7-12-89
Vol. 54 No. 132
Pages 29317-29528

federal register

Wednesday
July 12, 1989

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3328
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3328
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3328
Problems with Federal agency subscriptions	523-5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

ACTION
NOTICES
Agency information collection activities under OMB review, 29360

Agency for International Development
NOTICES
Housing guaranty programs:
Jordan, 29394

Agricultural Marketing Service
RULES
Cranberries grown in Massachusetts et al., 29323
Marketing orders; expenses and rates of assessment, 29318, 29319, 29324
(3 documents)
Milk marketing orders:
Southern Michigan, 29327
Onions (Vidalia) grown in Georgia, 29325
Pears, plums, and peaches grown in California, 29321
Pears shipped to foreign destinations; exemption increase, 29317
Raisins produced from grapes grown in California, 29326
PROPOSED RULES
Dates (domestic) produced or packed in California, 29342
Limes grown in Florida, 29338
Pears (winter) grown in Oregon, Washington, and California, 29340
Potatoes (Irish) grown in—
California and Oregon, 29341
Raisins produced from grapes grown in California, 29343

Agricultural Stabilization and Conservation Service
NOTICES
Marketing quotas and acreage allotments:
Tobacco, 29360

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Forest Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc..
Genetically engineered plants; field test permits—
Tobacco, 29361

Army Department
NOTICES
Meetings:
Science Board, 29365

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc..
Occupational safety and health (NIOSH); research and demostration projects, 29389

Coast Guard
PROPOSED RULES
Regattas and marine parades:
West Coast Outboard Championship Hydro Races, 29348

Commerce Department
See also Export Administration Bureau; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 29363

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1989:
Additions and deletions, 29364

Defense Department
See also Army Department
NOTICES
Meetings:
Military Personnel Testing Advisory Committee, 29365

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration
NOTICES
Grant and cooperative agreement awards:
American Statistical Association, 29365
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Panda-Rosemary Corp., 29370

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Chlorofluorocarbons and halons; production and consumption, 29336
Toxic substances:
Asbestos; manufacture, importation, processing, and distribution; commerce prohibitions, 29460
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Small industrial-commercial-institutional steam generating units, 29352
Air programs:
Stratospheric ozone protection—
Chlorofluorocarbons and halons, production and consumption; amendment, 29353
Air quality implementation plans; approval and promulgation; various States, etc..
New Jersey, 29349

Drinking water:
Safe Drinking Water Act administrative enforcement regulations, 29516
Toxic substances:
Export notifications; reporting and recordkeeping requirements, 29524
NOTICES
Pesticides; emergency exemptions, etc..
Oxyfluorfen, 29383
Privacy Act:
Systems of records, 29384

Export Administration Bureau
NOTICES
Foreign availability assessments:
Side scan sonar systems, 29363

Farmers Home Administration
RULES
Debt collection; applicant certification statements use, 29329

Federal Election Commission
NOTICES
Special elections; filing dates:
Texas, 29385

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc..
Gerken, Walter B., et al., 29365

Federal Maritime Commission
NOTICES
Agreements filed, etc., 29385, 29386 (2 documents)
Casualty and nonperformance certificates:
China Navigation Co., Ltd., 29386

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc..
Comerica, Inc., et al., 29386
De Lange, Daniel, et al., 29387
Firstar Corp. et al., 29387
Lee National Banc Corp. et al., 29387
MidAmerican Corp., 29388
Royal Bank of Canada, 29388

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 29393

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Narasin, roxarsone, etc., 29335

Forest Service
NOTICES
Environmental statements; availability, etc..
DeSoto National Forest, MS, 29362

General Accounting Office
NOTICES
Government accounting principles, standards, and requirements; establishment, 29389

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; National Institutes of Health; Public Health Service

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 29370, 29374 (2 documents)

Immigration and Naturalization Service
RULES
Immigration:
Adjustment to lawful permanent status by individuals and nationals from Cuba and Haiti, etc.
Service officers; powers and duties, etc., 29440
Aliens; adjustment of status (legalization program), 29442
Applicant processing for legalization program; conforming amendments, 29438
Federal programs of financial assistance benefits; temporary disqualification of newly legalized aliens, 29434
PROPOSED RULES
Organization, functions, and authority delegations:
Appeals, precedent decisions, certifications, and motions; clarification, 29344
NOTICES
Immigration:
Aliens; adjustment of status; U.S. history and government questions and answers for interview, 29456

Interior Department
See Fish and Wildlife Service; Land Management Bureau

International Development Cooperation Agency
See Agency for International Development

International Trade Commission
NOTICES
Import investigations:
12-volt motorcycle batteries from—
Korea, 29396
Carrier materials bearing ink compositions to be used in dry adhesive free thermal transfer process and signfaces made by such process, 29395
Concealed cabinet hinges and mounting plates, 29395
Crystalline cefadroxil monohydrate, 29396
Novelty teleidoscope, 29396
Track lighting system components, including plugboxes, 29396
Wire electrical discharge machining apparatus and components, 29397

Interstate Commerce Commission
RULES
Organization, functions, and authority delegations:
Proceedings Office, Director; declaratory order proceedings, 29337

Justice Department
See Immigration and Naturalization Service

Land Management Bureau
PROPOSED RULES
Forest management:
Forest products; sales—
Contract awards, etc., 29357

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc..
Biological Sciences Study Section et al., 29392

National Oceanic and Atmospheric Administration
PROPOSED RULES
Tuna, Atlantic bluefin fisheries, 29359
NOTICES
Fishery management councils; hearings:
Mid-Atlantic—
Bluefish fishery, 29364

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc..
Southern California Edison Co. et al., 29422
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 29397
Reports; availability, etc..
Postclosure seals, barriers and drainage system in unsaturated medium; technical position, 29423

Panama Canal Commission
RULES
Reporting and recordkeeping requirements, 29335

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; National Institutes of Health
NOTICES
National toxicology program:
Toxicology and carcinogenesis studies—
Alpha-methyldopa sesquihydrate, 29392
C.I. acid orange 3, 29392
Pentachlorophenol technical-grade mixtures, 29393
Roxarsone, 29393

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
Accounting for transfers of nonperforming assets by financial institutions and disclosure of impact of financial assistance from regulators, 29333
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 29423
New York Stock Exchange, Inc., 29424
Philadelphia Stock Exchange, Inc., 29425
Applications, hearings, determinations, etc..
Mitsubishi Bank Ltd., 29426
New England Variable Annuity Fund II, 29428
Public utility holding company filings, 29428
Select Protector Variable Account, 29428

Transportation Department
See also Coast Guard
NOTICES
Rural America transportation issues; national transportation policy development; forums, 29429

Treasury Department
NOTICES
Notes, Treasury:
G-1996 series, 29429

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 29432

Western Area Power Administration
NOTICES
Power rate adjustments:
Colorado River Storage Project, CO, 29378

Separate Parts In This Issue

Part II
Department of Justice, Immigration and Naturalization Service, 29434

Part III
Environmental Protection Agency, 29460

Part IV
Environmental Protection Agency, 29516

Part V
Environmental Protection Agency, 29524

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
33 29317
905 29318
917 29321
921 29319
922 29319
923 29319
924 29319
928 29318
929 29323
948 29324
955 29325
958 29324
989 29326
1040 29327
1822 29329
1823 29329
1910 29329
1941 29329
1942 29329
1943 29329
1944 29329
1945 29329
1951 29329
1955 29329
1965 29329

Proposed Rules:
911 29338
927 29340
947 29341
987 29342
989 29343

8 CFR
100 29438
103 (2 documents) 29438, 29440
242 29438
245 29440
245A (2 documents) 29434, 29442
264 29438
299 29438

Proposed Rules:
103 29344

17 CFR
211 29333

21 CFR
558 29335

33 CFR

Proposed Rules:
100 29348

35 CFR
103 29335
117 29335
135 29335

40 CFR
82 29336
763 29460

Proposed Rules:
22 29516
52 29349
60 29352
81 29349
82 29353
142 29516
707 29524

43 CFR

Proposed Rules:
5450 29357
5460 29357

49 CFR
1011 29337

50 CFR

Proposed Rules:
285 29359

Rules and Regulations

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 33

[Docket No. FV 89-009]

Regulations Issued Under the Export Apple and Pear Act; Proposed Increase in Exemptions for Pears Being Shipped to Certain Foreign Destinations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule exempts from the current minimum U.S. No. 2 grade and container marking requirements those export shipments of pears in less than carload lots shipped to all Western Hemisphere countries touching or lying south of the Tropic of Cancer. This includes all countries in Central America, South America, and the Caribbean but not Bermuda or the Bahama Islands. This rule also defines the term "less than carload lot" to mean a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent. These changes are designed to expand the markets for pears and to increase their fresh utilization.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Virginia Olson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2531-S, Washington, DC 20090-6456; telephone: (202) 475-3930.

SUPPLEMENTARY INFORMATION: This final rule is issued under authority of the Export Apple and Pear Act (7 U.S.C. 581-590), as amended, applicable to shipments of apples and pears to any foreign destination. This rule amends "Regulations Issued Under Authority of the Export Apple and Pear Act" (7 CFR Part 33).

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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.

There are approximately 100 pear handlers in Oregon, Washington and California subject to regulations issued under authority of the Export Apple and Pear Act, and approximately 1,800 pear producers in the Oregon, Washington and California area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Exemptions from the export regulations are specified in § 33.12—*Apples and pears not subject to regulation.* Currently, quantities of apples or pears not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples or pears packed in standard boxes on a single conveyance may be shipped exempt from regulations to any country. Also exempt are shipments of pears to Venezuela and Mexico in less than carload lots not exceeding one such lot to any one consignee or receiver on a single conveyance. "Less than carload lot" is defined in § 33.8 as packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent. Apples and pears shipped in larger quantities are subject to quality and container marking requirements and must be inspected by the Federal or Federal-State Inspection Service. Section 33.10 requires that apples grade at least U.S. No. 1 grade and pears grade U.S. No. 2 grade with specified exceptions. Also, packages of apples and pears for export must be marked as to the source of the fruit, varietal name, U.S. or state grade designation, and count of fruit in the package.

The Oregon-Washington-California Pear Bureau, which represents a substantial portion of the Northwest pear industry, unanimously recommended to change the definition of "less than carload lot" and to exempt from regulation shipments of pears in less than carload lots to any country in the Western Hemisphere which touches or lies south of the Tropic of Cancer, i.e., any country in Central America, South America, or the Caribbean, except Bermuda and the Bahama Islands. A proposed rule regarding this recommendation was issued April 12, 1989, and published in the **Federal Register** (54 FR 15216, April 17 1989). The proposed rule provided that interested persons could file public comments through May 17 1989. No comments were received.

The Northwest pear industry reports that during certain growing seasons pears may be affected by limb rub or frost damage. While these pears do not meet the minimum U.S. No. 2 grade requirements, they are otherwise acceptable to consumers. Pears from the Northwest which fail to meet U.S. No. 2 due to such factors as limb rub or frost damage are marketed domestically. The Northwest pear industry believes that increasing the minimum quantity exemption and extending the exemption to additional export outlets could expand markets for these pears and increase the fresh utilization of the crop. Pears which are not shipped for fresh consumption to domestic or foreign markets are disposed of in processing outlets, such as juice. Processing outlets are normally not as remunerative as fresh use outlets.

Based on information furnished by the Winter Pear Control Committee, which administers the Federal Winter Pear Marketing Order, during the 1986-87 shipping season, 9,056,641 boxes of winter pears were produced in the Northwest. Of these, 1,183,626 boxes or 13 percent were exported. Of those exported, it is estimated that about eight percent (100,175 boxes) were shipped to South America, four percent (50,913 boxes) were shipped to Mexico, two percent (24,915 boxes) were shipped to the Caribbean, and one percent (9,790 boxes) were shipped to Central America. Exports to these countries

represent approximately fifteen percent of the total exported from the U.S. or two percent of the total pears produced in the Northwest.

The industry has recommended redefining "less than carload lot" to enable exporters to ship substantially full loads of pears to foreign destinations. Under current limitations, many conveyances are travelling to destinations partially full. This action redefines "less than carload lot" for pears to mean a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent. This is an increase from the current definition (not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent). Regulations applicable to exports of apples will not be changed.

Therefore, the Department's view is that the impact of this action will be beneficial to producers and handlers because it will enable exporters to provide pears consistent with buyer preferences.

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

List of Subjects in 7 CFR Part 33

Apples, Exports, Pears.

For the reasons set forth in the preamble, 7 CFR Part 33 is amended as follows:

Note: These sections will appear in the annual Code of Federal Regulations.

PART 33—EXPORT APPLES AND PEARS

1. The authority citation for 7 CFR Part 33 continues to read as follows:

Authority: Sec. 7 48 Stat. 124; 7 U.S.C. 587

2. Section 33.8 is revised to read as follows:

§ 33.8 Less than carload lot.

"Less than carload lot" means a quantity of apples in packages not exceeding 20,000 pounds gross weight or 400 standard boxes or equivalent, or a quantity of pears in packages not exceeding 50,000 pounds gross weight or 1,000 standard boxes or equivalent.

3. Section 33.12 is amended by revising paragraph (a) to read as follows:

§ 33.12 Apples and pears not subject to regulation.

(a) A quantity of apples or pears to any foreign country not exceeding a total of 5,000 pounds gross weight or 100 boxes of apples or pears packed in standard boxes on a single conveyance: *Provided*, That pears may be shipped to Western Hemisphere countries touching or lying south of the Tropic of Cancer in less than carload lots not exceeding one such lot to any one consignee or receiver on a single conveyance.

Dated: July 6, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16286 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Parts 905 and 928

[Docket No. FV-89-049]

Expenses and Assessment Rates for the Marketing Orders Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, and Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders Nos. 905 and 928 for the 1989-90 fiscal year for each marketing order program. These expenditures and assessment rates are needed by the administrative committees established under these orders to pay program expenses and collect assessments from handlers to pay those expenses. This action will enable these committees to perform their duties and the programs to operate.

EFFECTIVE DATES: Section 905.228 is effective for the period August 1, 1989, through July 31, 1990; and § 928.219 is effective for the period July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; and 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos, and 122 handlers of Hawaiian papayas subject to regulations under their respective orders, and approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and 344 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of the Florida citrus handlers, and the majority of the Hawaiian papaya handlers and Florida citrus and Hawaiian papaya producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) 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 of approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs 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 administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, bushels, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' 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 Citrus Administrative Committee (CAC) met on April 18, 1989, and unanimously recommended a 1989–90 budget with expenditures of $185,000, compared with $190,000 budgeted for 1988–89. The 1989–90 expenditures are comparable to those for 1988–89, except that CAC travel costs are expected to be substantially lower next year.

The CAC also unanimously recommended a 1989–90 assessment rate of $0.0027 per ⅘ bushel carton, compared with the 1988–89 assessment rate of $0.003. Assessment income for 1989–90 is expected to total $162, 000, based on shipments of 60,000,000 cartons of fresh oranges, grapefruit, tangerines, and tangelos. Interest income is estimated at $8,000, while an estimated $15,000 will be drawn from the CAC's reserve.

The Papaya Administrative Committee (PAC) met on April 28, 1989, and unanimously recommended a 1989–90 budget with expenditures of $814,030, compared with $743,360 budgeted for 1988–89. Most expenditure items for 1989–90 are higher than those for 1988–89, reflecting for the most part inflationary price increases. Major expenditure items in the 1989–90 budget are $400,000 for advertising and promotion, including $200,000 for mainland promotion, $50,000 for Hawaii promotion, $126,280 for Japanese promotion, and $23,280 for contingencies. Research and development expenditures are projected at $60,000. The advertising, promotion, and research projects will be submitted for approval as soon as they are fully evaluated and after the budget has been approved. Most of the remaining expenditure items, totaling $354,030, are for program administration and management activities related to the advertising and promotional effort.

The PAC also unanimously recommended a 1989–90 assessment rate of $0.0085 per pound of shipped fresh papapas, compared with the 1988–89 assessment rate of $0.007 per pound. PAC income for 1989–90 is expected to amount to $904,230, with assessment income estimated at $595,000, based on shipments of 70,000,000 pounds of fresh papayas. Additional estimated income includes promotional grants of $200,000 from the Hawaii Department of Agriculture, and of $63,360 from the USDA's Foreign Agricultural Service. Other income includes $7,000 from the Japan Inspection Program, $15,000 from the Japan Trade Show, $13,470 from the University of Idaho, and $10,400 from miscellaneous sources including interest. Projected 1989–90 income over expenses ($90,200) is intended to increase the PAC's relatively low operating reserve, projected at only $28,874 on July 1, 1989.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 905.228 and 928.219 and is based on the committees' recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** (54 FR 25283, June 14, 1989). Comments on the proposed rule were invited from interested persons until June 26, 1989. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of these actions, which were recommended by the Committees at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of these actions until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 905 and 928

Marketing agreements and orders, oranges, grapefruit, tangermes, tangelos, Florida, papayas, Hawaii.

For the reasons set forth in the preamble, 7 CFR Parts 905 and 928 are amended as follows:

1. The authority citation for 7 CFR Parts 905 and 928 continues to read as follows:

Note: These sections will not appear in the Code of Federal Regulations.

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

2. Sections 905.228 and 928.219 are added to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.228 Expenses and assessment rate.

Expenses of $185,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.0027 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1990.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.219 Expenses and assessment rate.

Expenses of $814,030 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 7, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16326 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Parts 921, 922, 923 and 924

[Docket No. FV-89-054]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 921, 922, 923 and 924 for the 1989–90 fiscal year which began April 1, 1989. This action is needed for the marketing committees established under these orders to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1989 through March 31, 1990 (§§ 921.228, 922.228, 923.229 and 924.229).

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC, 20090-6456; telephone: (202) 475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order Nos. 921 (7 CFR Part 921) regulating the handling of fresh peaches grown in designated counties in Washington; 922 (7 CFR Part 922) regulating the handling of apricots grown in designated counties in Washington; 923 (7 CFR Part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and 924 (7 CFR Part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 65 handlers of Washington peaches, 60 handlers of Washington apricots, 85 handlers of Washington cherries, and 40 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders, and approximately 390 Washington peach producers, 190 Washington apricot producers, 1,115 Washington cherry producers, and 375 Washington-Oregon prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) 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 marketing committee and submitted to the Department for approval. The members of the marketing committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for 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 marketing committee is derived by dividing anticipated expenses by the expected shipments of the commodity (in tons). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' 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 Stone Fruit Executive Committee (SFEC) met on April 13, 1989, and unanimously recommended 1989-90 fiscal year expenditures and assessment rates for Marketing Order Nos. 921, 922, 923, and 924. The SFEC is made up of officers of the marketing committees established under these orders.

Expenditures of $18,615 for the Washington Fresh Peach Marketing Committee and an assessment rate of $2.00 per ton of peaches shipped under M.O. 921 were recommended by the SFEC. In comparison, 1988-89 budgeted expenditures were $18,378 and the assessment rate was $1.20 per ton. On May 24, 1989, the Washington Fresh Peach Marketing Committee met and recommended decreasing the assessment rate to $1.35 per ton of peaches to reflect current crop estimates and to bring its reserve balance within the amount authorized under the marketing order. Based on anticipated shipments of 11,000 tons of peaches, assessment income is estimated at $14,850. Committee reserve funds are available to cover the anticipated $3,765 deficit for the 1989-90 fiscal year.

The SFEC recommended expenditures of $6,942 for the Washington Apricot Marketing Committee and an assessment rate of $3.00 per ton of apricots shipped under M.O. 922. In comparison, 1988-89 budgeted expenditures were $6,970 and the assessment rate was $2.00 per ton. Assessment income for the 1989-90 fiscal year is estimated at $3,000 based on a crop estimate of 1,000 tons of apricots. Committee reserve funds are available to cover the anticipated $3,942 deficit for the 1989-90 fiscal year. On May 24, 1989, the Washington Apricot Marketing Committee met and unanimously approved the budget and assessment rate recommended by the SFEC.

For Washington cherries, expenditures of $98,503 and an assessment rate of $3.00 per ton of cherries shipped under M.O. 923 were recommended by the SFEC. In comparison, 1988-89 budgeted expenditures were $97,210 and the assessment rate was $2.00 per ton. On May 25, 1989, the Washington Cherry Marketing Committee met and recommended decreasing the assessment rate to $2.00 per ton of cherries to reflect current crop estimates and to keep its reserve balance within the amount authorized under the marketing order. Based on anticipated shipments of 45,000 tons of cherries, assessment income is estimated at $90,000. Committee reserve funds are available to cover the anticipated $8,503 deficit for the 1989-90 fiscal year.

Finally, the SFEC recommended expenditures of $17,490 for the Washington-Oregon Fresh Prune Marketing Committee and an assessment rate of $2.00 per ton of prunes shipped under M.O. 924. In comparison, 1988-89 budgeted expenditures were $17,342 and the assessment rate was $1.00 per ton. On June 7 1989, the Washington-Oregon Fresh Prune Marketing Committee met and recommended decreasing the assessment rate to $0.80 per ton of prunes to reflect current crop estimates and to bring its reserve balance within the amount authorized under the marketing order. Based on anticipated shipments of 9,000 tons of prunes, assessment income is estimated at $7,200. Committee reserve funds are available to cover the anticipated $10,290 deficit for the 1989-90 fiscal year.

The committees' 1989–90 fiscal year budgets are similar in scope and size to those approved for 1988–89. The recommended expenditures are for program administration, prune research and cherry market development.

Notice of this action was published in the June 8, 1989, issue of the **Federal Register** [54 FR 24561]. The comment period ended June 19, 1989. Comments were received from the Washington Fresh Peach Marketing Committee, the Washington Cherry Marketing Committee and the Washington-Oregon Fresh Prune Marketing Committee, in which they requested the establishment of the revised assessment rates. These comments are adopted by this final rule.

While this action will 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 will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information, recommendations and comments submitted by the committees, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Approval of the levels of expenses and assessment rates for these programs should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 921, 922, 923 and 924

Marketing agreements and orders, Peaches, Apricots, Cherries, Prunes, Washington, Oregon.

For the reasons set forth in the preamble, 7 CFR Parts 921, 922, 923 and 924 are amended as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 921, 922, 923 and 924 continues to read as follows:

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

2. A new § 921.228, is added to read as follows:

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.228 Expenses and assessment rate.

Expenses of $18,615 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $1.35 per ton of assessable peaches is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

3. A new § 922.228 is added to read as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.228 Expenses and assessment rate.

Expenses of $6,942 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $3.00 per ton is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

4. A new § 923.229 is added to read as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.229 Expenses and assessment rate.

Expenses of $98,503 by the Washington Cherry Marketing Committee are authorized, and an assesssment rate of $2.00 per ton is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

5. A new § 924.229 is added to read as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

§ 924.229 Expenses and assessment rate.

Expenses of $17,490 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $0.80 per ton of assessable prunes is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16270 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 917

[Docket No. FV-89-036]

Fresh Pears, Plums, and Peaches Grown In California; Redefining Producer Representation Areas and Changing the Representation on the Peach Commodity Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes certain representation areas and producer representation on the Peach Commodity Committee (Committee). It reduces the number of representation areas from six to five by combining two areas ("f" and "e"), and assigns an additional member position to Area "d" This action is needed to provide equitable representation on the Committee based upon the proportionate quantity of peaches shipped from each representation area.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 320 peach handlers currently regulated under Marketing Order 917 and approximately 840 peach producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of California peaches may be classified as small entities.

The production area for California peaches is divided into six representation areas for the purpose of producer representation on the 13-member Committee. The current representation areas and Committee representation for those areas are specified in paragraphs (a) through (f) of § 917.22 as follows:

(a) South Coast District and Southern California District: one nominee.

(b) Tehachapi District and Kern District: one nominee.

(c) Tulare District: one nominee.

(d) Fresno District: eight nominees.

(e) Stanislaus District and Stockton District: one nominee.

(f) All of the production area not included in paragraphs (a) through (e) of this section: one nominee.

Paragraph (g) of § 917.35 of the order authorizes each commodity committee, with the approval of the Secretary, to change the representation of any representation area. Any such change must be based, so far as practicable, upon the proportionate quantity of peaches shipped from the respective representation area during the three preceding fiscal periods. In addition, and again so far as practicable, a member position should be assigned to any representation area from which five percent of regulated shipments have originated during such periods.

On November 17 1988, the Committee unanimously recommended that Area "f" (the balance of the State) be combined with Area "e" (Stanislaus and Stockton Districts) and that the member position serving Area "f" be assigned to Area "d" (Fresno District). A proposed rule, published in the **Federal Register** on March 7 1989 (54 FR 9457), incorrectly indicated that Area "f" would be combined with Area "d" That proposal provided a 30-day comment period which ended April 6, 1989. The Committee submitted a written comment on the proposal indicating that Area "f" should be combined with Area "e" not Area "d" Based on this comment, the Department issued a modified proposed rule to accurately reflect the Committee s recommendation. The modified proposal was published in the **Federal Register** on May 10, 1989 (54 FR 20141). An additional 10-day comment period, which ended May 22, 1989, was provided for the receipt of written comments concerning the modified proposed rule. No additional comments were received.

During the three year period 1986–1988, peach production totaled 41,683,000 packages. During that period, Area "d" (Fresno District), with eight members, accounted for 35,590,000 packages or 85.4 percent of the total production. Area "e" with one member, accounted for 1,008,000 packages or 2.4 percent of the total production and Area "f" also with one member, accounted for 221,000 packages or only one-half of one percent of the total production.

Basing representation for the 13-member Committee solely on the proportionate quantity of peaches shipped from each representation area would mean that every 7.69 percent of the total production shipped should be represented by one member on the Committee. On this basis, Area "d" which accounted for 85.4 percent of the total production shipped during the past three years, would be entitled to 11 positions on the Committee and the remaining two positions would be allocated among the other five production areas. Allocating positions on the Committee in this manner was considered, but the Committee concluded that it was not in the program's best interest to allocate 11 positions to Area "d" because doing so would cause the Committee to lose valuable input in deliberations from a large part of the production area. Combining the minimal production from Area "e" and Area "f" creates a representation area with an increased amount of production (approximately 2.9 percent of the total production), but not enough to justify more than one position on the Committee. This frees one member position to be allocated to Area "d" in order to increase its representation. In its recommendation, the Committee further indicated that growers from Area "f" have had limited interest in program matters in recent years and that the persons currently representing this region are no longer interested in serving on the Committee.

In recognition of these considerations, a new § 917.120 is added to provide representation that is more nearly based upon the proportionate quantity of peaches shipped from each representation area during the preceding three fiscal periods. This action, providing more equitable representation on the Committee, is warranted and will not impose any additional costs on producers or handlers.

Based on the above, the Administrator of the 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 information presented, the recommendation and the comment submitted by the Committee, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is important that the changes in the regulations adopted pursuant to this action be in effect as soon as possible so that a committee position can be filled promptly based upon the changes made in this final rule concerning representation areas and producer representation on the Peach Commodity Committee.

Lists of Subjects in 7 CFR Part 917

Marketing agreements and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

Note: The following section will be published in the Code of Federal Regulations.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

2. New § 917.120 is added to read as follows:

§ 917.120 Changes in nomination of Peach Commodity Committee members.

Nominations for membership on the Peach Commodity Committee shall be made by growers of peaches in the respective representation areas, as follows:

(a) South Coast District and Southern California District: one nominee.

(b) Tehachapi District and Kern District: one nominee.

(c) Tulare District: one nominee.

(d) Fresno District: nine nominees.

(e) Stanislaus District, Stockton District and all of the production area not included in paragraphs (a) through (d) of this section: one nominee.

(e) Stanislaus District, Stockton District and all of the production area not included in paragraphs (a) through (d) of this section: one nominee.

Dated: July 6, 1989.

William J. Doyle,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-16273 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 929

[Docket No. FV-89-033FR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Amendment of Rules and Regulations; Increase in Base Quantity Reserve

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the base quantity reserve for the 1989-90 crop year from the required minimum of 2.0 percent to 7.28 percent of the total base quantities currently issued to cranberry producers, in order to update and expand base quantities for the benefit of producers. This will help to facilitate the appropriate and equitable operation of the cranberry marketing order.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in 10 states. 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 final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 30 handlers of cranberries subject to regulation under the cranberry marketing order, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This final rule increases the reserve base quantity from the minimum 2.0 percent required by the order to 7.28 percent, in order to update and adjust producers' base quantities for the 1989-90 crop year. This action was unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 8, 1989, meeting. The Committee is the agency responsible for local administration of the cranberry marketing order.

Each year prior to May 1, the Committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries deemed necessary to meet the season's total market demand and provide for an adequate carryover of cranberries to the next season. If annual cranberry production is expected to exceed the desired marketable quantity, and, if the Secretary finds, based on a recommendation of the Committee or from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of producers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity is then apportioned among all eligible producers by applying an allotment percentage to each producer's base quantity pursuant to § 929.48 of the order. The allotment percentage is established by the Secretary and equals the marketable quantity divided by the total of all producers' base quantities.

Such base quantities are issued to producers: (a) Based on their sales during the period 1968-69 through 1973-74; (b) as a result of transfers of base quantities from other producers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used annually for the issuance of base quantities to new producers and adjustments in base quantities for existing producers, with 25 percent made available for new growers and 75 percent made available for adjustments for existing producers. Any unallocated portion of the 25 percent available to new producers may, at the discretion of the Committee, be prorated among eligible existing producers on an equitable basis.

On March 8, 1989, the Committee held its annual winter meeting to formulate its marketing policy for the 1989-90 crop year. It determined that implementation of § 929.49 (the establishment of a marketable quantity and annual allotment) was not warranted. However, the Committee noted that cranberry production, as in recent years, was projected to exceed the total of all current producers' allotment bases. Therefore, they recommended that additional base be issued to all qualified new and existing producers to the full amount to which each producer requested, contingent on the producer's demonstrated ability to produce and sell cranberries. The increase would make additional base quantity available to new and existing producers by increasing the 2.0 percent minimum base quantity reserve, as currently provided, to 7.28 percent. This increase would also aid in the updating of base quantities, which would be necessary for any future establishment of a marketable quantity and annual allotment.

The impact of this regulation on producers and handlers will not be significant because the change represents a relaxation of restrictions by increasing the total amount of base quantity available to producers. The increase in the amount of base quantity to be issued represents the total amount of base quantity requested by qualified new and existing producers for the 1989-90 crop year. The Committee intends to distribute base quantity reserve to approximately 25 new producers and 411 existing producers. This final rule will not alter any reporting or recordkeeping requirements currently in effect.

Notice of this action was published in the April 28, 1989, issue of the **Federal Register** (54 FR 18296). Written comments were invited from interested persons until May 30, 1989. No comments were received.

Based on the available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic

impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that the amendment of § 929.153(a), as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements and orders, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and New York.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

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

2. Section 929.153 is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Rules and Regulations

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1989-90 crop year, the reserve base quantity shall be 7.28 percent.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16269 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Parts 948 and 958

[Docket No. FV-89-053]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 948 and 958 for the 1989-90 fiscal period. Authorization of these budgets will enable the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, and Marketing Agreement No. 130 and Order No. 958 (7 CFR Part 958), both as amended, regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 20 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 80 potato producers. Also, there are approximately 30 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 360 onion producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budgets of expenses for the 1989-90 fiscal year were prepared by the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee (committees), the agencies responsible for local administration of the orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of Colorado potatoes and Idaho-Oregon onions. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of potatoes and onions. Because the rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the committees' expected expenses.

The Colorado Area III Potato Committee (potato committee) met April 13, 1989, and unanimously recommended a 1989-90 budget of $3,619, up from $3,537 last year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order, however, authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order. The potato committee also recommended a rate of assessment of $0.005 per hundredweight, an increase from last year's $0.002. The major increases include the manager's salary ($600), payroll taxes ($171), and manager's expenses ($100). The recommended assessment rate, when applied to projected fresh market shipments of 729,250 hundredweight, will yield $3,646 in assessment income which would be adequate to cover budgeted expenses. Projected reserve funds at the end of the 1989-90 fiscal period of $4,019 are within the order's maximum of two fiscal periods' expenses.

The Idaho-Eastern Oregon Onion Committee (onion committee) met April

18, 1989, and unanimously recommended a 1989–90 budget of $1,083,081. This compares with $1,038,500 for last year. The onion committee recommended an assessment rate of $0.09 per hundredweight, the same as last year. Substantial increases were recommended in research ($4,650), promotion ($29,266), and export programs ($16,500) as well as manager's and clerical salaries ($7,500). Partially offsetting these increases is a decrease of $20,000 in capital improvements, which was used to purchase a new computer system and office furnishings last year. The recommended assessment rate, when applied to anticipated fresh market shipments of 7,200,000 hundredweight, will yield $648,000 in assessment income. This, when combined with $30,000 in interest income and $405,081 from the reserve, would provide adequate funding for budgeted expenses. Operating reserve funds, currently at $482,280, are well within the limit of one fiscal period's expenses.

While this action will 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 offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on June 8, 1989 (54 FR 24564). That document contained a proposal to add §§ 948.202 and 958.233 to authorize expenses and establish assessment rates for the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee, respectively. That rule provided that interested persons could file comments through June 19, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committees need to have sufficient funds to pay their expenses. The 1989–90 fiscal period for each program begins on July 1, 1989, and each marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes or onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings.

Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 948 and 958

Marketing agreements and orders, potatoes, onions, Colorado, Idaho, Oregon

For the reasons set forth in the preamble, 7 CFR Parts 948 and 958 are amended as follows:

1. The authority citation for 7 CFR Parts 948 and 958 continues to read as follows:

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

PART 948—IRISH POTATOES GROWN IN COLORADO

2. A new section 948.202 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 948.202 Expenses and assessment rate.

Expenses of $3,619 by the Colorado Area III Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

3. A new § 958.233 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 958.233 Expenses and assessment rate.

Expenses of $1,083,081 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.09 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16271 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 955

[Docket No. FV-89-038]

RIN 0581-AA29

Vidalia Onions Grown in Georgia; Authorization of Collection of Shipment Data

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) which requires handlers to provide information to the Vidalia Onion Committee (committee) on weekly fresh market onion shipments. The information is needed by the committee primarily for the purpose of collecting assessments which fund the marketing order program. In addition, the information is used to compile statistical data for use in planning and evaluating market development activities and making recommendations for production research projects.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Tentative Marketing Agreement No. 955 and Interim Marketing Order No. 955 (7 CFR Part 955; 54 FR 10972) concerning Vidalia onions grown in Georgia. The tentative marketing agreement and interim order are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final 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) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final 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 160 handlers and 260 producers of Vidalia onions in that portion of Georgia covered by the interim order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the Georgia Vidalia onion handlers and producers may be classified as small entities.

An interim final rule was published in the **Federal Register** on May 2, 1989 (54 FR 18648). That rule required handlers to provide the Vidalia Onion Committee (committee) with information regarding the volume of Vidalia onions received and shipped during each week of the shipping season, which runs from late April through June. It was unanimously recommended by the committee at its March 27 meeting. The interim rule provided that interested persons could file written comments through June 1, 1989. No comments were received. This action adopts the provisions of the interim final rule without change.

This rule is being issued under § 955.60 of the interim marketing order (54 FR 10977) which authorizes the committee to collect from handlers information necessary to perform its duties. As provided in the interim order, the committee is authorized to incur such expenses as are found to be reasonable to administer the program. Funds to cover these expenses are acquired by levying assessments upon handlers. For the 1989 Vidalia onion season, a budget of expenses of $150,000 has been approved, and handlers are required to pay assessments to the committee at a rate of $0.10 per 50-pound bag shipped to the fresh market.

Before the interim final rule went into effect on May 2, 1989, there was no information available which could be used by the committee to ascertain the volume of Vidalia onions shipped by individual handlers. Such information was needed by the committee for the purpose of collecting assessments, which are necessary to finance the program. Therefore, the committee recommended that the necessary information be obtained by requiring handlers to report to the committee the volume of fresh market shipments at the end of each week during the harvesting and shipping season.

The information derived from these reports is also being used by the committee in planning and evaluating market development activities and production research projects. The information will be made available to the industry on a composite basis to avoid divulging individual handlers' operations. This should aid growers and handlers in planning their individual operations and making marketing decisions during the season. Since the information collected by the committee is currently compiled and maintained by handlers, the additional reporting burden is minimal. It is estimated that it takes a handler five minutes to complete the report.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0160.

