emissions. A frequently used method of controlling dust emissions is a pneumatic dust collection system. However, the installation of a poorly designed pneumatic dust collection system has fostered a false sense of security and has often led to an inappropriate reduction in manual housekeeping. Therefore, it is imperative that the system be designed properly and installed by a competent contractor. Those employers who have a pneumatic dust control system that is not working according to expectations should request the engineering design firm, or the manufacturer of the filter and related equipment, to conduct an evaluation of the system to determine the corrections necessary for proper operation of the system. If the design firm or manufacturer of the equipment is not known, employers should contact their trade association for recommendations of competent designers of pneumatic dust control systems who could provide assistance.

When installing a new or upgraded pneumatic control system, the employer should insist on an acceptance test period of 30 to 45 days of operation to ensure that the system is operating as intended and designed. The employer should also obtain maintenance, testing, and inspection information from the manufacturer to ensure that the system will continue to operate as designed.

Aspiration of the leg, as part of a pneumatic dust collection system, is another effective method of controlling dust emissions. Aspiration of the leg consists of a flow of air across the entire boot, which entrains the liberated dust and carries it up the up-leg to take-off points. With proper aspiration, dust concentrations in the leg can be lowered below the lower explosive limit. Where a prototype leg installation has been instrumented and shown to be effective in keeping the dust level 25% below the lower explosive limit during normal operations for the various products handled, then other legs of similar size, capacity and products being handled which have the same design criteria for the air aspiration would be acceptable to OSHA, provided the prototype test report is available on site.

Another method of controlling dust emissions is enclosing the conveying system, pressurizing the general work area, and providing a lower pressure inside the enclosed conveying system. Although this method is effective in controlling dust emissions from the conveying system, adequate access to the inside of the enclosure is necessary to facilitate frequent removal of

dust accumulations. This is also necessary for those systems called "self-cleaning."

The use of edible oil sprayed on or into a moving stream of grain is another method which has been used to control dust emissions. Tests performed using this method have shown that the oil treatment can reduce dust emissions. Repeated handling of the grain may necessitate additional oil treatment to prevent liberation of dust. However, before using this method, operators of grain handling facilities should be aware that the Food and Drug Administration must approve the specific oil treatment used on products for food or feed.

As a part of the housekeeping program, grain elevators are required to address accumulations of dust at priority areas using the action level. The standard specifies a maximum accumulation of ⅛ inch dust, measurable by a ruler or other measuring device, anywhere within a priority area as the upper limit at which time employers must initiate action to remove the accumulations using designated means or methods. Any accumulation in excess of this amount and where no action has been initiated to implement cleaning would constitute a violation of the standard, unless the employer can demonstrate equivalent protection. Employers should make every effort to minimize dust accumulations on exposed surfaces since dust is the fuel for a fire or explosion, and it is recognized that a ⅛ inch dust accumulation is more than enough to fuel such occurrences.

8. Filter Collectors

Proper sizing of filter collectors for the pneumatic dust control system they serve is very important for the overall effectiveness of the system. The air to cloth ratio of the system should be in accordance with the manufacturer's recommendations. If higher ratios are used, they can result in more maintenance on the filter, shorter bag or sock life, increased differential pressure resulting in higher energy costs, and an increase in operational problems.

A photohelic gauge, magnehelic gauge, or manometer, may be used to indicate the pressure rise across the inlet and outlet of the filter. When the pressure exceeds the design value for the filter, the air volume will start to drop, and maintenance will be required. Any of these three monitoring devices is acceptable as meeting paragraph (k)(1) of the standard.

The employer should establish a level or target reading on the instrument which is consistent with the manufacturer's recommendations that will indicate when the filter should be serviced. This target reading on the instrument and the accompanying procedures should be in the preventive maintenance program. These efforts would minimize the blinding of the filter and the subsequent failure of the pneumatic dust control system.

There are other instruments that the employer may want to consider using to monitor the operation of the filter. One instrument is a zero motion switch for detecting a failure of motion by the rotary discharge valve on the hopper. If the rotary discharge valve stops turning, the dust released by the bag or sock will accumulate in the filter hopper until the filter becomes clogged. Another instrument is a level indicator which is installed in the hopper of the filter to detect the buildup of dust that would otherwise cause the filter hopper to be plugged. The installation of these instruments should be in accordance with manufacturer's recommendations.

All of these monitoring devices and instruments are to be capable of being read at an accessible location and checked as frequently as specified in the preventive maintenance program.

Filter collectors on portable vacuum cleaners, and those used where fans are not part of the system, are not covered by requirements of paragraph (k) of the standard.

9. Preventive Maintenance

The control of dust and the control of ignition sources are the most effective means for reducing explosion hazards. Preventive maintenance is related to ignition sources in the same manner as housekeeping is related to dust control and should be treated as a major function in a facility. Equipment such as critical bearings, belts, buckets, pulleys, and milling machinery are potential ignition sources, and periodic inspection and lubrication of such equipment through a scheduled preventive maintenance program is an effective method for keeping equipment functioning properly and safely. The use of vibration detection methods, heat sensitive tape or other heat detection methods that can be seen by the inspector or maintenance person will allow for a quick, accurate, and consistent evaluation of bearings and will help in the implementation of the program.

The standard does not require a specific frequency for preventive maintenance. The employer is permitted flexibility in determining the appropriate interval for maintenance provided that the effectiveness of the maintenance program can be demonstrated. Scheduling of preventive maintenance should be based on manufacturer's recommendations for effective operation, as well as from the employer's previous experience with the equipment. However, the employer's schedule for preventive maintenance should be frequent enough to allow for both prompt identification and correction of any problems concerning the failure or malfunction of the mechanical and safety control equipment associated with bucket elevators, dryers, filter collectors and magnets. The pressure-drop monitoring device for a filter collector, and the condition of the lagging on the head pulley, are examples of items that require regularly scheduled inspections. A system of identifying the date, the equipment inspected and the maintenance performed, if any, will assist employers in continually refining their preventive maintenance schedules and identifying equipment problem areas. Open work orders where repair work or replacement is to be done at a designated future date as scheduled, would be an indication of an effective preventive maintenance program.

It is imperative that the prearranged schedule of maintenance be adhered to regardless of other facility constraints. The employer should give priority to the maintenance or repair work associated with safety control equipment, such as that on dryers, magnets, alarm and shut-down systems on bucket elevators, bearings on bucket elevators, and the filter collectors in the dust control system. Benefits of a strict preventive maintenance program can be a reduction of unplanned downtime, improved equipment performance, planned use of resources, more efficient operations, and, most importantly, safer operations.

The standard also requires the employer to develop and implement procedures consisting of locking out and tagging equipment to prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted, which could result in employee injury. All employees who have responsibility for repairing or servicing equipment, as well as those who operate the equipment, are to be familiar with the employer's lock and tag procedures. A lock is to be used as the positive means to prevent operation of the disconnected equipment. Tags are to be used to inform employees why equipment is locked out. Tags are to meet requirements in § 1910.145(f). Locks and tags may only be removed by employees that placed them, or by their supervisor, to ensure the safety of the operation.

10. Grain Stream Processing Equipment

The standard requires an effective means of removing ferrous material from grain streams so that such material does not enter equipment such as hammer mills, grinders and pulverizers. Large foreign objects, such as stones, should have been removed at the receiving pit. Introduction of foreign objects and ferrous material into such equipment can produce sparks which can create an explosion hazard. Acceptable means for removal of ferrous materials include the use of permanent or electromagnets. Means used to separate foreign objects and ferrous material should be cleaned regularly and kept in good repair as part of the preventive maintenance program in order to maximize their effectiveness.

11. Emergency Escape

The standard specifies that at least two means of escape must be provided from galleries (bin decks). Means of emergency escape may include any available means of egress (consisting of three components, exit access, exit, and exit discharge as defined in § 1910.35), the use of controlled descent devices with landing velocities not to exceed 15 ft/sec., or emergency escape ladders from galleries. Importantly, the means of emergency escape are to be addressed in the facility emergency action plan. Employees are to know the location of the nearest means of emergency escape and the action they must take during an emergency.

12. Dryers

Liquefied petroleum gas fired dryers should have the vaporizers installed at least ten feet from the dryer. The gas piping system should be protected from mechanical damage. The employer should establish procedures for

locating and repairing leaks when there is a strong odor of gas or other signs of a leak.

13. Inside Bucket Elevators

Hazards associated with inside bucket elevator legs are the source of many grain elevator fires and explosions. Therefore, to mitigate these hazards, the standard requires the implementation of special safety precautions and procedures, as well as the installation of safety control devices. The standard provides for a phase-in period for many of the requirements to provide the employer time for planning the implementation of the requirements. Additionally, for elevators with a permanent storage capacity of less than one million bushels, daily visual inspection of belt alignment and bucket movement can be substituted for alignment monitoring devices and motion detection devices.

The standard requires that belts (purchased after the effective date of the standard) have surface electrical resistance not to exceed 300 megohms. Test methods available regarding electrical resistance of belts are: The American Society for Testing and Materials D257-76, "Standard Test Methods for D-C Resistance or Conductance of Insulating Materials"; and, the International Standards Organization's #284, "Conveyor Belts-Electrical Conductivity-Specification and Method of Test." When an employer has a written certification from the manufacturer that a belt has been tested using one of the above test methods, and meets the 300 megohm criteria, the belt is acceptable as meeting this standard. When using conductive belts, the employer should make certain that the head pulley and shaft are grounded through the drive motor ground or by some other equally effective means. V-type drive belts should not be used to transmit power to the head pulley assembly from the motor drive shaft because of the break in electrical continuity to the motor ground.

Employers should also consider purchasing new belts that are flame retardant or fire resistive. A flame resistance test for belts is contained in 30 CFR 18.65.

Appendix B to § 1910.272 Grain Handling Facilities

National Consensus Standards

The following table contains a cross-reference listing of current national consensus standards which provide information that may be of assistance to grain handling operations. Employers who comply with provisions in these national consensus standards that provide equal or greater protection than those in § 1910.272 will be considered in compliance with the corresponding requirements in § 1910.272.

Subject	National consensus standards
Grain elevators and facilities handling bulk raw agricultural commodities	ANSI/NFPA 61B
Feed mills	ANSI/NFPA 61C
Facilities handling agricultural commodities for human consumption	ANSI/NFPA 61D
Pneumatic conveying systems for agricultural commodities	ANSI/NFPA 66
Guide for explosion venting	ANSI/NFPA 68
Explosion prevention systems	ANSI/NFPA 69
Dust removal and exhaust systems	ANSI/NFPA 91

Appendix C to § 1910.272 Grain Handling Facilities

References for Further Information

The following references provide information which can be helpful in understanding the requirements contained in various provisions of the standard, as well as provide other helpful information.

1. *Accident Prevention Manual for Industrial Operations;* National Safety Council, 425 North Michigan Avenue, Chicago, Illinois 60611.

2. *Practical Guide to Elevator Design;* National Grain and Feed Association, P.O. Box 28328, Washington, DC 20005.

3. *Dust Control for Grain Elevators;* National Grain and Feed Association, P.O. Box 28328, Washington, DC 20005.

4. *Prevention of Grain Elevator and Mill Explosions;* National Academy of Sciences, Washington, DC. (Available from National Technical Information Service, Springfield, Virginia 22151.)

5. *Standard for the Prevention of Fires and Explosions in Grain Elevators and Facilities Handling Bulk Raw Agricultural Commodities,* NFPA 61B; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

6. *Standard for the Prevention of Fire and Dust Explosions in Feed Mills,* NFPA 61C; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

7. *Standard for the Prevention of Fire and Dust Explosions in the Milling of Agricultural Commodities for Human Consumption,* NFPA 61D; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

8. *Standard for Pneumatic Conveying Systems for Handling Feed, Flour, Grain and Other Agricultural Dusts,* NFPA 66; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

9. *Guide for Explosion Venting,* NFPA 68; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

10. *Standard on Explosion Prevention Systems,* NFPA 69; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

11. *Safety-Operations Plans;* U.S. Department of Agriculture, Washington, DC 20250.

12. *Inplant Fire Prevention Control Programs;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

13. *Guidelines for Terminal Elevators;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

14. *Standards for Preventing the Horizontal and Vertical Spread of Fires in Grain Handling Properties;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

15. *Belt Conveyors for Bulk Materials,* Part I and Part II, Data Sheet 570, Revision A; National Safety Council, 425 North Michigan Avenue, Chicago, Illinois 60611.

16. *Suggestions for Precautions and Safety Practices in Welding and Cutting;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

17. *Food Bins and Tanks,* Data Sheet 524; National Safety Council, 425 North Michigan Avenue, Chicago, Illinois 60611.

18. *Pneumatic Dust Control in Grain Elevators;* National Academy of Sciences, Washington, DC. (Available from National Technical Information Service, Springfield, Virginia 22151.)