Based on the above, the Administrator of the 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, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 955

Marketing agreements and orders, Vidalia onions, Georgia.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR Part 955 which was published at 54 FR 18648 on May 2, 1989, is adopted as a final rule without change.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16272 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 989

[Docket No. FV-89-029FR]

Raisins Produced From Grapes in California; Change to the Administrative Rules and Regulations Regarding the Deletion of a 1 Percent Shrinkage Factor

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the administrative rules and regulations of the Federal marketing order for California raisins. This action eliminates a 1 percent shrinkage factor granted to handlers on reserve pool tonnage. This action also eliminates the provision for any additional allowance for shrinkage in weight for raisins held beyond the crop year of acquisition. This change was recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, because a study indicates that stored raisins no longer tend to lose weight.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes 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 No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 23 handlers of raisins who are subject to regulation under the Federal marketing order for California raisins, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual

receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The marketing order authorizes, for the total annual California raisin crop, the establishment of final free and reserve percentages for volume regulation purposes. Raisins in the reserve percentage category must be held by handlers in a reserve pool on handlers' premises for the account of the Committee. This rule eliminates a 1 percent shrinkage allowance for normal and natural shrinkage in weight that is applied to reserve pool tonnage held by handlers on the Saturday nearest to May 1 of each crop year. The shrinkage factor was originally designed to compensate for lost weight of stored raisins due to moisture loss. This change also eliminates any additional allowance for shrinkage in weight that might be granted by the Committee for raisins held beyond the end of the crop year of acquisition.

Raisins are usually stored outdoors on handlers' premises. Storage bins or sweatboxes are organized into rows and stacked into columns and then covered with plastic to protect them from the weather. The Committee weighs reserve pool raisins by taking an average weight of bins and multiplying that number by the number of bins in the stacks.

The order provides, pursuant to § 989.66(b)(1), that handlers are not to be held responsible for natural deterioration and shrinkage of raisins held in the reserve pool for the account of the Committee. Therefore, § 989.166(a) was put into effect on July 19, 1950 (15 FR 4580) under the authority provided in the order. Currently, § 989.166(a) provides that handlers are entitled to a shrinkage allowance so that they are granted a credit for normal and natural shrinkage in weight of 1 percent of the original natural condition weight of reserve pool raisins acquired by the handler during a crop year and held through May 1 of the same crop year. The Committee therefore deducts 1 percent of the natural condition weight of reserve pool raisins on handlers' premises which are still being held in storage on the Saturday nearest to May 1 to take into account shrinkage or loss of moisture during such storage. In practice, the handlers are thus responsible for returning 99 percent of the weight in raisins they receive into their reserve.

When the 1 percent shrinkage factor was first implemented in 1950, most of the industry used sweatboxes (approximately 175 pounds net weight) for storing raisins. The industry found at that time that sweatbox-stored raisins tended to shrink and loose moisture during extended periods of storage. Since the implementation of the 1 percent shrinkage factor, however, the vast majority of the industry has adopted the use of bins (approximately 2,000 pounds net weight) rather than sweatboxes (approximately 175 pounds net weight). The Committee has indicated that approximately 95 percent of this year's crop was delivered in bins. Additionally, the Committee recently conducted a survey which indicated that reserve pool raisins stored in bins and sweatboxes actually gain rather than lose moisture through extended storage periods. To conduct this survey, the Committee randomly weighed raisin bins and sweatboxes from different handlers' processing plants which were being transferred to other handlers' premises.

Therefore, the Committee has recommended the deletion of the 1 percent shrinkage factor and the provision to grant any allowance for shrinkage for reserves held beyond the end of the crop year.

These changes would increase payments to equity holders (growers) in the reserve pool since the 1 percent shrinkage allowance would no longer be deducted from the natural condition weight of reserve pool raisins. Therefore, producers would be likely to receive larger payments because there would be more tonnage available in the reserve pool.

Notice of this action was published in the May 2, 1989, issue of the **Federal Register** (54 FR 18664). Written comments were invited from interested persons until June 1, 1989. No comments were received.

Based on available information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

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

Subpart—Administrative Rules and Regulations

2. Amend § 989.166 by removing paragraph (a); redesignating paragraphs (b)(1) and (b)(2) as (a)(1) and (a)(2), respectively; redesignating paragraphs (c)(1), (c)(2) and (c)(3) as (b)(1), (b)(2) and (b)(3), respectively; redesignating paragraphs (d) through (f) as paragraphs (c) through (e).

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16328 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 1040

[Docket No. AO–225–A39; DA–88–047]

Milk in the Southern Michigan Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the plant location adjustments to prices under the Southern Michigan order. The amendments were proposed by four dairy farmer cooperatives that supply about 87 percent of the market's milk.

The changes replace the current seven pricing zones with just three zones (zero, minus five cents, and minus seven cents) and increase the rate of adjustment at plants outside the zones from one cent to 2.25 cents per hundredweight per 10 miles or fraction thereof. The zone and location adjustments apply to Class I milk prices to handlers and to uniform prices to producers.

The amended order also will require a larger direct-delivery differential payment of 10 cents per hundredweight for milk delivered to pool plants in a three-county area (metropolitan Detroit). Currently, two rates are applicable in portions of two counties.

Another change will use 0.115 rather than 0.113 as the factor that is multiplied times a specified butter price to

determine the butterfat differential used for pricing milk under the order.

The amendments are based on industry proposals and the record of a public hearing held at Romulus, Michigan, on May 24, 1988. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the Southern Michigan marketing area. Cooperatives representing more than two-thirds of the order's producers favor issuance of the amended order.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:.

Notice of Hearing: Issued April 29, 1988; published May 4, 1988 (53 FR 15851).

Extension of Time for Filing Briefs: Issued July 19, 1988; published July 22, 1988 (53 FR 27699).

Recommended Decision: Issued February 21, 1989; published February 24, 1989 (54 FR 7938).

Correction to Recommended Decision: Published March 10, 1989 (54 FR 10214).

Extension of Time for Filing Exceptions: Issued March 16, 1989; published March 21, 1989 (54 FR 11545).

Final Decision: Issued June 20, 1989; published June 26, 1989 (54 FR 26768).

Findings and Determinations

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

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

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

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

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

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

(b) Determination. It is hereby determined that:

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

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

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

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

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

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

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

§ 1040.52 [Amended]

2. In § 1040.52, revise paragraph (a)(1) to read as follows:

(a)

(1) Zone rates. For a plant located within the following described territory, including the cities located therein, the applicable zone rates shall be as follows:

Michigan Counties

Zone I—No Adjustments

Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saginaw, Sanilac, St. Clair, Shiawassee, Tuscola, Washtenaw and Wayne.

Bay (except Gibson, Mount Forest, Pinconning, Garfield and Fraser Townships).

Zone II—5 Cents

Allegan, Barry, Berrien, Branch, Calhoun, Cass, Eaton, Ionia, Kalamazoo, Kent, Montcalm, Muskegon, Ottawa, St. Joseph and Van Buren.

Zone III—7 Cents

Bay (all townships excluded from Zone I), Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Isabella, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Mecosta, Midland, Montmorency, Newago, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

§ 1040.52 [Amended]

3. Amend § 1040.52(a)(2) by changing "1 cent" to "2.25 cents.

§ 1040.74 [Amended]

4. Amend § 1040.74 by changing "0.113" to "0.115"

§ 1040.75 [Amended]

5. Amend § 1040.75 by removing and reserving paragraph (a)(2) and revising paragraph (a)(3) to read as follows:

(a)

(3) Shall add not less than 10 cents per hundredweight with respect to milk received from producers and cooperative associations pursuant to § 1040.9(c) at a pool plant located within the Michigan counties of Macomb, Oakland, and Wayne.

Signed at Washington, DC, on: July 6, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-16329 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1822, 1823, 1910, 1941, 1942, 1943, 1944, 1945, 1951, 1955, and 1965

Use of Certification Statements by the Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to add a new requirement concerning the use of applicant certification statements. This action is necessary to comply with OMB Circular A-129, Subject: Managing Federal Credit Programs. The intended effect is to establish procedures to ensure that applicants for Federal loans are aware of debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Norma Weetman, Chief, Management Analysis Branch, Financial and Management Analysis Staff, Farmers Home Administration, Room 4929, South Agriculture Building, 14th and Independence Avenue SW Washington, DC 20250, Telephone (202) 475-3859.

SUPPLEMENTARY INFORMATION:

Classification

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

Environmental Impact Statement

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

Intergovernmental Consultation

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

Programs Affected

This program/activity is listed in the Catalog of Federal Domestic Assistance under: 10.404 Emergency Loans; 10.405 Farm Labor Housing Loans and Grants; 10.406 Farm Operating Loans; 10.407 Farm Ownership Loans; 10.410 Low Income Housing Loans; 10.411 Rural Housing Site Loans; 10.414 Resource Conservation and Development Loans; 10.415 Rural Rental Housing Loans; 10.416 Soil and Water Loans; 10.417 Very Low-Income Housing Repair Loans and Grants; 10.418 Water and Waste Disposal Systems Loans; 10.419 Watershed Protection and Flood Prevention Loans; 10.421 Indian Tribes and Tribal Corporation Loans; and 10.423 Community Facilities Loans.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it requires applicants only to read and to acknowledge a list of actions that the Government can take to collect delinquent debt.

General Information

OMB Circular A-129 requires that Federal Agencies must use Certification Statements during the loan application process to notify applicants about the Federal Government's debt collection policies. Therefore, FmHA amends its regulations to require that the County Supervisor or District Director must review a certification statement with applicants for insured loans and that the applicant must sign and date the certification statement to show that the applicant is aware of and understands the debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

Discussion of Comments

A proposed rule was published in the **Federal Register** [53 FR 9318] on March 22, 1988, and invited comments for 60 days ending May 23, 1988. Two comments were received from farm organizations and one from the FmHA Single Family Housing Processing Division (SFHPD). They were concerned that (1) the actual Form FmHA 1910-11 was not published in the **Federal Register**; (2) suspension and debarment proceedings were not listed on the form; and (3) the form does not include borrower rights or available servicing options.

Form FmHA 1910-11 was not published in the **Federal Register** as a Proposed Rule, however, draft copies of the form were available upon request and FmHA did provide these copies to interested parties in response to requests for the form.

Concern also was expressed that Form FmHA 1910-11 did not include debarment and suspension as available debt collection mechanisms. Since the time these regulations were published as a Proposed Rule, the Department of Agriculture issued agency-wide regulations concerning debarment and suspension at 54 FR 4722 (January 30, 1989). As a result, debarment and suspension has been included on Form FmHA 1910-11 as a possible action that may be taken by the Federal Government if loan payments become delinquent or if the borrower defaults on the loan.

Form FmHA 1910-11 does not list borrower rights or available servicing options. These issues are addressed in other FmHA Regulations. The intent of this form is only to ensure that applicants for Federal loans are aware of debt collection methods the Federal Government can use in recovering delinquent or defaulted debt on FmHA loans.

A minor modification in FmHA instruction 1944-A is made in answer to the SFHPD request.

List of Subjects

7 CFR Part 1822

Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

7 CFR Part 1823

Credit, Indians.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and

community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing, Subsidies.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1951

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

7 CFR Part 1955

Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1965

Administrative practice and procedure, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

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

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 continues to read as follows:

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

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.271 [Amended]

2. Section 1822.271(e) is amended by adding the following entry to the list of forms after the Application Letter and Attachments and before the Evidence of Legal Authority (copy or citation of specific provisions of State statutory authority):

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	2-O&C	1-O	1-C

PART 1823—ASSOCIATION LOANS AND GRANTS—COMMUNITY FACILITIES, DEVELOPMENT, CONSERVATION, UTILIZATION

3. The authority citation for Part 1823 is added to read as follows:

Authority: 7 U.S.C. 1989, 5 U.S.C. 301, 25 U.S.C. 490, 7 CFR 2.23, 7 CFR 2.70.

Subpart N—Loans to Indian Tribes and Tribal Corporations

Exhibit A—[Amended]

4. Exhibit A, section 1 is amended by adding the following phrase to the list of forms after Form AD 621 and before Form FmHA 442-12: "Form FmHA 1910-11: Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts. (O & 1C—Sign O)"

PART 1910—GENERAL

5. The authority citation for Part 1910 continues to read as follows:

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

Subpart A—Receiving and Processing Applications

§ 1910.8 [Amended]

6. Section 1910.8 is amended by adding paragraph (e) to read as follows:

§ 1910.8 Reaching an understanding.

(e) *Use of Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* Before loan closing, all insured Single Family Housing (502 and 504) and Farmer Program loan applicants will have Form FmHA 1910-11 reviewed with them by the County Supervisor, and all insured Multi-Family Housing loan applicants will have Form FmHA 1910-11 reviewed with them by the Loan Approval Official (District Director or State Director, as appropriate). Form FmHA 1910-11 explains collection policies that may be taken by FmHA to recover delinquent or defaulted debt on insured loans. Form FmHA 1910-11 will be signed and distributed in accordance with the Forms Manual Insert. The applicant certification statement does not constitute a notification under the Debt Collection Act or the Deficit Reduction Act.

PART 1941—OPERATING

7 The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures and Authorizations

8. Exhibit A is amended in item A, Applicant Interview, by adding the following entry to the list of application processing forms after Form FmHA 410-10 and before Form FmHA 431-1.

Form No.	Name	Use
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	(x)

PART 1942—ASSOCIATION

9. The authority for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989, 16 U.S.C. 1005, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Community Facility Loans

10. Section 1942.5 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 1942.5 Application review and approval.

(a)

(1)

(i) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (members) and verification required, contributions rates and charges, interim financing, disbursement of funds, security requirements, graduation requirements, debt collection policies execution of Form FmHA 1910-11, Application Certification, Federal Collection Policies for Consumer or Commercial Debts, organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A-128 and A-110), adoption of Form FmHA 1942-47 "Loan Resolution (Public Resolution), for public bodies or Form FmHA 1942-9, "Loan Resolution (Security Agreement), for other than public bodies, closing instructions, and other requirements.

PART 1943—FARM OWNERSHIP SOIL AND WATER AND RECREATION

11. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.32 [Amended]

12. Section 1943.32(a) is amended by adding the following entry to the list of forms after Form FmHA 410-10 and before Form FmHA 422-1:

FmHA Form No.	Name of form	Total No. of copies	Signed by borrower	Loan docket	Copy for borrower
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1-O&C	1-O	1-C

[1] O=Original; C=Copy

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.82 [Amended]

13. Section 1943.82(a) is amended by adding the following entry to the list of forms after Form FmHA 410-10 and before Form FmHA 422-1:

FmHA Form No.	Name of form	Total No. of copies	Signed by borrower	Loan docket	Copy for borrower
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1-O&C	1-O	1-C

[1] O=Original; C=Copy

PART 1944—HOUSING

14. The authority citation for Part 1944 continues to read as follows:

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

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

15. Section 1944.26 is amended by adding a new paragraph (a)(6) to read as follows:

§ 1944.26 Application processing.

(a)

(6) The County Supervisor must review with each loan applicant, and the applicant must sign Form FmHA 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts"

§ 1944.30 [Amended]

16. Section 1944.30(a) is amended by adding the following entry to the list of forms after Form FmHA 410-4 and before Form FmHA 1944-12:

FmHA Form No.	Name of form	Total of No. of copies	No. Signed by borrower	Loan docket	Copy for borrower
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1	1	1

[1] Original; [2] Copy.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.171 [Amended]

17 Section 1944.171(d) is amended by adding the following entry to the list of forms after Form AD-625 and before Exhibit A-1:

Form No.	Name of form	Total No. of copies	Signed by borrower	No. for docket	Copy for borrower
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1	1-O	1-C

Subpart E—Rural Rental Housing Loan Policies, Procedures and Authorizations

Exhibit A-8 [Amended]

18. Exhibit A-8 is amended by adding paragraph 15 to read as follows:

15. Form FmHA 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.

Subpart J—Section 504 Rural Housing Loans and Grants

19. Section 1944.467 is amended by adding paragraph (a)(3) to read as follows:

§ 1944.467 Processing applications.

(a)

(3) The County Supervisor must review with the applicant, and assure that the applicant signs Form FmHA 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts"

PART 1945—EMERGENCY

20. The authority citation for Part 1945 is added (the authorities for the subparts are removed) to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.73, 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

21. In Exhibit A, paragraph III A 5 is amended by adding the following entry to the list of forms after Form FmHA 410-10 and before Form FmHA 431-1:

Form No.	Name	Use
1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	X

PART 1951—SERVICING AND COLLECTIONS

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

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

Subpart E—Servicing of Community Program Loans and Grants

23. Section 1951.210 is amended by adding a new paragraph (f)(15) to read as follows:

§ 1951.210 Transfer of security and assumption of loans.

(f)

(15) Form FmHA 1910-11, *"Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* The District Director must review Form FmHA 1910-11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant.

§ 1951.211 [Amended]

24. In § 1951.211, the introductory text of paragraph (c) is amended by changing the reference "§ 1951.210(f) (1) through (14)" to read "§ 1951.210(f) (1) through (15).

PART 1955—PROPERTY MANAGEMENT

25. The authority citation for Part 1955 continues to read as follows:

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

Subpart C—Disposal of Inventory Property

26. Section 1955.109 is amended by adding paragraph (j) to read as follows:

§ 1955.109 Processing and closing (CONACT).

(j) *Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* The County Supervisor or District Director must review Form FmHA 1910–11 Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts, with the applicant, and the form must be signed by the applicant.

27 Section 1955.118 is amended by adding paragraph (k) to read as follows:

§ 1955.118 Processing cash sales or credit sales on NP terms (housing).

(k) *Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* The County Supervisor or District Director must review Form FmHA 1910–11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts, with the applicant, and the form must be signed by the applicant.

PART 1965—REAL PROPERTY

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

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

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note—Only Cases

29. Section 1965.27 is amended by adding paragraph (b)(21) to read as follows:

§ 1965.27 Transfer of real estate security.

(b)

(21) Form FmHA 1910–11, *Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."* For all transfers, the County Supervisor must review Form FmHA 1910–11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts, with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

Subpart B—Security Servicing for Multiple Housing Loans

30. Section 1965.65 is amended by adding a new paragraph (a)(9) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a)

(9) For all transfers, the District Director must review Form FmHA 1910–11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts, with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

Dated: May 24, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87–16255 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–07–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Rel. No. SAB–82]

Staff Accounting Bulletin No. 82

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's view regarding the accounting for transfers of nonperforming assets by financial institutions, and disclosure of the impact of financial assistance from regulators.

DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Teresa Iannaconi, Office of the Chief Accountant (202–272–2130), or Robert A. Bayless, Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street NW Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

July 5, 1989.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 82 to the table found in Subpart B.

The staff hereby adds Section V to Topic 5 and Section N to Topic 11 of the staff accounting bulletin series. Section V of Topic 5 discusses the staff's views regarding the accounting for transfers of nonperforming assets by financial institutions, and Section N of Topic 11 discusses the staff's views regarding the disclosure of the impact of regulatory assistance received in transfers or other regulatory assisted reorganizations or combinations.

Topic 5: Miscellaneous Accounting

V Certain Transfers of Nonperforming Assets

Facts: A financial institution desires to reduce its nonaccrual or reduced rate loans and other nonearning assets, including foreclosed real estate (collectively, "nonperforming assets"). Some or all of such nonperforming assets are transferred to a newly-formed entity (the "new entity"). The financial institution, as consideration for transferring the nonperforming assets, may receive (a) the cash proceeds of debt issued by the new entity to third parties, (b) a note or other redeemable instrument issued by the new entity, or (c) a combination of (a) and (b). The residual equity interests in the new entity, which carry voting rights, initially owned by the financial institution, are transferred to outsiders (for example, via distribution to the financial institution s shareholders or sale or contribution to an unrelated third party).

The financial institution typically will manage the assets for a fee, providing necessary services to liquidate the assets, but otherwise does not have the right to appoint directors or legally control the operations of the new entity.

Question 1: What factors should be considered in determining whether such transfer of nonperforming assets can be accounted for as a disposition by the financial institution?

Interpretive Response: The staff believes that determining whether nonperforming assets have been disposed of in substance requires an assessment as to whether the risks and rewards of ownership have been transferred.

SAB Topic 5–E discusses some factors that the staff believes should be considered

---

SAB Topic 5–E, "Accounting for Divestiture of Subsidiary or Other Business Operation, addresses the accounting for the transfer of certain operations whereby there is continuing involvement by the seller or other evidence that incidents of ownership remain with the seller.

in determining whether the risks of a business have been transferred. Consistent with the factors discussed in SAB Topic 5-E, the staff believes that the transfer described should not be accounted for as a sale or disposition if (a) the transfer of nonperforming assets to the new entity provides for recourse by the new entity to the transferor financial institution, (b) the financial institution directly or indirectly guarantees debt of the new entity in whole or in part, (c) the financial institution retains a participation in the rewards of ownership of the transferred assets, for example through a higher than normal incentive or other management fee arrangement,[2] or (d) the fair value of any material non-cash consideration received by the financial institution (for example, a note or other redeemable instrument) cannot be reasonably estimated. Additionally, the staff believes that the accounting for the transfer as a sale or disposition generally is not appropriate where the financial institution retains rewards of ownership through the holding of significant residual equity interests or where third party holders of such interests do not have a significant amount of capital at risk.

Where accounting for the transfer as a sale or disposition is not appropriate, the nonperforming assets should remain on the financial institution's balance sheet and should continue to be disclosed as nonaccrual, past due, restructured or foreclosed, as appropriate, and the debt of the new entity should be recorded by the financial institution.

Question 2: If the transaction is accounted for as a sale, at what value should the transfer be recorded by the financial institution?

Interpretive Response: The staff believes that the transfer should be recorded by the financial institution at the fair value of assets transferred (or, if more clearly evident, the fair value of assets received) and a loss recognized by the financial institution for any excess of the net carrying value over the fair value. Fair value is the amount that would be realizable in an outright sale to an unrelated third party for cash. Statement of Financial Accounting Standards No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings, and Financial Reporting Release No. 28 (Section 401.09 of the Financial Reporting Codification) discuss the determination of fair value of formally or substantively repossessed collateral. The same concepts should be applied in determining fair value of the transferred assets, i.e., if an active market exists for the assets transferred, then fair value is equal to the market value. If no active market exists, but one exists for similar assets, the selling prices in that market may be helpful in estimating the fair value. If no such market price is available, a forecast of expected cash flows, discounted at a rate commensurate with the risks involved, may be used to aid in estimating the fair value. In situations where discounted cash flows are used to estimate fair value of nonperforming assets, the staff would expect that the interest rate used in such computations will be substantially higher than the cost of funds of the financial institution and appropriately reflect the risk of holding these nonperforming assets. Therefore, the fair value determined in such a way will be lower than the amount at which the assets would have been carried by the financial institution had the transfer not occurred, unless the financial institution had been required under generally accepted accounting principles to carry such assets at market value or the lower of cost or market value.

Question 3: Where the transaction may appropriately be accounted for as a sale and the financial institution receives a note receivable or other redeemable instrument from the new entity, how should such asset be disclosed pursuant to Item III C, "Risk Elements, of Industry Guide 3? What factors should be considered related to the subsequent accounting for such instruments received?

Interpretive Response: The staff believes that the financial institution may exclude the note receivable or other asset from its Risk Elements disclosures under Guide 3 provided that: (a) the receivable itself does not constitute a nonaccrual, past due, restructured, or potential problem loan that would require disclosure under Guide 3, and (b) the underlying collateral is described in sufficient detail to enable investors to understand the nature of the note receivable or other asset, if material, including the extent of any over-collateralization. The description of the collateral normally would include material information similar to that which would be provided if such assets were owned by the financial institution, including pertinent Risk Element disclosures.

The staff notes that, in situations in which the transaction is accounted for as a sale and a portion of the consideration received by the registrant is debt or another redeemable instrument, careful consideration must be given to the appropriateness of recording profits on the management fee arrangement, or interest or dividends on the instrument received, including consideration of whether it is necessary to defer such amounts or to treat such payments on a cost recovery basis. Further, if the new entity incurs losses to the point that its permanent equity based on generally accepted accounting principles is eliminated, it would ordinarily be necessary for the financial institution, at a minimum, to record further operating losses as its best estimate of the loss in realizable value of its investment.[6]

Topic 11: Miscellaneous Disclosure

N. Disclosures of the Impact of Assistance from Federal Financial Institution Regulatory Agencies.

Facts: An entity receives financial assistance from a federal regulatory agency in conjunction with either an acquisition of a troubled financial institution, transfer of nonperforming assets to a newly-formed entity, or other reorganization.

Question: What are the disclosure implications of the existence of regulatory assistance?

Interpretive Response: The staff believes that users of financial statements must be able to assess the impact of credit and other risks on a company following a regulatory assisted acquisition, transfer or other reorganization on a basis comparable to that disclosed by other institutions, i.e., as if the assistance did not exist. In this regard, the staff believes that the amount of regulatory assistance should be disclosed separately and should be separately identified in the statistical information furnished pursuant to Industry Guide 3, to the extent it impacts such information.[12] Further, the nature, extent and impact of such assistance needs to be fully discussed in Management's Discussion and Analysis.

[FR Doc. 89-16316 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

---

[2] The staff recognizes that the determination of whether the financial institution retains participation in the rewards of ownership will require an analysis of the facts and circumstances of each individual transaction. Generally, the staff believes that, in order to conclude that the financial institution has disposed of the assets in substance, the management fee arrangement should not enable the financial institution to participate to any significant extent in the potential increases in cash flows or value of the assets, and the terms of the arrangement, including provisions for discontinuance of services, must be substantially similar to management arrangements with third parties.

[3] The carrying value should be reduced by any allocable allowance for credit losses or other valuation allowances. The staff believes that the loss recognized for the excess of the net carrying value over the fair value should be considered a credit loss and thus should not be included by the financial institution as loss on disposition.

The staff notes that the FASB's Emerging Issues Task Force (EITF) reached consensus at its November 17, 1988 meeting on Issue 88-25 that the newly created "liquidating bank" should continue to report its assets and liabilities at fair values at the date of the financial statements.

The FASB's Emerging Issues Task Force reached a consensus at its May 21, 1987 meeting on Issue No. 87-17, "Spin-off or other distributions of loans receivable to shareholders, that an enterprise that distributes loans to its owners should report such distribution at fair value.

[6] Typically, the financial institution's claim on the new entity is subordinate to other debt instruments and thus the financial institution will incur any losses beyond those incurred by the permanent equity holders.

The staff has previously expressed its views regarding acceptable methods of compliance with this principle in the minutes of EITF Issue 88-19, and an announcement by the SEC Observer to the EITF at the February 23, 1989 meeting.

Paragraph 9 of Statement of Financial Accounting Standards No. 72, "Accounting for Certain Acquisitions of Banking or Thrift Institutions, addresses the recording of regulatory assistance at the date of purchase business combination and indicates that, "[i]f receipt of the assistance is probable and the amount is reasonably estimable, that portion of the cost of the acquired enterprise shall be assigned to such assistance. In addition, see Emerging Issues Task Force Issue 88-19 for guidance on the appropriate period in which to record certain types of regulatory assistance.

[12] See § 501.06.c., "Effects of Federal Financial Assistance Upon Operations, of the Financial Reporting Codification for further discussion of the Management's Discussion and Analysis disclosures of the effects of regulatory assistance.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Narasin, Roxarsone, and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by A.L. Laboratories, Inc. The NADA provides for using separately approved Type A medicated articles containing narasin, roxarsone, and bacitracin methylene disalicylate to make a combination Type C medicated feed for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broiler chickens.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Malcolm C. Thomas, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301-443-4317

SUPPLEMENTARY INFORMATION: A.L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 140-852, providing for combining separately approved narasin, roxarsone, and bacitracin methylene disalicylate Type A medicated articles to make a Type C medicated feed containing 54 to 72 grams of narasin per ton, 22.7 to 45.4 grams of roxarsone per ton, and 10 to 50 grams of bacitracin methylene disalicylate per ton. The feed is for use in broiler chickens for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* for increased rate of weight gain and improved feed efficiency. The application is approved and the regulations in §§ 558.76(d)(3), 558.363(c)(1), and 558.530(d)(3) are amended accordingly. The basis for approval is discussed in the freedom of information summary.

Narasin, roxarsone, and bacitracin methylene disalicylate are new animal drugs used in Type A medicated articles to make Type C medicated feeds. Roxarsone is a Category II drug which, as provided in 21 CFR 558.4, requires an approved form FDA 1900 for making a Type C medicated feed from a Type A article. Therefore, an approved form FDA 1900 is required for making a Type C medicated feed containing narasin, roxarsone, and bacitracin methylene disalicylate as provided in approved NADA 140-852 and in § 558.363 as amended by this final rule.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857 from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.76 is amended by adding new paragraph (d)(3)(xiii) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

(d)

(3)

(xiii) Narasin with roxarsone as in § 558.363.

3. Section 558.363 is amended by adding new paragraph (c)(1)(v) to read as follows:

§ 558.363 Narasin.

(c)

(1)

(v) *Amount per ton.* Narasin 54 to 72 grams, roxarsone 22.7 to 45.4 grams, and bacitracin methylene disalicylate 10 to 50 grams.

(A) *Indications for use.* For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* for increased rate of weight gain, and for improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Withdraw 5 days before slaughter. Do not feed to laying hens. Use as sole source of organic arsenic. Drug overdose or lack of water may result in leg weakness. Do not allow adult turkeys, horses, or other equines access to narasin formulations. Ingestion of narasin by these species has been fatal. Narasin as provided by 000986, roxarsone by 017210, bacitracin methylene disalicylate by 046573 in § 510.600(c) of this chapter.

4. Section 558.530 is amended by adding new paragraph (d)(3)(xxiii) to read as follows:

§ 558.530 Roxarsone.

(d)

(3)

(xxiii) Narasin with bacitracin methylene disalicylate as in § 558.363.

Dated: July 5, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-16297 Filed 7-11-89; 8:45 am]

BILLING CODE 4160-01-M

PANAMA CANAL COMMISSION

35 CFR Parts 103, 117 and 135

RIN 3207-AA21

Paperwork Reduction Act; OMB approved collections of information

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: In accordance with the requirement of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), as amended, that agencies publish Office of Management and Budget (OMB) control numbers assigned to their collections of information contained in regulations, the Panama Canal Commission is amending Parts 103, 117 and 135 of Title 35, Code of Federal Regulations to reflect current OMB numbers.

EFFECTIVE DATE: July 12, 1989.

ADDRESS: Send comments to Edward H. Clarke, Information Desk Officer, Commerce and Lands Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, telephone (202) 634-6441.

SUPPLEMENTARY INFORMATION: 44 U.S.C. Chapter 35 requires Federal agencies to obtain approval from the Office of Management and Budget before collecting information from ten or more members of the public. As evidence of such approval, agencies are required to display an OMB control number on collection of information requirements.

The Panama Canal Commission has received OMB approval, valid through August 31, 1991, for the collection of information requirements contained in Subchapter C of Chapter I, 35 CFR. The OMB control number for all collection of information requirements in Subchapter C is 3207-0001. The OMB Control Number was included in §§ 101.10, 113.4, 113.22, 113.28, 113.29, 113.42, 113.47 113.50 and 123.4 by publication in the **Federal Register**, on May 10, 1985 (50 FR 19676). The OMB Control Number was included in §§ 101.9, 103.6, 103.8, 103.32, 103.42 and 121.45 by publication in the **Federal Register** on July 1, 1985 (50 FR 26990). We are now incorporating the OMB Control Number in §§ 103.1, 117.4, 135.1, 135.2, 135.443 and 135.484 in Subchapter C of Chapter I of 35 CFR.

The Commission has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, dated February 17 1981. Furthermore, the Regulatory Flexibility Act is inapplicable since this regulation does not have an impact on small entities (5 U.S.C. 601-612).

List of Subjects in 35 CFR Parts 103, 117 and 135

Panama Canal, Vessels, Order of transit, Advance reservation, Booking system, Tolls, Displacement tonnage, Measurement authorities, Reporting and recordkeeping requirements.

Accordingly, 35 CFR Parts 103, 117 and 135 Subchapter C of Chapter I of Title 35, Code of Federal Regulations, are amended as set forth below.

PART 103—GENERAL PROVISIONS GOVERNING VESSELS

1. The authority citation for Part 103 continues to read as follows:

Authority: 22 U.S.C. 3811; E.O. 12215, 45 FR 36043 and 44 U.S.C. 3501.

2. Section 103.1 is amended by adding the OMB clearance language to read as follows:

§ 103.1 Regulations to be kept aboard.

(Approved by the Office of Management and Budget under control number 3207-0001)

PART 117—MARINE ACCIDENTS: INVESTIGATIONS; CONTROLS; RESPONSIBILITY

3. The authority citation for Part 117 continues to read as follows:

Authority: 22 U.S.C. 3791; E.O. 12215, 45 36043.

4. Section 117.4 is amended by adding the OMB clearance language to read as follows:

§ 117.4 Reports of accidents by officer in command to Board.

(Approved by the Office of Management and Budget under control number 3207-0001)

PART 135—RULES FOR MEASUREMENT OF VESSELS

5. The authority citation for Part 135 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043

6. Section 135.1 is amended by adding the OMB clearance language to read as follows:

§ 135.1 Vessels generally to present tonnage certificate or be measured.

(Approved by the Office of Management and Budget under control number 3207-0001)

7 Section 135.2 is amended by adding the OMB clearance language to read as follows:

§ 135.2 Warships to present documents stating displacement tonnage.

(Approved by the Office of Management and Budget under control number 3207-0001)

8. Section 135.443 is amended by adding the OMB clearance language to read as follows:

§ 135.443 Substance and form of tonnage certificates; blank certificates.

(Approved by the Office of Management and Budget under control number 3207-0001)

9. Section 135.484 is amended by adding the OMB clearance language to read as follows:

§ 135.484 Commander of warship to exhibit vessel's displacement scale and curves.

(Approved by the Office of Management and Budget under control number 3207-0001)

Date: June 27 1989.

D. P McAuliffe

Administrator.

[FR Doc. 89-16343 Filed 7-11-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3613-5]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Suspension of rule.

SUMMARY: Effective June 30, 1989, today's action suspends § 82.11 of EPA's August 12, 1988 final rule (53 FR 30566) implementing the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). A revised § 82.11 is proposed elsewhere in today's **Federal Register** Notice to conform with recent agreements made by The Parties to the Montreal Protocol.

DATE: This suspension is effective June 30, 1989.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A-87-20 at the Air Docket Room, Room M 1500, First Floor, Waterside Mall, 401 M Street SW Washington, DC 20460. This docket may be inspected between 8:30 a.m. and 12:00 p.m. and 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: David Lee, Analyst, Regulatory and Analysis Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW Washington, DC 20460. (202) 475-7497

SUPPLEMENTARY INFORMATION: Last August the Agency promulgated a final rule implementing the United States obligation under the Montreal Protocol, an international treaty that requires ratifying countries to limit their production and consumption of substances that are known to deplete stratospheric ozone. At the time of promulgation, several sections of the final rule reflected how the United States then interpreted the terms of the Montreal Protocol. Parties to the Protocol were to meet at a later date to resolve issues of interpretation.

The Parties to the Protocol met May 2-5, 1989 in Helsinki, Finland. During this meeting, the Parties, including the

United States, agreed to several interpretations of terms in the Montreal Protocol that differed from the United States interpretation as reflected in its final rule. Elsewhere in today's **Federal Register** Notice are proposed amendments that reflect these recent agreements.

The proposed amendment to § 82.11 alters the conditions under which persons may obtain authorizations to convert potential production allowances to production allowances. In its current form, § 82.11 allows persons to obtain authorization to convert potential production allowances upon proof of export of controlled substances to any Party. However, under the interpretation of the relevant Protocol provision agreed to by Parties in Helsinki, authorizations to convert may only be granted upon proof of export to Parties operating under Article 5 of the Protocol ("Article 5 Parties") or upon proof of a transfer of production rights from another Party. Because the current version of § 82.11 authorizes conversions on grounds the Protocol does not, EPA is immediately staying that section of the rule to prevent the United States from violating the Protocol.

Because both EPA's rule and the Montreal Protocol go into effect July 1, the Agency must ensure that the rule is implemented in accordance with the internationally adopted interpretation of the Montreal Protocol, an interpretation by which the United States now subscribes. Delays inherent in notice and comment rulemaking on this action to suspend the existing rule would entail the risk that transactions could occur that would lead to violations of the Protocol. For that reason, EPA finds that notice and public procedure on this suspension are impracticable and contrary to the public interest.

Accordingly, § 82.11 is suspended.

Date: June 30, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89-16207 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

[Ex Parte No. 55 (Sub-No. 76)]

Delegation of Authority—Declaratory Order Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is codifying its delegation of authority to the Director of the Office of Proceedings to issue decisions determining whether, upon petition, a declaratory order proceeding should be instituted. This action will aid in the management of the Commission's workload.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7291 (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, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721).

Regulatory Flexibility

This action will not have a significant impact on a substantial number of small entities.

Energy and Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Since this is a final action undertaken to revise an internal, organizational matter, formal comments are unnecessary under 5 U.S.C. 553(b)(A).

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure; Authority delegations (Government agencies).

Dated: June 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1011 of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for 49 CFR Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.2(a)(8) is amended by removing the word "and" before § 1011.2(a)(8)(iv), removing the period at the end of § 1011.2(a)(8)(iv) and adding in its place "; and" and adding a new § 1011.2(a)(8)(v) to read as follows:

§ 1011.2 The Commission.

(a)

(8)

(v) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

3. Section 1011.8(c) is amended by adding a new paragraph (6) to read as follows:

§ 1011.8 Delegations of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

(c)

(6) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

[FR Doc. 89-16331 Filed 7-11-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

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 911

[Docket No. FV-89-046]

Limes Grown in Florida; Proposed Changes in Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes tightening minimum grade requirements currently in effect for Florida grown limes. Currently, shipments of Florida seedless limes must contain at least 60 percent U.S. No. 1 quality fruit, and the remainder must be U.S. No. 2 quality during the period February 1 through May 31 each season. Shipments and imports during the period June 1 through January 31 each season must contain at least 75 percent U.S. No. 1 quality fruit and the remainder must be at least U.S. No. 2 quality. The proposed change would increase the minimum amount of U.S. No. 1 grade fruit required in shipments of Florida grown and imported limes form 60 to 75 percent during the period February 1 through May 31, thus making the 75 percent requirement effective on a year around basis. The proposed change also would apply to imported limes. The proposed action would provide fresh markets with higher quality limes, and is designed to create and maintain consumer satisfaction while increasing sales and promoting orderly marketing conditions in the interest of both growers and consumers.

DATE: Comments must be received by September 11, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 911, both as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule under the 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 action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subjects 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 an estimated 26 handlers of Florida limes subject to regulation under the marketing order for limes grown in Florida, and an estimated 20 importers who import limes into the United States. In addition, there are approximately 260 lime growers in Florida. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, importers, and growers may be classified as small entities.

Fresh Florida lime shipments are projected at 1,500,000 bushels (55 pounds net weight) for the 1989-90 season, compared with fresh shipments of 1,492,893 bushels in 1988-89, 1,352,780 bushels in 1987-88, and 1,334,997 bushels in 1986-87 Florida limes are harvested and shipped to market every month of the year, beginning with new season shipments in April and with peak shipments during the May through October period. Florida limes compete in the marketplace primarily with Mexican grown limes imported into the United States, with such imports estimated at 2,016,775 bushels for 1989-90. California fresh lime shipments are estimated at 292,590 bushels for the 1988-89 season crop.

Section 911.344 (7 CFR 911.344) specifies continuous minimum grade and size requirements for fresh shipments of all varieties of fresh limes grown in Florida. Two different groups of limes are grown in Florida, and different grade regulations apply to each group. One group is known as seeded or true limes, and are referred to as Mexican, West Indian, and Key limes. The other group is known as seedless, large-fruited, or Persian limes, and includes the Tahiti, Bearss, and similar varieties.

This proposed rule applies to the group known as seedless, large-fruited, or Persian limes, and proposes tighter minimum grade requirements for such limes. Currently, seedless limes must grade at least U.S. Combination, Mixed Color, except for stem length, during the period February 1 through May 31 each season. Under the U.S. Combination grade at least 60 percent, by count, of the limes must be U.S. No. 1 quality fruit, and the remainder must be at least U.S. No. 2 quality. However, the current grade regulation increases the minimum amount of U.S. No. 1 quality fruit required to 75 percent during the period June 1 through January 31 each season. The proposed change would increase the minimum amount of U.S. No. 1 grade fruit required in shipments of Florida grown and imported limes from 60 to 75 percent during the period February 1 through May 31, thus making the 75 percent requirement effective on a year around basis.

The current minimum grade requirements for fresh Florida limes

have been in effect on a continuous basis for several seasons. These grade requirements are designed to ensure that all fresh lime shipments are of good quality, thereby providing consumer satisfaction essential for the successful marketing of the crop. These grade requirements are intended to improve buyer confidence and increase consumption of limes, while continuing to provide the trade and consumers with an adequate supply of quality limes. Florida lime growers and handlers have found such requirements beneficial in the successful marketing of their lime crops in the past. Recent marketing research studies indicate that consumers prefer higher quality seedless limes. Moreover, a recent USDA inspection data study indicates that handlers' lime shipments are currently averaging well above 75 percent U.S. No. 1 grade fruit even though only 60 percent is required. The application of tighter grade requirements for the entire season is intended to provide fresh markets with higher quality fruit which consumers prefer on a year around basis. Providing fresh markets with the quality of fruit desired is an important aspect of creating consumer satisfaction and increasing sales opportunities. Ample supplies of higher quality limes are available to meet consumer demand.

The proposed tighter grade requirements for Florida limes were unanimously recommended by the Florida Lime Administrative Committee (committee) at its meeting of April 12, 1989. The committee works with the Department in administering the marketing agreement and order program. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida limes. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida lime shipments are exempt from grade requirements. Handlers may ship up to 55 pounds of limes during any one day under a minimum quantity exemption, and may make gift shipments in individually addressed containers of up to 20 pounds of limes each. Also, limes utilized in commercial processing are not covered by the grade requirements.

This proposed action would also amend paragraph (b) of § 911.344 to update language pertaining to the United States Standards for Grades of Persian (Tahiti) Limes.

Section 8e of the Act (7 U.S.C. 608e-1) requires that whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Lime import grade requirements are specified in § 944.209 (7 CFR 944.209) issued under Section 8e of the Act. That section provides that fresh limes imported into the United States must meet the same minimum grade and size requirements specified in § 911.344 for limes grown in Florida. Since this proposed action would change the grade requirements for Florida grown limes, the proposed changes would also apply to imported limes. However, no change to the text of § 944.209 is needed by this proposed action. An exemption provision in the lime import regulation permits persons to import up to 55 pounds of limes at one time exempt from such import requirements.

The proposals specified herein reflect the committee's and the Department's appraisal of the need to change the grade requirements applicable to domestic shipments of limes. The Department's view is that the proposed changes would not adversely impact lime growers, handlers, and importers. The application of grade requirements over the past several years have helped to assure shipments of good quality limes to fresh markets. The committee considers that the proposed tighter grade requirements for Florida limes are needed to improve grower returns. Although compliance with grade requirements affects costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of good quality limes.

This proposed rule also would delete unnecessary language from the introductory text of § 911.344(a).

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

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, limes, Florida.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

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

2. Section 911.344 is amended by revising the section heading, (a) introductory text, and paragraphs (a)(2) and (b) to read as follows:

§ 911.344 Florida lime grade and size regulation.

(a) No handler shall handle any variety of limes grown in the production area unless:

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided*, that at least 75 percent, by count, of the limes in the lot meet the requirements of the U.S. No. 1 grade, and the remainder meet the requirements of the U.S. No. 2 grade; *provided further*, That stem length shall not be considered a factor of grade; *provided further*, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the United States Standards for Grades of Persian (Tahiti) Limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in § 911.329.

(b) Terms relating to grade and diameter shall mean the same as defined in the United States Standards for Grades of Persian (Tahiti) Limes (7 CFR 51.1000 through 51.1016).

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16274 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 927

[Docket No. FV-89-068]

Proposed Expenses and Assessment Rate for Marketing Order Covering Winter Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 927 for the 1989-90 fiscal year established for that order. The proposal is needed for the Winter Pear Control Committee (Committee) to incur operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by July 21, 1989.

ADDRESSES: 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 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and 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 the regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick, Packnett, Marketing Order Administration Branch, Fruit and Vegetable Divison, AMS, USDA, P O. Box. 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Marketing Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and 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 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the 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 of 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 approximatley 90 handlers of winter pears under this marketing order, and approximately 1,800 winter pear producers in Washington, Oregon, and 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 $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers of winter pears may be classified as small entities.

The winter pear marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate of a particular fiscal year shall apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of pears (in standard boxes or equivalents). 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 Committee 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 Committee will have funds to pay its expenses.

The Budget Subcommittee, a subcommittee of the Winter Pear Control Committee, unanimously recommended proposed 1989-90 fiscal year expenditures of $3,991,464 and an assessment rate of $0.33 per standard box, or equivalent, of assessable pears shipped under M.O. 927 In comparison, 1988-89 fiscal year budgeted expenditures were $3,802,864 and the assessment rate was $0.30.

Major expenditure items this year in comparison to 1988-89 budgeted expenditures (in parentheses) are $3,440,400 ($3,112,660) for paid advertising, $79,643 ($320,191) for contingencies to cover unanticipated expenses, and $200,000 ($145,000) for research designed to improve winter pear yields and quality. The remaining expenses are primarily for program administration and are budgeted at about last year's amounts with the exception of a $24,000 increase in staff salaries.

Assessment income for the 1989-90 fiscal year is expected to total $3,784,440, based on shipments of 11,468,000 packed boxes of pears at $0.33 per standard box or equivalent. Other available funds, including $15,000 in prior year assessments, $20,000 in miscellaneous income, $82,500 in voluntary intrastate assessments, and a reserve of $89,524 carried into this fiscal year, will also be utilized to cover the proposed 1989-90 fiscal year expenditures. The Committee's reserves are within authorized limits.

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 the 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 pear program need to be expedited and the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

The Winter Pear Control Committee plans to meet July 11, 1989, to finalize its recommendation for the proposed expenses and assessment rate for the 1989-90 fiscal year based upon a more accurate crop estimate.

List of Subjects in 7 CFR Part 927

Marketing agreements and orders, Winter pears, Oregon, Washington, and California.

For the reaons set forth in the preamble, it is proposed that 7 CFR Part 927 be amended as follows:

1. The authority citation for 7 CFR Part 927 continues to read as follows:

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

1a. The heading for part 927 is revised as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

2. New § 927.229, is added to read as follows:

§ 927.229 Expenses and assessment rate.

Expenses of $3,991,464 by the Winter Pear Control Committee are authorized, and an asessment rate of $0.33 per standard box, or equivalent, of pears is established for the fical year ending June 30, 1990. Unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

Dated: July 6, 1989

William J. Doyle,

Acting Deputy Director Fruit and Vegetable Division.

[FR Doc. 89-16275 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 947

[Docket No. FV-89-072]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 947 for the 1989-90 fiscal period. Authorization of this budget would enable the Oregon-California Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by July 24, 1989.

ADDRESSES: Interested persons are invited to submit writtten 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 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and 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: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 114 and Marketing Order No. 947 (7 CFR Part 947) regulating the handling of Irish potatoes grown in designated counties in Oregon and California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule 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 50 handlers of Oregon-California potatoes under this marketing order, and approximately 470 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Oregon-California Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Oregon-California potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatotes. 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.

The committee met on June 9, 1989, and unanimously recommended a 1989-90 budget of $37,950 and an assessment rate of $0.004 per hundredweight, the same assessment rate of last year's. The proposed budget is $775 more than last year's due to increases in expenditures for committee expenses and for preparation of the annual report. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 8,100,000 hundredweight, would yield $32,400 in assessment revenue which, when added to $5,550 from reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989-90 fiscal period begins on July 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval of this program needs 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 947

Marketing agreements and orders, potatoes, Oregon and California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 947 be amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR Part 947 continues to read as follows:

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

2. A new § 947.242 is added to read as follows:

§ 947.242 Expenses and assessment rate.

Expenses of $37,950 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16276 Filed 7–11–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 987

[Docket No. FV-89-069]

Proposed Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 987 for the 1989–90 crop year established for that order. The proposal is needed for the California Date Administrative Committee (Committee) to incur operating expenses during the 1989–90 crop year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 11, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 (7 CFR Part 987) regulating the handling of dates produced or packed in Riverside County, 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 1512–1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to the 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 26 handlers of California dates regulated under this marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The California date marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate for a particular crop year shall apply to all assessable dates handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are date handlers and producers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of dates (in hundredweight). 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.

The Committee met on June 8, 1989, and unanimously recommended 1989–90 crop year expenditures of $361,480 and an assessment rate of $1.30 per hundredweight of assessable dates shipped under M.O. 987 In comparison, 1988–89 crop year budgeted expenditures were $394,500 and the assessment rate was $1.30 per hundredweight.

The major expenditure item this year is $325,000 for continuation of the Committee's market promotion program. The industry is faced with a serious oversupply of product dates and the Committee considers this program necessary to stimulate sales. The rest of the anticipated expenditures are for program administration and are budgeted at about last year's amounts with the exception of $5,400 budgeted for liability insurance for the Committee's officers and management.

Income for the 1989–90 season is expected to total $363,550. Such income consists of $362,050 in assessment revenue based on shipments of 27,850,000 pounds of dates and $1,500 in interest income.

The Committee also unanimously recommended that any unexpended funds or excess assessments from the 1988–89 crop year be placed in its reserve. The Committee's reserve is well within the maximum amount authorized under the order.

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 the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 987 be amended as follows:

1. The authority citation for 7 CFR Part 987 continues to read as follows:

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

2. New § 987.334, is added to read as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

§ 987.334 Expenses and assessment rate.

Expenses of $361,480 by the California Date Administrative Committee are authorized, and an assessment rate of $1.30 per hundredweight of assessable dates is established for the crop year ending September 30, 1990. Unexpended funds from the 1988-89 crop year may be carried over as a reserve.

Dated: July 7 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-16327 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 989

[Docket No. FV-89-035PR]

Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on increasing handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the Raisin Administrative Committee (RAC) and also for reserve tonnage raisins held beyond the crop year of acquisition under the California raisin marketing order. Handlers' compensation for receiving, storing, fumigating, and handling reserve tonnage raisins would increase form $38.75 per ton to $40.00 per ton. Additional payment for receiving, storing, fumigating, and handling reserve tonnage raisins held beyond the crop year of acquisition would also be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30, and from $1.00 per ton to $1.03 per ton for each month of the next nine months. This action was recommended by the RAC, the agency responsible for local administration of the order. The proposed changes more closely reflect current industry costs.

DATES: Comments must be received by July 27 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Martha B. Ransom, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes 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 No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this 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 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

This proposed rule invites comments on increasing handler compensation under the California raisin marketing order. This action would increase the rates at which handlers are paid for receiving, storing, fumigating, and handling reserve tonnage raisins and also for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Both of these changes were recommended by the RAC.

The marketing order authorizes, for the total annual California raisin crop, the establishment of final free and reserve percentages for volume regulation purposes. Raisins in the reserve percentage category must be held by handlers in a reserve pool on handlers' premises for the account of the RAC. Currently, for example, handlers are free to market 70 percent of the Natural (sun-dried) Seedless raisins they receive and must hold 30 percent in reserve. This proposed rule would increase the compensation rate for receiving, storing, fumigating, and handling reserve tonnage raisins acquired by handlers during a particular crop year and held for the account of the RAC and for reserve tonnage raisins held by handlers beyond the crop year of acquisition for the account of the RAC. Since August 1, 1983, handlers have been compensated at a rate of $38.75 per ton for providing these services. Additional payment for reserve tonnage raisins held beyond the crop year of acquisition has been $1.94 per ton for each month of the three-month period ending November 30, and $1.00 per ton for each month of the next nine months.

The RAC conducted a survey among handlers on the cost of receiving, storing, fumigating, and handling the 1988-89 raisin reserve pool. The RAC determined that costs ranged from approximately $30.00 per ton to approximately $57.00 per ton. Therefore, the RAC recommended that the compensation rate be increased from $38.75 per ton to $40.00 per ton to more closely reflect increases in the costs for handlers to provide services on reserve pool raisins. In addition, the RAC

recommended that payment to handlers for reserve held beyond the end of the crop year be increased proportionately. Therefore, additional payment for reserve tonnage raisins held beyond the crop year of acquisition would be increased from $1.94 per ton to $2.00 per ton for each month of the three-month period ending November 30, and from $1.00 per ton to $1.03 per ton for each month of the next nine months.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is deemed adequate because the changes, if adopted, should be in effect for the new crop year which begins on August 1.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

Subpart—Schedule of Payments

2. Section 989.401 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of $40.00 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Raisin Administrative Committee during all or any part of the same crop year.

(2)

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling and fumigating such raisins at the rate of $2.00 per ton per month, or any part thereof, for each month of the three-month period ending November 30, and $1.03 per ton per month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

Dated: July 6, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–16277 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number: 1136–89]

RIN Number 1115–AB17

Appeals, Precedents, Certifications, and Motions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: The Immigration and Naturalization Service proposes to clarify sections of its regulations on appeals, precedent decisions, certifications, and motions and to increase the time periods for submission of certain appeals and briefs. The purpose of the changes is to streamline the Service's review of certain decisions. The proposed changes would increase the number of complete appeals filed with any supporting briefs and make requirements easier to understand.

DATE: Comments must be received on or before August 11, 1989.

ADDRESS: Written comments should be submitted, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Thomas W. Simmons, Chief, Administrative Appeals Unit, Immigration and Naturalization Service, 425 I Street, NW. (Vermont 400), Washington, DC 20536, (202) 376–2084.

SUPPLEMENTARY INFORMATION: The proposed rule would amend Immigration and Naturalization Service regulations on appeals and precedent decisions at 8 CFR 103.3, certifications at 8 CFR 103.4, and motions at 8 CFR 103.5. The Service believes the proposed changes would benefit the public because they would simplify the processing of appeals and certifications within the Service's jurisdiction, give the public more generous time periods to prepare certain cases for review after unfavorable decisions are made, consolidate into the regulations existing policies and procedures, and make the requirements and procedures easier for the public to understand. The Service also believes that 30 days is enough time to comment on the proposed changes since they are either procedural or editorial in nature.

Background

Review of Decisions

The immigration and nationality regulations state whether decisions under these regulations may be appealed and, if so, to which appellate body. The regulations also provide for other ways a decision may be reviewed. One way is for a case to be certified to another official for review. Another way is for a proceeding to be reopened or reconsidered as a result of a motion.

Appellate Bodies

There are two appellate bodies which consider cases under the Immigration and Nationality Act, the Board of Immigration Appeals (Board), under the Director, Executive Office for Immigration Review (EOIR), and the Administrative Appeals Unit (AAU), under the Associate Commissioner, Examinations. The Legalization Appeals Unit (LAU), a separate unit within the AAU, considers appeals provided for by the Immigration Reform and Control Act of 1986, Pub. L. 99–603. Cases under the Board's appellate jurisdiction are listed in 8 CFR 3.1(b). Cases under the Associate Commissioner's appellate jurisdiction are listed in 8 CFR 103.1(f)(2).

Discussion of Proposed Amendments

Filing AAU Appeal

Under current regulations at 8 CFR 103.3(a)(1), an AAU appeal in other than an LAU (special agricultural worker or legalization) case must be filed within 15 days of service of the decision. When the affected party desires additional time to submit a supporting brief, the request is made to the office which made the original decision. If additional

time is granted, the affected party submits the brief to that office.

This procedure often delays forwarding the appeal case to the AAU. Furthermore, sometimes the brief does not arrive in the office which made the original decision before the case is sent to the AAU. In such a situation, the AAU normally writes to the affected party to request a copy of the brief.

Proposed 8 CFR 103.3(a)(2) would allow AAU appeals in other than LAU cases to be filed within 30 days of the date of the decision. The new time period would be from the date of the notice, not the date of service of the notice, because the former is far easier to determine. Requests for additional time to submit a brief would be made directly to the AAU. The AAU could allow additional time for good cause shown.

The proposed change would allow more time to submit complete appeals including any supporting briefs and expedite the movement of appeal cases to the AAU. The 30-day appeal period would be consistent with the time now allowed for LAU appeals.

Improperly Filed AAU Appeal

Under current Service procedures on non-LAU cases, an AAU appeal filed by a person not entitled to file it (for example, the beneficiary of a sixth preference petition instead of the petitioner) must be rejected. If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is to be returned to that person for submission of such a form, if applicable.

Similarly, an untimely appeal must be rejected as improperly filed. However, if an untimely appeal meets the requirements of a motion, it is to be treated as a motion.

Proposed 8 CFR 103.3(a)(2)(ii) is based on the above existing procedures regarding improperly filed appeals. Under current procedures, any fee which the Service has accepted is to be refunded when an improperly filed appeal is rejected. The proposed regulations, on the other hand, provide that the fee would not be refunded in such a case. The Service has significant handling costs even when an appeal is rejected. Further, refund of the fee is time-consuming for the Service and is, therefore, inappropriate when a member of the public has caused the error. This is consistent with the current "fee for filing" approach.

AAU Appeal Treated as Motion When Favorable Action Taken

Existing Service operations instruction 103.5(d) and the Service's "Examinations Handbook" provide that a field office treat an appeal from denial of an application or petition which is still in that office as a motion to reopen or reconsider if favorable action is taken. Proposed 8 CFR 103.3(a)(2)(iii) would provide regulatory authority for such a procedure with respect to AAU appeals in other than LAU cases.

Under the proposal, this procedure for treating an appeal as a motion would also apply to cases other than those involving applications and petitions. The proposal provides further that, if the affected party moves to a new jurisdiction, the case must be forwarded to the official who has jurisdiction for appropriate action.

The proposal contains the additional provision allowing the official having jurisdiction over the original decision to take favorable action within 45 days of receipt of the appeal. Otherwise, under proposed 8 CFR 103.3(a)(2)(iv), the appeal is to be forwarded to the AAU for consideration. The proposed 45-day requirement is similar to the current requirement in Board and LAU cases.

AAU Review of Appeals

Current 8 CFR 103.3(b) provides for dismissal of appeals when the appellant does not specify the reasons for the appeal or the appeal is "patently frivolous. This wording is not contained in the proposed regulations because the AAU considers the merits of all appeals.

Submission of Brief in Service Certification Proceedings

At present, Service regulations at 8 CFR 103.4(a) allow 10 days from receipt of a notice of certification within which to submit a brief. (There is an exception, however, in legalization cases, where 8 CFR 245a.2(r) allows 30 days from the date of service.) Under current procedures the brief must be submitted to the official who made the initial decision. Proposed 8 CFR 103.4(a)(2) would allow 30 days from the date of a notice of certification to a Service officer for submission of a brief. The brief would be submitted directly to the officer to whom it is certified. The affected party could, however, waive the 30-day period.

The more generous time period is reasonable since cases which are certified to another official often involve unusually complex or novel questions of law or fact. The new time period would be from the date of the notice for reasons previously stated. Submission of the brief, if any, directly to the official to whom the case is certified would expedite its movement.

Service Rejection of Deficient Motion

Proposed 8 CFR 103.5(a)(4) is based on the procedure described in the "Examinations Handbook" for the Service to reject deficient motions. A motion to reopen which does not state new facts to be proved and/or is not supported by affidavits or other evidence would be rejected as deficient. A motion to reconsider which does not state reasons for reconsideration would also be rejected.

The "Examinations Handbook" provides for refund of the fee when a motion is rejected. The proposed regulations, on the other hand, provide that any fee which has been accepted would not be refunded in such a case for reasons already explained about rejection of improperly filed appeals.

Even so, within 60 days of rejection of a motion, the Service would act on a previously deficient motion which has been corrected. No fee would be required in such a case as long as the filing fee has already been paid and accepted by the Service.

Submission of Motion

Current regulations at 8 CFR 103.5(a) state a motion must be submitted to the district director in whose district the proceeding was conducted. Proposed 8 CFR 103.5(a)(1)(ii)(F) would provide for submission of a motion to the Service office maintaining the record upon which the unfavorable decision was made. This change takes into consideration the fact that regional service centers now also house files.

Proposed 8 CFR 103.5(a)(1)(ii)(A) provides that a motion be signed. Proposed 8 CFR 103.5(a)(1)(ii)(B) provides that a motion addressed to a Service officer be submitted without any copies.

Decision Which May Be Unfavorable to Affected Party

In the current regulations at 8 CFR 103.5(a), when a Service officer is the moving party, a motion must be served on the affected party. The affected party has 10 days from the date of service within which to submit a brief. Under proposed 8 CFR 103.5(a)(5)(iii), the procedure would be the same when a Service officer files a motion in a proceeding within the jurisdiction of the Board or of an immigration judge.

Under proposed 8 CFR 103.5(a)(5)(ii), when a Service decision made as a result of a Service motion may be

unfavorable to the affected party, the affected party would be allowed 30 days from the date of the motion to submit a brief. The affected party could, however, waive the 30-day period. The more generous time period is consistent with new time frames being proposed in appeal and certification cases.

Other Proposed Amendments

Proposed 8 CFR 103.3(a)(1)(iii)(B) defines affected party for purposes of this regulation. Proposed 8 CFR 103.1(f)(1)(v) changes the title of the Chief of AAU to Director.

In addition, the current regulations have been amended to explain existing requirements and procedures more clearly. The following proposed amendments would give additional information to make various current requirements and procedures more understandable to the public:

Proposed 8 CFR 103.3(a)(1)(ii) clarifies that certain unfavorable decisions in cases other than applications and petitions may be appealed. It also states which immigration and nationality regulations list the types of cases which may be appealed to the two appellate bodies.

Proposed 8 CFR 103.3(a)(1)(iv) explains the function of the AAU.

Proposed 8 CFR 103.4(a)(1) refers to the authority of the Director of the newly established National Fines Office to certify cases.

Proposed 8 CFR 103.4(a)(6) and 103.5(a)(7) provide regulatory authority for granting oral argument before the AAU regarding certification proceedings and motions.

Proposed 8 CFR 103.5(a)(5)(i) clarifies that when a Service decision made as a result of a Service motion is favorable to the affected party, the motion and the favorable decision are to be combined in one action.

Proposed 8 CFR 103.5(a)(6) clarifies that a field office decision made as a result of a motion may be appealed to the AAU only if the original decision was appealable.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in Section 1(b) of E.O. 12992, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Aliens, Authority delegation, Organization and functions.

Accordingly, Part 103, Chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1160, 1201, 1255a, 1303–1304, 1455; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166.

2. Section 103.1 is amended by revising paragraph (f)(1)(v) to read as follows:

§ 103.1 Delegations of authority.

(f)

(1)

(v) Director, Administrative Appeals Unit, and

3. Section 103.3 is amended by removing paragraphs (d) and (e), by redesignating paragraph (a)(2) as paragraph (a)(3), by adding new paragraph (a)(2), and by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) *Denials and appeals*—(1) *General*—(i) *Denial of application or petition.* When a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I–292 (a denial form including notification of the right of appeal) is used to notify the applicant or petitioner, the duplicate of Form I–292 constitutes the denial order.

(ii) *Appealable decisions.* Certain unfavorable decisions on applications, petitions, and other types of cases may be appealed. Decisions under the appellate jurisdiction of the Board of Immigration Appeals (Board) are listed in § 3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in § 103.1(f)(2) of this part.

(iii) *Appeal*—(A) *Jurisdiction.* When an unfavorable decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, "affected party" (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with Part 292 of this chapter.

(C) *Record of proceeding.* An appeal and any cross-appeal or briefs become part of the record of proceeding.

(D) *Appeal filed by Service officer in case within jurisdiction of Board.* If an appeal is filed by a Service officer, a copy must be served on the affected party.

(iv) *Function of Administrative Appeals Unit (AAU).* The AAU is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations.

(2) *AAU appeals in other than special agricultural worker and legalization cases*—(i) *Filing appeal.* The affected party shall file an appeal on Form I–290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief at the office where the unfavorable decision was made within 30 days of the date of the decision.

(ii) *Improperly filed appeal*—(A) *Rejection of appeal filed by person or entity not entitled to file it.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(B) *Appeal by attorney or representative without proper Form G–28.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G–28) entitling that person to file the appeal, the appeal is considered improperly filed. Such an appeal must be returned to that person for submission of such a form, if applicable. The appeal may be considered properly filed as of its original filing date if it is resubmitted with a properly executed Form G–28 entitling that person to file the appeal. In such a case, no fee is required as long as the filing fee has already been paid and accepted by the Service.

(C) *Untimely appeal.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. However, if an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

(iii) *Appeal treated as motion when favorable action taken.* The official having jurisdiction at the office where the unfavorable decision was made shall review the appeal and decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action. If the affected party moves to a new jurisdiction, the case must be forwarded to the official who has jurisdiction for appropriate action.

(iv) *Forwarding appeal to AAU.* If the reviewing official does not take favorable action within the 45 days allowed or decides favorable action is not warranted, that official shall promptly forward the appeal and the relating record of proceeding to the AAU in Washington, DC.

(v) *Brief.* The affected party may submit a brief with Form I-290B.

(vi) *Additional time to submit a brief.* The affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one.

(vii) *Where to submit supporting brief if additional time is granted.* If the AAU grants additional time, the affected party shall submit the brief directly to the AAU.

(viii) *Withdrawal of appeal.* The affected party may withdraw the appeal, in writing, before a decision is made.

(ix) *Decision on appeal.* The decision must be in writing. A copy of the decision must be served on the affected party and the attorney or representative of record, if any.

(b) *Oral argument regarding appeal before AAU*—(1) *Request.* If the affected party desires oral argument, the affected party must explain in writing specifically why oral argument is necessary. For such a request to be considered, it must be submitted within the time allowed for meeting other requirements.

(2) *Decision about oral argument.* The Service has sole authority to grant or deny a request for oral argument. Upon approval of a request for oral argument, the AAU shall set the time, date, place, and conditions of oral argument.

(c) *Service precedent decisions.* In addition to Attorney General and Board decisions referred to in § 3.1(g) of this chapter, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in § 103.9(a) of this part.

4. Section 103.4 is amended by revising paragraph (a) to read as follows:

§ 103.4 Certifications.

(a) *Certification of other than special agricultural worker and legalization cases*—(1) *General.* The Commissioner or the Commissioner's delegate may direct that any case or class of cases be certified to another Service official for decision. In addition, regional commissioners, regional service center directors, district directors, officers in charge in districts 33 (Bangkok, Thailand), 35 (Mexico City, Mexico), and 37 (Rome, Italy), and the Director, National Fines Office, may certify their decisions to the appropriate appellate authority (as designated in this chapter) when the case involves an unusually complex or novel issue of law or fact.

(2) *Notice to affected party.* When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I-290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days of the date of the notice. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(3) *Initial decision.* A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision is made.

(4) *Certification to AAU.* A case described in paragraph (a)(3) of this section may be certified to the AAU.

(5) *Appeal to Board.* In a case within the Board's appellate jurisdiction, an unfavorable decision of the Service official to whom the case is certified (whether made initially or upon review) is the decision which may be appealed to the Board under § 3.1(b) of this chapter.

(6) *Other applicable provisions.* The provisions of § 103.3(a)(2)(ix) of this chapter also apply to decisions on certified cases. The provisions of § 103.3(b) also apply to requests for oral argument regarding certified cases considered by the AAU.

5. Section 103.5 is amended by revising paragraph (a) to read as follows:

§ 103.5 Reopening or reconsideration.

(a) *Motions to reopen or reconsider in other than special agricultural worker and legalization cases*—(1) *When filed by affected party*—(i) *General.* Except where the Board has jurisdiction and as otherwise provided in Part 242 of this chapter, when the affected party files a motion, the official who has jurisdiction over the proceeding or who made the original decision may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

(ii) *Filing requirements.* A motion may be accompanied by a brief. It must be—

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) In triplicate if addressed to the Board, in duplicate if addressed to an immigration judge, without any copies if addressed to a Service officer;

(C) Accompanied by the fee required by § 103.7 of this part;

(D) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(E) Addressed to the official who has jurisdiction over the motion; and

(F) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction over the motion.

(iii) *Effect of motion or subsequent application or petition.* Unless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition after an unfavorable decision does not stay execution of any decision in a case or extend a previously set departure date.

(2) *Requirements for motion to reopen.* A motion to reopen must—

(i) State the new facts to be proved at the reopened proceeding; and

(ii) Be supported by affidavits or other documentary evidence.

(3) *Requirements for motion to reconsider.* A motion to reconsider must—

(i) State the reasons for reconsideration; and

(ii) Be supported by any pertinent precedent decisions.

(4) *Deficient motion in Service case*—(i) *Motion to reopen.* A Service officer considering a motion to reopen shall reject a motion as deficient and not refund any filing fee the Service has accepted when the motion does not state the new facts to be proved or when it is not supported by affidavits or other documentary evidence.

(ii) *Motion to reconsider.* A Service officer considering a motion to reconsider shall reject a motion as deficient and not refund any filing fee the Service has accepted when the motion does not state the reasons for reconsideration.

(iii) *Correction of deficient motion.* If the affected party corrects the deficiency within 60 days of rejection of a motion, the Service officer having jurisdiction shall act upon the original motion and make a decision on the merits of the case. There is no fee for correction of a deficient motion within 60 days of its rejection as long as the filing fee has already been paid and accepted by the Service.

(5) *Motion by Service officer*—(i) *Service motion with decision favorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision in order to make a new decision favorable to the affected party, the Service officer shall combine the motion and the favorable decision in one action.

(ii) *Service motion with decision which may be unfavorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the Service officer shall give the affected party 30 days from the date of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(iii) *Proceeding within jurisdiction of Board or immigration judge.* When a Service officer is the moving party in a proceeding within the jurisdiction of the Board or of an immigration judge, a copy of the motion must be served on the affected party. The motion and proof of service must be filed with the official having jurisdiction. The affected party has 10 days from the date of service to submit a brief. This time period may be extended as provided in §§ 3.8(c) and 3.22(b) of this chapter.

(6) *Appeal to AAU from Service decision made as a result of a motion.* A field office decision made as a result of motion may be appealed to the AAU only if the original decision was appealable to the AAU.

(7) *Other applicable provisions.* The provisions of § 103.3(a)(2)(ix) of this chapter also apply to decisions on motions. The provisions of § 103.3(b) also apply to requests for oral argument regarding motions considered by the AAU.

Dated: April 17 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-16330 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 89-07]

Regatta; Richland, Washington, West Coast Outboard Championship Hydro Races

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Richland, Washington, the Coast Guard is considering adopting Special Local Regulations for the Richland, Washington, 1989 West Coast Outboard Championship Hydro Races. The temporary regulation would permit the closure of a section of the Columbia River from Mile 337 to Mile 339 between the hours of 6:00 a.m. p.d.t. and 6:00 p.m. p.d.t. on Friday, Saturday, and Sunday, August 18, 19, and 20, 1989. This proposal is designed to promote the safety of life and property on navigable waters during the event.

DATES: Comments must be received on or before August 1, 1989.

ADDRESSES: Comments should be mailed to Commander, U. S. Coast Guard Group, 6767 N. Basin Avenue, Portland, Oregon 97217 The comments and other materials referenced in this notice will be available for inspection and copying at U. S. Coast Guard Group, 6767 N. Basin Avenue, Portland, OR 97217 Mount Adams Building, Room 3210. Normal office hours are between 7:15 a.m. and 3:45 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: BMC F.L. Casanova, Port Management Branch, U.S. Coast Guard Marine Safety Office, 6767 N. Basin Avenue, Portland, Oregon 97217 (503) 240-9319.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD13 89-07 and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are BMC F L. Casanova, Project Officer, U. S. Coast Guard Group Portland, Oregon and Lt. Deborah Schram, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations: During the past two years, the City of Richland, Washington has served as the host city for the West Coast Outboard Championship Hydro Races. While these past races were highly successful, they demonstrated that some refinement and modifications are both necessary and desirable. One such refinement involves the control of boat traffic around and through the race course during both the preparatory activities and the actual race. The City of Richland and the race's sponsors, the Sunfest Association and the Seattle Outboard Association are now seeking Coast Guard assistance in maintaining traffic control by closing the affected section of the Columbia River, Mile 337 to 339 in Richland, Washington between the hours of 6:00 a.m. p.d.t. and 6:00 p.m. p.d.t. on Friday, Saturday, and Sunday, August 18, 19 and 20, 1989. The Coast Guard is proposing to promulgate Special Local Regulations governing the Richland, Washington West Coast Championship Hydro Races (33 CFR 100.35).

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These regulations will affect a short section of the Columbia River which experiences no commercial traffic. The regulations will be in effect for only three days and two of those days are Saturday and Sunday. The Coast Guard Patrol Commander will allow any commercial traffic to transit the area between races.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Regattas and Marine Parades.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T1302 is added to read as follows:

§ 100.35T1302 Richland, Washington 1989 West Coast Outboard Championship Hydro Races

(a) *Regulated area.* By this regulation, the Coast Guard will restrict general navigation on the waters of the Columbia River from River Mile 337 to River Mile 339 in Richland, Washington between the hours of 6:00 a.m. p.d.t. and 6:00 p.m. p.d.t. on Friday, Saturday, and Sunday, August 18, 19, and 20, 1989. This restricted area includes all waters between the above mile marks and is approximately 2 miles long.

(b) *Special local regulations.* (1) Persons or vessels (other than official vessels) shall not enter or remain in the regulated area described in paragraph (a) during the hours that this regulation is in effect. The Patrol Commander is empowered to control the movement of vessels in the regulated area described in paragraph (a) and the adjoining waters during the period this regulation is in effect.