19. *Dust Control Analysis and Layout Procedures for Grain Storage and Processing Plants;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

20. *Standard for the Installation of Blower and Exhaust Systems for Dust, Stock and Vapor Removal,* NFPA 91; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

21. *Standards for the Installation of Direct Heat Grain Driers in Grain and Milling Properties;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

22. *Guidelines for Lubrication and Bearing Maintenance;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

23. *Organized Maintenance in Grain and Milling Properties;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

24. *Safe and Efficient Elevator Legs for Grain and Milling Properties;* Mill Mutual Fire Prevention Bureau, 2 North Riverside Plaza, Chicago, Illinois 60606.

25. *Explosion Venting and Supression of Bucket Elevators;* National Grain and Feed Association, P.O. Box 28328, Washington, DC 20005.

26. *Lightning Protection Code*, NFPA 78; National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

27. *Occupational Safety in Grain Elevators*, DHHS (NIOSH) Publication No. 83–126); National Institute for Occupational Safety and Health, Morgantown, West Virginia 26505.

28. *Retrofitting and Constructing Grain Elevators;* National Grain and Feed Association, P.O. Box 28328, Washington, DC 20005.

29. *Grain Industry Safety and Health Center—Training Series* (Preventing grain dust explosions, operations maintenance safety, transportation safety, occupational safety and health); Grain Elevator and Processing Society, P.O. Box 15026, Commerce Station, Minneapolis, Minnesota 55415–0026.

30. *Suggestions for Organized Maintenance;* The Mill Mutuals Loss Control Department, 2 North Riverside Plaza, Chicago, Illinois 60606.

31. *Safety—The First Step to Success;* The Mill Mutuals Loss Control Department, 2 North Riverside Plaza, Chicago, Illinois 60606.

32. *Emergency Plan Notebook;* Schoeff, Robert W. and James L. Balding, Kansas State University, Cooperative Extension Service, Extension Grain Science and Industry, Shellenberger Hall, Manhattan, Kansas 66506.

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federal register

Thursday
December 31, 1987

Part IV

Federal Trade Commission

16 CFR Part 305

Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act; Final rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule; Corrections to Appendices A–I.

SUMMARY: The Commission is amending Appendices A–I of its Appliance Labeling Rule to correct deficiencies that appeared in the Appendices when the Commission published amendments to the Rule on December 10, 1987.

EFFECTIVE DATE: December 31, 1987.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC, 20580 (202) 326–3035.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act (EPCA)[1] requires the Federal Trade Commission to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnances; (8) televison sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

Section 305.8 of the rule requires manufacturers of covered appliances to submit annually to the Commission the energy costs or energy efficiencies of their products. Section 305.10 requires that the Commission compile ranges of comparability from these data. According to this section, the Commission must then publish these ranges in the **Federal Register**. The ranges of comparability presently appear in Appendices A–I of the Rule.

On November 19, 1979, the Commission issued a final rule[2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces. Five categories were exempted at the time, and for one category DOE has not yet developed a test procedure.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE tests procedures.

On December 10, 1987,[3] the Commission amended its Appliance Labeling Rule by adding a new category of appliances to the Rule—central air conditioners (which includes heat pumps)—and extending the Rule's existing coverage under the furnace catetory to include two new types of furnaces—pulse combustion furnaces and condensing furnaces. The December 10, 1987 **Federal Register** publication included a reprinting of the amended Rule with all of its Appendices (A–J).

The Appendices published on December 10 contain several deficiencies.

Today's announcement corrects the deficiencies as follows:

(1) Current figures for the ranges of estimated yearly energy costs or energy efficiency ratings have been inserted in the range tables, and the Appendices have been updated to reflect the national average representative unit energy costs that were used to calculate the ranges;

(2) Appendices H and I (for central air conditioners and heat pumps) have been changed to reflect the fact that current representative unit energy costs must be used in required cost calculations.

Although Appendix J requires no corrections, the Commission is reprinting it (to avoid confusion) so the Notice will contain all the appendices to the Rule at one time.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Amendments

Accordingly, Part 305 of 16 CFR is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619 (42 U.S.C. 6294).

2. Appendices A through J to Part 305 are revised to read as follows:

Appendices to Part 305

Appendix A1—Refrigerators
Appendix A2—Refrigerator-Freezers
Appendix B—Freezers
Appendix C—Dishwashers
Appendix D1—Water Heater-Gas
Appendix D2—Water Heater-Electric
Appendix D3—Water Heater-Oil
Appendix E—Room Air Conditioners
Appendix F—Clothes Washers
Appendix G1—Furnaces-Gas
Appendix G2—Furnaces-Electric
Appendix G3—Furnaces-Oil
Appendix H—Cooling Performance and Cost for Central-Air Conditioners
Appendix I—Heating Performance and Cost for Central-Air Conditioners
Appendix J—Suggested Data Reporting Format

Appendices to Part 305

Appendix A1—Refrigerators

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 2.5	$18	$34
2.5 to 4.4	22	42
4.5 to 6.4	30	42
6.5 to 8.4	30	31
8.5 to 10.4	30	49
10.5 to 12.4	25	54
12.5 to 14.4	34	56
14.5 to 16.4	(1)	(1)
16.5 and over	72	72

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 6.75¢ per kilowatt hour.

Cost per kilowatt hour	
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] Public Law 94–163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

[2] 44 FR 66466, 16 CFR Part 305 (Nov. 19, 1979).

[3] 52 FR 46888 (Dec. 10, 1987).

Beside each cost in the table place the cost estimate for the model being labeled using the table costs in place of the national average rate.

3. Additional Information—[Reserved].

Appendix A2—Refrigerator-Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 10.5	$32	$52
10.5 to 12.4	42	81
12.5 to 14.4	42	121
14.5 to 16.4	45	125
16.5 to 18.4	61	120
18.5 to 20.4	75	124
20.5 to 22.4	80	121
22.5 to 24.4	85	129
24.5 to 26.4	107	148
26.5 to 28.4	127	128
28.5 and over	(1)	(1)

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 6.75¢ per kilowatt hour.

Cost per kilowatt hour	
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

Beside each cost in the table place the cost estimate for the model being labeled using the table costs in place of the national average rate.

3. Additional Information—[Reserved].

Appendix B—Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 5.5	$18	$46
5.5 to 7.4	23	41
7.5 to 9.4	34	50
9.5 to 11.4	34	56
11.5 to 13.4	35	68
13.5 to 15.4	48	98
15.5 to 17.4	52	103
17.5 to 19.4	57	103
19.5 to 21.4	59	114
21.5 to 23.4	67	148
23.5 to 25.4	72	79
25.5 to 27.4	71	88
27.5 to 29.4	87	87
29.5 and over	114	182

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 6.75¢ per kilowatt hour.