(2) Patrol of the described area will be under the direction of Commander, Coast Guard Group Portland, who will designate a Patrol Commander. The Patrol Commander will be embarked on the Coast Guard vessel on scene. The Patrol Commander is empowered to forbid vessels or persons from entering the regulated area described in paragraph (a) of this section during the hours this regulation is in effect.

(3) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled to stop shall comply with the orders of the patrol vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) *Effective dates:* These regulations become effective on August 18, 19, and 20, 1989, from 6:00 a.m. p.d.t. to approximately 6:00 p.m. p.d.t.

Dated: June 13, 1989.

R. E. Kramek,

Rear Admiral, U. S. Coast Guard Commander, Thirteenth Coast Guard District, DOT-U.S. Coast Guard.

[FR Doc. 89-16258 Filed 7-11-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. 96; FRL-3614-4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Revisions to the State of New Jersey Implementation Plan and Attainment Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is todav announcing its proposed approval of the New Jersey Air Quality State Implementation Plan (SIP) for particular matter. On July 1, 1987 EPA promgulated new ambient air quality standards (NAAQS) for particulate matter which are based upon the measurement of particles having an aerodynamic diameter of 10 microns or less (PM_{10}). Consequently, states are required to develop plans which provide for attainment and maintenance of the new standards. The New Jersey statewide SIP revision demonstrates that the existing SIP for total particulate (TSP) is adequate to provide for attainment and maintenance of the PM_{10} standards.

This notice also announces EPA's proposed approval of a request from the State of New Jersey to revise the air quality TSP designation for areas in the following Air Quality Control Regions (AQCRs): New Jersey-New York-Connecticut Interstate AQCR; and Metropolitan Philadelphia Interstate AQCR. Specifically, this action means that the air quality in these locations will now be designated as "unclassifiable" with respect to particulate matter.

DATE: Comments must be received by August 11, 1989.

ADDRESSES: All comments should be addressed to: William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York, 10278.

Copies of the state submittal are available at the following addressed for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

New Jersey Department of Environmental Protection, 401 East State Street, CN-027 Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517

SUPPLEMENTARY INFORMATION:

I. Background

In 1971, EPA promulgated primary and secondary national ambient air quality standards (NAAQS) for particulate matter, measured as "total suspended particulate matter" or "TSP The primary standards were set at 260 $\mu g/m^3$ 24-hour average not to be exceeded more than once per year, and 75 $\mu g/m^3$ annual geometric mean. The secondary standard, also measured as TSP was set at 150 $\mu g/m^3$ 24-hour average not to be exceeded more than once per year. In accordance with sections 108 and 109 of the Clean Air Act (CAA), EPA has reviewed and revised the health and welfare criteria upon which the primary and secondary particular matter standards were based.

In a **Federal Register** notice published on July 1, 1987 (52 FR 24634), EPA announced its final decisions regarding changes to the particular matter standards. Specifically, (1) TSP was replaced as the indicator for determining attainment of particular matter standards by a new indicator that consists of measuring only particles with an aeodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}); (2) replacing the 24-hour primary standard with a 24-hour PM_{10} standards of 150 ug/m^3 with no more than one expected exceedance per year; (3) replacing the annual primary TSP standard with a PM_{10} standard of 50 $\mu g/m^3$ expected annual arithmetic mean; and (4) replacing the secondary TSP standard with 24-hour and annual PM_{10} standards that are identical in all respects to the primary standards.

The new PM_{10} indicator was selected since it includes all the particles small enough to cause the adverse health effects associated with breating particle-

laden air. These smaller particles are detrimental to human respiratory health due to their ability to penetrate the sensitive alveolar regions of the lung.

A. Group Designations

Because PM_{10} air quality data was lacking in most areas of the country, EPA could not arbitrarily designate areas of attainment/nonattainment. EPA then developed an analysis using historical ambient TSP data and any available PM_{10} data to classify all counties in the nation into one of three groups based upon the statistical probability of not attaining the new PM_{10} standards. EPA has classified the following: (1) Areas with a probability of not attainment the PM_{10} standard of at least 95 percent as "Group I, (2) areas with a prbability of not attaining the PM_{10} standard of between 20 and 95 percent as "Group II," and (3) areas with a probability of not attaining the PM_{10} standard of less than 20 percent as "Group III. All areas are currently conducting ambient monitoring to determine whether actual ambient PM_{10} concentrations are above or below the PM_{10} NAAQS.

B. SIP Revisions

For Group I areas, a State Implementation Plan (SIP) is required with sufficient PM_{10} control strategies included to demonstrate attainment and maintenance of the standard. For Group II areas, the state must submit a "committal" SIP that supplements the existing TSP SIP with enforceable commitments. Specifically, commitments include: plans to collect and analyze PM_{10} ambient air quality data; and report violations to the EPA Region II Office. For Group III areas, existing SIP documents are adequate but the SIP revision must include provisions for the Prevention of Significant Deterioration (PSD) and PM_{10} monitoring. A full SIP revision would be required for a Group II of Group III area if a monitoring site records four exceedances of the PM_{10} 24-hour standard over a three year period or less, or if the PM_{10} annual arithmetic mean is greater than 50 $\mu g/m^3$ based on three consecutive years of data.

Each SIP for particulate matter must be revised as follows: (1) To include state ambient air quality standards for PM_{10} at least as stringent as the NAAQS; (2) to trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions; (3) to invoke the emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 $\mu g/m^3$ (4) to meet ambient PM_{10} monitoring requirements of 40 CFR Part 58; and (5) to meet the requirements of 40 CFR 53.322 and 51.323 to report actual emissions of PM_{10} (beginning with emissions for calendar year (CY) 1988) for point sources emitting 100 tons per year or more.

II. SIP Content and Review

On May 31, 1988 the State of New Jersey submitted a SIP for PM_{10} which contains the following: (1) Current particulate air quality data for the two Group II urban areas of Camden and Jersey City; (2) description of existing and proposed PM_{10} monitoring networks for the entire State; (3) air quality control of particulate matter under existing regulations and controls; (4) PSD from new sources and modifications and; (5) additional commitments for the two urban areas of Camden and Jersey City including an exceptional event study at the PJP landfill on August 23, 1985 in Jersey City. In New Jersey, EPA has designated Camden and Jersey City as Group II areas. The rest of the State is designated as Group III.

A. Monitoring

Since 1983, EPA has been assisting in and encouraging states to develop PM_{10} monitoring networks. As a result, New Jersey has PM_{10} instruments operating at 16 monitoring sites where TSP concentrations had historically been high and/or where local emission sources contribute to PM_{10} concentrations. The following sampling frequencies are being observed for the different areas in New Jersey: (1) Group II areas require for one year or its equivalent, every other day PM_{10} sampling at the site of maximum concentration with other sites on a six day sampling schedule and; (2) for Group III area, PM_{10} monitoring is in a sixth day schedule at any site.

B. Pre-Construction Review, New Source Review (NSR) and Prevention of Significant Deterioration (PSD)

New source review in TSP nonattainment areas will continue to be covered under the New Jersey Air Pollution Control Act (New Jersey Statutes Annotated (N.J.S.A.) 26:2c-1 et. seq.) (Attachment 5 of State Submittal). This provides the authority to require permits to construct, install or alter control apparatus. Also, the applicant must demonstrate, to the satisfaction of the New Jersey Department of Environmental Protection (NJDEP), that the equipment incorporates advances in the art of air pollution control developed for the kind and amount of air contaminant emitted.

NJDEP has promulgated regulations under Title 7 Chapter 27 of the New Jersey Administrative Code (N.J.A.C.), to address the control of particulate emissions from activities and source operations (see attachments 6 through 15 of the State submittal). In enforcing the state-of-the art requirement, NJDEP requires emission rates which are at least as stringent as the EPA definition of "best available control technology. N.J.A.C. 7:27-8 requires a new permit for new modified sources regardless of the magnitude of the emission increase. Therefore, an increase which may be defined as "significant" is regulated by the NSR/PSD program regardless of whether it is TSP or PM_{10}.

With respect to PSD, EPA has delegated authority to NJDEP to enforce the federal PSD program. Once TSP areas have been designated as attainment or unclassifiable, all new or modified construction at a major facility must conform to PSD review. TSP increments will continue to be used under PSD review until new PM_{10} increments are established. The emission limits which are assumed to protect the NAAQS in the Group III areas are cited in N.J.A.C. 7:27-4 and 7:27-6. Additionally, N.J.A.C. 7:27-13, Ambient Air Quality Standards, (Attachment 13 of the State submittal) has been revised to incorporate the PM_{10} standards.

C. Regulations and Consent Orders

The State of New Jersey is maintaining all existing regulations and/or consent orders which pertain to particulate control. However, regulations and/or consent orders are revised to include PM_{10} as the new NAAQS.

D. Annual National Emissions Data System (NEDS) Emissions Data Reporting

The state of New Jersey reports actual and/or allowable emissions data for point sources emitting 100 tons/year or more of any criteria pollutant each year. This information is entered by EPA into NEDS. In February, 1989, NJDEP staff has submitted a mail survey package to facilities with allowable total particulate matter (TPM) greater than 100 tons per year (TPY). The plant operators will be required to provide to NJDEP speciated particulate emissions to quantify both TPM emissions and PM_{10} emissions. The end product of the survey (to be completed in August, 1989) will be an inventory of point source allowable and actual TPM emissions, and an inventory of point source allowable and actual

PM_{10} emissions starting with calendar year 1988.

E. Changes to State Emergency Episode Plans

The purpose of air pollution episode levels and contingency plans is to prevent air pollution from reaching the "significant harm levels" prescribed in the Code of Federal Regulations (40 CFR 51.151). The prevention and control of air pollution emergency episodes is regulated by N.J.A.C. 7:21–12 and Administrative Order Number Thirty-Eight (Attachments 12 and 23 of the State submittal).

F Group II Areas—Camden, Camden County and Jersey City, Hudson County

Based on monitored data collected in the City of Camden since May 1, 1985 and in Jersey City since January 13, 1987 EPA has classified these two areas as Group II PM_{10} areas. Consequently, New Jersey has committed to the requirements for Group II areas as stated in the July 1, 1987 notice (52 FR 24681).

(1) PM_{10} Monitoring for New Jersey Group II and Group III Areas

The New Jersey Department of Environmental Protection (NJDEP) has committed resources for the demonstration of the attainment status of the two Group II areas and for the demonstration of maintenance of the PM_{10} NAAQS in the Group III areas in New Jersey.

The attainment status of the Camden urban area will be determined based upon an every-six-day operating schedule in accordance with 40 CFR 58.113. PM_{10} monitoring was initiated at the Morris-Delair Water Treatment Plant, Pennsauken, Camden County, on May 1, 1985. As of December 31, 1988, an arithmetic mean of 35.6 $\mu g/m^3$ was recorded for the three year period.

The attainment status of the Jersey City urban area will be based upon an every-other-day operating schedule in accordance wtih 40 CFR 58.13. PM_{10} monitoring was initiated at the Newark Avenue site, Jersey City, Hudson County on January 13, 1987 As of December 31, 1988 an arithmetic mean of 38.0 $\mu g/m^3$ was recorded at the Newark Avenue site.

(2) The Identification of Air Quality Data Affected by an Exceptional Event at the PJP Landfill on August 23, 1985

NJDEP operates an inhalable particulate (IP) sampler on the roof of the Hudson County Safety and Health Department Building on Duncan Avenue in Jersey City. During the 1985 calendar year, 57 valid samples were collected at that site. On August 23, 1985 the site's sole exceedance of the 24-hour PM_{10} standard for the year, 308 $\mu g/m^3$ was recorded. On the same day, major hazardous site mitigation activities occurred at the PJP Landfill about 0.3 miles away.

In 1977 the PJP Landfill was closed after more than twenty years of operation. However, subsurface fires that were ignited during the mid-1950's continued to smolder. Efforts to extinguish these fires began in August, 1985. The remediation efforts involved the use of an experimental fire fighting foam which was applied to the landfill surface and injected into its subsurface. This was followed by the evacuation, dousing and compaction of the landfill material. After the fire was extinguished, PM_{10} readings at the Duncan Avenue site fell to where the arithmetic mean is 43.5 $\mu g/m^3$ as of December 31, 1988.

On January 28, 1988, NJDEP submitted an exceptional event study for the PJP Landfill and requested that EPA flag the August 23, 1985 reading as an exceptional event. On February 10, 1988, EPA Region II concurred that the long-burning fire at the PJP Landfill constitutes an exceptional event as defined in EPA's "Guidelines on the Identification and Use of Air Quality Data Affected by Exceptional Events" (EPA–450/4–86–007).

(3) Air Quality Control of Particulate Matter

EPA believes existing State regulation as well as both State and Federal Motor Vehicle Emissions Control Programs are sufficient to provide for attainment and maintenance of the PM_{10} standards in the Cities of Camden and Jersey City. Also, the control measures in the existing TSP SIP will continue to be enforced. For the Group II areas of Camden and Jersey City, upon declaring attainment of the NAAQS (within 37 months of promulgation of the standard), NJDEP will cite the federally enforceable emission limits in the existing TSP SIP assumed to protect the NAAQS and establish an emissions trading baseline. Also, for the Group III areas (the rest of the State) NJDEP will site the emission limits in the existing TSP SIP assumed to protect the NAAQS.

(4) Additional commitments for the Group II Areas of Jersey City and the city of Camden

The State of New Jersey has committed to the following:

i. Analyze and verify the ambient PM_{10} air quality data and report 24-hour PM_{10} exceedances to the EPA Region II office within 45 days of each exceedance. After an equivalent monitoring period (three years), analyze air quality data and determine the long term monitoring requirement and attainment status.

ii. Within 30 days of notification of a PM_{10} exceedance or within 30 months of promulgation of the PM_{10} standard, which ever comes first, determine whether the measures in the existing Camden or Jersey City TSP SIP will assure the timely attainment and maintenance of the primary PM_{10} standards and immediately notify EPA Region II.

iii. Within 6 months after notifying EPA Region II of a PM_{10} nonattainment problem, adopt a PM_{10} control strategy that assures attainment within three years from the approval date of the PM_{10} SIP revision for the Camden and Jersey City Group II areas.

(5) Schedule of Activities

The SIP revision shall demonstrate that both daily and annual NAAQS for PM_{10} will not be exceeded. In the City of Camden and Jersey City NJDEP will or has followed the following schedule for attainment demonstration:

—May 1, 1985, PM_{10} monitoring started at the Morris-Delair Water Treatment Plant, Camden County.

—December 31, 1988, monitoring period completed at the Camden site.

—March 31, 1989, attainment status determined for the Camden site.

—January 13, 1987 PM_{10} monitoring started at the Jersey City, Newark Avenue site.

—March 30, 1990, attainment status determined for the Jersey City site.

—August 30, 1989, TSP and PM_{10} actual and allowable emissions data prepared for the Jersey City and Camden areas.

G. Group III Areas

Based on monitored TSP data and some PM_{10} data, the entire State of New Jersey, outside of the City of Camden and Jersey City, is designated as Group III for PM_{10}. As such, EPA believes that the existing TSP SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standard. The State of New Jersey, in its SIP revision, has committed to the monitoring and PSD requirements for Group III areas (see sections B and C of this notice). Any Group II or Group III area which subsequently observe violations of the PM_{10} NAAQS will be treated as a newly discovered non-attainment area. Thus, the State will submit a full control strategy which demonstrates attainment of the PM_{10} standard within three years.

The following AQCRs and AQMAs are designated as Group III for PM_{10} by EPA.

—Parts of the New Jersey-New York-Connecticut AQCR:
  —The City of Newark
  —The City of Elizabeth
  —The City of Linden
  —The Borough of Carteret
  —The Township of Woodbridge
  —The City of Perth Amboy
—Parts of the Philadelphia AQCR (not including Camden)
—New Jersey Interstate AQCR
—Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR

H. Other Administrative Requirements

As part of the public notification process, the State of New Jersey published a notice announcing the availability of the SIP revision in the New Jersey Register on July 29, 1988 and requested comments.

While EPA believes that the State did provide adequate opportunity for public comments, EPA regulations require the State to provide an opportunity for a public hearing. Therefore, the State has been notified that they must provide interested individuals an opportunity to comment and request a public hearing if they have substantial negative comments concerning the proposed approval of this SIP revision. These individuals would have to request this public hearing in writing and provide the basis to support their negative position.

In addition, EPA is providing an opportunity to submit written comments on the proposed SIP revision to the address at the beginning of this notice. All comments shall be considered before a final rulemaking action is taken on this SIP revision.

III. Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for the State of New Jersey

A. 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 EPA a list of NAAQS attainment status designations for all areas within the state. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). Pursuant to 52 FR 24682 in the July 1, 1987 Federal Register, states are encouraged to request the redesignation of TSP nonattainment areas to unclassifiable at the time the PM_{10} control strategy for the area is submitted. When EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, it will also approve the redesignation. Since the State of New Jersey made revisions to the SIP for particulate matter that enable the State to protect the NAAQS for particulate matter having a nominal aerodynamic diameter of 10 microns (PM_{10}), EPA will redesignate TSP Primary or Secondary nonattainment areas in the following AQCRs to unclassifiable:

—New Jersey-New York-Connecticut Interstate AQCR:
  —Hudson County
  —The City of Newark
  —The City of Elizabeth
  —The City of Linden
  —The Borough of Carteret
  —The Township of Woodbridge
  —The City of Perth Amboy
—Metropolitan Philadelphia Interstate AQCR:
  —The City of Camden

One significant result of EPA's rulemaking is that states will no longer be required to subject major new and modified sources of particulate matter to the nonattainment requirements under Part D of the Clean Air Act. That is, because EPA is implementing the PM_{10} NAAQS in accordance with section 110 of the Clean Air Act and will not promulgate any attainment area designations (pursuant to section 107 of the Clean Air Act) for PM_{10}, the nonattainment area NSR requirements contained in paragraph (a) of section 51.165 will not apply to PM_{10}. Furthermore, in light of EPA's delegation of the TSP indicator for the NAAQS, EPA no longer requires states to implement TSP nonattainment area NSR requirements based on Part D of the Clean Air Act.

IV Conclusion

TSP concentrations in the State of New Jersey are predominantly influenced by combustion sources and motor vehicles. Combustion sources are controlled by State regulations through NJDEP's system while the State and Federal Motor Vehicle Control programs limit motor vehicle emissions. Since a large percentage of the particles that are being controlled by these programs have emissions that are less than 10 microns, existing controls and strategies are considered adequate for controlling and maintaining the PM_{10} standard in New Jersey. Air quality has improved in Jersey City after extinguishing the subsurface fires at the PJP Landfill and PM_{10} air quality data indicates that this area as well as the City of Camden should attain and maintain the PM_{10} standards without any new regulations. EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the address at the beginning of this notice.

The revisions are being processed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in the areas other than those identified in this notice, EPA will publish a revised notice of proposed rulemaking. If no substantial changes are made other than those areas identified in this notice, EPA will publish a notice of final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by the State of New Jersey and submitted to EPA for incorporation into the SIP

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan is based on its meeting the requirements of section 110 of the Clean Air Act, and 40 CFR Part 51. Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

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

List of Subjects in 40 CFR Part 52

Air pollution control, particulate matter.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Date: June 29, 1989.

William J. Muszynski,

Acting Regional Administrator, Environmental Protection Agency.

[FR Doc. 89-16348 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 60

[AD-FRL-3614-7]

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Change in date of public hearing and extension of public comment period.

SUMMARY: Standards of performance which would limit emissions of sulfur

dioxide (SO_2), particulate matter (PM), and nitrogen oxides (NO_x) from new, modified, or reconstructed small industrial-commercial-institutional steam generating units with heat input capacities of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour) were proposed in the **Federal Register** on June 9, 1989 (54 FR 24792). The public hearing was scheduled for July 17 1989, and comments were to be received on or before August 17 1989. A request has been made to postpone the public hearing to allow more time for preparation of comments. Therefore, the public hearing has been rescheduled for August 8, 1989, and all comments must be received on or before September 8, 1989.

DATES: *Comments.* Comments must be received on or before September 8, 1989.

Public Hearing. A public hearing will be held on August 8, 1989, beginning at 10:00 a.m. Assistance will be available for persons with hearing impairments.

Request to Speak at Hearing. Persons wishing to present oral testimony must request to speak at the public hearing by August 1, 1989.

ADDRESSES: *Public Hearing.* The public hearing will be held at the EPA's Office of Administrative Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland [(919) 541-5265] or Mr. Fred Porter [(919) 541-5251], Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711.

Date: July 7, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-16347 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 82

[FRL-3575-3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed revisions to rule.

SUMMARY: Today's notice proposes several amendments to EPA's August 12, 1988 rule (53 FR 30566) implementing the Montreal Protocol on Substances that Deplete the Ozone Layer. These amendments are needed to conform EPA's rule with recent agreements reached by the Parties to the Montreal Protocol concerning the implementation of the Protocol. The first proposed amendment implements the Parties' interpretation of "industrial rationalization" a term in the control article of the Protocol. According to the Parties' interpretation, a Party can only increase its production of controlled substances by specified amounts if there is a documented, corresponding decrease in production by another Party, or if the increase in production is exported to Parties operating under Article 5 of the Protocol (In today's notice, the Agency proposes Appendix E, Article 5 Parties" developing countries that are Party to the Protocol and have a per capita consumption of less than .3 kg.). EPA's current rule, however, allows an increase up to the production limits for exports to *any* Party. The second proposed amendment, also based on an agreement reached by the Parties, expands the definition of exports to include used and recycled controlled substances. The Agency also proposes to grant additional allowances or credits to any person who uses controlled substances as a feedstock for other substances. The proposed amendments detail the necessary reporting and recordkeeping requirements. The current rule only grants such allowances to the person who produces and then consumes the controlled substance as a feedstock.

Finally, the Agency proposes a new record keeping requirement for producers of controlled substances. The proposal requires producers to maintain records of the date and estimated quantity of any spills or releases of controlled substances.

DATES: A public hearing on the proposed rule published today will be held on July 27 1989, if any interested party notifies EPA before that date that it wishes to present oral testimony. To request a public hearing or to learn whether and where a public hearing will occur, call the contact person listed below. Written comments on this proposed rule must be submitted to the location listed below by August 11, 1989. If a public hearing is held, information necessary to rebut or supplement oral testimony may be submitted until August 28, 1989.

ADDRESS: Written comments should be sent to Docket No. A-87-20 (Amendments), Air Docket, Room M-1500 Waterside Mall, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12:00 p.m. and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to David Lee at the address listed below.

Three of these amendments increase recordkeeping and reporting for affected persons. Persons who desire to trade rights to produce controlled substances with a Party to the Protocol for the purposes of industrial rationalization must submit a report documenting the agreement with the Party. Any person who desires to receive production and consumption allowances for the use of purchased controlled substances as feedstock must also submit a report documenting the consumption of controlled substances as well as maintain records. Finally, producers must maintain records of any spills of controlled substances that would count toward production.

FOR FURTHER INFORMATION CONTACT: David Lee, Analyst, Office of Atmospheric and Indoor Air Programs, Division of Global Change, Office of Air and Radiation (ANR-445), EPA, 401 M Street, SW Washington, DC 20460, Telephone (202) 475-7497

SUPPLEMENTARY INFORMATION: Last August, EPA promulgated a final rule to limit the production and consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. The rule requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC-11, -12, -113, -114, and -115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning as early as 1992. Under specified circumstances, limited increases in production (but not consumption) above these levels would be permitted.

This rule was promulgated under section 157(b) of the Clean Air Act and constituted the United States' implementation of the Montreal Protocol, which the United States ratified on April 21, 1988. The final rule's control measures took effect when the Protocol entered into force on January 1, 1989.

The rule implements the Protocol's requirements to control production and consumption of the CFCs and halons

specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities.

Today the Agency proposes to amend several sections for this final rule. Several of these amendments are based on recent agreements concerning implementation of the Montreal Protocol reached by nations that are Parties to the Protocol at their first meeting in Helsinki, Finland, during the week of May 1.

The first amendment concerns the Parties' interpretation of Article 2 of the Montreal Protocol. Article 2 allows increases in production of both groups of controlled substances by as much as 10 percent, and 15 percent for CFCs after July 1, 1998, if that production is used to satisfy "the basic domestic needs" of developing countries or "for the purposes of industrial rationalization" Industrial rationalization is defined by the Protocol as "the transfer of all or a portion of the calculated level of production of one party to another, for the purposes of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.

In its final rule, EPA interpreted the term "industrial rationalization" to mean trade in controlled substances between Parties. The Agency believed that the trading provisions of the Protocol created a "bubble" of controlled substance production. If one Party increased its production by 10 or 15 percent, it would have to export that production to other Parties or decrease its imports from Parties in order to comply with its consumption limits. The Party that imported the increased production would, in turn, have to decrease its own production, or export it to another Party. Since, under the Montreal Protocol, Parties' consumption limits are held constant while their production may rise somewhat, any increase in production by one Party would have to be offset by a decrease in production by another Party or Parties. Therefore, the Agency believed that exporting to Protocol Parties was tantamount to a transfer of production, and that the conditions of industrial rationalization had been met. Consequently, EPA promulgated a final rule that allowed companies to increase production up to the 10 and 15 percent limits specified in the Protocol if the exports were made to Parties.

The first meeting of the Parties was held May 2–5, 1989 in Helsinki, Finland. The Parties met in part to resolve outstanding issues related to implementation of the Montreal Protocol. At the meeting, the Parties determined that the term "industrial rationalization" means a documented transfer of production rights, requiring a Party desiring to increase its production "for the purposes of industrial rationalization" to obtain the agreement of another Party to decrease its production by the same amount. To comply with the Parties' interpretation of industrial rationalization, and to ensure internationally consistent implementation of the terms of the Montreal Protocol EPA proposes to amend its final rule to require any person seeking to increase its production for the purposes of industrial rationalization to obtain and document the agreement of another Party to offset that increase.

Specifically, EPA proposes to modify two sections of the final regulation. The Agency proposes to amend § 82.9(c) under which a person may obtain authorization to convert potential production allowances to actual production allowances, or reduce his available production allowances to the extent he provides a documented transfer of production. To document a transfer from a Party, a person must obtain a written statement from the Party's U.S. embassy that the Party agrees to reduce its production allowances by the calculated level of the production to be transferred. To document a transfer to a Party, a person must obtain a written statement from the Party's U.S. embassy acknowledging that the Party has agreed to the transfer. For transfers to a Party for the purposes of industrial rationalization, the Agency will review the transfer request and approve the transfer if the company has sufficient allowances to trade. In today's notice the Agency requests comments on whether there is a need to consider other factors such as the transfer's potential impact on the domestic economy, U.S. trade and the environmental implications. All transfer requests must include the requisite document from the embassy, the name and address of the person submitting the request and his contact, the name and address of the Party involved in the transfer and its contacts, the amount of allowable authorization to convert requested or production transferred, and the control periods to which the transfer applies.

In addition, the Agency will also amend § 82.11 to state that authorizations to convert potential production allowances will also be granted upon proof of exports to Parties operating under Article 5 of the Protocol and listed in proposed Appendix E to EPA's regulations.

The Agency also proposes Appendix E, Article 5 Parties" The countries that are listed in Appendix E are (1) Parties fo the Protocol, (2) developing countries agreed to by the Parties, and (3) are believed by the United Nations Environmental Programme (UNEP) to have an annual per capita consumption of controlled substances of less than .3 kilograms. UNEP has not received consumption figures from all Parties that are developing countries. The Agency believes that it is necessary to publish this proposed list, based on the most recent information from UNEP for comment so that affected persons may take advantage of the provisions of the final rule that allow increased production for exports to Article 5 Parties as soon as possible. The Agency believes that this proposed list is not likely to change after UNEP has received all consumption figures from all Parties.

EPA also proposes today to expand the definition of exports to include controlled substances that are either used or recycled (§ 82.3 (h)). In the final rule published last August, EPA excluded recycled and used control substances from the definition of exports, excluded exports of such substances from the reporting requirements and precluded exporting companies from claiming additional consumption allowances under § 82.10 and authorization to convert under § 82.11 for exports of such substances. The Agency was concerned at that time that defining exports to include recycled and used controlled substances along with virgin controlled substances would risk U.S. noncompliance with the Protocol. Since the Agency's rule defines production to exclude recycled controlled substances, firms could recycle those substances without expending production and consumption allowances. However, if export is defined to include recycled substances, on exporting the recycled substances firms would receive authorization to convert potential production allowances in the amount of the recycled substances exported. Thus, as a result of exporting recycled substances for which no production and consumption allowances were expended, firms would realize a net increase in production allowances (up to the 10 or 15 percent limit on potential production allowances) and consumption allowances. They could then use these additional allowances to produce or import and sell domestically controlled substances in excess of the amount of the initial allocations authorized.

At their Helsinki meeting the Parties to the Protocol agreed that exports should be defined to include virgin and recycled or used controlled substances to facilitate recycling efforts by countries that do not have recycling facilities. The Parties' definition allows such countries to export their used controlled substances and then re-import the reprocessed or recycled controlled substance without expending consumption allowances or credits. The Parties stated that recycling is an important control option to limit the production of additional controlled substances and should be encouraged wherever possible.

The Agency proposes to amend the definition of exports to include recycled or used controlled substances in accordance with the agreement reached by the Parties in Helsinki. The Agency believes that the U.S. domestic program should be consistent with the internationally accepted definitions reached by agreement by the Parties. In this case, the expanded definition of exports benefits domestic recycling companies that intend to trade in used and recycled controlled substances.

The Agency further believes that defining exports under the U.S. rule to include recycled or used controlled substances will have no adverse effect on stratospheric ozone levels. Controlled substances produced, recycled and exported all in the same control period will not yield a net increase in consumption allowances since consumption allowances were expended and recouped in the same control period. Controlled substances produced, recycled and exported in different control periods will also not affect the ozone layer. A controlled substance eventually recycled could have been released or emitted during the control period when it was produced and when consumption allowances were expended for it. Instead, recycling results in the consumption or use (in the sense of emission) of a substance being transferred from the period it was produced to the period it was exported. Thus, the net effect on the environment would be zero since all that occurred was an inter-temporal transfer of consumption (or emissions) from one control period to another. Since the proposed change will have no adverse environmental effect, and since the Parties to the Protocol have agreed to this definition of exports, the Agency proposes to expand the definition of exports in its rule to include used or recycled controlled substances.

The Agency also proposes to amend the final rule to allow persons who consume or transform purchased controlled substances as feedstock for other substances to claim an allowance credit equal to the allowances expended for the production or importation of the transformed controlled substance (§ 82.9(e) and 82.10(c)). Currently only persons who produce and then consume the controlled substance in the production of other substances can deduct the amount of controlled substances from the allowance limits set by the final rule.

The Agency stated last August that tracking controlled substances produced and transformed by different persons would be administratively burdensome, and present verification problems for compliance or enforcement proceedings. Furthermore, the Agency could not resolve at the time whether the person who produced the controlled substance or the person who transformed the controlled substance should receive the credit. This issue was even more difficult to resolve where transformations involve controlled substances produced in another country. Last year, technical advisors to the Protocol meeting in Nairobi could not agree on which country should be granted credits in the case of transformation of feedstocks traded between countries.

At their meeting in Helsinki, the Parties resolved this issue and agreed that each Party could exclude from its production totals any manufactured controlled substance that is entirely used as feedstock. Based on this agreement, the Agency proposes to allow companies that use controlled substances as feedstock to claim allowance credits equal to the allowances that were expended to either import or produce these substances, regardless of who originally produced or imported the controlled substance.

The Agency proposes that any person that consumes as feedstocks for any substance, controlled substances it did not produce may request production and/or consumption allowances equal to the calculated level of the controlled substance used and consumed as feedstocks. To receive these allowances, a person must report the type and quantity of controlled substance transformed, the resulting product of the transformation, the quantity of the product transformed, and indicate that the product is used commercially. The person must also submit a copy of the invoice or receipt documenting the sale of the controlled substances that were transformed and such other information as may be necessary to trace the origin of the controlled substance. The Agency requires such information to verify and determine whether production and consumption allowances were expended for the domestic use of the controlled substance (For example, no allowances would have been expended for controlled substances produced before July 1, 1989.) and to verify that the controlled substance was transformed into another substance rather than destroyed. (Parties to the Protocol have not yet approved destruction technologies used to destroy controlled substances for the purposes of receiving production credit.) Such persons who do request additional consumption and production allowances must maintain dated records of the type and quantity of the controlled substance transformed, the quantity of the resulting product, and any shipping records that verify the sale of the resulting product (§ 82.13(h)).

After reviewing this information, the Agency will issue a notice granting additional consumption allowances for transformed controlled substances that were imported, or additional production and consumption allowances for transformation of controlled substances that were produced domestically. Granted allowances will equal the calculated level of the transformed controlled substance, and will only be valid for the control period in which the transformation occurred. Such allowances will entitle the holder to either produce or import additional controlled substances and may be traded to other persons.

The August 12 final rule already provides that producers of controlled substances may subtract from their production and consumption the calculated level of controlled substances produced by that company that are consumed as feedstocks. In accordance with the proposal that purchasers of controlled substances receive allowances for controlled substances that are consumed, the Agency is also proposing to allow producers of controlled substances who consume controlled substances produced by a different person to subtract that level of controlled substance from its calculated levels of production and consumption. The current wording of the record keeping and reporting requirements at § 82.13 (f)(2)(ii) and (f)(3)(i) is already broad enough to apply to all producers, whether or not the controlled substance used as feedstock was manufactured by that person. Therefore, in order to qualify for credit for the consumption of feedstocks, producers need to keep the records and make the reports required by §§ 82.13(f)(2)(ii) and 82.13(f)(3)(i) as well as proposed § 82.13(h).

Finally, the Agency proposes to add an additional recordkeeping requirement for producers of controlled substances (§ 82.13(f)(2)(vii)). In the final rule of last August, the Agency did not anticipate spills as releases or emission of controlled substances that may be excluded from the volume of produced controlled substance measured under typical accounting procedures by producers and reported to EPA. Indeed, spills could be a very sizeable emission of controlled substances to the atmosphere which may not be recorded under the current recordkeeping requirements. Although the Agency believes that there are financial incentives to minimize spills, EPA proposes that all producers maintain records of any spills or releases that occur up until shipment of the controlled substance, and that such spills be included in the measurement of production. The Agency requests comments on whether there is a need to specify within this recordkeeping requirement a "de minimis" volume of a spill below which the producers do not need to record.

Additional Information

1. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

EPA determined that its August 12, 1988, final rule to protect stratospheric ozone met with the definition of a major rule, and therefore prepared a regulatory impact analysis (RIA). Since these amendments do not impose any significant burdens as defined by E.O. 12291, the RIA prepared for the final rule fulfills the executive order's requirement for these proposals.

2. Paperwork Reduction Act

Changes to the information requirements as proposed in today's notice have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1432.03) and a copy may be obtained by writing Carla Levesque, Information Policy Branch; EPA; 401 M Street SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2468.

Public reporting burden for this collection of information is estimated to increase an average of 5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060-0170), Office of Management and Budget, Washington, DC 20503, marked Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its final rule, and no additional RFA need be prepared for these amendments.

Date: June 30, 1989.

William K. Reilly,

Administrator.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

For reasons set forth in the preamble, the Agency proposes to amend 40 CFR Part 82 as follows:

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7157(b).

2. Section 82.3 is amended by revising paragraph (h) to read as follows:

§ 82.3 Definitions.

(h) "Export" means the transport of virgin, used or recycled controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

3. Section 82.9 is amended by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(c) A person may convert potential production allowances, either granted to him under paragraphs (a) and (b) of this section or obtained by him under § 82.12 (transfer of allowances), to production allowances only to the extent authorized by the Administrator under § 82.11 (Exports to Article 5 Parties) or under paragraph (c)(1) of this section. A person may obtain authorization to convert potential production allowances to production allowances by requesting issuance of a notice under § 82.11, by completing a transfer of authorization under § 82.12, or in accordance with paragraph (c)(1) of this section.

(1) A nation listed in Appendix B to this part (Parties to the Montreal Protocol) must agree to either transfer to the person at a specified time some amount of the calculated level of production that the nation is permitted under the Montreal Protocol or receive from the person at a specified time some amount of the calculated level of production that the person is permitted under this part. The person must obtain from the principal diplomatic representative in that nation's embassy in the United States a document clearly either stating that the nation agrees to reduce its allowable calculated level of production by the amount being transferred to the recipient for the control period(s) to which the transfer applies, or acknowledging that the nation has agreed to the transfer of the calculated level of production from the person. The person must submit to the Administrator a transfer request that includes a true copy of this paragraph and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The amount of allowable calculated level of production being transferred; and

(v) The control period(s) to which the transfer applies.

(2) After receiving a transfer request that meets the requirements of paragraph (c)(1) of this section, the Administrator will complete the following steps:

(i) Review any proposed transfer of production allowances to a Party and approve the transfer if the person holds a sufficient number of allowances to trade.

(ii) Issue the person a notice granting authorization to convert or deducting production allowances equivalent to the calculated level of production transferred, and specifying the control periods to which the transfer applies. The change in production allowances will be effective on the date that the notice is issued.

(e) A person who does not produce controlled substances may obtain production allowances equal to the calculated level of controlled substances produced by somebody else in the United States and that the person used and entirely consumed in the manufacture of other chemicals in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(c).

(1) A person must submit a request for production allowances that includes the following:

(i) The identity and address of the person;

(ii) The name, quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale from the producer of the controlled substance to the person;

(iv) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator will review the information and documentation submitted under paragraph (e)(1) of this section, and will assess the quantity of controlled substance that the documentation and information verifies were used and entirely consumed in the manufacture of other chemicals. The Administrator will issue the person production allowances equivalent to the calculated level of controlled substances that the Administrator determined were consumed. The grant of allowances will be effective on the date that the notice is issued.

4. Section 82.10 is amended by adding paragraph (c) to read as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

(c) A person who does not produce controlled substances may obtain consumption allowances equal to the calculated level of a controlled substance either produced in or imported into the United States by someone else that the person used and entirely consumed in the manufacture of other chemicals in accordance with the provisions of this paragraph.

(1) A person must submit a request for consumption allowances that includes the following:

(i) The identity and address of the person;

(ii) The quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(iii) A copy of the invoice or receipt documenting the sale from the person or importer of the controlled substance to the person;

(iv) The name, quantity and verification of the commercial use of the resulting chemical.

(2) The Administrator will reveiw the information and documentation submitted under paragraph (c)(1) of this section, and will assess the quantity of controlled substance that the documentation and information verifies were used and entirely consumed in the manufacture of other chemicals. The Administrator will issue the person consumption allowances equivalent to the calculated level of controlled substances that the Administrator determined were consumed. The grant of allowances will be effective on the date that the notice is issued.

5. Section 82.11 is amended by revising the introductory text to read as follows:

§ 82.11 Exports to parties.

In accordance with the provisions of this section, any person may obtain authorization to convert potential production allowances to production allowances by exporting controlled substances to nations listed in Appendix E (Article 5 Parties). Authorization obtained under this section will be valid only during the control period in which the controlled substance departed the United States or its territories. A request for authorization under this section will be considered a request for consumption allowances under § 82.10 as well.

6. Section 82.13 is amended by adding paragraphs (f)(2)(vii) and (h) to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

(f)

(2)

(vii) Records of the date and estimated quantity of any spills or releases of controlled substances.

(h) Every person who has requested additional production allowances under § 82.9(e) or consumption allowances under § 82.10(c), or producers who purchase controlled substances used or consumed as feedstock for other substances must maintain the following:

(i) Dated records of the quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical;

(ii) Copies of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person;

(iii) Dated records of the names, commercial use and quantities of the resulting chemical(s); and

(iv) Dated records of shipments to purchasers of the resulting chemical(s).

7 Appendix E is added to read as follows:

Appendix E—Article 5 Parties

Egypt, Ghana, Kenya, Maldives, Mexico, Nigeria, Panama, Uganda, Jordan and Venezuela.

[FR Doc. 89-16208 Filed 7-11-89; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5450 and 5460

RIN 1004-AB40

[AA-230-08-6310-02]

Award of Contract; General Sales Administration; General

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend provisions of the existing regulations in 43 CFR Part 5450—Award of Contract; General, and 43 CFR Part 5460—Sales Administration. The Department of the Interior has determined that it is necessary to amend existing regulations concerning timber sale contract performance bonds and payments to encourage responsible bidding at such a rate that the bidder, if awarded the contract, would be more able to perform the obligations under the contract.

DATES: Comment period expires September 11, 1989. Comments received or postmarked after this date may not be considered in the decision making process on the rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Department of the Interior, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dave Estola (503) 231-6873 or Richard Bird (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Federal Timber Contract Payment Modification Act of October 16, 1984 (Pub. L. 98-478) requires the Secretary of the Interior to take action to encourage responsible bidding. Bidding is considered responsible if it is at such a level that the bidder, if awarded the contract, would be able to perform the obligations required by its provisions. Further, the Act requires the Secretary to take action to reduce speculative bidding. In practice, the major action taken by the Secretary to address speculative bidding has been greater use of short-term contracts. Bids on short-term contracts reflect the current value of timber, whereas bidders on long-term contracts are more at the mercy of unanticipated unfavorable market conditions than are bidders on short-term contracts. Contracts bid since the 1984 Act are being completed on a timely basis.

Timber markets have improved with no commensurate increase in available timber, thus generating speculation. In response to this, a proposed rulemaking was published in the February 29, 1988, **Federal Register** (53 FR 6013). This rulemaking was designed to dampen speculative bidding and encourage the completion of future timber contracts by requiring an increase in the minimum performance bond for timber sale contracts having a bid ratio exceeding 1.25. The bid ratio is the quotient of the total bid price divided by the total appraised price, expressed as a decimal. The rulemaking also proposed removing the existing $500,000 cap on performance bonds and removing personal surety as a type of acceptable performance bond.

Comments on this proposed rule were received from 1 surety association, 1 surety management company, 3 forest industry associations, and 1 forest industry corporation. These comments uniformly expressed their concerns over the accuracy of bid ratios as a measure of speculative bidding and the equity of additional bonding as a means of ensuring completion of the timber sale contract. Three industry comments recommended retaining personal surety as an acceptable type of performance bond. One industry comment suggested the regulation should apply to both transaction evidence appraisals and analytical appraisals. With one exception, the comments uniformly supported the industry proposal to encourage responsible bidding on, and completion of, timber sale contracts by: (1) Requiring a first-anniversary 20 percent payment comprised of stumpage payments and/or the value of completed road construction, (2) retaining personal surety as an acceptable type of performance bond, and (3) permitting a 50 percent reduction in the performance bond when stumpage payments and/or the value of completed road construction equals or exceeds 50 percent of the contract purchase price.

The Department of the Interior has determined these comments to have merit and has incorporated them into a revised proposed rulemaking which would encourage early performance as a means of discouraging speculative bidding. In addition, personal surety would be retained as a type of acceptable performance bond. As stated before, contracts bid since 1984 are being completed in a timely manner. This has been partially due to the greater use of shorter term contracts. However, with the projection of increasing competition for timber, further measures are needed.

The elements of this new proposed rulemaking are as follows: (1) It would increase the cash deposit to one installment (10 percent of purchase price, limited to $50,000 for sales of $500,000 or more). It would hold one-half of the deposit to satisfy the final payment and release one-half of the deposit as specified in No. 4 below. (2) It would require payment of 20 percent of the total purchase price on the first anniversary of contracts 19 months in length or longer. The payment could be reduced by the value of completed road construction. (3) It would require payment of 40 percent of the total purchase price on the second anniversary of contracts 27 months in length or longer. The payment could be reduced by the value of completed road construction. (4) It would also permit a 50 percent reduction in the performance bond when 60 percent of the total purchase price has been reached through contract payments plus the value of completed road construction. In addition, at this 60 percent payment point, the aforementioned one-half of the cash deposit would be released and applied to subsequent payments.

The principal authors of the proposed rulemaking are Lyndon Werner, Division of Forestry, and David Estola, Oregon State Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 5450

Forests and forest products, Government contracts, Land Management Bureau, Public lands, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 5460

Forests and forest products, Government contracts, Land Management Bureau, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947 as amended (30 U.S.C. 601 *et seq.*), Chapter II of Title

43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5450—[AMENDED]

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

Authority: Sec. 5., 50 Stat. 875; 61 Stat. 681, as amended, 69 Stat. 367· 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

2. Section 5451.3 is revised to read as follows:

§ 5451.3 Performance bond reduction.

(a) As contract provisions are satisfactorily completed, the authorized officer may, in his discretion, reduce the amount of the required performance bond: *Provided, however,* That the amount of the performance bond shall not be reduced below the minimum required by § 5451.1 until

(1) payment of no less than 60 percent of the total purchase price has been made, or

(2) road construction required under the contract has been completed, the value of which when combined with contract payments is equal to no less than 60 percent of the total purchase price.

(b) At the request of the purchaser, when the requirements set forth in the proviso to paragraph (a) of this section have been met, the amount of the performance bond may be reduced to 10 percent of the total purchase price or the value of the uncompleted post-harvest contract requirements, whichever is greater. The amount of the performance bond shall not be reduced below 10 percent of the total purchase price until payment for all the timber sold under the terms of the contract is complete.

(c) For the purpose of this section, the value of completed road construction shall be based on the Bureau's appraisal allowance.

PART 5460—[AMENDED]

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

Authority: Sec. 5., 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367· 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*)

4. Section 5461.2 is amended by revising the heading and paragraph (a) to read as follows:

§ 5461.2 Required payment schedule.

(a)(1) For sales of less than $500,000, installment payments shall be not less than 10 percent of the total purchase price. For sales of $500,000 or more, installment payments shall be $50,000.

(2) The first installment shall be paid prior to or at the time the authorized officer signs the contract. One-half of the first installment shall be held to satisfy the final payment under the contract and one-half of the first installment shall be released and applied to subsequent contract payment when either payment of no less than 60 percent of the total purchase price has been made or completion of road construction required under the contract the value of which when combined with contract payments is no less than 60 percent of the total purchase price.

(3) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments not including the deposit: *Provided, however,* That in the case of all contracts with terms longer than 18 months, the purchaser shall be required by the first anniversary date either to pay no less than 20 percent of the total purchase price, or to complete road construction required under the contract the value of which when combined with contract payments is no less than 20 percent of the total purchase price. In the case of all contracts with a 27-month or longer term, the purchaser shall be required by the second anniversary date either to pay no less than 40 percent of the total purchase price or to complete road construction required under the contract the value of which when combined with contract payments is no less than 40 percent of the total purchase price.

(4) For the purpose of this section, the value of completed road construction shall be based on the Bureau's appraisal allowance.

May 25, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89-16294 Filed 7-11-89; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Bluefin Tuna Fishery; Public Hearing

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

ACTION: Proposed rules; Notice of an additional public hearing and request for comments.

SUMMARY: A notice of public hearings to solicit public comment on the proposed changes to the regulations governing the Atlantic bluefin tuna fishery was published on June 16, 1989 (54 FR 25593). NMFS announces the scheduling of an additional public hearing. Individuals and organizations may also comment in writing.

DATES: The hearing is scheduled for 7:00 p.m. on July 28, 1989. Comments may be submitted until August 4, 1989.

ADDRESSES: The hearing will be held at the Holiday Inn in Toms River, New Jersey.

Comments should be addressed to Richard Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Atlantic Bluefin Tuna Regulations.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: The two changes proposed are: (1) Whether to allow the Assistant Administrator to adjust the daily catch limit for the General category upward or downward at any time during the season as circumstances warrant and, (2) whether to prohibit the use of spotter aircraft in all but the Purse Seine category.

Additional information was provided in the notice published on June 16, 1989.

Dated: July 5, 1989.

David S. Crestin,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-16263 Filed 7-11-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

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.

ACTION

Information Collection Requirements Under OMB Review

AGENCY: Action.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

BACKGROUND: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents) may be obtained from the agency clearance officer.

Need and Use

Study will provide reliable data describing perceived impact of SCSPs on volunteerism, work sites, and low-income communities. Results will be used to assess program effectiveness and develop current and future policy. Respondents are Project Directors, Student Volunteers, Work Site Supervisors, Community Members, and Recipients of Services.

Number of respondents by group	Average burden minutes per response	Frequency of response	Respondents burden (in hours)
Project Directors (44)	70 Minutes	Once	51.3
Student Volunteers (80)	45 Minutes	Once	60
Work Site Supervisors (80)	40 Minutes	Once	53.3
Community Members (80)	25 Minutes	Once	33.3
Recipients of Services (64)	10 Minutes	Once	10.7

Estimated Response Burden 208.6

A.14. Reasons for Changes in Burden.

Not applicable.

A.15. Plan for Tabulation, Statistical Analysis, and Publication and Time Schedule.

The analysis plan consists primarily of frequency distributions, percentage distributions and cross-tabulations, some of which will be presented in the form of table shells. Special emphasis in the plan will be directed toward analyzing the perceived impact of SCSP on volunteers and host communities. A matrix showing the relationship of study goals of questionnaire items is presented in Appendix B. In addition, a copy of the study's draft analysis plan is provided in Appendix C.

Joseph M. Suszko,
Acting Inspector General,
July 7 1989.

[FR Doc. 89-16355 Filed 7-11-89; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1989-1990 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination: 1989-1990 marketing year penalty rates for all kinds of tobacco subject to quotas.

SUMMARY: This notice sets forth the determination of the 1989-1990 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, marketing quota penalties for a kind of tobacco are assessed at the rate of seventy-five (75) percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013, (202) 382-0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512-1 and has been classified as "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, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 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 notice since the Agricultural Stabilization and Conservation Service (ASCS) 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 notice.

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).

Section 314 of the Agricultural Adjustment Act of 1938, as amended, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be seventy-five (75) percent of the average market price for such tobacco for the immediately preceding marketing year. The Agricultural Statistics Board, National Agricultural Statistical Service, U.S. Department of Agriculture determines an announces annually the average market prices for each type of tobacco. The penalty rates are determined on the basis of this information.

Since the determination of the 1989–1990 marketing year rates of penalty reflects only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Accordingly, it has been determined that the 1989–1990 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY (1989–1990 MARKETING YEAR)

Kinds of tobacco	Cents per pound
Flue-Cured	121
Burley	121
Fire-Cured (Types 21)	111
Fire-Cured (Types 22, 23 and 24)	165
Dark Air-Cured (Types 35 and 36)	122
Virginia Sun-Cured (Type 37)	93
Cigar-Filler and Binder (Types 42, 43, 44, 53, 54, and 55)	94

Signed at Washington, DC, on July 7 1989.

Keith D. Bjerke,

Administrator, Agricultural, Stabilization and Conservation Service.

[FR Doc. 89-16325 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 89-114]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the University of Kentucky to allow the field testing in the State of Kentucky of genetically engineered tobacco plants modified to express a mouse metallothionein gene. These tobacco plants will be used as a model system to investigate the possibility of lowering the concentrations of toxic metals in leaf tissue. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on 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 Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Biotechnologist, I Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under permit number 89-065-01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The University of Kentucky at Lexington, Kentucky, has submitted an application for a permit for release into the environment, to field test genetically engineered tobacco plants modified to express a mouse metallothionein gene. These tobacco plants will be used as a model system to investigate the possibility of lowering the concentrations of toxic metals in leaf tissue.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the University of Kentucky application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the University of Kentucky, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS's finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A metallothionein (MT) gene from the mouse has been modified and inserted into a tobacco chromosome. In this field trial none of the introduced genes can spread to another plant, because the test plants will not be allowed to flower. In nature, genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. Neither the MT gene itself, nor its gene product, confers on tobacco any plant pest characteristics.

3. The MT 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.

4. The vector used to transfer the MT gene to tobacco plants has been evaluated for its use in this specific experiment, and does not pose a plant pest risk. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed; that is, the genes that are necessary for pathogenicity have been removed. The vector also has been tested and shown to be not pathogenic to a susceptible plant.

5. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the MT gene into tobacco plant cells, was eliminated and is no longer associated with the transformed tobacco plants.

6. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tobacco genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

7 The field test plot will be less than 0.1 acre in size, and the test plants will be located approximately 50 meters from any other tobacco plants. Measurement of heavy metal uptake by these transgenic plants will not involve administration of any exogenous heavy metals on the test plot.

This environmental assessment and finding of no significant impact have 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 (40 CFR Parts 1500–1509), (3) USDA Regulations for Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines for Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 6th day of July 1989

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–16284 Filed 7–11–89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Nursery Pest Management in the W.W. Ashe Nursery, DeSoto National Forest, Forrest County, Mississippi

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on nursery pest management practices that will be used at the Ashe Nursery, Brooklyn, Mississippi. The Forest Service invites written comments on the scope of the analysis. In addition, the Forest Service gives notice of the environmental analysis and decisionmaking process that will occur on the proposed action so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis should be received in writing by August 7 1989.

ADDRESS: Send written comments to Robert O. Harllee, USDA Forest Service, National Forests in Mississippi, Route 1, Box 621, Brooklyn, MS 39425.

FOR FURTHER INFORMATION CONTACT: Robert O. Harllee. Ashe Nursery Project Manager or Charles Grambling, Ashe Nursery Manager, (601) 584–8488.

SUPPLEMENTARY INFORMATION: Ashe Nursery will grow longleaf, loblolly, and slash pine seedlings for the National Forests in the Southern Coastal Plains. The first priority at Ashe is to grow quality seedlings. This means using the latest known practices that will produce seedlings that will survive and grow.

The Forest Service will conduct an environmental analysis to determine what pest management practices will be used at the Ashe Nursery, Brooklyn, Mississippi, to produce the seedlings for use on National Forest System land in portions of the Southern Coastal Plains. The management practices that will be analyzed include, but are not limited to, cover crop, seed pre-treatment, nursery seedbed preparation, sowing, seedling growth from germination to lifting, and seedling storage. In order to produce seedlings, control of unwanted vegetation, disease, insects, and other animals is necessary. The control methods that will be considered include biological, chemical, manual, and mechanical techniques.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed project. This input will be used in preparation of the draft environmental impact statement. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper make up of the interdisciplinary team.
4. Identifying potential environmental, economic, and social impacts.
5. Determining potential cooperating agencies.
6. Identifying groups or individuals interested or affected by the decision.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternative management practices. One alternative will be the no action (continuation of present pest management practices). Another alternative will be pest control without use of pesticides. Other alternatives will consider a range of methods for the control of unwanted vegetation, diseases, insects and other animals in the Ashe Nursery.

Kenneth R. Johnson, Forest Supervisor, is the responsible official.

The Forest Service invites written comments on the scope of the analysis.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear*

Power Corp. v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by August 1990.

The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement and applicable laws, regulations, and policies in making a decision regarding this proposal. The decision and reasons for the decision will be documented in the Record of Decision. That decision will be subject to appeal.

Date: July 5, 1989.

Ellen J. Goetz,

Acting Forest Supervisor.

[FR Doc. 89-16309 Filed 7-11-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation 1989 Panel Wave 4
Form Number: SIPP 9400, SIPP-87/9403, SIPP-9405
Agency Approval Number: 0607-0643
Type of Request: Revision of a currently approved form
Burden: 12,180 hours
Number of Respondents: 24,360
Avg Hours per Response: 30 minutes
Needs and Uses: This survey will provide statistics to estimate the effects of Executive and Legislative decisions. Data provided by SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs such as the Department of Health and Human Services and the Department of Agriculture
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-16265 Filed 7-11-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket No. 90496-9153]

Negative Determination of Foreign Availability for Side Scan Sonar Systems

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of foreign availability determination.

SUMMARY: Under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration has determined that foreign availability of side scan sonar systems, comparable to that of the claimant's denied license, controlled under ECCN 1510A of the Commodity Control List does not exist to the controlled country so as to render the denial of the license ineffective in achieving the purposes of the controls.

FOR FURTHER INFORMATION CONTACT: Toli Welihozkiy, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by sections 5 (f) and (h) of the EAA to initiate and review claims of foreign availability of items controlled for national security purposes. Part 791 of the Export Administration Regulations establishes the procedures and criteria for determining foreign availability. The Secretary of Commerce or his designee is authorized by statute to determine foreign availability.

In any case in which the Secretary determines that an item of comparable quality to a U.S. item controlled for national security purposes is available-in-fact to a controlled country from a foreign source in quantities sufficient to render the control ineffective in meeting its purpose, under section 5(f)(1)(B), the Secretary must approve the validated license application for its export.

In February of 1989, OFA, upon receipt of a claimant's allegation, formally undertook a denied license assessment of side scan sonar systems.

These systems, parts and components are multilaterally controlled under ECCN 1510A of the Commodity Control List, maintained under section 5 of the Export Administration Act of 1979, as amended (EAA).

As directed by law, OFA has completed the denied license assessment of the foreign availability of the above mentioned equipment. Based upon the assessment, OFA's recommendation and the statutory criteria, the Deputy Assistant Secretary for Export Administration, pursuant to the authority of section 5(f)(1)(b) of the EAA, has determined that foreign availability of side scan sonar systems does not exist.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability.

Dated: July 7 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-16384 Filed 7-10-89; 8:57 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public hearings to allow for input on the Fishery Management Plan for the Bluefish Fishery (FMP).

DATES: Written comments will be accepted until August 25, 1989. See "**SUPPLEMENTARY INFORMATION**" for dates, times, and locations of the hearings.

ADDRESS: Send comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, 302-674-2331.

SUPPLEMENTARY INFORMATION: This FMP prepared by the Council and the Atlantic States Marine Fisheries Commission (ASMFC), is intended to initiate management of the bluefish (*Pomatomus saltatrix*) fishery in the western Atlantic Ocean pursuant to the Magnuson Fishery Conservation and Management Act of 1976, as amended. The major goal of the management plan is to conserve the bluefish resource along the Atlantic coast.

The following management measures have been adopted for purposes of public hearings:

1. The commercial fishery, on a coastwide basis, would be limited to 20% of the total catch (recreational catch plus commercial landings) each year. The decision to implement commercial controls would be based on two separate indices and a two-tiered approach. If the catch in the commercial fishery were projected to equal or exceed the 20% limit during the upcoming year, then highly efficient gears (purse seines, pair trawls, and runaround gill nets) would be prohibited from use in exclusive economic zone (EEZ) waters if those gears were responsible for the increase in the commercial landings. At the same time, a state allocation system would also be implemented. Commercial landings data from the 10-year period, 1978-1987, for each state would be used to determine the average percentage of coastwide commercial landings by state. These percentages would be used to determine the amount of the coastwide quota allocated to each state. Quotas would apply to commercial landings in each state, regardless of where the bluefish were caught.

2. Anglers would be restricted to a possession limit of no more than ten bluefish or the more stringent possession limit at the state of landing, if such a limit exists. The Director, Northeast Region, NMFS, after consultation with the Councils and the ASMFC, could modify the possession limit to between three and ten bluefish per angler based on evidence of stock condition.

3. Commercial hook-and-line fishermen may take more than the possession limit if they have a commercial permit issued by the state of landing. Without a permit, fishermen using hook-and-line gear would be restricted to the possession limit. For states without a permit, a federal permit would be required. No person in the EEZ could exceed the possession limit without a federal or state commercial permit. The captain, crew, and passengers of party or charter vessels would be restricted to the possession limit if the vessel were carrying passengers for hire. A captain in possession of a commercial fishing permit could use the permit (i.e., exceed the possession limit) when no passengers were aboard.

All hearings will be tape recorded with the tapes filed as the official transcript of the hearing. The dates, times, and locations of the public hearings are scheduled as follows:

July 24, 1989, 7:00 p.m.
Department of Agriculture Building, 50 Harry S. Truman Highway, Annapolis, Maryland.
South Carolina Wildlife and Marine Resources Center, 217 Fort Johnson Road, Charleston, South Carolina.

July 25, 1989, 7:00 p.m.
Cape May County Extension Office, Dennisville Road, Cape May Court House, New Jersey.
Joslyn Hall, Carteret Community College, 3505 Arendell, Morehead City, North Carolina.

July 26, 1989, 7:00 p.m.
Cape Henlopen High School, Kings Highway, Lewes, Delaware.
North Carolina Aquarium, Airport Road, Manteo, North Carolina.

July 27, 1989, 7:00 p.m.
Wall Township Fire Hall, West Atlantic Avenue at Route 34, Wall, New Jersey.
Radisson, 700 Settlers Landing Road, Hampton, Virginia.

July 31, 1989, 7:30 p.m.
Room 190, Building D, Academic Village, State University of New York Old Westbury, Route 107 Old Westbury, New York.

August 1, 1989, 7:00 p.m.
Ramada Inn, 76 Industrial Highway, Essington, Pennsylvania.

August 1, 1989, 7:30 p.m.
Holiday Inn Riverhead, Exit 72, Long Island Expressway and Route 25, Riverhead, New York.

August 2, 1989, 7:00 p.m.
Ramada Inn, I-95 and Route 27, Mystic, Connecticut.

August 3, 1989, 7:00 p.m.
Days Inn, 815 Lafayette Boulevard, Bridgeport, Connecticut.

August 7, 1989, 7:00 p.m.
Holiday Inn West, 81 Riverside Street, Portland, Maine.
City Commission Chambers, Stuart City Hall, 121 Southwest Flagler Street, Stewart, Florida.

August 8, 1989, 7:00 p.m.
Holiday Inn, 300 Woodbury Avenue, Portsmouth, New Hampshire.

August 9, 1989, 7:00 p.m.
Peabody Holiday Inn, 1 Newbury Street, Peabody, Massachusetts.

August 10, 1989, 7:00 p.m.
Sheraton Hyannis, Route 132 and Bearse's Way, Hyannis, Massachusetts.

August 11, 1989, 7:00 p.m.
Dutch Inn, Great Island Road, Galilee, Rhode Island.

Dated: July 6, 1989.

Joe P Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-16264 Filed 7-11-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 11, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 17 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 15244) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received as a result of that public notice. However, during the early development stage, the current contractor claimed in a letter to the Committee that the addition of the file folder to the Procurement List would be extremely detrimental to his

company. The value of the firms contract for this file folder represents approximately 10.1 percent of its total yearly sales. This is not considered to be severe adverse impact. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Folder, File
7530–FMHA Supply Item No. 38

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 87–16303 Filed 7–11–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5 p.m. on July 27 1989, and from 8:30 a.m. to 11:30 a.m. on July 28, 1989. The meeting will be held at the Ramada Inn, 901 North Fairfax Street, Alexandria, Virginia 22314. The purposes of the meeting are to review military adaptability screening procedures and new computerized predictor tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (202) 697–9271, no later than July 15, 1989.

July 7 1989.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–16307 Filed 7–11–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Science Board; Open Meeting

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 the Committee: Army Science Board (ASB)

Dates of Meeting: 31 July–1 August 1989

Time: 0800–1700 hours each day

Place: Baltimore, Maryland

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety Will conduct its next meeting at Baltimore, Maryland. The primary purpose of this meeting will be to discuss and write the findings for the study. Past, current, and planned actions will also be discussed in accordance with the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202)695–3039/7046.

Thomas E. Stalzer,

LTC(P), GS,

Executive Secretary.

[FR Doc. 89–16308 Filed 7–11–89; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Intent To Make a Noncompetitive Financial Assistance Award; American Statistical Association

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b)(2)(i)(D), competition for a grant has been restricted to the American Statistical Association (ASA), a widely recognized and highly prestigious professional society established to further statistical theory in numerous fields. The ASA sponsors the Committee on Energy Statistics which has provided EIA, primarily during biannual meetings over the past seven years, with guidance in addressing key statistical, economic and technical issues faced by EIA.

Scope: This grant will provide assistance required for maintaining communication with the American Statistical Association Committee on Energy Statistics and for the conduct of five (5) specified meetings between the Committee and the Energy Information Administration (EIA).

Eligibility: There is no other entity which represents the statistical community and combines the complete objectivity and academic expertise necessary to carry out this review function. Since these committee members are selected by and under the purview of the ASA, and no other organization has the necessary knowledge of available committee members and committee structure, EIA recommends that consideration for this grant be limited to the American Statistical Association.

The term of this grant shall be from October 1, 1989 through April 30, 1991. The estimated cost of this grant is $172,728.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Witt, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586–1570.

Thomas S. Keefe, Director,

Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 89–16354 Filed 7–11–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ID–2417–000, et al.]

Walter B. Gerken, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Walter B. Gerken

[Docket No. ID–2417–000]

July 3, 1989.

Take notice that on June 13, 1989, Walter B. Gerken, tendered for filing an application under section 305(b) of the Federal Power Act to hold the following interlocking postitions:

Director.....	Southern California Edison Company	Public Utility

Director.....	Whittaker Corporation	Supplying Electrical Equipment

Comment date: July 17 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Century Power Corporation

[Docket No. ER89-496-000]

July 3, 1989.

Take notice that on June 12, 1989, Century Power Corporation (formerly Alamito Company) tendered for filing an executed letter amendment to the 1989 Power Sales Agreement between Century and San Diego Gas & Electric Company (SDG&E). The amendment reduces the amount of power and energy sold to SDG&E by 4.5% to account for losses in transmission.

Century requests waiver of the Commission's notice of filing requirements to permit the filing to become effective as of June 1, 1989, the date that sales commenced under the Power Sales Agreement.

Comment date: July 17 1989, in accordance with Standard Paragraph E at the end of this document.

3. Iowa Public Service Company

[Docket No. ER89-506-000]

July 3, 1989.

Take notice that Iowa Public Company on June 21, 1989, tendered for filing Supplement No. 6 to the Twin Cities Iowa-Omaha-Kansas City 345 kV Interconnection Coordinating Agreement, effective May 1, 1989. Supplement No. 6 revises the rates for power and energy in the Service Schedules under the Original Agreement and adds two new classes of power and energy called "General Purpose Energy and Term Energy"

Comment date: July 17 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket No. ER89-386-000]

July 3, 1989.

Take notice that on June 12, 1989, Kansas City Power & Light Company (KCPL) tendered an amendment to its earlier filing in this Docket.

KCPL states that the purpose of the Amendment is to provide, at the request of the Commission Staff, additional detail on the computation of present revenues supplied with the filing of April 28, 1989.

Comment date: July 17 1989, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Corporation

[Docket No. ER89-428-000]

July 3, 1989.

Take notice that New York State Electric & Gas Corporation (NYSEG) on June 19, 1989, tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, an Amendment to the filing of a Power Authority of the State of New York (the Authority). The agreement sets forth the terms and of conditions that govern NYSEG's transmission and delivery of Expansion Power and associated energy to certain of NYSEG's industrial customers.

The Amendment was filed in response to a request for additional information concerning the basis of the transmission rate for delivery at voltages less than 34.5 Kv and for information concerning the facilities included in the cost basis of the two transmission rates filed.

NYSEG has filed a copy of this amendment with the Authority, the Public Service Commission of the State of New York, and with Expansion Power customers with which NYSEG has signed agreements.

Comment date: July 17 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER89-515-000]

July 3, 1989.

Take notice that on June 26, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing, information in support of an energy rate increase to the Southern California Cities of Anaheim, Azusa, Banning, Colton and Riverside (Cities), Rate Schedules FERC No. 102, 103, 104, 105 and 106, respectively. In Docket No. ER88-1-000, PG&E requested, and was granted, a waiver of certain filing requirements under § 35.13 for energy rate changes to these rate schedules, where the change is a recalculation of rates in accordance with a rate formula between PG&E and the Cities. PG&E is not changing capacity rates in this filing, and will not do so in 1989.

The present filing was triggered by CPUC Decision No. 87-12-039, which authorized a change in the Utility Electric Generation gas rate structure, an input to the cities energy rate formula, and is supported by the abbreviated filing materials agreed to in Docket No. ER88-1-00. PG&E has requested a waiver to allow an effective date of May 1, 1988, the effective date of CPUC Decision No. 87-12-039.

Comment date: July 18, 1989, in accordance with Standard Paragraph end of this notice.

7 American Electric Power Service Corp.

[Docket No. ER89-516-000]

July 3, 1989.

Take notice that on June 23, 1989, American Electric Power Service Corporation tendered for filing a Letter Agreement among the City of Hamilton, Ohio, Kentucky Power Company, Ohio Power Company, and American Municipal Power-Ohio, Inc. On behalf of Kentucky Power Company, Ohio Power Company, and the City of Hamilton.

The Letter Agreement provides for the temporary suspension of certain provisions as they pertain to inadvertent power flows for a 90-day period, from May 26, 1989 through August 23, 1989.

A copy of this filing has been served upon the Public Utilities Commission of Ohio.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89-510-000]

July 3, 1989.

Take notice that on June 21, 1989, PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (Company), tendered for filing, in accordance with section 35.30 of the Commission's Regulations, the Company's Revised Appendix 1 for the state of Montana and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Montana (Bonneville's Docket No. 5-A4-8802). The Revised Appendix 1 calculates the ASC for the state of Montana applicable to the exchange of power between Bonneville and the Company.

The Company requests waiver of the Commission's notice requirements to permit this rate schedule to become effective Octover 14, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Montana Public Service Commission and Bonneville's Direct Service Industrial Customers.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota Company)

[Docket No. ER89-519-000]

July 3, 1989.

Take notice that on June 26, 1989, Northern States Power Company (Minnesota Company) ("NSP-MN") tendered for filing Amendment No. 5, dated June 16, 1989, to the Interconnection Agreement dated November 18, 1965 among NSP-MN, Northern States Power Company (Wisconsin Company), and Wisconsin Electric Power Company.

Amendment No. 5 provides for sales of System Power by Northern States Power Company to Wisconsin Electric Power Company.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota, North Dakota, South Dakota, Wisconsin, and Michigan.

NSP-MN requests that the commission make the effective date of the proposed rate schedule retroactive to May 1, 1989 to coincide with the terms of the Amendment No. 5 to the Interconnection Agreement named above.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89-511-000]

July 3, 1989.

Take notice that on June 21, 1989, PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (Company), tendered for filing, in accordance with § 35.30 of the Commission's Regulations, the Company's Revised Appendix 1 for the state of Washington and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Montana (Bonneville's Docket No. 5-A2-8803). The Revised Appendix 1 calculates the ASC for the state of Montana applicable to the exchange of power between Bonneville and the Company.

The Company requests waiver of the Commission's notice requirements to permit this rate schedule to become effective Octover 14, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Washingon Utilities and Transportation Commission and Bonneville's Direct Service Industrial Customers.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER89-507-000]

July 3, 1989.

Take notice that on June 21, 1989, Wisconsin Electric Power Company ("Wisconsin Electric") tendered for filing a Firm Transmission Service Agreement with Wisconsin Power & Light Company ("WPL"). The agreement provides for firm transmission service to be rendered by Wisconsin Electric to the city of Elkhorn, Wisconsin, for a one year period. According to Wisconsin Electric, the charges for the service are identical to those found in its FERC Electric Tariff Original volume No. 1, Rate Schedule T-1.

Wisconsin Electric respectfully requests waiver of the Commission's sixty-day notice requirements in order to allow an effective date of June 16, 1989. Wisconsin Electric is authorized to state that WPL and the City of Elkhorn join in the requsted effective date.

Copies of this filing have been served on WPL, the City of Elkhorn and the Public Service Commission of Wisconsin.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Electric Power Company

[Docket No. ER89-509-000]

July 3, 1989.

Take notice that on June 21, 1989, Southwestern Electric Power Company ("SWEPCO") tendered for filing (1) Amendment No. 1 to the Electric System Interconnection Agreement, dated January 1, 1988, between SWEPCO and Cajun Electric Power Cooperative, Inc. ("Cajun") and (2) a letter agreement ("Letter Agreement"), dated May 31, 1989, between SWEPCO and Cajun. Amendment No. 1 provides that, when capacity is available, SWEPCO will transmit on behalf of Cajun up to 92 MW of Peaking Power from the Southwestern Power Administration ("SWPA") rather than the present 89 MW. The Letter Agreement provides that SWEPCO will provide as-available transmission service to Canjun from SWEPCO's point of interconnection with Gulf States Utilities Company ("GSU") across SWEPCO's system to SWEPCO's points of interconnection with SWPA and Associated Electric Cooperative, Inc.

Copies of this filing have been served upon Cajun, GSU, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER89-508-000]

July 3, 1989.

Take notice that on June 21, 1989, Montana Power Company (MPC) tendered for filing pursuant to Section 205 of the Federal Power Act an agreement effective September 1, 1988 for the sale of firm energy to the Western Area Power Administration during the period from September 1988 through March 1989.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Iowa Public Service Company

[Docket No. ER89-430-000]

July 3, 1989.

Take notice that on June 23, 1989, Iowa Public Service Company (IPS), tendered for filing an amended filing for its Electric Utility Service Agreement between IPS and the Municipal Electric Utility of Waverly, Iowa (Waverly) and an Interim Wheeling Letter Agreement whereby IPS will supply intermediate and peaking capacity to Waverly, as well as provide dispatch and transmission services. IPS has requested an effective date of May 1, 1989 for the initial rate, and accordingly seeks waiver of the notice requirements of the Commission's rules.

IPS states that copies of this filing were served on Waverly and the Iowa Utilities Board.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company

[Docket No. ER89-517-000]

July 3, 1989.

Take notice that on June 23, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Long Island Lighting Company (LILCO). The agreement provides for a charge of 2.4 mills per kilowatthour for transmission of power purchased from other public utilities and power generating entities.

Con Edison requests waiver of the notice requirements so that the Rate

Schedule can be made effective as of May 1, 1989.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Gulf States Utilities Company

[Docket No. ER89-514-000]

July 3, 1989.