Cost per kilowatt hour	
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

Beside each cost in the table place the cost estimate for the model being labeled using the table costs in place of the national average rate.

3. Additional Information—[Reserved]

Appendix C—Dishwashers

1. Range Information: "Compact" includes countertop dishwasher models with a capacity of less than eight (8) place settings.

"Standard" includes portable or built-in models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DE-1 (1) for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

Ranges of comparability	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$54.00	$90.00	$27.00	$52.00

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scales are based on a national average electric rate of 7.63¢ per kilowatt hour, a national average natural gas rate of 62.7¢ per therm, and eight loads of dishes per week.

Cost per kilowatt hour	Loads of dishes per week.				
	2	4	6	8	10
4¢					
6¢					
8¢					
10¢					
12¢					
14¢					

Appendix D1—Water Heater—Gas

1. Range Information:

First hour rating	Ranges of estimated yearly energy cost			
	Natural Gas		Propane	
	Low	High	Low	High
Less than 21	(1)	(1)	(1)	(1)
21 to 24	(1)	(1)	(1)	(1)
25 to 29	(1)	(1)	(1)	(1)
30 to 34	(1)	(1)	(1)	(1)
35 to 40	$186.00	$219.00	(1)	(1)
41 to 47	187.00	202.00	$258.00	$284.00
48 to 55	176.00	266.00	243.00	368.00
55 to 64	188.00	295.00	260.00	407.00
65 to 74	185.00	273.00	255.00	377.00
75 to 86	170.00	288.00	236.00	397.00
87 to 99	210.00	243.00	290.00	335.00
100 to 114	219.00	304.00	301.00	419.00
115 to 131	254.00	266.00	351.00	368.00
Over 131	254.00	266.00	351.00	397.00

(1) No data submitted.

2. Yearly Cost Information—Natural Gas and Propane: Estimates on the scale are based on a national average natural gas rate of 62.7¢ per therm and a national average propane rate of 78.7¢ per gallon.

Cost Per Therm	
40¢	
50¢	
60¢	
70¢	
80¢	
90¢	

Beside each cost in the table place the cost estimate for the model being labeled using the table costs in place of the national average rate.

3. Additional Information [Reserved]

Appendix D2—Water Heater—Electric

1. Range Information:

First hour rating	Ranges of estimated yearly energy cost	
	Low	High
Less than 21	(1)	(1)
21 to 24	$414.00	$443.00
25 to 29	469.00	469.00
30 to 34	414.00	469.00
35 to 40	410.00	513.00
41 to 47	402.00	513.00
48 to 55	406.00	526.00
55 to 64	406.00	519.00
65 to 74	410.00	549.00
75 to 86	419.00	573.00
87 to 99	414.00	557.00
100 to 114	419.00	628.00
115 to 131	448.00	573.00
Over 131	(1)	(1)

(1) No data submitted.

2. Yearly Cost Information—Electricity: Estimates on the scale are based on a national average electric rate of 7.63¢ per kilowatt hour.

Cost Per Kilowatt Hour	
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

Beside each cost in the table place the cost estimate for the model being labeled using the table costs in place of the national average rate.

3. Additional Information [Reserved]

Appendix D3—Water Heater—Oil

1. Range Information:

First hour rating	Low	High
Less than 65	(1)	(1)
65 to 74	(1)	(1)
75 to 86	(1)	(1)
87 to 99	(1)	(1)
100 to 114	(295.00)	(295.00)
115 to 131	(288.00)	(309.00)
Over 131	(1)	(1)

[1] No data submitted.

2. Yearly Cost Information—Oil: Estimates on the scale are based on a national average oil rate of $1.22 per gallon

Cost Per Gallon	Yearly cost
.85	
.90	
.95	
1.00	
1.05	
1.10	

Beside each cost in the table, place the cost estimate for the model being labeled using the table costs in place of the national average rate.

3. Additional Information—[Reserved]

Appendix E—Room Air Conditioners

1. Range Information:

Manufacturers rated cooling capacity in BTU's/hr.	Ranges of energy efficiency ratings	
	Low	High
Less than 4,000	(1)	(1)
4,000 to 4,299	5.1	7.5
4,300 to 4,799	5.5	7.5
4,800 to 5,299	5.6	8.7
5,300 to 5,799	6.3	9.0
5,800 to 6,299	6.4	9.5
6,300 to 6,799	8.5	9.0
6,800 to 7,299	5.8	10.1
7,300 to 7,799	5.4	9.0
7,800 to 8,299	5.7	9.8
8,300 to 8,799	6.5	9.4
8,800 to 9,299	5.6	11.0
9,300 to 9,799	6.1	10.9
9,800 to 10,299	6.1	11.5
10,300 to 10,799	7.2	9.1
10,800 to 11,299	6.0	8.8
11,300 to 11,799	6.0	9.0
11,800 to 12,299	5.1	9.5
12,300 to 12,799	7.6	9.6
12,800 to 13,299	5.8	9.0
13,300 to 13,799	7.2	9.7
13,800 to 14,299	6.0	9.9
14,300 to 14,799	6.3	8.4
14,800 to 15,299	5.5	8.6
15,300 to 15,799	5.7	7.5
15,800 to 16,499	5.9	8.5
16,500 to 17,499	7.5	8.7
17,500 to 18,499	5.8	9.2
18,500 to 19,499	7.9	9.3
19,500 to 20,499	6.4	7.8
20,500 to 21,499	6.7	8.2
21,500 to 22,499	6.5	8.6
22,500 to 24,499	5.9	9.0
24,500 to 26,499	7.5	8.2
26,500 to 28,499	6.0	8.2
28,500 to 32,499	5.8	8.3
32,500 to 36,000	6.6	7.2

[1] No data submitted.

2. Yearly Cost Information:

Cost per kilowatt hour	Yearly hours of use				
	250	750	1,000	2,000	3,000
4¢					
6¢					
8¢					
10¢					
12¢					
14¢					

Below the appropriate number of yearly hours of use and beside each cost in the table, place the cost estimate for the model being labeled using the table costs and using the yearly hours of use.

3. Additional Information—[Reserved]

Appendix F—Clothes Washers

1. Range Information: "Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	$43.00	$97.00	$15.00	$41.00
Standard	37.00	150.00	19.00	62.00

2. Yearly Cost Information: Estimates on the scales are based on a national average electric rate of 7.63¢ per kilowatt hour, a national average natural gas rate of 62.7¢ per therm, and eight loads of clothes per week.