Take notice that on June 22, 1989, Gulf States Utilities Company tendered for filing (1) a Written Agreement For Transmission Service Under Section 2.6 of Service Schedule SRSTS, entered into by Gulf States Utilities Company (Gulf States), Sam Rayburn Municipal Power Agency (SRMA), Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC), and Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), (2) Amendment No. 3 To Power Interconnection Agreement Between Gulf States and SRDEC, SRG&T, and SRMA, (3) Service Schedule SRSTS—Special Transmission Service (supersedes Schedule SRSTS dated February 17 1987), entered into by Gulf States, SRDEC, SRG&T, and SRMA, (4) Service Schedule SRTS—Transmission Service (supersedes Schedule SRTS dated June 6, 1980), entered into by Gulf States, SRDEC, SRG&T, and SRMA, and (5) Power Interconnection Agreement Between Gulf States Utilities Company and Jasper Newton Electric Cooperative, Inc.

The purpose of the above agreements is to enable the connection of two SRMA hydroelectric generating units having a combined nominal rating of 6 Mw located at Town Bluff Dam on B.A. Steinhagen Lake on the Neches River ("Town Bluff Hydro Project") to the Gulf States transmission system. The parties have in place existing agreements for the connection of certain other generating capacity to the Gulf States transmission system, and the above agreements amend and modify those agreements in order to provide for the connection of the Town Bluff Hydro Project to the transmission system.

Gulf States requests an effective date for the agreements of May 26, 1989, which was the date of the first transmission of test energy from the Town Bluff Hydro Project.

Copies of the filing were served on Sam Rayburn Dam Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, Sam Rayburn G&T Electric Cooperative, Inc., Jasper Newton Electric Cooperative, Inc., and the Public Utility Commission of Texas.

Comment date: July 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Hill Petroleum Company

[Docket No. QF89-249-000]

July 5, 1989.

On June 20, 1989, Hill Petroleum Company (Applicant), c/o Ronald W. Lewis, P.O. Box 5038, Houston, Texas 77262-5038, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Texas City, Texas. The facility will consist of two combustion turbine generating units and two waste heat recovery boilers equipped for supplementary firing. Steam produced by the facility will be used in the refinery process by the Applicant. The maximum net electric power production capacity of the facility will be 34,092 kW. The primary energy source will be natural gas. Installation of the facility will be on or about December, 1989.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

18. Nevada Power Company

[Docket Nos. ER89-234-000, ER89-235-000, and ER89-236-000]

July 6, 1989.

Take notice that on June 26, 1989, Nevada Power Company (Nevada) tendered for amended filing three agreements entitled respectively, Short Term Seasonal Power Agreement Between City of Boulder City (Boulder) and Nevada Power Company, Short Term Seasonal Power Agreement Between Overton Power District No. 5 (Overton) and Nevada Power Company, and Short Term Seasonal Power Agreement Between Valley Electric Association (Valley) and Nevada Power Company, hereinafter "the Agreements" The purpose of the agreements is to establish the terms and conditions for the Sale by Nevada to Boulder, Overton, and Valley of up to 30 MW per hour of capacity and energy during January, February, and March, 1989.

Nevada requests an effective date of January 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the amended filing were served upon Boulder, Overton, and Valley.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. Portland General Electric Company

[Docket No. ER89-513-000]

July 6, 1989.

Take notice that on June 23, 1989, Portland General Electric Company (PGE) tendered for filing an Exchange Agreement with the Chelan County Public Utility District for an exchange consisting of the receipt of summer on-peak energy by PGE and the return of such energy plus 22 percent to Chelan County Public Utility District during off-peak hours during the summer and winter, beginning July 1989 and ending February 2011. The amount escalates from 15 MW in 1989, to 25 MW in 1990, and 50 MW from 1992 through the end of the Agreement.

PGE states the reason for the proposed Exchange Agreement is to allow it to shift production into off-peak periods and better meet its peak load.

PGE requests an effective date of July 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing has been served upon the Chelan County Public Utility District and the Oregon Public Utility Commission.

Comment date: July 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Company

[Docket No. ER89-520-000]

July 6, 1989.

Take notice that on June 26, 1989, Arizona Public Service Company ("APS" or "Company") tendered a Notice of Termination of the Operating Letter between Maricopa County Municipal Water Conservation District No. 1 and APS for the Banking of Arizona Power Authority Energy. A review of APS' records indicated that although the aforementioned service was intended to be superseded by identical service provided pursuant to APS FERC Rate Schedule No. 157 the Commission Acceptance of FERC Rate Schedule No. 157 did not provide for the cancellation of APS Rate Schedule No. 111. The purpose of this filing is to conform APS records to the intent of the Parties.

APS has requested an effective date of January 1, 1988 to coincide with the effective date of APS FERC Rate Schedule No. 157 APS requests waiver of any applicable Commission Rules and Regulations to allow the termination to become effective as of the aforesaid date.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

21. The Montana Power Company

[Docket No. ER89-521-000]

July 6, 1989.

Take notice that on June 26, 1989, The Montana Power Company ("Montana"), tendered for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement ("Agreement") between Montana and the Bonneville Power Administration ("BPA").

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate, subject to possible modification by the FERC, have an effective date of August 29, 1988 and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filling was served upon BPA.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

22. Interstate Power Company

[Docket No. ER89-524-000]

July 6, 1989.

Take notice that on June 27 1989, Interstate Power Company (IPW) tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1, Rider 1W, Fuel Cost Adjustment. The proposed change will allow Interstate to include all charges incurred in the purchase of economic power in Interstate's fuel cost adjustment.

Interstate's present fuel cost adjustment computation includes only fuel and energy related costs. The proposed change will update the fuel cost adjustment clause in accordance with FERC Order No. 352 in Docket No. RM83-62-000; allowing recovery of all expenses related to power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than Interstate's total avoided variable cost and the purchase is not made to maintain reserve levels.

Copies of the filing were served upon IPW's jurisdictional customers and the State Commissions of Iowa, Illinois and Minnesota.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

[Docket No. ER89-525-000]

July 6, 1989.

Take notice that on June 29, 1989, PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (Company), tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, Revision No. 15 to Exhibits A and B, to the Contract for Interconnections and Transmission Service, Contract No. 14-06-400-2437 (Transmission Agreement) dated May 16, 1962 between the Company and Western Area Power Administration (the Company's Rate Schedule FPC No. 45).

Exhibit A specifies the projected maximum integrated demand in kilowatts which the Company desires to have transmitted to its respective points of delivery. Exhibit B specifies the projected maximum integrated demand in kilowatts which Western desires to have transmitted to its respective points of delivery.

The Company respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Committee's Rules and Regulations and that an effective date of January 1, 1989, be assigned, this date being consistent with the effective date of Exhibits A and B.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

Comment date: July 20, 1989, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of Indiana, Inc.

[Docket No. ER89-526-000]

July 6, 1989.

Take notice that on June 29, 1989, Public Service Company of Indiana, Inc. Tendered for filing an Interim Scheduled Power Agreement (Agreement), dated May 24, 1989, between Public Service Company of Indiana, Inc. (Service Company) and Wabash Valley Power Association, Inc. (Wabash Valley).

The Agreement provides for power to be supplied by Service Company to Wabash Valley for Wabash Valley's member systems located in Indiana Michigan Power Company's (IMP) control area as follows:

1. Power sufficient to meet Wabash Valley's load requirements in excess of the firm power supplied to Wabash Valley by IMP pursuant to the Settlement Agreement between Wabash Valley and IMP in Docket Nos. EL88-1-000 and ER88-34-000.

2. Wabash Valley is to provide its own bulk transmission service from Service Company's generating facilities to Service Company's bulk transmission interconnection points with IMP through the use of the Service Company, Wabash Valley and Indiana Municipal Power Agency joint transmission system.

3. Wabash Valley shall arrange with IMP for transmission and distribution service from the Service Company/IMP bulk transmission interconnection points to the Wabash Valley member systems' delivery points in the IMP control area, which is part of the Settlement Agreement referred to above.

Copies of the filing were served on Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.

The parties have requested a waiver of the Commission's Rules and Regulations to permit the proposed service to become effective August 1, 1989.

Comment date: July 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16353 Filed 7-11-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 89-14; Certification Notice-40]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Panda-Rosemary Corporation, Dallas, TX.	6-28-89	Combined cycle cogen.	165	Roanoke Rapids, NC

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on July 5, 1989.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 89-16324 Filed 7-11-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Decisions and Orders Issued During Week of May 22 Through May 26, 1989

During the week of May 22 through May 26, 1989, the decisions and orders summarized below were issued with respect to submissions filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercial published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 5, 1989.

Remedial Order

Theodore M. Ragsdale, Salem Ventures, Inc., 5/25/89; HRO-0270

Theodore M. Ragsdale (Ragsdale) objected to an Amended Proposed Remedial Order (APRO) which the Economic Regulatory Administration (ERA) issued jointly to Ragsdale and Salem Ventures, Inc., on April 24, 1985. In the APRO, the ERA charged that during the period December 1979 through December 1980, Salem Ventures and Ragsdale resold crude oil at unlawful prices in violation of 10 C.F.R. § 212.186 (the layering rule). Specifically, the ERA charged that Ragsdale and Salem Ventures sold crude oil at a mark-up without providing any traditional and historical reseller services. The amount of illegal revenues obtained in these transactions totaled $365.652.

After considering the Ragsdale Statement of Objections, the DOE concluded that the APRO should be issued as a final Remedial Order. In reaching this conclusion, the DOE rejected Ragsdale's claims that § 212.186 was invalid, that the APRO was barred by the California statute of limitations and that the APRO constituted an illegal rulemaking. The DOE also found that Ragsdale and Salem Ventures engaged in illegal layering activities and that Ragsdale should be held personally liable for the violations. Finally, the DOE rejected Ragsdale's claim that personal liability should be limited, citing Ragsdale's refusal to provide information concerning either his ownership position in Salem Ventures, the identities of others alleged to be in charge of the firm's layering activites or the disbursement of the overcharge moneys. Accordingly, the DOE concluded that the APRO should be issued as a final order and directed Ragsdale to remit $365,652 plus accrued interest, to the DOE.

Refund Applications

Atlantic Richfield Company/Chuck's Arco, George L. Thalhamer, 5/26/89; FR304-1991, FR304-2051, FR304-2188

The DOE issued a Decision and Order concerning two Applications for Refund filed by Chuck's ARCO and one by George L. Thalhamer in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal, both applicants are presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that Chuck's and Thalhamer should receive refunds of $1,478 and $1,894, respectively, representing a total of $2,595 in principal and $777 in interest.

Atlantic Richfield Company/Conservative Gas, Division of National Propane Corporation, et al., 5/24/89; RF304-1261, et al.

The DOE issued a Decision and Order concerning nineteen Applications for Refund filed by three claimants from a consent order fund made available by the Atlantic Richfield Company. Each of the firms had filed multiple applications and had elected either the $5,000 small claims or the 41% presumption of injury. The DOE determined that the election of an injury presumption applied to the total purchases made by an applicant, and, thus, consolidated all of the applications for each claimant and applied the chosen presumption to that total claim. The DOE concluded that these firms should receive refunds totalling $25,738, representing $19,810 in principal and $5,928 in accrued interest.

Atlantic Richfield Company/K.C. Sales Co., et al., 5/26/89; RF304-3068, et al.

The DOE issued a Decision and Order concerning fifty-eight Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims presumption refunds. Each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The refunds granted totalled $100,068, representing $77,205 in principal and $22,863 in interest.

Atlantic Richfield Company/Pine Grove Arco, et al, 5/24/89; RF304-1402, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than $5,000 in principal or end-users, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling $25,053, representing $19,282 in principal and $5,771 in interest.

Cameron Bros. Construction Company, et al., 5/24/89; RF272-27609, et al.

The DOE issued a Decision and Order approving 15 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $27,908.

Dayton Sand & Gravel Company, Inc., et al., 5/24/89; RF272-22285, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 19 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $73,103.

Exxon Corporation/Green Bay, et al., 5/23/89; RF307-6884, et al.

The DOE issued a Decision and Order concerning 65 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $52,419, including $8,064 in accrued interest.

Exxon Corporation/Morel G. Lemoine Dist., Inc., et al., 5/25/89; RF307-1723, et al.

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order granting 49 Applications for Refund in the Exxon Corporation special refund proceeding. Each Applicant sought a refund of less than $5,000, and was therefore presumed to have been injured as a result of Exxon's alleged overcharges. The sum of the refunds granted is $55,510.

Exxon Corporation/Pride Solvents and Chemical Company, Et Al., 5/23/89; RF307-751, et al.

The DOE issued a Decision and Order concerning 65 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $48,903, including $7,801 in accrued interest.

Getty Oil Company/Harry's Super Service, 5/25/89; RF265-107 RF265-108

Harry's Super Service filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Harry's documented the volume of motor gasoline and middle distillates that it purchased from Getty through the Tesoro Petroleum Corporation, a Getty jobber. Harry's refund, which was calculated based upon the procedures outlined in *Little America Refining Co./University Gas*, 14 DOE ¶85,217 (1986), totaled $10,324, representing $5,000 in principle and $5,324 in interest.

Getty Oil Company/Western Petroleum Company, 5/23/89; RF265-2558

The DOE issued a Decision and Order concerning an Application for Refund filed by Western Petroleum Company (Western), a motor gasoline reseller, in the Getty Oil Company special refund proceeding. Western submitted documentation substantiating that during the consent order period it accumulated banks of unrecovered costs that exceeded its allocable refund share for motor gasoline. In addition, the firm submitted information indicating that Western experienced a continuing decline in its historical profit margin during the period in which it purchased motor gasoline from Getty. Based on the data furnished by Western, the DOE determined that the firm was entitled to receive a refund of its full volumetric share based upon its purchases of Getty motor gasoline. The total refund approved in this Decision is $219,585, representing $106,343 in principal and $113,242 in accrued interest.

Gulf Oil Corporation/A.N. Rusche Distributing Company, 5/23/89; RF300-10813

The DOE issued a Supplemental Order amending a refund granted on April 25, 1989 to A.N. Rusche Distributing Company granted in the Gulf Oil Corporation special refund proceeding (*Gulf Oil Corporation/Irby Oil Company, et al.*) in order to include interest accrued on the principal refund amount. The addition of interest increased Rusche's refund from $46,719 to $61,319.

Gulf Oil Corporation/Almacigo Gulf Service Center, et al., 5/24/89; RF300-6713, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $72,555.

Gulf Oil Corporation/Brookville Chevron, Airport Gulf, 5/22/89; RF300-4780, RF300-5111

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by George A. Hartless. Because the two firms were under the common ownership of Mr. Hartless during the consent order period, the applications were consolidated for purposes of applying the presumptions of injury. The two firms collectively purchased 13,119,281 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is $6,563.

Gulf Oil Corporation/Charlie's Gulf, et al., 5/26/89; RF300-46, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each

application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $28,183.

Gulf Oil Corporation; Graeber Bros., Inc., Dixie Gas, Inc., Graeber Bros., Inc., Graeber Bros., Inc. of Clarksdale, 5/22/89, RF300-7176, RF300-7228, RF300-7411, RF300-7521

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Graeber Bros., Inc., Dixie Gas, Inc. and Graeber Bros., Inc. of Clarksdale. Because Mr. Lewis Graeber and Mr. James P Graeber had a combined ownership interest of more than 50 percent in each of the three companies during the consent order period, and because their allocable shares exceed $5,000, the claims were considered together when applying the presumptions of injury. The three firms were eligible to receive a refund based upon purchases of 195,620,810 gallons of Gulf propane, after excluding volumes of propane which Dixie purchased from Gulf and resold to Graeber Bros. and Graeber Bros. of Clarksdale. The Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is 65,625.

Gule Oil Corporation/Joan J. Reynolds, 5/25/89; RF300-4122

The DOE granted an Application for Refund submitted by a motor gasoline retailer in the Gulf Oil Corporation special refund proceeding. The applicant and her spouse had operated the gasoline outlet during the consent order period but were subsequently divorced. Based upon the refund submission, the DOE determined that she was the proper recipient of the refund. The Application was approved using a presumption injury. The sum of the refund granted in this Decision, including accrued interest, is $646.

Gulf Oil Corporation/Leo Mullens, dba Kirkland's Gulf, et al., 5/23/89; RF300-224, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $4,317

Gulf Oil Corporation/Martin N. Rentschler, Rentschler's Gulf, 5/22/89; RF300-2148, RF300-10727

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. One was submitted by the current owner of Rentschler's Gulf (RF300-2148) and the second by the owner of Rentschler's during the consent order period (RF300-10727). The OHA determined that the owner during the consent order period was entitled to claim and receive a refund based upon Rentschler's purchases from Gulf. Accordingly, Case No. RF300-2148 was denied while Case No. RF300-10727 was approved under the small-claims presumption of injury. The total refund granted in this Decision, including accrued interest, is $925.

Gulf Oil Corporation/Midway Gulf, et al., 5/24/89; RF300-7616, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $16,540.

Gulf Oil Corporation/Nelson Oil Company, et al., 5/26/89; RF300-4988, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $22,687

Gulf Oil Corporation/Newell Oil Co., Inc., 5/24/89; RF300-4868

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The total refund granted in this Decision, including accrued interest, is $14,010.

Gulf Oil Corporation/Penn Ave. Gulf, Inc., et al., 5/22/89; RF300-131, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $39,378.

Gulf Oil Corporation/Penn Dairies, Inc., et al., 5/24/89; RF300-7814, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $37,928.

Gulf Oil Corporation/W.E. Jersey & Sons, Inc., 5/26/89; RF300-5044

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision, including accrued interest, is $8,218.

Henderson County Highway Dept., et al., 5/22/89; RF272-19035, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 54 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. Each applicant was an end-user of the products it purchased and was therefore presumed to have been injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $136,734. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Johnny B. Smith, et al., 5/22/89; RF272-11809, et al.

The DOE issued a Decision and Order approving four Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved, and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $377

Kansas City, Missouri, 5/24/89; RF272-29333

The DOE granted an Application for Refund filed by Kansas City, Missouri, in the crude oil special refund proceeding. Kansas City had used the refined products on which its claim was based to operate several fleets of motor vehicles and thus was an end-user of the products claimed. In addition, Kansas City documented its purchases on the basis of actual records and resonable estimating procedures. The refund granted was $22,708.

Marathon Petroleum Company/Doyle Walters Distributors, 5/26/89; RF250-2749

The DOE issued a Decision and Order concerning an Application for Refund filed by Doyle Walters Distributors in the Marathon Petroleum Company special refund proceeding. Using the small claims presumption of injury, the

DOE found that Doyle was eligible for a refund of $4,398. However, another firm under common ownership with Doyle had previously received a Marathon small claims refund of $2,093. Since the maximum small claims refund that a firm, including affiliates, may receive in the Marathon refund proceeding is $5,000, the DOE granted Doyle a refund of $2,907 for a total refund in both proceedings of $5,000.

Martinique Realty Associates, et al., 5/22/89; RF272-27507 et al.

The DOE issued a Decision and Order approving 18 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $32,227

Midwest Continental, Inc. et al., 5/24/89; RF272-351, et al.

The DOE issued a Decision concerning six Applications for Refund filed in the DOE Subpart V crude oil refund proceeding. Each of the applicants was an end-user of the petroleum products it purchased and therefore presumed injured and eligible for a full allocable share refund. The refunds granted in this Decision totaled $25,895.

Orme Ranch, Inc., et al., 5/26/89; RF272-1671, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 22 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The refunds granted in this Decision total $67,677

Plaquemines Oil Sales Corp./Shell Oil Co., 5/23/89; RR305-2

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Shell Oil Co. in the Plaquemines Oil Sales Corp (POSC) special refund proceeding. In its Motion Shell contended that a prior Decision and Order denying its Application was incorrect because, as an end-user of POSC products in its offshore drilling operations, it was entitled to its full allocable share under the presumption of injury established for end-users in this proceeding. The firm also contended that in the Remedial Order issued to POSC Shell was found to have been overcharged by POSC. In addition, Shell claimed that the contract governing its purchases from POSC, the discretionary nature of those transactions and the equities of the case, were not relevant to the merits of its refund application. Finally, Shell contended that its purchasing division was ignorant of the pricing regulations.

The DOE determined that since Shell had failed to answer the questions regarding its relationship with POSC that had been raised in both the POSC implementation order and the original Decision, the firm had not demonstrated its eligibility for a refund in this proceeding. In addition, the DOE noted that the end-user presumption of injury is rebuttable, and that end-users have been required to provide additional information when the record contained sufficient evidence to rebut the presumption. Since Shell had failed to provide such information even though requested to do so, the DOE determined that the end-user presumption could not be applied in this case. The DOE also determined that the POSC remedial order finding that Shell was overcharged was not, ipso facto, evidence that Shell was injured by its purchases. The DOE also found that the discretionary nature of Shell's arrangement with POSC indicated that it was not injured. Finally, the Decision rejected Shell's claim that equitable considerations do not apply to this case and that ignorance of the regulations was a valid defense for its actions. Accordingly, the Motion for Reconsideration was denied.

Shell Oil Corporation/Aerospace Shell, et al., 5/22/89; RF315-2, et al.

The DOE issued a Decision and Order granting 150 Applications for Refund filed in the Shell Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $141,079, including $19,270 in accrued interest.

Shell Oil Company/Gordie's Shell Service, et al., 5/23/89; RF315-425, et al.

The DOE issued a Decision and Order granting 120 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share, plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $117,575, including $16,060 in accrued interest.

Stahl Construction Company Smithtown Central School District, 5/23/89; FR272-14015, FR272-14016

The DOE issued a Decision and Order granting refunds to Stahl Construction Company (Stahl) and the Smithtown Central School District (Smithtown) in the Subpart V crude oil refund proceedings. Each of the applicants documented its purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. The DOE found that Stahl, a paving contractor, and Smithtown, a school district, were both end-users of their relevant petroleum product purchases and therefore presumed injured. The total of the refunds approved in this Decision is $23,794.

Yale University, 5/25/89 RF272-22310

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Yale University based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27 1981. Yale documented its purchase volumes on the basis of actual, contemporaneous records. As an end-user of the products it purchased, Yale was therefore presumed injured and was granted a total refund of $79,528.

Dismissals

The following submissions were dismissed.

Name	Case No.
Airline and Clearview Exxon	RF307-1991
Al's Thunderbird ARCO	RF304-22
Beckner's Exxon	RF307-1978
Bryant Exxon	RF307-1968
Carl's Spur	RF309-661
Carolina Springs Golf & Country Club.	RF272-75420
Consolidated Construction, Inc.	RF272-75432
Crawford County	RF272-62217
Dom and Buddy's ARCO	RF304-8767
Earhart Exxon	RF307-1992
Egano's Exxon	RF307-1973
G. A. Watson, Inc.	RF272-75431
Gentilly Woods Exxon	RF307-1990
Hogan's ARCO	RF304-3693
Howell Corp.	KRO-0690
Jack Fanning	RF272-61662
Jerry's Garage	RF307-1998
Jim's Gulf Service Station	RF300-6899
	RF300-6900
	RF300-6901
Joe Lee McClellan, Inc.	RF272-75428
Main Street Exxon	RF307-1967
Mancha Exxon	RF307-1974
Melba's Grocery	RF307-1966
Metcalf's ARCO	RF304-1980

Name	Case No.
Mike's ARCO	RF304-6813
Mr. Jerry W. Hopkins	RF304-5683
Mr. Richard Gnder	RF304-7654
Norway Community Schools	RF272-64646
Parkway Market	RF307-1962
Paso Robles JT. Union H. S. District.	RF272-62248
Peek Grocery	RF307-1960
Perrine Oils	RF304-6410
Pete's Exxon	RF307-1970
Queensborough Community College.	RF272-27719
Refroe Grocery	RF307-1961
Saddle Lor Service	RF307-1982
Sartin Exxon	RF307-1983
Shrewbkury Exxon	RF307-1993
South Carolina Law Enforcement	RF307-6805
South Main Exxon	RF307-1988
St. Thomas Aquinas High School	RF272-75437
T-bar D General Store	RF307-1989
Wells and Sons Exxon Station	RF307-1980
Westphalia Oil Company	RF310-289
Young's Exxon	RF307-1979

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Orders:

Name	Case No.	Date	No of Applicants	Total Refund
Mitchel Dobson, *et 3al*	RF272-50600	5/25/89	169	$19,060
Norbert D. Bremer, *et al*	RF272-51200	5/26/89	177	18,157
Southwest Tenn, Elec. Membership, Corp., *et al*	RF272-26591	5/22/89	122	235,801

[FR Doc. 89-16322 Filed 7-11-89; 8:45 am]

BILLING CODE 6450-01-M

Decisions and Orders Issued During Week of May 29 Through June 2, 1989

During the week of May 29 through June 2, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 5, 1989.

Appeals

Gene De Fau, 6/1/89; KFA-0285

Gene De Fau filed an Appeal from a denial by the Economic Regulatory Administration (ERA) of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the ERA had not adequately justified its withholding of the documents at issue under Exemption 4. Accordingly, the DOE ordered the ERA to either release the documents or issue a new determination regarding its use of Exemption 4.

Knolls Action Project, 5/30/89; KFA-0283

On May 2, 1989, the Knolls Action Project (KAP), filed an Appeal from a determination issued to it on March 24, 1989, by the Department of Energy's (DOE) Office of Naval Reactors (ONR). In that determination, the ONR denied in large part the KAP request for information filed pursuant to the Freedom of Information Act (FOIA). Specifically, the ONR denied portions of the KAP request for information related to activities at the Knolls Atomic Power Laboratory (KAPL) pursuant to FOIA Exemptions 3, 4, and 5. In considering the Appeal with respect to Exemption 5, the DOE found that the determination to withhold correspondence and reports pursuant to that exemption was consistent with the FOIA and the DOE's implementing regulations. Accordingly, the DOE denied the KAP Appeal.

Omega World Travel, Inc., 5/30/89; KFA-0282

Omega World Travel, Inc. filed an Appeal from a partial denial by the Albuquerque Operations Office of the Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the information which was initially withheld under Exemption 4 is not confidential and should be released to Omega.

Petition for Special Redress

International Drilling and Energy Corp., 6/1/89; KEG-0036

International Drilling and Energy Corporation (IDEC) filed a Petition for Special Redress with the Office of Hearings and Appeals. In the Petition, IDEC requested that approximately $1.2 million be transferred into an escrow account funded pursuant to a consent order with Petrolane-Lomita Gasoline Corporation. That sum, according to IDEC, was the amount needed to satisfy its request for a refund from the Petrolane consent order fund. Since, in another Decision and Order, the Office of Hearings and Appeals had rejected IDEC's Petrolane refund request, it found the Petition moot. Accordingly, the Petition for Special Redress was dismissed.

Refund Applications

Atlantic Richfield Company/C.R. White, Inc., et al., 5/30/89; RF304-2882, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund filed by five claimants in the Atlantic Richfield Company special refund proceeding. All applicants documented their ARCO purchases and all were resellers and retailers applying for small claims refunds. The applicants were therefore presumed to have been injured. The refunds granted in this proceeding totalled $11,096, including $2,555 in accrued interest.

Atlantic Richfield Company/Palmers ARCO Service Center, Inc., et al., 6/2/89; RF304-446, et al.

The DOE issued a Decision and Order concerning 115 Applications for Refund filed by 108 claimants in the Atlantic Richfield Company special refund proceeding. As reseller/retailers applying for small claims refunds, and end-users, these claimants were presumed to have been injured. Based upon their documented purchase volumes, the DOE concluded that these firms should receive refunds totalling

$193,616, representing $149,021 in principal and $44,595 in accrued interest.

Bristol-Myers Company, 5/30/89; RF272-26462

Bristol-Myers Company filed an application for a refund in the Subpart V crude oil special refund proceeding. Bristol-Myers used the refined products on which its claim is based to heat buildings and to operate a fleet of motor vehicles and was therefore considered to be an end-user. The firm estimated the volume of its purchases on the basis of usage rates for the period for which the company has records. The refund granted was $10,000.

Crown Central Petroleum Corporation/ Rex Oil Company, Inc., 5/31/89; RF313-21

The DOE issued a Decision and Order considering an application filed in the Crown Central Petroleum Corporation special refund proceeding. Rex Oil, a purchaser of Crown refined petroleum products, presented evidence that it experienced a competitive disadvantage in all of its purchases of Crown gasoline and middle distillates during the refund period. Therefore, under the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), the firm was entitled to a full volumetric refund. The total refund approved in this Decision was $24,099, representing $20,562 in principal plus $3,537 in accrued interest.

Dorchester/MFA Oil Company, 6/1/89; RF253-56

The DOE issued a Decision and Order concerning an Application for Refund filed by MFA Oil Company (MFA) in the Dorchester Gas Corporation special refund proceeding. MFA indirectly purchased Dorchester propane through Home Petroleum Corporation (Home). Home had previously been denied a refund in the Dorchester proceedings on the basis that it had passed through any Dorchester overcharges to its customers and therefore was not injured. As a result, MFA was eligible to receive its full allocable share. MFA, as an agricultural cooperative, certified that it would pass through any refund received to its members and was therefore considered to be an end-user not required to provide a detailed demonstration of injury. The total refund, including both principal and interest, approved in this Decision is $2,592.

Exxon Corporation/Administration De Servicios Agricolas, et al., 5/30/89; RF307-6000, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,876 ($28,666 principal plus $5,210 interest).

Exxon Corporation/Brooksburg Service Station, Inc., et al., 5/30/89; RF307-2216, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share was less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $12,931 ($10,869 in principal and $2,062 in interest).

Exxon Corporation/Bud Hayes Auto Service & Repair, et al., 5/31/89; RF307-4940, et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $40,372 ($33,933 principal plus $6,439 interest).

Exxon Corp./Dill's Servicenter, et al., 6/2/89; RF307-410, et al.

The Department of Energy issued a Decision and Order concerning 40 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $33,580, including $5,353 in accrued interest.

Exxon Corporation/M. L. Bishop Exxon, et al., 5/30/89; RF307-6072, et al.

The DOE issued a decision and Order concerning 19 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $17,735, including $2,828 in accrued interest.

Exxon Corporation/Thompson Oil & Gas Co., Inc., 5/30/89; RF307-3290

The DOE issued a Decision and Order concerning an Application for Refund filed by Thompson Oil & Gas Co., Inc. (Thompson), a reseller, in the Exxon Corporation special refund proceeding. Thompson's potential allocable share exceeded $5,000 and the firm elected to receive a refund of either 40 percent of its allocable share or $5,000, whichever was greater. The total refund granted in this Decision was $5,949, including $949 in accrued interest.

Florida Rock & Tank Lines, Inc. Florida Rock Industries, Inc., 5/30/89; RF272-75433 RF272-75492

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Florida Rock and Tank Lines, Inc. (Tank Lines) and Florida Rock Industries, Inc. (FRI). Previously, Tank Lines had applied for and been granted a refund in the Surface Transporters (ST) proceeding at the same time FRI's Application for Refund filed in the crude oil proceedings was denied, on the basis that its former subsidiary, Tank Lines, filing in the ST proceeding has waived FRI's right to receive a Subpart V crude oil refund. The United States District Court for the District of Columbia reversed this aspect of the OHA decision, finding that Tank Lines had effectively qualified its ST waiver. The court ordered the OHA to consider FRI's Subpart V application on its merits, and DOE did not appeal that decision. In reviewing FRI's application, the DOE rejected objections submitted by a group of states, reiterating its long-standing position that a general showing of sustained growth and profitability of a particular firm does not rebut the end-user presumption. In addition, the DOE found the states' evidence concerning the cement industry to be irrelevant to FRI's claim because FRI was involved in the concrete industry. Accordingly, FRI was granted a refund of $25,940, while Tank Lines was granted a refund of $9,624.

Gulf Oil Corporation/Annona Gulf, 5/30/89; FR300-4707

The DOE sisued a Decision and Order concerning an Application for Refund submitted by Annona Gulf, an indirect

purchaser, in the Gulf Oil Corporation special refund proceeding. Because Annona's supplier, the direct purchaser from Gulf, filed a refund claim on the basis of the presumptions of injury adopted in Gulf, the Annona submission was approved under the same procedure as applied to direct purchasers using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $786.

Gulf Oil Corporation Fuchs Oil Company, et al., 5/30/89; RF300-5041, et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of the applicants is a consignee and a reseller of Gulf refined products and each application was approved utilizing appropriate presumptions of injury. The sum of the refunds granted in this Decision is $13,192.

Gulf Oil Corporation/Lillian Pitts Brenham Quick Mark Hilbert Rosenbaum DBA Brenham Quick Mart, 6/2/89; RF300-4786; RF300-10819

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applicants indicated that they were consignees of Gulf products during the consent order period. One of the applicants was a consignee of the Gulf Oil Corporation and the other a consignee of a Gulf jobber. Neither applicant attempted to show injury, but instead elected the 10 percent injury presumption for Gulf consignees. Therefore, each applicant will receive a refund equal to 10 percent of its allocable share (excluding interest). The sum of the refunds granted in this Decision, which includes both principal and interest, is $152.

Gulf Oil Corporation/Pigeon Cooperative Oil Co., 6/2/89; RF300-3573

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applicant was an agricultural cooperative during the consent order period and certified that it would pass the refund through to its members. The refund granted in this Decision, including accrued interest, is $7,980.

Gulf Oil Corporation/Sellers Oil Company, Inc., 5/31/89; RF300-5015

The DOE issued a Decision and Order concerning an Application for Refund submitted by an indirect purchaser in the Gulf Oil Corporation special refund proceeding. Because the applicant's direct supplier had received a refund based upon a presumption of injury, the indirect purchaser's application was approved under the same procedure as direct purchasers using a presumption of injury. The total refund granted in this Decision is $1,212.

Gulf Oil Corporation/Wald Oil Company, et al., 6/2/89; RF300-10815, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund approved in *Gulf Oil Corporation/Wald Oil Company, et al.*, on May 8, 1989. The original Decision and Order erroneously lised in the total gallons and refund approved. The total gallonage approved in the May 8, 1989 Decision and Order should have been 115,790,976 gallons, and the total refunds approved $27,148. The amounts approved for each individual claimant in the May 8, 1989 Decision and Order were not incorrect, and thus were unaffected by the Supplemental Order.

Gulf Oil Corporation/Washington Gas Light Co., 6/2/89; RF300-3286

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applicant was a regulated public utility during the consent order period and certified that it would pass the refund through to its customers. The refund granted in this Decision, including accrued interest, is $8,916.

Indian Wells Oil Company/Farmland Industries, Inc., 5/31/89; RF317-4

The DOE issued a Decision and Order concerning an Application for Refund filed by Farmland Industries, Inc., (Farmland) in the Indian Wells Oil Company special refund proceeding. Farmland is an agricultural cooperative, and therefore considered an end-user of Indian Wells NGLs with respect to sales to its members. The firm stated that 86% of its product sales during the consent order period were to members. Accordingly, Farmland was entitled to receive $137,735, (86 percent of its allocable share of $160,157) plus a proportionate share of the interest that accured in the escrow account. With respect to the remaining 14 percent of its allocable share that is attributable to sales to non-members ($22,422), Farmland did not attempt to prove injury as a reseller. Therefore, Farmland was granted a total refund of $151,660 ($137,735 principal and $13,925 interest).

Marathon Petroleum Company/ Peyton Petroleum Company, 6/1/89; RF250-1387

The DOE issued a Decision and Order concerning an Application for Refund filed by the Peyton Petroleum Company (Peyton), an indirect purchaser, in the Marathon Petroleum Company special refund proceeding. Peyton had purchased Marathon products from two suppliers, one of which had received a Marathon refund under a presumption of injury; the refund claim of the second was denied. Under the circumstances, Peyton was found to be eligible for a refund under the small-claims presumption of injury and granted a refund of $4,813 in principal and $1,135 in interest.

Marathon Petroleum Company/Pullman Marathon, 5/30/89; RF 250-2735

The DOE issued a Decision and Order concerning an Application for Refund filed by Pullman Marathon, an indirect purchaser, in the Marathon Petroleum Company special refund proceeding. Because Pullman's supplier had previously received a refund under a presumption of injury, Pullman was found to be eligible to receive a small claims presumption refund. The total refund approved in this Decision is $529 in principal and $123 in interest.

Mobile Crane Company, Inc., et al., 6/1/89; RF272-27703, et al.

The DOE issued a Decision and Order approving 16 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $45,453.