Cost per kilowatt hour [1]	Loads of clothes per week					
	2	4	6	8	10	12
4¢						
6¢						
8¢						
10¢						
12¢						
14¢						

[1] For chart on natural gas, substitute the following cost figures:
Cost per therm—40¢, 50¢, 60¢, 70¢, 80¢, 90¢.

Below the appropriate number of clothes loads in the table and beside each cost, place the cost estimate for the model being labeled using the table costs and using the designated loads in the table.

3. Additional Information—[Reserved]

APPENDIX G1.—FURNACES—GAS

Comparability (Btu per hour)	Ranges of energy efficiency ratings;	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	68.30	70.58
26,000 to 42,000	55.00	82.00
43,000 to 59,000	51.40	81.19
60,000 to 76,000	54.00	86.20
77,000 to 93,000	55.00	85.90
94,000 to 110,000	54.00	84.70
111,000 to 127,000	54.00	85.70
128,000 to 144,000	57.60	85.30
145,000 to 161,000	63.37	84.60
162,000 to 178,000	63.73	78.78
179,000 to 195,000	63.79	83.00
196,000 and over	63.92	82.00

[1] No data submitted.

APPENDIX G2.—FURNACES—ELECTRIC

Comparability (Btu per hour)	Ranges of energy efficiency ratings;	
	Low	High
5,000 to 10,000	100.00	100.00
11,000 to 16,000	100.00	100.00
17,000 to 25,000	99.60	100.00
26,000 to 42,000	99.20	100.00
43,000 to 59,000	96.60	100.00
60,000 to 76,000	98.50	100.00
77,000 to 93,000	98.30	100.00
94,000 to 110,000	99.20	100.00
111,000 to 127,000	100.00	100.00
128,000 to 144,000	100.00	100.00
145,000 to 161,000	(1)	(1)
162,000 to 178,000	100.00	100.00
179,000 to 195,000	100.00	100.00
196,000 and over	100.00	100.00

[1] No data submitted.

Appendix G3—Furnaces—Oil

1. Range Information:

Comparability (Btu per hour)	Ranges of energy efficiency ratings	
	Low	High
5,000 to 10,000	(1)	(1)
11,000 to 16,000	(1)	(1)
17,000 to 25,000	(1)	(1)
26,000 to 42,000	(1)	(1)
43,000 to 59,000	71.00	87.10
60,000 to 76,000	67.10	87.96
77,000 to 93,000	66.80	87.29
94,000 to 110,000	65.90	86.36
111,000 to 127,000	66.00	85.96
128,000 to 144,000	68.00	85.31
145,000 to 161,000	62.00	84.40
162,000 to 178,000	73.40	83.30
179,000 to 195,000	71.93	85.39
196,000 and over	74.30	85.39

[1] No data submitted.

2. Yearly Cost Information:

Cost per kilowatt hour [1]	Btu Heat Loss of Home (See Chart Below)
4¢	
6¢	
8¢	
10¢	
12¢	
14¢	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:

a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.

b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.

c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu/hr.) to be used in the grid above:

Manufacturer's rated heat output of model to be labeled (Btu per hour)	Design heat loss of model to be labeled (1,000 Btu per hour)	Heat loss values to be used on the grid (1,000 Btu per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100; 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the grid on the opposite page, and below the appropriate heat loss value taken from the table above, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used above with the national average cost.

3. Additional Information—[Reserved]

Appendix H. Cooling Performance and Cost For Central-Air Conditioners

1. *Range Information*:

Manufacturer's rated cooling capacity (BTU/hr.)	Range of EER's (Generic)	
	Low	High
All Capacities		

2. *Yearly Cost Information*: For each model, display three annual operating costs, based on 7.94¢ per kilowatt hour, rounded to the nearest $10, corresponding to the three building heat gains from the chart below:

Manufacturers rated cooling capacity (BTU/hr)	Building heat gain (in 1000's BTU's/hr)
Up to 9,000	3 6 9
9,100 to 15,000	9 12 15
15,100 to 21,000	15 18 21
21,100 to 27,000	21 24 27
27,200 to 33,000	27 30 33
33,200 to 39,000	33 36 39
39,500 to 45,000	39 42 45
45,500 to 51,000	45 48 51
51,500 to 57,000	51 54 57
57,500 to 63,000	57 60 63
63,500 and over	63 66 69

The values of building heat gain are to be considered cooling capacities in the calculation of annual operating cost in accordance with 10 CFR 430.22 (m) (1) (i).

Include the following note on every fact sheet page that lists annual operating costs.

Note: These figures are based on U.S. Government standard tests and are for national averages of 1000 cooling load hours and 7.94¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given [direct user to location].

The methodology referred to in the note is provided below. This information shall be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this methodology must be provided on or with the unbound fact sheets.

How to Estimate Your Cooling Cost

To estimate your actual cost of operation, find your cooling load hours from the map, your average annual operating cost from the National Average Annual Operating Cost Table, and determine your electrical rate in cents per kilowatt hour (KWH) from your electric bill.

$$\text{Your estimated cost} = \text{Listed average annual operating cost}^{*} \times \frac{\text{Your cooling load hours}^{**}}{1000} \times \frac{\text{Your electrical rate in cents Per KWH}}{7.94¢}$$

*From the National Average Annual Operating Cost Table.
**From the map.

Example: If your cooling load hours = 1500, and your electric rate is 11.9¢/KWH and your listed annual operating cost is $100, then:

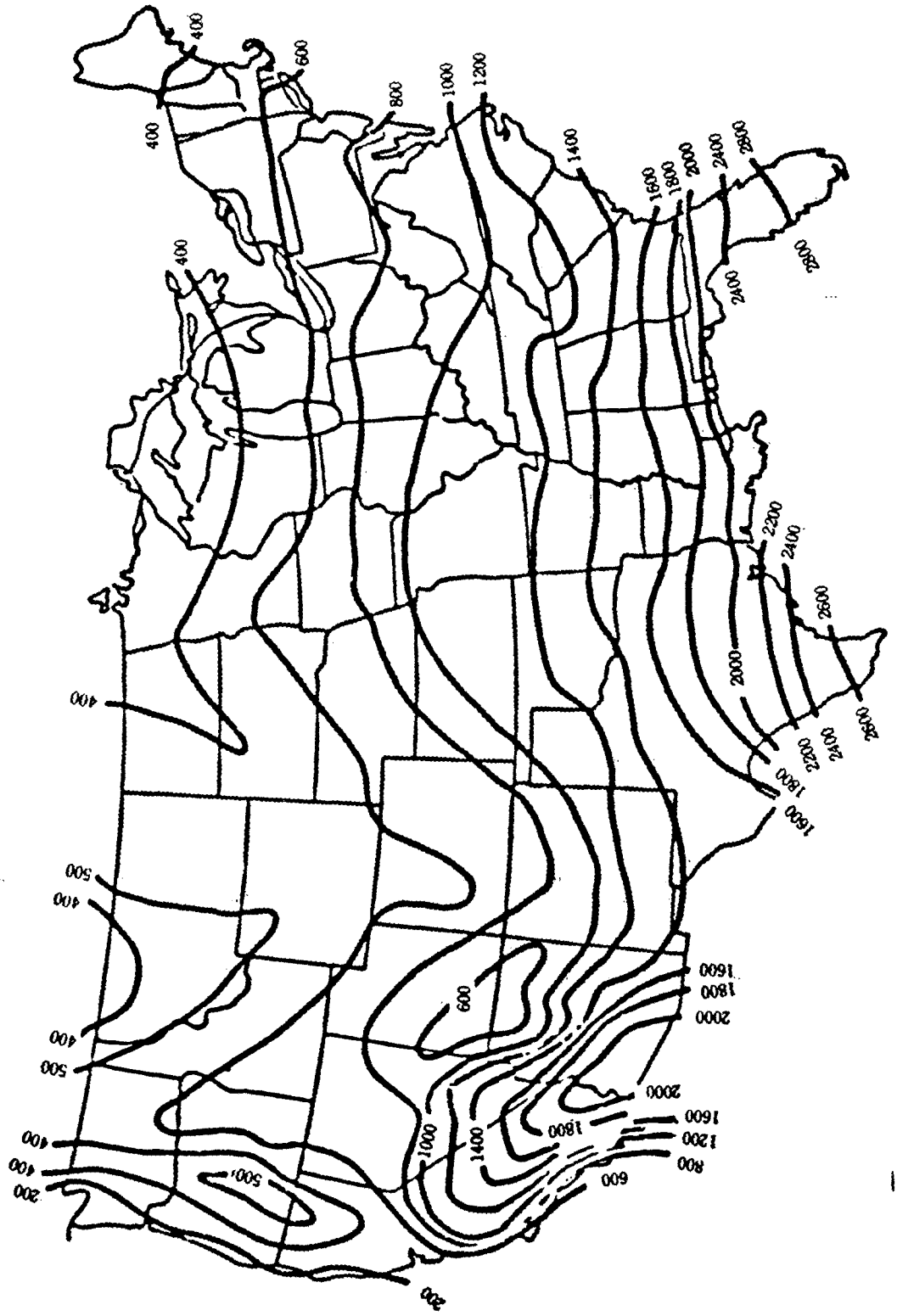
$$\text{Your estimated cost} = \$100 \times \frac{1500}{1000} \times \frac{11.9¢}{7.94¢}$$

$$\text{Your estimated cost} = \$100 \times 1.5 \times 1.5 = \$225$$

Your estimated cost = $225.

BILLING CODE 6750-01-M

Cooling Load Hour Map



This map must be included at least once in all compendiums of fact sheets If separate fact sheets are prepared for individual distribution to consumers this map must be provided on or with the separate fact sheets

	Cooling Load Hours
Alaska	— 0
Canal Zone	— 6 000
Guam	— 6 600
Hawaii	— 2 300
Puerto Rico	— 6 000
Samoa	— 6 600
Virgin Island	— 6 000

AN EXAMPLE OF A FACT SHEET FOR CENTRAL AIR CONDITIONERS OR FOR ONLY THE COOLING FUNCTION OF HEAT PUMPS

ENERGYGUIDE

CENTRAL AIR CONDITIONER (Cooling only)

Cooling Capacity

MODELS	XXX/C1	31,000	BTU/hr
	XXX/C2	31,400	BTU/hr
	YYY/C3	29,000	BTU/hr
	YYY/C6	29,400	BTU/hr

Comparability Range: 27,200 to 33,000

NOTE Since product specific labels showing ranges are required on each product the inclusion of ranges on fact sheets is optional

COOLING PERFORMANCE

Model XXX/C1

Least Efficient Model 6.00 — 7.70 — This Model — Most Efficient Model 12.00

Energy Efficiency Rating (EER)

Model XXX/C2

Least Efficient Model 6.00 — 7.60 — This Model — Most Efficient Model 12.00

Energy Efficiency Rating (EER)

Model YYY/C3

Least Efficient Model 6.00 — 8.00 — This Model — Most Efficient Model 12.00

Energy Efficiency Rating (EER)

Model YYY/C6

Least Efficient Model 6.00 — 7.90 — This Model — Most Efficient Model 12.00

Energy Efficiency Rating (EER)

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings may vary slightly with different coils.

(This is page 1 of sample fact sheet)

NATIONAL AVERAGE ANNUAL OPERATING COST TABLE ($ per year)

MODEL	Building Heat Gain (BTU/hour)		
	27,000	30,000	33,000
XXX/C1	$200	$220	$240
XXX/C2	$200	$220	$240
XXX/C3	$190	$210	$230
XXX/C6	$190	$210	$230

NOTE: These figures are based on U.S. Government standard tests and are for national averages of 1000 cooling load hours and 7.94 ¢/KWH. Your cost will vary depending onn your local energy rate and how you use the product. A method for estimating your cost of operation is provided on page 2 of this fact sheet.

HOW TO ESTIMATE YOUR COOLING COST:

To estimate your actual cost of operation, find your actual cooling load hours from the map, your average annual operating cost from the National Average Annual Operating Cost Table, and determine your electrical rate in cents per kilowatt hour (KWH) from your electrical bill.

$$\text{Your Estimated Cost} = \text{Listed average annual operating cost*} \times \frac{\text{Your cooling load hours**}}{1000} \times \frac{\text{Your electrical rate in cents per KWH}}{7.94¢}$$

* From the national average table, above
** From map

Example: If your cooling load hours are 1500, and your electric rate is 11.9 ¢/KWH, and your listed annual operating cost is $100, then

$$\text{Your Estimated Cost} = \$100 \times \frac{1500}{1000} \times \frac{11.9¢}{7.94¢}$$

$$\text{Your Estimated Cost} = \$100 \times 1.5 \times 1.5 = \$225$$

$$\text{Your Estimated Cost} = \$225$$

(This is page 2 of sample fact sheet)

BILLING CODE 6750-01-C

Appendix I.—Heating Performance And Cost For Central-Air Conditioners

1. Range Information:

Manufacturer's rated heating capacity (Btu/hr.)	Range of EER's (generic)	
	Low	High
All capacities		

2. *Yearly Heating Cost Information:* For each model, display a regional annual operating cost, based on 7.94¢ per kilowatt hour, rounded to the nearest $10, calculated according to 10 CFR 430.22(m)(3)(ii) for each region. The heat loss of home values given in the chart below are to be considered standardized design heating requirements in the calculation of annual operating cost in accordance with 10 CFR 430.22(m)(3)(ii).

Capacity	Region	Average design heat loss (in 1000's Btu's/hr.)	Heat loss of home values used on the grid (in 1000's Btu's/hr.)
Up to 9,000	1	10	5, 10
	2		5, 10, 15
	3		5, 10, 15
	4		10, 15, 20
	5		10, 15, 20
	6		5, 10, 15
9,100 to 15,000	1	20	5, 10,15
	2		5, 10, 15, 20
	3		10, 15, 20, 25
	4		10, 15, 20, 25, 30
	5		10, 15, 20, 25, 30
	6		5, 10, 15, 20
15,100 to 21,000	1	25	10, 15, 20
	2		10, 15, 20, 25
	3		15, 20, 25, 30
	4		15, 20, 25, 30, 35, 40
	5		15, 20, 25, 30, 35, 40
	6		10, 15, 20, 25, 30, 35
21,100 to 27,000	1	30	10, 15, 20, 25
	2		15, 20, 25, 30
	3		15, 20, 25, 30, 35, 40
	4		20, 25, 30, 35, 40, 50
	5		20, 25, 30, 35, 40, 50, 60
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	4		35, 40, 50, 60, 70, 80, 90
	5		35, 40, 50, 60, 70, 80, 90
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39,500 to 45,000	1	60	20, 25, 30, 35, 40
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	3		30, 35, 40, 50, 60
	4		40, 50, 60, 70, 80, 90, 100
	5		40, 50, 60, 70, 80, 90, 100, 110
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45,500 to 51,000	1	70	20, 25, 30, 35, 40
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	3		35, 40, 50, 60, 70, 80
	4		50, 60, 70, 80, 90, 100, 110
	5		50, 60, 70, 80, 90, 100, 110, 130
	6		30, 35, 40, 50, 60, 70, 80, 90, 100, 110, 130
51,500 to 57,000	1	70	25, 30, 35, 40, 50
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	3		40, 50, 60, 70, 80, 90
	4		50, 60, 70, 80, 90, 100, 110
	5		50, 60, 70, 80, 90, 100, 110, 130
	6		35, 40, 50, 60, 70, 80, 90, 100

Capacity	Region	Average design heat loss (in 1000's Btu's/hr.)	Heat loss of home values used on the grid (in 1000's Btu's/hr.)
57,500 to 63,000	1	80	25, 30, 35, 40, 50
	2		35, 40, 50, 60, 70
	3		50, 60, 70, 80, 90
	4		60, 70, 80, 90, 100, 110
	5		60, 70, 80, 90, 100, 110, 130
	6		35, 40, 50, 60, 70, 80, 90, 100
63,500 and over	1	90	30, 35, 40, 50, 60
	2		40, 50, 60, 70, 80
	3		50, 60, 70, 80, 90, 100
	4		70, 80, 90, 100, 110, 130
	5		70, 80, 90, 100, 110, 130
	6		40, 50, 60, 70, 80

Include the following note on every fact sheet page that lists annual operating costs.

Note. These annual heating costs are based on U.S. Government standard tests and on a national average cost of electricity of 7.94¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given [direct user to location].

The methodology referred to in the note is provided below. This information shall be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this methodology must be provided on or with the unbound fact sheets.

How to Estimate Your Heating Costs

To estimate your heating cost, determine your cost of electricity in cents per kilowatt hour (KWH) from your electric bill, your listed average annual heating cost from the National Average Annual Heating Cost Table, and use that number in the following equation:

$$\text{Your estimated cost} = \text{Listed annual heating cost}^{*} \times \frac{\text{Your Electric Cost in Cents per ¢/KWH}}{\text{7.94 ¢/KWH}}$$

*From the National Average Annual Heating Cost Table

Example: If your electric rate is 11.9¢/KWH and the anual heating cost listed in the chart is $200:

$$\text{Your estimated cost} = \$200 \times \frac{11.9¢}{7.94¢}$$

$$\text{Your estimated cost} = \$200 \times 1.5 = \$300$$

Your estimated cost = $300.

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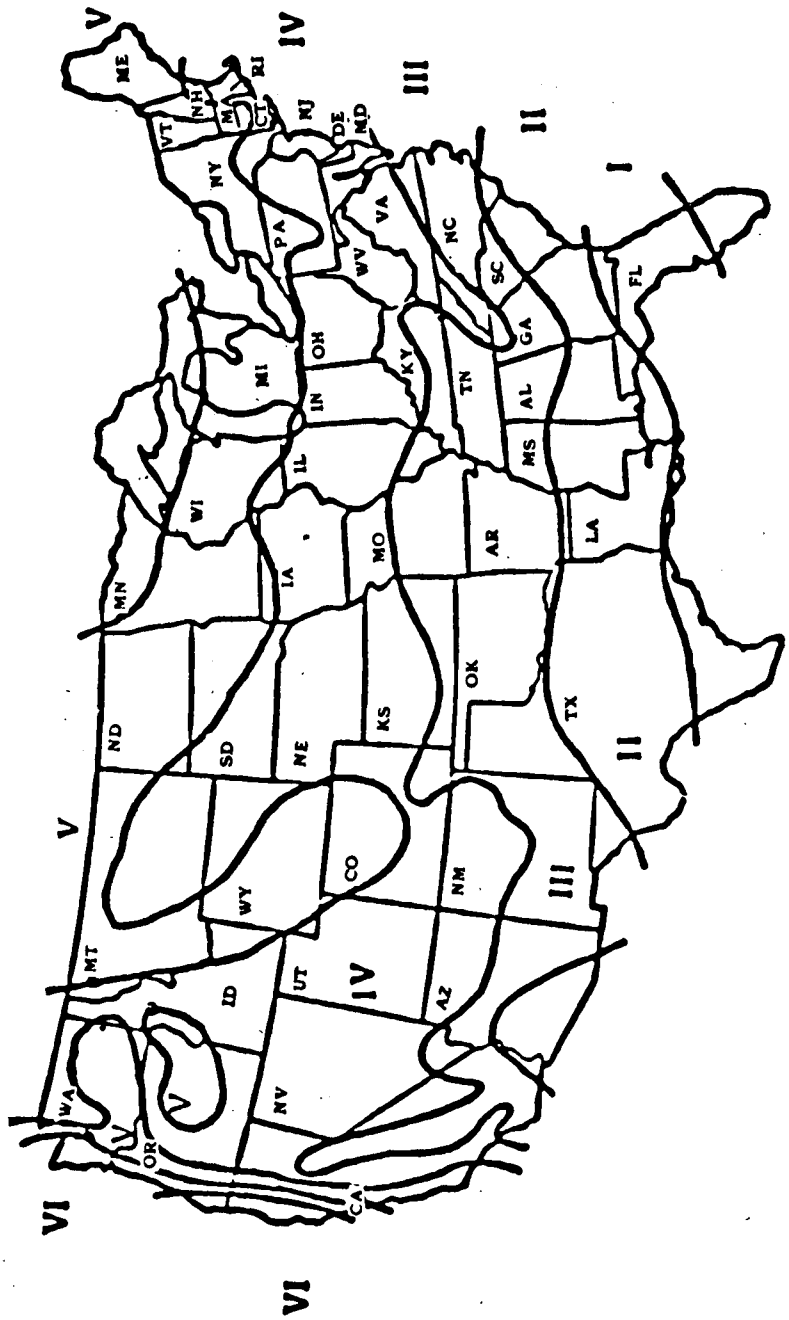
Heating Region Map



This map must be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this map must be provided on or with the separate fact sheets.

AN EXAMPLE OF A FACT SHEET SHOWING ONLY

THE HEATING FUNCTION FOR HEAT PUMPS

ENERGYGUIDE

MODEL	HEATING CAPACITY (BTU's/hr.)
XXX/C1	33,000
XXX/C2	35,000

NOTE. Since product-specific labels showing ranges are required on each product, the inclusion of ranges on fact sheets is optional.

HEATING PERFORMANCE FOR REGION IV:

Model XXX/C1

Least Efficient Model 5.00 — This Model 6.90 — Most Efficient Model 10.00

Energy Efficiency Rating (EER)

Model XXX/C2

Least Efficient Model 5.00 — This Model 7.90 — Most Efficient Model 10.00

Energy Efficiency Rating (EER)

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings will vary slightly with different coils and in different geographic regions.

NATIONAL AVERAGE ANNUAL HEATING COST TABLE ($ per year)

MODEL XXX/C1	Heat Loss of Home (in 1000's Btu's/hr.)									
	15	20	25	30	35	40	50	60	70	80
* Region 1	$60	$80	$100	$120						
• 2		$140	$170	$200	$240	$280				
• 3			$250	$300	$350	$400	$520			
• 4			$350	$410	$480	$550	$710	$910	$1110	$1330
• 5				$560	$660	$750	$970	$1200	$1460	$1720
• 6		$300	$370	$430	$500	$590				

MODEL XXX/C2	Heat Loss of Home (in 1000's Btu's/hr.)									
	15	20	25	30	35	40	50	60	70	80
* Region 1	$50	$70	$90	$110						
• 2		$130	$160	$190	$220	$260				
• 3			$240	$280	$330	$400	$500			
• 4			$330	$400	$450	$520	$580	$880	$1020	$1230
• 5				$540	$640	$730	$940	$1100	$1300	$1620
• 6		$300	$350	$400	$470	$560				

*From Heating Region Map

(This is page 1 of sample sheet)

NOTE: These annual heating costs are based on U.S. Government standard tests and on a national average cost of electricity of 7.94 ¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given below.

HOW TO ESTIMATE YOUR HEATING COST:

To estimate your heating cost, determine your cost of electricity in cents per kilowatt hour (KWH) from your electric bill, your listed average annual heating cost from the National Average Annual Heating Cost Table, and substitute that number in the following equation:

$$\text{Your Estimated Cost} = \text{Listed annual* heating cost} \times \frac{\text{Your electrical cost in cents}}{7.94\text{¢/KWH}}$$

* from the National Average Annual Heating Cost Table

Example: If your electric cost is 11.9 ¢/KWH and the annual heating cost listed in the table is $200:

$$\text{Your Estimated Cost} = \$200 \times \frac{11.9\text{¢}}{7.94\text{¢}}$$

$$\text{Your Estimated Cost} = \$200 \times 1.5 = \$300$$

$$\text{Your Estimated Cost} = \$300$$

(This is page 2 of sample sheet)

BILLING CODE 6750-01-C

Appendix J—Suggested Data Reporting Format

1. Date of Report _____
2. Company Name _____
3. City _____
4. State _____
5. Product _____
6. Energy Type (gas, oil, etc.) _____
7. Model Number _____
8. Estimated Annual Energy Cost or Energy Efficiency Rating _____
9. Capacity _____
10. Number of Tests Performed _____
11. Total Energy Consumption (based on all tests performed) _____

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-29851 Filed 12-30-87; 8:45 am]

BILLING CODE 6750-01-M

federal register

Thursday
December 31, 1987

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of December 1, 1987, of 19 deferrals contained in the two special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987.

Rescissions (Table A and Attachment A)

As of December 1, 1987, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of December 1, 1987, $1,866 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 52, FR p. 37739, Thursday, October 8, 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	1,873.0
Routine Executive releases through December 1, 1987 (OMB/Agency releases of $7.0 million and cumulative adjustments of $0)	-7.0
Overturned by the Congress	0
Currently before the Congress	1,866.0

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of December 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of December 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 12-1-87
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D88-1	40,000		10-1-87	5,000				35,000
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-3	120,425		10-1-87					120,425
Timber salvage sales	D88-4	34,841		10-1-87					34,841
Cooperative work	D88-5	628,025		10-1-87					628,025
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87					104
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					51,015
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					636
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance	D88-15	2,000		10-29-87	2,000				0

Attachment B - Status of Deferrals - Fiscal Year 1988

As of December 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 12-1-87
Southwestern Power Administration, Operation and maintenance	D88-16	6,000		10-29-87					6,000
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D88-17	774		10-29-87					774
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	D88-18	2,391		10-29-87					2,391
Social Security Administration Limitation on administrative expenses (construction)	D88-10	6,171		10-1-87					6,171
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund	D88-19	85,000		10-29-87					85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive	D88-11	11,638		10-1-87					11,638
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund)	D88-12	879,049		10-1-87					879,049
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS		1,873,023	0		7,000	0		0	1,866,023

[FR Doc. 87-30001 Filed 12-30-87; 8:45 am]

BILLING CODE 3110-01-C

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