Petrolane-Lomita Gasoline Co./ International Drilling & Energy Corp., 6/1/89; RF208-2

International Drilling & Energy Corporation (IDEC) filed a Motion for Reconsideration of the denial of its Application for Refund from a consent order fund made available by Petrolane-Lomita Gasoline Company. In its applications, IDEC alleged that Petrolane violated DOE allocation regulations by failing to supply it with the volume of propane that it was entitled to receive during the period August 4, 1975, through January 1981. IDEC also requested a refund based on volumes of propane that another firm, H.W. Lemens Company, was entitled to receive from Petrolane during the period August 19, 1973, through August 3, 1975. IDEC claimed that since it purchased some of Lemens' assets in 1972, it was

entitled to Lemens' base period allocation of propane from Petrolane and therefore was eligible for a refund from the Petrolane fund for the alleged allocation violations. In denying the original IDEC application, the DOE found that during the earlier period IDEC had not established that it had a supplier/purchaser relationship with Petrolane and that it was not entitled to a refund for alleged violations by Petrolane pertaining to Lemens' propane allocation. The DOE further found that for the period August 4, 1975, through January 27 1981, IDEC failed to show that it filed a contemporaneous complaint alleging the allocation violation and that it had therefore not met the standards established for receiving a refund for this type of violation. In its Motion for Reconsideration, IDEC stated that because it purchased Lemens' entire "hot-mix" business, the Lemens allocation from Petrolane was automatically transferred to IDEC. The DOE rejected this claim, stating that during the August 19, 1973, through August 3, 1975 period, IDEC purchased the propane through Lemens and that Petrolane had no way of knowing that it had any obligation to supply IDEC. Accordingly, the DOE found that Petrolane could not have committed any alleged allocation violation with respect to IDEC during that period. With respect to the latter period, the DOE found that IDEC did have a relationship with Petrolane and did file an allocation complaint. However, the DOE referred to an FEA letter stating that Petrolane may not have supplied IDEC because the latter had not paid Petrolane for the product which it had received, it was again supplied with propane. THe DOE also noted that IDEC was able to obtain significant amounts of propane from other suppliers. The DOE concluded that no colorable allocation violation claim had been made by IDEC and accordingly denied the Motion for Reconsideration.

Pride Oil Well Service Company, et al., 6/1/89; RF272-27800, et al.

The DOE issued a Decision and Order approving 24 Applications for Refund submitted in the Subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $46,061.

Shell Oil Company/Camillo R. Bruni, et al., 6/1/89; RF315-2000, et al.

The DOE issued a Decision and Order granting 134 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased products directly from Shell and was either an end-user or a reseller whose allocable share was less than $5,000. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $115,146 ($99,415 principal plus $15,731 interest).

Strattanville Auto Truck Center, 5/31/89; RR272-23

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Strattanville Auto Truck Center (Strattanville) in the Subpart V crude oil refund proceeding. As a reseller of refined petroleum products, Strattanville was required to demonstrate that it had absorbed and therefore been injured by crude oil overcharges. Strattanville did not make such a demonstration and its Application was therefore denied in a Decision and Order dated January 25, 1989. *See Henderson Oil & Butane Co.*, 18 DOE ¶ 85,533. In the Motion for Reconsideration, Strattanville asserted that it was injured by crude oil overcharges and that its original Application should have been granted. However, Strattanville again did not demonstrate that it has absorbed any crude oil overcharges, and thus its Motion for Reconsideration was denied.

Vickers Energy Crop./Oklahoma, 5/30/89; RQ1-512

The DOE issued a Decision and Order approving a second-stage refund application filed by the State of Oklahoma in the Vickers Energy Corp. special refund proceeding. Oklahoma requested permission to use $25,600 in second-stage funds to purchase Ground-Source Heat Pumps for eight State-run vocational/technical schools to be used as demonstration models. The DOE found that these purchases would benefit the public by enhancing awareness of an energy-saving technology, and would therefore provide restitutionary benefits to injured consumers of petroleum products. Accordingly, the DOE granted Oklahoma's application and allocated $25,600 ($13,282 in principal plus $12,318 in interest) in Vickers funds to the State.

Walsh & Kelly, Inc., 6/2/89; RF272-3217

The DOE issued a Decision and Order granting a refund of the crude oil overcharge funds to Walsh & Kelly, Inc. based on its purchases of refined petroleum products during the period August 19, 1973 through January 27 1981. Walsh purchased gasoline, diesel fuel, heating oil, and liquid asphalt to produce bituminous concrete and asphalt emulsions in its plants. The DOE determined that Walsh was the end-user of the refined petroleum products that it purchased. As an end-user, Walsh was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is $72,566.

Dismissals

The following submissions were dismissed.

Name	Case No.
Byron Gulf	RF300-10074
Carleton College	RF272-61138
Chinoski Oil Company	RF310-216
City of Abilene, Kansas	RF272-58343
Cowles Publishing Company	KFA-0145
Hanford Education Action League.	KFA-0257
Jackson Co. Dept of Public Works.	RF272-72547
L. C. Livingston	RF300-7914
Ozark County Gas, Inc.	HRO-0239
Stan Balzer	KFA-0286
Steve's Service Station	RF304-5890
Sunclipse, Inc.	RF272-54369
Tesoro Petroleum Corp.	RF300-9641
The Oregonian	KFA-0089
Thomason Gulf	RF300-9386
Tri-City Herald	KFA-0072
Williams Service Station	RF300-7643
Yansick's ARCO	RF304-2660
	RF304-4236

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of Applicants	Total Refund
Carolina Storage Corp., *et al.*	RF272-51400	5/31/89	154	$17,967
Harold Flanders, *et al.*	RF272-52400	5/31/89	158	$16,408
J.R. Martin, *et al.*	RF272-52000	5/31/89	167	$17,817
Lawrence Wilde, *et al.*	RF272-51600	5/31/89	176	$20,235
Mervin G. Hoppman, *et al.*	RF272-52200	5/31/89	152	$17,835

[FR Doc. 89-16323 Filed 7-11-89; 8:45 am]
BILLING CODE 6450-01-M

Western Area Power Administration, Colorado River Storage Project; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a rate order—Colorado River storage project firm transmission rate.

SUMMARY: Notice is hereby given of the confirmation and approval, by the Deputy Secretary of the Department of Energy, of Rate Order No. WAPA-42 for placing an increased rate into effect on an interim basis for the firm transmission of power over the Colorado River Storage Project system by the Western Area Power Administration (Western).

The firm transmission rate consists of a charge of $21.72 per kilowatt-year. The rate will be in effect on an interim basis beginning July 1, 1989.

Rate Order No. WAPA-42 further explains the rate adjustment and discusses the principal factors leading to the decisions on the rate increase and responds to the comments and criticisms offered during the consultation and comment period.

EFFECTIVE DATE: The rate will be effective July 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147 (801) 524-6372.

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1545.

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Forrestal Building, Room 8G061, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated the authority to develop long-term power and transmission rates to the Administrator of Western; the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On October 27 1988, the Secretary issued a notice, DOE N 1110.29, amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This order was published in the **Federal Register** on January 26, 1989 (54 FR 3841).

A consultation and comment period was initiated on December 7 1988, with an announcement of the proposed rate adjustment published in the **Federal Register** at 53 FR 49357 The **Federal Register** notice also announced a combined public information and comment forum to be held on January 19, 1989. On December 9, 1988, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the forum and to transmit copies of the **Federal Register** notice and a rate brochure dated December 1988. The combined public information and comment forum was held January 19, 1989. Written comments were accepted through February 3, 1989.

All public comments received by February 3, 1989, have been considered in the preparation of the rate order.

Rate Order No. WAPA-42 confirming and approving an increased firm transmission rate on an interim basis is issued, and the rate will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued at Washington, DC, June 28, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. WAPA-42]

Order Confirming, Approving, and Placing an Increased Transmission Rate in Effect on an Interim Basis.

June 28, 1989

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Colorado River Storage Project (CRSP), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). On October 27 1988, the Secretary of Energy issued a notice, DOE N 1110.29, amending Delegation Order No. 0204-108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This order was published in the **Federal Register** on January 26, 1989 (54 FR 3841). This rate order is issued pursuant to the delegation to the Administrator and the Deputy Secretary and the rate adjustment procedures at 10 CFR Part 903, published at 50 FR 37835 on September 18, 1985.

Background

Public Notice and Comments

The Procedures for Public Participation in Power and Transmission Rate Adjustments, 10 CFR Part 903, have been followed by Western in the development of this firm transmission rate. The transmission rate increase represents an increase of less than 1 percent in the total CRSP revenues; therefore, it is a minor rate adjustment, as defined at 10 CFR 903.2(f)(1). The distinction between a minor or major rate adjustment is used only to determine the public procedures for the rate adjustment. The following discussion summarizes the steps Western took to assure involvement of interested parties in the rate process.

1. The Federal Register notice at 53 FR 49357 published on December 7 1988, announced the proposed firm transmission rate adjustment and the combined public information and comment forum.

2. Letters were sent to customers and other interested parties on December 9, 1988, to announce the proposed rate adjustment and the combined public information and comment forum, and to transmit copies of the notice and the rate brochure entitled "Colorado River Storage Project and Participating Projects Proposed Adjustment of Transmission Rates, December 1988" (Rate Brochure).

3. A combined public information and comment forum was held on January 19, 1989, in Salt Lake City, Utah. Western explained the need for the proposed rate increase and presented the results of the transmission rate study. Customers asked clarifying questions, but no oral comments were received at the meeting.

4. Three written comments were received through the end of the consultation and comment period on February 3, 1989. In addition, one written comment was received after February 3.

Project History

The CRSP was authorized by the Colorado River Storage Project Act, Ch. 203, 70 Stat. 105, on April 11, 1956. By means of the four storage units authorized, the flow of the Colorado River is regulated in such a way that irrigation, municipal, industrial, and other water-use developments in the Upper Colorado River Basin can take place while maintaining water deliveries to the lower basin as required by the Colorado River Compact. Facilities have also been provided at the storage units for flood control, recreation, and other beneficial purposes. In order to optimize the use of the water and to obtain revenues to assist in the repayment of the irrigation developments, hydroelectric-power generation plants have been installed on 3 of the 4 storage units and on 1 of the 20 participating projects.

Transmission facilities include a high-voltage transmission grid to deliver power to certain delivery points, provide interconnections among the plants of the CRSP units and the participating project, and interconnect with other Federal systems and systems of neighboring utilities. Additional transmission facilities are being built which will improve system reliability, better manage inadvertent power flows from other systems, and accommodate increased generating capacity.

Transmission Rate Study

A transmission rate study was completed as part of the CRSP power repayment study (PRS) this year. The first 3 future years were used as the study period for calculating the transmission rate. New and existing investment in transmission facilities was identified, and annual investment costs were determined by amortizing the investment at appropriate interest rates for 50 years. Other annual costs such as operations, maintenance, and replacements (OM&R) were also estimated. Estimated annual revenues from rental of transmission facilities, exchange of hydrogenerated power for thermal-generated power (included in the transmission-rate study because the exchange is made possible by the transmission facilities), and nonfirm wheeling revenues reduced the annual expenses. Capacity commitments for use of the transmission system were projected using planned maximum operating capacity of CRSP powerplants and contractual arrangements for wheeling over the CRSP transmission system that Western has with others. The annual unit cost was derived by dividing the annual costs by the annual capacity commitments. The firm transmission rate was determined by averaging the three annual unit costs. The rate increase is needed to recover the investment in CRSP transmission facilities scheduled to become operational during the 3-year study period.

Existing and Increased Rates

The existing firm transmission rate of $15.94 per kilowatt-year (kW-year) for the use of the CRSP transmission system was placed in effect on July 1, 1986, and will expire June 30, 1989. It was based on data available as of September 1, 1985. Projections of the transmission system investments, OM&R costs, wheeling costs over other systems, and revenues from Colorado-Ute Electric Association (Colorado-Ute) and Salt River Project (SRP) exchanges of thermal generation for CRSP hydrogeneration were made for fiscal years (FY) 1986, 1987 and 1988. The estimated average annual costs were $29,241,283, and the estimated annual transmission capacity commitments were 1826.7 megawatts (MW).

In December 1988, Western prepared a firm transmission rate study. The proposed firm transmission rate of $22.35/kW-year was presented to Western's customers and other interested parties in the Rate Brochure and at a combined public information and comment forum held January 19, 1989. The Rate Brochure describes the development of the proposed rate of $22.35 per kW-year and the changes in methodology used to develop the proposed rate, compared to the existing rate of $15.94 per kW-year.

The source for all the expenses and revenues shown in the transmission rate study is the CRSP PRS. The proposed transmission rate was based on the 1987 final PRS. In response to customer comments and the completion of the 1988 final PRS, some estimates used to develop the revised proposed rate were changed. These changes are reflected in table 1, which is a revision of table 2 shown in the Rate Brochure. The calculation results in a revised proposed firm transmission rate of $21.74/kW-year. For ease of monthly billing, Western has adjusted this rate of $21.72/kW-year.

Certification of Rates

Western transmits and disposes of power and energy in a manner that encourages their most widespread use at the lowest possible rates consistent with sound business principles. The Administrator of Western has certified that this new firm transmission rate is the lowest possible rate consistent with sound business principles. The rate has been developed in accordance with administrative policies and applicable laws.

Discussion

Several changes in the proposed firm CRSP transmission rate are reflected in the revised proposed rate. These revisions resulted from changes between the 1987 final PRS and the 1988 final PRS and from Western's response to customer comments. Written comments were received from three entities during the public consultation and comment period. One entity commented after the close of the comment period. The comments of all four entities, along with the changes in the revised proposed transmission rate, are described here.

BILLING CODE 6450-01-M

Table 1

CRSP TRANSMISSION SYSTEM COSTS AND CAPACITY COMMITMENTS - REVISED MARCH 1989

Interest Rate (%)	1989 ($)	1990 ($)	1991 ($)
2.632	1 179,517	1,179,517	1 179,517
2.875	182,609,000	182,609,000	182,609,000
5.683	0	351,895	351,895
6.595	6,213,388	6,213,388	6,213,388
7.210	684 794	684,794	684,794
9.352	159,302,848	163,295,354	163,295,354
10.051	11,699 153	11,699,153	11,699 153
10.250	0	1,909,945	1,909,945
10.371	1 474,804	1 474,804	1 474,804
10.403	1,172,701	23,504,261	23,504,261
10.693	1 780,847	3,038,704	3,092 704
10.898	31,256,947	39,688,083	39,688,083
11.070	1,151,737	1,151,737	1,151,737
Total	398,525 736	436,800,635	436,854,635

AMORTIZATION OF INVESTMENT

Interest Rate (%)	1989 ($)	1990 ($)	1991 ($)
2.632	42,692	42,692	42,692
2.875	6,929,662	6,929,662	6,929,662
5.683	0	21,344	21,344
6.595	427,308	427,308	427,308
7.210	50,942	50,942	50,942
9.352	15,070,503	15,448,206	15 448,206
10.051	1,185 751	1 185,751	1 185 751
10.250	0	197,269	197,269
10.371	154,061	154,061	154,061
10.403	122,868	2,462,621	2 462,621
10.693	191,618	326,963	332,774
10.898	3 425,817	4,349,884	4,349,884
11.070	128,170	128,170	128,170
AMORTIZATION COSTS	27,729,391	31,724,873	31,730,684
OTHER COSTS:			
OPER. & MAINT EXPENSE	9,597,521	9 182,252	9,812,644
REPLACEMENTS 1/	2 466 122	2 485,916	2,610,972
SUBTOTAL	12,063,643	11,668,168	12,423,616
TOTAL TRANSMISSION COSTS	39 793,034	43,393,041	44 154,300
LESS REVENUES			
SUBSTATION RENTAL	287,000	287,000	287,000
EXCHANGE CAP CHARGES 2/	1,050,000	1,050,000	1,050,000
NONFIRM WHEELING	326,003	326,003	326,003
SUBTOTAL	1,663,003	1,663,003	1,663,003
NET COSTS TO RECOVER	38 130,031	41,730,038	42,491,297
CAPACITY COMMITMENTS (MW)			
CRSP POWERPLANTS	1715.0	1747.0	1753.0
ESTIMATED FIRM WHEELING.			
SRP	33.0	33.0	33.0
NTUA	32.0	32.0	32.0
ICPA	14.0	14 7	15.6
TRI-STATE	20.0	20.0	20.0
LOS ALAMOS	10.0	10.0	10.0
BASIN	10.0	10.0	10.0
ROCKY MTN. G&T	10.0	10.0	10.0
MEAN	7.0	7.0	7.0
TOTAL WHEELING	136.0	136.7	137.6
TOTAL CAPACITY COMMITMENTS	1851.0	1883.7	1890.6
UNIT COST ($/KW-YEAR)	20.600	22.153	22.475
1989-1991 AVERAGE ($/kW-year)	21 74		

1/ Amortization of historical and budgeted replacements 1975-1991
2/ Revenues from SRP ($1 75 x 500,000 kW) and Colorado-Ute ($1 75 x 100 kW) for exchange of capacity

BILLING CODE 6450-01-C

Minor Rate Adjustment

Several entities commented that a 40-percent firm transmission rate increase was significant and asked for an explanation of Western's minor rate adjustment determination. The distinction of a minor or major rate adjustment is used only to determine the type of public process for the rate adjustment. The definition of a minor or major rate adjustment was published as part of the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, in the **Federal Register** on September 18, 1985, at 50 FR 37835. According to these procedures, at § 903.2(f):

'Minor rate adjustment' means a rate adjustment which (1) will produce less than 1-percent change in the annual revenues of the power system or (2) is for a power system which has either annual sales normally less than 100 million kilowatthours or an installed capacity of less than 20,000 kilowatts.

The CRSP transmission system is only part of the power system for which repayment must be demonstrated. Western does not treat the transmission system as a separate power system because it was built to deliver Federal power generated by the CRSP powerplants. Third-party transmission is an additional use of the system. The transmission rate study is used only to calculate a transmission rate for this third-party wheeling service. The revenue received from that service is used as a revenue credit in the PRS prepared for the CRSP power system. It does not serve to determine the repayment status of the transmission system. Repayment is handled through the PRS. The change in revenues for the CRSP power system from the proposed firm transmission rate increase is less than 1 percent; therefore, this is a minor rate adjustment as defined by 10 CFR Part 903.

Original Investment and Additions

One customer requested an accounting of increased transmission system investments for FY 1990 that were not listed in table 3 of the Rate Brochure. Table 3 included only the investments greater than $4 million. Other investments to come on line in FY 1990 are:

Item	Amount
Dallas Creek Transmission System	$351,895
Rifle Substation, Stage 3	3,992,506
Western Colorado Capacitor Banks	1,910,015
Craig Switchyard Terminal Facilities	3,734,900
Vehicle Storage Building	445,494
Ault-Ft. St. Vrain 230-Kilovolt Transmission Line	99,427
Ault Substation Terminal	658,935
	11,193,173

The interest rate on one investment budgeted in 1988 at 8.605 percent was corrected to 10.403 percent when the investment was actually placed in service. Another investment budgeted at 10.371 percent, expected in service in 1990, was changed to 10.250 percent, the latest treasury interest rate available.

There were some minor adjustments to budgeted amounts, reflected in the revised transmission rate study. Most investment changes were investments that were not moved to plant-in-service when originally planned. Some were moved to plant-in-service in 1988, and others are estimated to be moved in 1989. These delays necessitated calculating related, additional interest during construction, which is capitalized as part of the investment. The additional amount of cumulative investment shown in the revised transmission-rate study, compared to the proposed-rate study, was $25.88 million. When these changes are amortized at the applicable interest rate for 50 years, the increase in annual expenses is $2.51 million.

Operation and Maintenance (O&M) Expense

Western's budgeted O&M expenses were prorated to transmission service based on whether the expense item was more related to transmission investment or to revenues from transmission service. With the actual 1988 expense figures available, the amounts used to prorate Western's O&M figures changed. (The 1989 budget amounts used in the final PRS were already reflected in the proposed rate of $22.35/kW-year.) The average increase in transmission system O&M over the 3-year rate period was $86,273.

Replacements

Several comments were received regarding projected replacement costs. One entity requested a discussion of the rationale of averaging replacements through 2038. Another requested an explanation of the increases in replacements and suggested Western use programmed replacements for the 3-year study period. The PRS shows those investments expected to be in place within the next 5 years and projects replacements beyond the 5-year period based on the amount of current investment in place. There have been significant increases in actual and projected investments in the CRSP transmission system since the 1985 transmission rate study.

In the proposed transmission-rate study, the replacement expense was calculated by first averaging all historical, budgeted, and projected replacements (1975–2038), by plant account, shown in the 1987 final PRS. These average replacements by plant account were then prorated to the transmission system according to the amount of investment in the PRS attributed to transmission. The prorated average replacements were then summed to yield the annual replacement expense used in the transmission study. Western averaged transmission replacement costs over the FY 1975 to 2038 period in order to help level the replacement expense over time.

As a result of comments received, Western reviewed the methodology used to calculate the annual replacement expense in the revised transmission-rate study. It was concluded that only historical and budgeted replacements would be included and future projected replacements would be eliminated in keeping with the way original investment and additions have been handled in the transmission rate study. Replacements go into the PRS with a particular interest rate (used to calculate the interest expense on any unpaid balances) and must be repaid within the service life of the replacement. For the revised proposed rate, each historical and budgeted replacement was amortized, at the appropriate interest rate, for a period equal to the service life of the replacement. These yearly expenses were then summed to give a total annual replacement expense. This change caused an average decrease of $3,336,498 in the replacement expense in the revised transmission-rate study.

Revenue Credits

Three revenue sources reduce the transmission system costs. These are facilities rental, exchange capacity charges, and nonfirm transmission service revenues. The exchange capacity charges did not change with this revision. The facilities rental revenue shown in the PRS is based on the 5-year historical average. In the 1988 final PRS (and therefore in the transmission rate study), this figure increased $1,098 each year to $287,000.

Several entities felt that nonfirm transmission revenues were underestimated in the transmission study. The proposed study assumed a 1 mill/kilowatthour (kWh) rate applied to the 5-year historical average actual kWh wheeled. In the revised transmission

rate study, Western averaged the actual revenues received for nonfirm wheeling between FY 1984 and FY 1988. This method avoids projecting a nonfirm wheeling rate. (Western plans on adopting a flexible nonfirm wheeling rate for its CRSP transmission system and at this time cannot estimate wheeling amounts at any given rate.) The average nonfirm wheeling credit of $326,003 resulted in an annual increase of nonfirm transmission revenues of $22,172.

Capacity

Several entities commented on capacity commitments listed in the Rate Brochure. Questions about capacity related to (1) 600 MW of exchange capacity from Colorado-Ute and SRP (2) 7 MW of transmission capacity reserved for the Municipal Energy Agency of Nebraska (MEAN), (3) the decrease in capacity from the 1985 study to the 1988 study, (4) 134 NW of exchange capacity for Public Service Company of New Mexico (PNM), and (5) discrepancies in the capacity commitment amounts shown in tables 1 and 2 of the Rate Brochure.

1. Revenues from capacity exchanged with Colorado-Ute and SRP are included in the transmission study. Six hundred MW from Colorado-Ute and SRP is exchanged for CRSP generation; therefore, the exchange capacity is part of the CRSP powerplant capacity.

2. Seven MW of firm transmission capacity for MEAN, inadvertently omitted from the transmission study, has been included in the revised transmission study.

3. The 1988 transmission study did not include an estimate of nonfirm transmission capacity as did the 1985 transmission study. It is inappropriate to treat nonfirm transmission capacity the same as firm because sale of nonfirm capacity is not guaranteed. However, estimated nonfirm transmission revenue is included in the transmission study as a revenue credit.

4. Under an exchange agreement, 50 MW of transmission capacity is provided to PNM in exchange for transmission provided to Western. PNM credits Western $0.90/kW-month for transmission provided by Western and applies this credit to transmission it provides for Western. Costs associated with this use of PNM's system are paid by the power users, not transmission customers. Under another agreement for exchange transmission capacity between PNM and Western, Western's Salt Lake City Area Office pays its Boulder City Area Office for transmission from Westwing to Pinnacle Peak and exchanges transmission capacity from Westwing to Four Corners with PNM for capacity from Four Corners to Albuquerque. These costs are paid by the power users, not transmission customers. No transmission costs to deliver Federal generation are included in the firm transmission rate.

5. The CRSP powerplant capacity shown in the proposed transmission rate study calculation was different than the supporting table shown in the Rate Brochure. This was an error. The supporting table showed the correct amounts. This resulted in a decrease in CRSP powerplant operating capacity of 2 MN in 1990 and an increase in 1991 of 5 MW

In addition, the CRSP powerplant capacity figures used in 1989 and 1990 did not include 13 MW of capacity at the Fontenelle Powerplant because the powerplant is not currently in operation. However, the transmission system capacity for that generation is in place and is, therefore, included in the revised transmission-rate study.

The net increase in capacity commitments is 20 MW in 1989, 18 MW in 1990, and 12 MW in 1991.

Environmental Evaluation

In compliance with the national Environmental Policy Act (NEPA) of 1969 and section D of the DOE Guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western has followed the process described below in conducting the environmental evaluation of the rate adjustment.

Section D of the DOE Guidelines states that the level of documentation required under NEPA for rate increases of power marketing administrations depends on the size of the rate increase as it relates to the rate of inflation since the last rate increase.

The Consumer Price Index (CPI) (published by the Department of Labor) was used to estimate the rate of inflation from the date of the last rate increase to the planned rate of the new increase. The proposed rate of $22.35/kWh represented a 40.21-percent increase over the current rate. The proposed rate increase is greater than the CPI over the period from July 1, 1986, to July 1, 1989.

In a determination Memorandum issued March 13, 1989, Western made the following determination based on the proposed firm transmission rate of $22.35/kW-year:

The proposed action would have no effect on the physical environment. Socioeconomic effects would include a small increase in operating expenses for customers of CRSP transmission services. This would likely result in small increases in retail sales for the retail customers of the utilities using CRSP transmission services. Although the proposed CRSP transmission rate increase expressed as a percent would be relatively large (40.21 percent), the net economic effect to the retail consumer would likely be small due to the small portion of the total transmission requirements of current customers supplied by CRSP transmission and the small proportion of transmission service expenses to the total operating costs of customers. The new firm transmission service costs would be low compared with alternative sources. No fuel switching would occur as a result of implementing the proposed action. In an environmental assessment (EA) prepared for the previous transmission service rate adjustment in 1986, no significant environmental impacts were identified for a percentage increase larger (55.21 percent) than that now proposed. The proposed action would clearly have no significant impact on the human environment as defined by the National Environmental Policy Act of 1969 and the Council on Environmental Quality.

Therefore, Western determined that the proposed firm transmission rate did not require the preparation of an environmental assessment or an environmental impact statement. Because the revised proposed firm transmission rate is less than the proposed firm transmission rate, Western will not make any further determination.

Executive Order 12291

The DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore, will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, and other supporting material, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City, Utah 84111; Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and the Office of Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW Washington, DC 20585.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for

confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective on July 1, 1989, Rate Schedule SP-FT3. This rate shall remain in effect on an interim basis pending FERC confirmation and approval of it or a substitute rate on a final basis for a period of 3 years, or until it is superseded.

Issued at Washington, DC, June 28, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Schedule SP-FT3 (Supersedes SP-FT2)

Western Area Power Administration; Colorado River Storage Project, Utah, Colorado, Wyoming, Arizona, New Mexico; Sechedule of Rate for Firm Transmission Service

Effective: Beginning on July 1, 1989 and ending June 30, 1992.

Available: In the area served by the Colorado River Storage Project transmission system.

Applicable: To firm transmission service customers where power and energy are supplied to the Colorado River Storage Project transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Colorado River Storage Project transmission system established by contract.

Character and Conditions of Service: Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Rate: Transmission service charge: $21.72 per kilowatt-year for each kilowatt of transmission service contracted for, payable montly at the rate of $1.81 per kilowatt-month.

Requirements for Reactive Power: Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt-amperes at delivery points except when such transfers may be mutually agreed upon by the contractor and the contracting officer or their authorized representatives.

Adjustments for Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract.

[FR Doc. 89-16321 Filed 7-11-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180814; FRL-3612-1]

Receipt of Application for Specific Exemption To Use Oxyfluorfen; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as Applicant") for use of the herbicide oxyfluorfen to control various weeds in grasses grown for seed in Oregon. EPA is soliciting comment before making the decision whether or not to grant this specific exemption request.

DATE: Comments must be received on or before July 27 1989.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180814, should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Room. 246, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the herbicide oxyfluorfen (CAS 42874 03 3) available as Goal 1.6E, EPA Reg. No. 707-174, to control various weeds in grasses grown for seed. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Oregon has requested authorization to apply up to 30 ounces of Goal 1.6E herbicide (0.375 pounds active ingredient) per acre on 165,800 acres of grasses grown for seed.

According to the Applicant, weed control in grasses grown for seed has relied on herbicides developed for use in conjunction with thermal santitation. Increasingly stringent restrictions on the use of open field burning as a sanitation practice in grass seed production in Oregon have seriously limited the number of grass seed fields burned in recent years. The traditional herbicide does not adequately control seedling grasses in unburned situations. Without the use of oxyfluorfen, the Applicant expects a loss of $63 million in sales.

Oxyfluorfen was referred to Special Review in January 1980 because pesticide products containing oxyfluorfen as an active ingredient were shown to be contaminated with perchloroethylene (PCE), a liver carcinogen in B6C3F1 mice. The Special Review process was completed on June 23, 1982, and the decision was made to continue registration of the herbicide subject to certain restrictions (on PCE) pertaining to formulation of the product (47 FR 27118).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review (40 CFR 166.24(a)(5)).

Accordingly, interested persons may submit written views on this subject to the Field Operations Division (H7506C), at the address given above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oregon Department of Agriculture.

Dated: June 16, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-15892 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3614-5]

Privacy Act of 1974; Amendment of Existing System of Records

AGENCY: Environmental Protection Agency.

ACTION: Notice of amendment of Privacy Act System of Records.

SUMMARY: The Environmental Protection Agency is giving notice that it is amending a Privacy Act system of records, "Invention Reports Submitted to the Environmental Protection Agency—EPA/OGC/Grants-16. This system of records was originally published in the **Federal Register** at 50 FR 50227 (1985).

EFFECTIVE DATE: These amendments are effective July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin Bochenek, Patent Counsel, Office of General Counsel, Grants, Contracts and General Law Division (LE-132G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-5460.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is amending the system of records entitled "Invention Reports Submitted to the Environmental Protection Agency—EPA/OGC/Grants-16. Except as noted below, all changes are editorial in nature or reflect minor administrative revisions which have occurred since the previous publication of the system notice in the **Federal Register** on December 9, 1985 (50 FR 50227).

The portion of the system notice describing the manner in which records in the system are stored is being revised to reflect that since April, 1987 the index to the system has been maintained in a computer data base rather than in a manual card file. The manual card index continues to cover records submitted prior to that period. The records described in "Categories of Records in the System" continue to be maintained in file folders and have not been automated. In addition, the "Safeguards" section of the system notice is being amended to make it clear that the protection from unauthorized access covering records in the system also covers the computerized index. The portion of the system notice describing how records are retrieved is being revised to reflect that records indexed in the computer data base may be retrieved by patent application serial number, U.S. patent number, and by institutional contractor, grantee or party to a cooperative agreement. Lastly, the Authority" section of this notice is being changed to reflect amendments to the Code of Federal Regulations.

These changes do not involve a new use of the information in the system of records, increase or change the categories of individuals or records covered by the system, create a potential for greater access to the system, or affect an individual's right to gain access to his or her records. Accordingly, these amendments do not require a report of an altered system under 5 U.S.C. 552a(o).

Dated: May 3, 1989.

Charles L. Grizzle,

Assistant Administrator for Administration and Resource Management.

EPA-16

System Name

Invention Reports Submitted to the Environmental Protection Agency—EPA/OGC/Grants-16.

System Location

U.S. Environmental Protection Agency, Office of General Counsel (LE-132G), General and Information Law Branch, 401 M Street, SW Washington, DC 20460.

Categories of Individuals Covered by the System

EPA employees and employees of contractors, subcontractors, grantees and cooperative agreement recipients who have submitted invention reports to EPA.

Categories of Records in the System

Invention reports, filed patent applications, assignments, licenses, procurement requests, Government purchase orders, and other documents relevant to inventions made under EPA sponsorship.

Authority for Maintenance of the System

E.O. 9865, E.O. 10096, 35 U.S.C. Ch.18, as amended (Patent Rights in Inventions made with Federal Assistance), 37 CFR Part 501 (53 FR 39734, October 31, 1988), 37 CFR Part 401, 40 CFR Part 30, 48 CFR Parts 27 and 52.

Purposes

Records are maintained for the purpose of documenting inventions made under EPA sponsorship, including filing patent applications, determining rights to inventions, licensing inventions, and ascertaining inventorship and priority of invention.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Uses

1. To the U.S. Department of Justice when related to litigation or anticipated litigation involving the records or the subject matter of the records, provided such disclosure is compatible with the purpose for which the records were collected.

2. To scientific personnel who possess the expertise to understand the invention and evaluate its importance to the Government and/or the public.

3. To contract patent counsel and their employees retained by the Agency for patent searching and preparation of United States and foreign patent applications and preparation of amendments or other documents related to patent applications.

4. To Government agencies whom we contact regarding possible use, interest in or ownership rights in our invention.

5. To the National Technical Information Service of the Department of Commerce for inclusion in their invention licensing program.

6. To prospective licensees or technology finders who may further make the invention available to the public through sale, use or publication.

7 To parties, such as supervisors of inventors, whom we contact to determine ownership rights, and to those parties contacting us to determine the Government's ownership.

8. To the United States and foreign Patent and Trademark Offices when we file U.S. and foreign patent applications.

9. Also see Prefatory Statement of General Routine Uses applicable to all EPA Systems of Records, 41 FR 39689 (September 15, 1976).

Polices and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System

Storage

Records are stored in individual file folders in file cabinets. An index is maintained in part on a computer data base and in part on manual cards.

Retrievability

Indexed and retrieved by inventor's name, case identification number, U.S. patent application serial number, U.S. patent number, and institutional contractor, grantee or party to a cooperative agreement.

Safeguards

Access to manual files, the card index and the automated index is limited to EPA personnel with an official need to know. During non-business hours, all files, indices, discs and the comptuer are kept in a locked room in a building with controlled access.

Retention and Disposal

The records are maintained for seventeen years after completion or termination of action on the disclosed invention, such as issuance of a patent. The records are maintained at EPA for approximately three to eight years and are then sent to a Federal Records Center for the remainder of the applicable retention period.

System Manager(s) and Addresses

Associate General Counsel, Grants, Contracts and General Law Division, (LE-132G), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Notification Procedure

Written inquiries should be directed to the System Manager. The System Manager will provide additional information or requirements if necessary.

Records Access Procedures

Same as Notification Procedure. In addition, individuals seeking access should reasonable specify the record contents being sought.

Contesting Records Procedures

Same as Notification Procedure. In addition, individuals contesting records should reasonably identify the record and specify the information being contested. The corrective action being sought and supporting justification for that action should be provided.

Records Source Categories

Records in the system are obtained from invention report submitters covered by this system, their supervisors, other persons with knowledge of the invention or expertise in the particular area of the invention, EPA Patent Counsel and EPA contractors who have searched the invention, prepared a patent application on the invention and/or otherwise performed work on patent application.

Systems Exempted From Certain Provisions of the Act.

None.

[FR Doc. 89-16350 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

[Notice 1989-10]

Filing Dates for Texas Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for Texas special election.

SUMMARY: Texas has scheduled a special election on August 12, 1989, in the 12th Congressional District to fill the seat that was held by Representative Jim Wright.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office 999 E Street, NW., Washington, DC 20463, Telephone: (202)376-3120; Toll Free (800)424-9530.

SUPPLEMENTARY INFORMATION: Principal campaign committees of candidates who participate in the Texas Special Election must file reports according to the schedule in the following charts. Party committees and PACs that make contributions or expenditures in connection with the Special Election during the coverage dates listed in the charts must file the appropriate reports. Monthly filers, however, do not file Special Pre- and Post-Election reports.

In the event that no candidate receives a majority of the vote in the Special Election, a second Special Election will be called within 5 days after the official election results are declared. If a second Special Election is necessary, filing dates for the appropriate reports will be established.

Calendar of Reporting Dates for Texas Special Election

ALL COMMITTEES INVOLVED IN THE 8/12/89 ELECTION MUST FILE

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Mid-Year	Waived		
Pre-Special.	01/01/89 [3]-07/23/89.	07/28/89	07/31/89

ALL COMMITTEES INVOLVED IN THE 8/12/89 ELECTION MUST FILE—Continued

Report	Period covered	Reg./cert. mailing date [1]	Filing date
Situation 1: If One Candidate Received a Majority of Votes All Committees Must File:			
Post-Special.	07/24/89-09/01/89.	09/11/89	09/11/89
Year-End.	09/02/89-12/31/89.	01/31/90	01/31/90
Situation 2: If no candidate receives a majority of the votes a run-off election will be sheduled. Committees that participate in the special run-off election will be notified of their filing requirements in a separate notice.			

Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

[2] The Mid-Year Report is waived, pursuant to Section 104.5(h)(2) of the FEC Regulations, provided the Pre-Special Election report is timely filed.

[3] Or the close of books of the last report filed (if after 1/1/89). If no previous reports filed, the date of the committee's first activity.

Dated: July 6, 1989.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 89-16304 Filed 7-11-89; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.. 224-200139-005.

Title: The Port Authority of New York and New Jersey Terminal Agreement.

Parties: The Port Authority of New York and New Jersey Sea-Terminals, Inc. (STI).

Synopsis: The Agreement provides STI with the use of three additional acres of upland storage area and reflects the additional monthly fee for the use of

the additional area. The Agreement also extends the term of the basic agreement to December 31, 1989.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16295 Filed 7-11-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.. 224-010954-002.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority

Mitsui O.S.K. Lines, Ltd.

Nippon Yusen Kaisha

Nippon Liner Systems, Ltd. (NLS)

Synopsis: The Agreement provides for the withdrawal of Japan Lines and Yamashita-Shinnihon Steamship Co. (YSS) from Agreement No. 224-010954. It also provides for NLS to assume the operations of YSS. All other terms and conditions of the basic agreement, as amended, will remain unchanged.

Agreement No.. 224-010930-001.

Title: City of Los Angeles Terminal Agreement.

Parties:

City of Los Angeles

Stevedoring Services of America (SSA)

Synopsis: The Agreement amends the parties' nonexclusive crane assignment agreement to extend SSA's right to use the three cranes assigned until such time that the cranes are sold to SSA but in no event later than December 31, 1989. The Agreement also revises SSA's maintenance responsibility under the basic agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 6, 1989.

[FR Doc. 89-16296 Filed 7-11-89; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

The China Navigation Co., Ltd.
c/o Lamorte Burns & Co., Inc.
505 Thornall Street, No. 205
Edison, New Jersey 08837
Vessel: Coral Princess

Date: July 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16254 Filed 7-11-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Comerica 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 July 26, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to acquire Bloomfield Mortgage Corporation, Southfield, Michigan, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Business Bancorp,* San Jose, California; to acquire Provident California Business and Industrial Development Corporation, San Francisco, California, and thereby engage in the origination and servicing of loans guaranteed by the Small Business Administration, the guaranteed portion of which is sold to investors in the secondary market pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16286 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Daniel De Lange,* Miami, Florida; to retain 24.76 percent and to acquire an additional 0.61 percent of the voting shares of Imperial Bank, Coral Gables, Florida, for a total of 25.37 percent.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mahaska Investment Company Employee Stock Ownership Trust,* Oskaloosa, Iowa; to acquire 24.88 percent of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire Mahaska State Bank, Oskaloosa, Iowa, and First National Bank of Sumner, Sumner, Iowa.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *James W Emison,* Eden Prairie, Minnesota; to acquire an additional 8.2 percent of the voting shares of Henderson Bancorporation, Inc., Henderson, Minnesota, for a total of 26.2 percent and thereby indirectly acquire Sibley County Bank of Henderson, Henderson, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jay D. Peters,* Martell, Nebraska; to acquire an additional 95.2 percent of the voting shares of Martell Financial Services, Inc., for a total of 100 percent, and thereby indirectly acquire The Martell State Bank, Martell, Nebraska.

2. *Dennis Schardt,* Deshler, Nebraska; to acquire 39.47 percent; Ronald Schardt, Deshler, Nebraska, to acquire 0.67 percent; Superior Deshler Company, Deshler, Nebraska, and VIE Company, Deshler, Nebraska, each to acquire 4.94 percent; and S&S Industries, Inc., Deshler, Nebraska, to acquire 0.65 percent of the voting shares of Gibbon Exchange Company, Gibbon, Nebraska, and thereby indirectly acquire Exchange Bank, Gibbon, Nebraska.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *E. Delbert Horton,* Dallas, Texas; to acquire 8.68 percent; and Michael B. Witcher, Windom, Texas; to acquire 8.69 percent of the voting shares of Cooper Lake Financial Corporation, Cooper, Texas, and thereby indirectly acquire First National Bank in Cooper, Cooper, Texas.

2. *Brett W Smith,* Kerrville, Texas, to acquire 10 percent; James W. Priour, III, Ingram, Texas, to acquire 20 percent; Stanley C. Jones, Lubbock, Texas, to acquire 20 percent; and Tex Hood, Kerrville, Texas, to acquire 20 percent of the voting shares of Premier Bancshares of Texas, Inc., Kerrville, Texas, and thereby indirectly acquire Bank of Kerrville, Kerrville, Texas, and Texas National Bank of Victoria, Victoria, Texas.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16287 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Firstar Corp., et al; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstar Corporation,* and Firstar Corporation of Minnesota, both in Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Firstar Trust Company of Minnesota, Minneapolis, Minnesota, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *Northern Trust Corporation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Trust Company of New York, New York, New York, in trust company activities pursuant to § 225.25(b)(3) 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. *Farmers Holding Company,* Jacksonville, Illinois; to engage *de novo* through its subsidiary, Tri-County Community Development Corporation, Jacksonville, Illinois, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Morgan, Scott and Cass Counties in Illinois.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16288 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Lee National Banc Corp., 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 July 26, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Lee National Banc Corp.*, Lee, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of the Berkshires, Lee, Massachusetts.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation*, Summit, New Jersey; to acquire 24.9 percent of the voting shares of Growth Financial Corp., Bernardsville, New Jersey, and thereby indirectly acquire Growth Bank, Harding Township, New Jersey.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *AgriSource Incorporated*, Rayne, Louisiana; to become a bank holding company by acquiring 89 percent of the voting shares of Bank of Southwest Louisiana, Oakdale, Louisiana.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Colonial Bancshares, Inc.*, Des Peres, Missouri; to acquire 100 percent of the voting shares of Village Bank of St. Louis County, Ellisville, Missouri.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Henderson Bancorporation, Inc.*, Henderson, Minnesota; to merge with Citizens, Inc., Winsted, Minnesota, and thereby indirectly acquire Citizens State Bank of Winsted, Winsted, Minnesota.

2. *Litchville State Bank Holding Company*, Litchville, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Litchville State Bank, Litchville, North Dakota. *Comments on this application must be received by July 26, 1989.*

3. *Primo Financial Services, Inc.*, Apple Valley, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Hampton, Hampton, Minnesota.

F **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Universal Bancorporation, Inc.*, Aurora, Colorado; to acquire 100 percent of the voting shares of Pioneer Bancorporation, Inc., Denver, Colorado, and thereby indirectly acquire City Center National Bank, Denver, Colorado, which engages in the sale of credit-related life and accident and health insurance only that is directly related to extensions of credit by the bank.

Board of Governors of the Federal Reserve System, July 6, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-16289 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

MidAmerican Corp., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *MidAmerican Corporation*, Shawnee Mission, Kansas; to engage in general insurance agency activities pursuant to section 4(a)(2) and 4(c)(8)(D) of the Bank Holding Company Act. MidAmerican Corporation recently received approval to acquire Merchants Bancorporation, Topeka, Kansas (MidAmerican Corporation, 75 Federal Reserve Bulletin 515 (1989) (Order dated May 30, 1989)).

Board of Governors of the Federal Reserve System, July 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16290 Filed 7-11-89; 8:45 am]

BILLING CODE 6210-01-M

Royal Bank of Canada, Montreal, Quebec, Canada; Proposal to Underwrite and Deal in Debt and Equity Securities to a Limited Extent

Royal Bank of Canada, Montreal, Quebec, Canada ("Royal Bank"), 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), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its indirect subsidiary, RBC Dominion Securities Corporation, New York, New York ("Company"), to underwrite and deal in all types of debt and equity securities to a limited extent.

Company is currently authorized to: (1) Provide advice in connection with financial transactions; (2) provide brokerage and investment advisory services to institutional customers and affiliates; (3) provide financial advice to the Canadian federal, provincial and

municipal governments, such as with respect to the issuance of their securities in the United States; (4) provide discount brokerage services; (5) furnish general economic information and advice, and provide portfolio investment advice and research to institutional customers and affiliates; and (6) underwrite and deal in securities eligible to be underwritten and dealt in by U. S. member banks. 74 Federal Reserve Bulletin 334 (1988).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. The Board has previously determined that underwriting and dealing in debt and equity securities that are not eligible to be underwritten and dealt in by member banks ("ineligible securities") are closely related and proper incidents to banking, subject to certain conditions. *J.P Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192 (1989) ("*Morgan* Order").

Royal Bank has proposed to underwrite and deal in ineligible debt and equity securities under limitations that differ from those approved by the Board in its *Morgan* Order. Generally, Royal Bank proposes that the framework of limitations established by the Board in the *Morgan* Order should not apply to its operations outside the United States. For example, under the terms of its proposal, Royal Bank, which is a foreign bank as well as a bank holding company, and its foreign offices and subsidiaries would be permitted to lend to and in support of Company. Royal Bank does not propose that any U.S. bank, branch or agency affiliate would lend or otherwise provide support to Company. Royal Bank has also made other commitments as alternatives to those approved in the *Morgan* Order.

Royal Bank has also requested additional authority for Company: (1) To underwrite and deal in ineligible debt and equity securities in amounts generating up to 10 percent of Company's gross revenues; (2) to underwrite and deal in equity securities immediately without regard to the one-year waiting period established by the Board in the *Morgan* Order; and (3) to underwrite and deal in securities representing interests in, or secured by, obligations originated or sponsored by its affiliates if such security is rated by a nationally-recognized rating agency or is issued or guaranteed by a U.S. government agency or a U.S. Government-sponsored agency. Royal Bank's commitments and application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments 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 August 1, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

Board of Governors of the Federal Reserve System, July 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 87-16291 Filed 7-11-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Proposed Framework for Establishing Federal Government Accounting Standards

AGENCY: General Accounting Office.

ACTION: Public Notice.

SUMMARY: Because of the significant interest expressed in GAOs exposure draft of the Proposed Framework for Establishing Federal Government Accounting Standards, the comment period has been extended to August 31, 1989. The original **Federal Register** notice dated June 5, 1989 (page 24039) indicated a comment period deadline of July 15, 1989.

DATES: Interested parties should provide their comments on or before August 31, 1989.

ADDRESSES: Interested parties may obtain copies of the exposure draft by writing the Director, Accounting Principles and Standards, Accounting and Financial Management Divison, General Accounting Office, Room 6023, 441 G Street NW., Washington, DC 20548. The Director, also, will receive written comments from interested parties.

FOR FURTHER INFORMATION CONTACT: Ronald Young, Director, Accounting Principles and Standards, Accounting and Financial Management Division, (202) 275-9578.

Brian P Crowley,

Acting Assistant Comptroller General Accounting and Financial Management.

[FR Doc. 89-16352 Filed 7-11-89; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Research and Demonstration Grants Relating to Occupational Safety and Health Availability of Funds for Fiscal Year 1989 Announcement Number 923

Introduction

The Centers for Disease Control (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds in Fiscal Year 1989 for research and demonstration project grants relating to occupational safety and health.

Authority

This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 501(c) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951). Program regulations applicable to these grants are in Part 87 "National Institute for Occupational Safety and Health Research and Demonstration Grants, of Title 42, Code of Federal Regulations.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations. Thus universities, colleges, research institutions and other public and private organizations including State and local governments and small, minority and/or woman-owned businesses are eligible for these research and demonstration grants.

Availability of Funds

There is $6,149,000 available in Fiscal Year 1989 to fund research project grants, demonstration grants, Special Emphasis Research Career Award (SERCA) grants, small grants, and Small Business Innovation Research (SBIR) grants.

For research project grants, it is expected that 27 continuation grants will be awarded totaling approximately $3.490 million and that about 12 new and competing renewal grants will be awarded totaling approximately $1.574 million and ranging from approximately $50,000 to $250,000 with the average award being approximately $140,000. For SERCA grants, it is expected that approximately $227,000 will be awarded for seven continuation grants and $259,000 for eight new grants.

For small grants, it is expected that approximately $129,000 will be awarded for six continuation grants and $270,000 for twelve new grants. For SBIR grants, it is expected that approximately $200,000 will be awarded for one phase II continuation grant and that no new phase I or II grants will be awarded. Grants are usually funded for 12 months in project periods of up to 5 years for research project and demonstration grants, 3 years for SERCA grants, and 2 years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds.

Purpose

The purpose of this program is to award funds to eligible institutions or agencies to establish, discover, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

Program Requirements

1. Research Project Grants

A research project grant application should be intended and designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of underlying causes and mechanisms.

2. Demonstration Grants

A demonstration grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility or application of: (a) A new or improved occupational safety or health procedure, method, technique, or system, or (b) an innovative method, technique, or approach for preventing occupational safety or health problems.

3. Special Emphasis Research Career Award (SERCA) Grants

The SERCA is designed to enhance the research capability of individuals in the formative stages of their careers who have demonstrated outstanding potential for contributing as independent investigators to health-related research. Candidates must have had 2 or more years of relevant post-doctoral experience prior to the submission date. The application must document accomplishments in this period that demonstrate research potential; it must also present a plan for additional experience in a productive scientific environment at domestic institutions that will foster development of a career of independent research in the area of occupational safety and health. The SERCA is not intended for untried investigators, or for productive, independent investigators with significant numbers of publications of high quality, or for persons of senior academic rank (above associate professor or tenured). Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research, nor is it intended to be a mechanism for providing institutional support. The application must demonstrate that the award will make a difference in and enhance the candidate's development as an independent investigator.

Candidates must indicate a commitment of at least 60 percent time (not necessarily 60 percent salary) devoted to research under the SERCA grant, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. While working closely with one or more advisers, the awardee is expected to develop capabilities in fundamental, applied, and/or clinical research in one of the areas listed under "FUNDING PRIORITIES.

At the end of the award period, evidence of independent investigative capability should be present such that the individual is better able to compete in traditional NIOSH research grant activities.

The total grant award may comprise direct costs of up to $30,000 per year and up to 8 percent additional indirect costs. Direct costs may include salary plus fringe benefits, technical assistance, equipment, supplies, consultant costs, domestic travel, publication, and other costs. If the awardee already holds a small grant on the same research topic, the amount of the SERCA may be reduced up to the amount of the small grant. Awards may be up to 3 years and will not be renewable.

4. Small Grants

A small grant application is intended to provide financial support to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. This small grant program is intended for predoctoral graduate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training) and junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, the application should specify that the funds are for the use of a particular student or junior-level person and should include appropriate justification for this arrangement. Though biographical sketches are required only for the person actually doing the work, the application should indicate who would be supervising the research. Small grant applications should be identified as such on the application form.

The total small grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for up to 2 years and are thereafter continuable by competitive renewal as a regular research grant. Salary of the principal investigator as well as that of the junior investigator, if university policy requires a senior person to be listed as the principal investigator, will not be allowed on a small grant, though salaries can be requested for necessary support staff such as laboratory technicians, interviewers, etc.

5. Program Project Grants

NIOSH will also accept applications for program project grants, but only after discussion with the individuals listed in this announcement.

Evaluation Criteria

Applications will be evaluated by a dual review process. The primary (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request.

Demonstration grant applications will be reviewed additionally on the basis of the following criteria:

Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured.

Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project.

Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis.

Extent of cooperation expected from industry, unions, or other participants in the project, where applicable.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

The review process will consider the applicant's scientific achievements, evidence of demonstrated commitment to a research career in occupational safety and health, and supportive nature of the research environment (including letter(s) of reference from advisor(s) which should accompany the application).

Small grant applications will be reviewed additionally on the basis of the following criteria:

The review process will take into consideration the fact that the applicants do not have extensive experience with the grant process.

A secondary review will also be conducted. Factors considered in the secondary review will include:

The results of the initial review.

The significance of the proposed study to the research programs of NIOSH.

National needs and program balance.

Policy and budgetary considerations.

Funding Priorities

NIOSH program priorities, listed below, are applicable to all of the above types of grants. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health. Applications responding to this announcement will be reviewed by staff for their responsiveness and relevance to occupational safety and health. Assignment to NIOSH for funding consideration will be according to established referral guidelines. Potential applicants with questions concerning the acceptability of their proposed work should contact the individuals listed in this announcement under "WHERE TO OBTAIN ADDITIONAL INFORMATION.

The NIOSH Program Priorities are:

1. Occupational lung disease: Asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, occupational asthma.

2. Musculoskeletal injuries: Disorders of the back, trunk, upper extremity, neck, lower extremity: traumatically induced Raynaud's phenomenon.

3. Occupational cancers (other than lung): Leukemia, mesothelioma, cancers of the bladder, nose and liver.

4. Severe occupational traumatic injuries: Amputations, fractures, eye loss, and lacerations.

5. Cardiovascular diseases: Hypertension, coronary artery disease, acute myocardial infarction.

6. Disorders of reproduction: Infertility, spontaneous abortion, teratogenesis.

7 Neurotoxic disorders: Peripheral neuropathy, toxic encephalitis, psychoses, extreme personality changes (exposure-related).

8. Noise-induced loss of hearing.

9. Dermatologic conditions: dermatoses, burns (scalding), chemical burns, contusions (abrasions).

10. Psychological disorders: Neuroses, personality disorders, alcoholism, drug dependency.

11. Engineering control systems: New technology performance evaluation, preconstruction review, equipment redesign, containment of hazards at the source, fundamental dust generation mechanisms, machine guarding/avoidance methods, explosion control, removal of emissions after generation, dispersion models, monitoring and warning techniques, technology transfer.

12. Respirator research: New and innovative respiratory protective devices, techniques to predict performance, effectiveness of respirator programs, physiologic and ergonomic factors, medical surveillance strategies, psychological and motivational aspects, effectiveness of sorbents and filters, including chemical and physical properties.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

CFDA Number (CFDA)

The Catalog of Federal Domestic Assistance number is 13.262.

Application Submission and Deadline

Applications should be submitted on Form PHS-398 (revised 9/86) or PHS-5161-1 (Revised 3/89) for State and local government applications. Also, the PHS-398 must be accompanied by the drug-free workplace certification. Forms should be available from the institutional business offices or from: Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building—Room 449, 5333 Westbard Avenue, Bethesda, Maryland 20892.

The original and six copies of the application must be submitted to the address below on or before the specified receipt dates in accordance with the instructions in the PHS-398 packet: Division of Research Grants, National Institutes of Health, Westwood Building—Room 240, Bethesda, Maryland 20892.

The instructions in the Form PHS-398 packet should be followed concerning deadlines for either delivering or mailing the applications. The application should be sent or delivered using the mailing label in the Form PHS-398 packet.

The proposed timetable for receiving applications and awarding grants is as follows:

Application deadline*	Primary review group meeting	Secondary review meeting	Earliest possible beginning date
New and competing renewal applications:			
February 1.	June	September	December 1
June 1	Oct./Nov.	January	April 1
October 1	Feb./Mar.	May	July 1
Exceptions: Career Development and Small Grants:			
March 1	June	September	December 1
July 1	Oct./Nov.	January	April 1
November 1.	Feb./Mar.	May	July 1

*Competing renewal deadlines are 1 month later.

Awards will be made based on results of the initial and secondary reviews, balance among areas of programmatic interest, emphasis area, and availability of funds.

Where To Obtain Information:

For Technical Information Contact: Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control, 1600 Clifton Road, N.E., Bldg. 1, Room 3053, Atlanta, Georgia 30333, Telephone: (404) 639-3343.

For Business Information Contact: Henry Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Rd., NE, Room 300, Atlanta, Georgia 30305, Telephone: (404) 842-6575.

Please refer to Announcement Number 923 when requesting information and submitting any application on the Request For Assistance.

Dated: July 5, 1989.

Larry W. Sparks,

Acting Director, National Institute for, Occupational Safety and Health.

[FR Doc. 89-16285 Filed 7-11-89; 8:45 am]

BILLING CODE 4160-19-M

National Institutes of Health

Establishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92-463, 86 Stat. 770-776]. and section 402(b)(6) of the Public Health Service Act, [42 U.S. Code 282(b)(6)] as amended, the Director, NIH, announces the establishment, effective August 1, 1989, of the following committees:

Biological Sciences Study Section
Immunology, Virology and Pathology Study Section
International and Cooperative Projects Study Section
Physiological Sciences Study Section

The restructuring of the Biomedical Sciences Study Section and the Clinical Sciences Study Section, (Division of Research Grants Fellowship Study Sections) resulted in the establishment of the above four committees.

The Biomedical Sciences Study Section consisted of seven subcommittees and, in restructuring, two of the subcommittees were combined as the Biomedical Sciences Study Section, three subcommittees became the newly established Biological Sciences Study Section, and one subcommittee was restructured to establish the International and Cooperative Projects Study Section.

The Clinical Sciences Study Section consisted of four subcommittees; two of the subcommittees remain as the Clinical Sciences Study Section, and the other two subcommittees were restructured to establish the Immunology, Virology and Pathology Study Section and the Physiological Sciences Study Section.

Duration of the committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: July 5, 1989.

William F Raub,

Acting Director, NIH

[FR Doc. 89-16279 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Alpha-Methyldopa Sesquihydrate

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of alpha-methyldopa sesquihydrate. Alpha-methldopa sesquihydrate is used in the treatment of hypertension.

Toxicology and carcinogenesis studies were conducted by administering diets containing 0, 3,100, or 6,300 ppm alpha-methyldopa sesquihydrate to groups of 50 male and 50 female rats and diets containing 0, 6,300 or 12,500 ppm alpha-methyldopa sesquihydrate were fed to groups of 50 male and 50 female mice for 103 weeks.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity* of alpha-methyldopa sesquihydrate for male or female F344/N rats fed diets containing 3,100 or 6,300 ppm. There was equivocal evidence of carcinogenic activity of alpha-methyldopa sesquihydrate for male $B6C3F_1$ mice, as shown by three dosed mice having uncommon tubular cell tumors of the kidney. There was no evidence of carcinogenic activity of alpha-methyldopa sesquihydrate for female $B6C3F_1$ mice fed diets containing 6,300 or 12,500 ppm. Nonneoplastic lesions of the kidney including karyomegaly were observed in dosed female mice. Decreased incidences of several tumor types (in the adrenal gland in male rats, uterus in female rats, liver in male and female mice, and anterior pituitary gland in female mice) were considered related to alpha-methyldopa sesquihydrate exposure.

The study scientist for this bioassay is Dr. June K. Dunnick. Questions or comments about the content of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7936; FTS: 629-3991.

Copies of *Toxicology and Carcinogenesis Studies of Alpha-methyldopa Sesquihydrate in F344/N Rats and $B6C3F_1$* Mice (Feed Studies) (TR 348) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991; TS: 629-3991.

Dated: July 5, 1989.

David P Rall,

Director.

[FR Doc. 89-16280 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

*The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws (" inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of C. I. Acid Orange 3

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of C. I. Acid Orange 3. C. I. Acid Orange 3 is a dinitrodiphenylamine derivative used exclusively as a dye in semipermanent hair coloring products.

Toxicology and carcinogenicity studies were conducted by administering to groups of 50 F344/N rats of each sex 0, 375, or 750 mg/kg C. I. Acid Orange 3 in corn oil by gavage, 5 days per week for 103 weeks. Groups of 50 male $B6C3F_1$ mice were administered 0, 125 or 250 mg/kg C. I. Acid Orange 3, and groups of 50 female $B6C3F_1$ mice were administered 0, 250 or 500 mg/kg on the same schedule.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity of C. I. Acid

The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no

Continued

Orange 3 for male F344/N rats administered 375 mg/kg; because of a marked reduction in survival and no indication of carcinogenicity, the 750 mg/kg group was considered to be inadequate for assessment of carcinogenic activity. There was clear evidence of carcinogenic activity of C. I. Acid Orange 3 for female F344/N rats as shown by the occurrence of transitional cell carcinomas of the kidney in the 750 mg/kg group; this group had reduced survival and chemically related nonneoplastic lesions of the kidney. There was no evidence of carcinogenic activity of C. I. Acid Orange 3 for male $B6C3F_1$ mice administered 125 or 250 mg/kg or for female $B6C3F_1$ mice administered 250 or 500 mg/kg. Nonneoplastic lesions of the kidney were observed in both dose groups of both sexes of rats and mice.

Copies of *Toxicology and Carcinogenesis Studies of C. I. Acid Orange 3 in F344/N Rats and $B6C3F_1$ Mice (Gavage Studies)* (TR 335) are available without charge from the NTP Public Information Office, MD B2-04, P O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991, FTS: 629-3991.

Dated: July 3, 1989.

David P Rall,

Director.

[FR Doc. 89-16281 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Two Pentachlorophenol Technical-Grade Mixtures

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of two pentachlorophenol technical-grade mixtures. Pentachlorophenol is a biocide used primarily as a wood preservative.

Toxicology and carcinogenicity studies were conducted by administering diets containing 100 or 200 ppm technical-grade pentachlorophenol or 100, 200 or 600 ppm Dowicide EC-7 to groups of 50 male and 50 female mice. Two groups of 35 male and 35 female mice were fed control diets.

Under the conditions of these 2-year studies, there was clear evidence of carcinogenic activity* for male $B6C3F_1$ mice fed diets containing technical-grade pentachlorophenol, as shown by increased incidences of adrenal medullary and hepatocellular neoplasms. There was some evidence of carcinogenic activity for female $B6C3F_1$ mice exposed to technical-grade pentachlorophenol, as shown by increased incidences of hemangiosarcomas and hepatocellular neoplasms. There was clear evidence of carcinogenic activity for male $B6C3F_1$ mice exposed to pentachlorophenol, EC-7 as shown by increased incidences of adrenal medullary and hepatocellular neoplasms. There was clear evidence of carcinogenic activity for female $B6C3F_1$ mice exposed to pentachlorophenol, EC-7 as shown by increased incidences of adrenal medullary and hepatocellular neoplasms and hemangiosarcomas.

Chemically related increased incidences of nonneoplastic lesions in mice of each sex included hepatocellular cytomegaly, necrosis, inflammation, pigmentation, and clear cell foci and intrahepatic bile duct hyperplasia.

Copies of *Toxicology and Carcinogenesis Studies of Two Pentachlorophenol Technical-Grade Mixtures in $B6C3F_1$ Mice (Feed Studies)* (TR 349) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle, Park, NC 27709 or telephone (919) 541-3991; FTS: 629-3991.

Dated: July 5, 1989.

David P Rall,

Director.

[FR Doc. 89-16282 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

*The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Roxarsone

This HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of roxarsone. Roxarsone is an organic arsenical widely used as a growth promoter for swine and poultry, and as a drug for treatment of swine dysentery.

Toxicology and carcinogenesis studies were conducted by administering diets containing 0, 50, or 100 ppm roxarsone to groups of 50 rats of each sex. Diets containing 0, 100, or 200 ppm were fed to groups of 50 mice of each sex.

Under the conditions of these 2-year studies, there was equivocal evidence of carcinogenic activity* of roxarsone for male F344/N rats, as indicated by a marginally increased incidence of adenomas of the exocrine pancreas. There was no evidence of carcinogenic activity for female F344/N rats fed diets containing 50 or 100 ppm roxarsone for 2 years. There was no evidence of carcinogenic activity for male or female $B6C3F_1$ mice fed diets containing 100 or 200 ppm roxarsone for 2 years.

The study scientist for this bioassay is Dr. K. Abdo. Questions or comments about the content of this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-7819.

Copies of *Toxicology and Carcinogenesis Studies of Roxarsone in F344/N Rats and $B6C3F_1$* Mice (Feed Studies) (TR 345) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991; FTS 629-3991.

Dated: July 5, 1989.

David P Rall

Director.

[FR Doc. 89-16283 Filed 7-11-89; 8:45 am]

BILLING CODE 4140-01-M

The NTP uses five categories of evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-738963

Applicant: International Animal Exchange, Inc., Ferndale, MI.

The applicant requests a permit to import one pair of captive hatched

Darwin's rheas (*Pterocnemia pennata pennata*) from La Dehesa Centro de Aclimatacion Zoologica, Santiago, Chile, for resale to Roger Williams Park Zoo, Providence, Rhode Island, where the birds will be entered into a breeding program and used for zoological display.

PRT-738995

Applicant: National Zoological Park, Washington, DC.

The applicant requests a permit to import two male and one female giant otters (*Pteronura brasiliensis*) from the Jardin Zoologico de Brasilia, Brazil, for behavioral research and captive breeding purposes. The otters were born in captivity at the Jardin Zoologico de Brasilia.

PRT-735842

Applicant: Fred David Rich, Portland, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen" Bedford, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-736889

Applicant: U.S. Fish & Wildlife Service, Montana Cooperative Wildlife Research Unit, Missoula, MT.

The applicant requests a permit to import the salvaged skulls of one male and one female wild yak (*Bos mutus*) and the skin and skull of one male musk deer (*Moschus sifanicus*) from the Northwest Plateau Institute of Biology Museum, Xining, People's Republic of China, for disposition in the Museum of the University of Montana where the specimens will be used for scientific research purposes.

PRT-737978

Applicant: Helen Carpenter, Jefferson, TX.

The applicant requests a permit to export and re-import two leopards (*Panthera pardus*), one jaguar (*P onca*), three tigers (*P tigris*), one lion (*P leo*), one cougar (*Felis concolor*), and one baboon (*Papio anubis*) for the purpose of conservation education. In the future, the applicant will re-export and re-import these animals for the same purpose.

PRT-738937

Applicant: William E. Kratz, Hightstown, NJ.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. Phil van der Merwe, Victoria West, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-736854

Applicant: University of Georgia, Museum of Nat. Hist., Athens, GA.

The applicant requests a permit to import six to ten infertile peregrine falcon (*Falco peregrinus anatum*) eggs from captive held birds for scientific research. The eggs will be imported from Saskatchewan Cooperative Falcon Project, Saskatoon, Saskatchewan, Canada.

PRT-738288

Applicant: Dr. John Faaborg, University of Missouri, Columbia, MO.

The applicant requests a permit to import blood samples taken from wild Galapagos hawks (*Buteo galapagoensis*) for the purpose of DNA sequence analysis.

PRT-738292

Applicant: James B. Gentry, Houston, TX.

The applicant requests a permit to import the short-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F W.M. Bowker, Jr., Thornkloof, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-739350

Applicant: National Marine Fisheries Service, Southwest Fisheries Center, LaJolla, CA.

The applicant requests a permit to (1) capture hawksbill sea turtles (*Eretmochelys imbricata*) in the sea by hand and hold them out of the water for short periods for the purpose of recording standard body measurements and attaching Inconel alloy identification tags; (2) restrain adult female hawksbill turtles on their nesting beaches for short periods of time for the purpose of recording standard body measurements and attaching Inconel tags; and (3) excavate nests to measure egg fertility and productivity and rescue any live hatchlings found to be trapped in the nest.

Activities will be conducted in the Hawaiian Islands, Samoa, Guam, Commonwealth of the Northern Mariana Islands, Palau and the Federated States of Micronesia.

PRT-738440

Applicant: Center for Reptile & Amphibian Propagation, Fresco, CA 93722.

The applicant requests a permit to purchase in interstate commerce three captive-bred Galapagos tortoises (*Geochelone elephantopus*) from Grant DeWitt, Dallas, Texas for propagation of the species.

PRT-738971

Applicant: Siegfried & Roy Enterprises, Las Vegas, NV.

The applicant requests a permit to import from Japan and reexport 3 male captive-born white tigers (*Panthera tigris*) born in Japan to a white tiger owned by Siegfried & Roy. The tigers will be imported and reexported several times during their lifetimes for the purpose of enhancement of the survival of the species through conservation education.

PRT-739412

Applicant: National Zoological Park, Washington, DC.

The applicant requests a permit to import two captive born female golden lion tamarins (*Leontopithecus rosalia*) from the Marwell Zoological Park, Hampshire, England. The tamarins will be exported to Brazil for release.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 432, 4401 N. Fairfax Drive, Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507 Arlington, Virginia 22203-3507

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: July 5, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-16351 Filed 7-11-89; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program Investment Opportunity

This is a correction to the Notice of Investment Opportunity for Jordan originally published on July 3, 1989 in the **Federal Register** (54 FR 28015, FR Doc. 89-15828). The date and time for receipts of bids has been changed and should read as follows:

Interested lenders should telex their bids to the Borrower's representative by 5:00 p.m. (EST) July 24, 1989.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

Date: July, 3, 1989.

[FR Doc. 89-16278 Filed 7-11-89; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-294]

Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add an Allegation of Direct Patent Infringement

In the matter of certain Carrier Materials Bearing Ink Compositions to be Used in a Dry Adhesive Free Thermal Transfer Process and Signfaces made by such a Process.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 5) issued by the presiding administrative law judge (ALJ) amending the complaint and notice of investigation to add an allegation of direct patent infringement as to respondent Signtech Incorporated.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW Washington, DC 20436, telephone 202-252-1096.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On June 5, 1989, the presiding ALJ issued an ID granting the motion of complainant Minnesota Mining and Manufacturing Company (3M) to amend the complaint and notice of investigation in the above-captioned investigation to add an allegation of direct patent infringement as to respondent Signtech Incorporated. The ID granted 3M leave to amend the complaint per the attachment to complainant's motion to amend and amended paragraph 1 of the "Scope of Investigation" section of the notice of investigation to read as follows:

Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation by instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain carrier materials bearing ink compositions to be used in a dry adhesive-free thermal transfer process, or signfaces made by such a process, by reason of alleged direct, contributory or induced infringement of claims 1, 2, 3, 4, 5, 6, 7 8, 10, 11, 12, 13, 15 or 22 of U.S. Letters Patent 4,737,224, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337

The ID also amended the title of the investigation to read as follows: Certain Carrier Materials Bearing Ink Compositions To Be Used In a Dry Adhesive-Free Thermal Transfer Process And Signfaces Made By Such A Process.

No petitions for review of the ID or agency comments concerning the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Issued: July 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-16336 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates; Commission Decision Not To Review an Initial Determination Finding Two Respondents in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 73) issued by the presiding administrative law judge (ALJ) finding two respondents in default in the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: Julius Blum, Inc. (Blum), a U.S. assembler of certain patented concealed hinges and mounting plates, filed a complaint with the Commission on November 23, 1988. The Commission instituted an investigation of Blum's complaint and issued a notice of investigation that was published in the **Federal Register** on December 28, 1988, 53 FR 52515.

On May 9, 1989, in response to a motion by Blum, the presiding administrative law judge (ALJ) issued an order (Order No. 40) directing two respondents, U.S. Industrial Products Corp. (USIP) and Advanced Affiliates, Inc. (Advanced), to show cause why they each should not be found in default. The order to show cause was based on failure of each respondent to respond to complainant's interrogatories, document requests, and motion to compel; their respective failures to comply with the ALJ's order compelling discovery by April 4, 1989 (Order No. 12); and the lack of willingness on the part of each to participate in the investigation.

Respondents USIP and Advanced filed a joint response to the order to show cause, offering arguments and requesting that they "be allowed to continue as a party to this action, and be provided with all copies of filings of complainant *"

The ALJ noted that in their joint response respondents did not show any willingness to provide the discovery long ago requested and ordered, and, on June 7 1989, issued an initial determination (ID) (Order No. 73) finding both USIP and Advanced in default for failure to respond to discovery, and ordered that each had waived its right (i) to appear in the investigation, (ii) to contest the allegations at issue in the investigation, and (iii) to be served with documents by the parties.

This action is taken under the authority of section 337 of the Tariff Act

of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (53 Fed. Reg. 33070, Aug. 29, 1988).

By order of the Commission.

Issued: July 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-16337 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-293]

Certain Crystalline Cefadroxil Monohydrate

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on July 17 1989, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E Street SW Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Janet D. Saxon,

Chief Administrative Law Judge.

Issued: June 30, 1989.

[FR Doc. 89-16338 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-295]

Certain Novelty Teleidoscopes; Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add Additional Responsents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 6) issued by the presiding administration law judge (ALJ) granting the motions of complainant Homespun Imports, Inc. d/b/a Silver Deer, Ltd., to add four respondents to the above-captioned investigation. The ID amends the complaint and notice of investigation by adding New Lon Industries, Inc., Rich Trees International, Prosperity Industrial Co., and Fred Kort International, all of Taiwan.

ADDRESSES: Copies of the ID and all other nonconfidential documents field in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On June 7 1989, the presiding ALJ issued an ID amending the complaint and notice of investigation to add the four firms as respondents. No petitions for review of the ID or government agency comments were received. These actions are taken under authority of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule § 210.53(h).

By order of the Commission.

Issued: July 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-16339 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-286]

Certain Track Lighting System Components, Including Plugboxes; Commission Determinations To Review and Clarify Portions of an Initial Determination Finding of No Violation of Section 337 of the Tariff Act of 1930 and Not To Review the Remainder of the Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and clarify portions of the presiding administrative law judge's (ALJ's) final initial determination (ID) in the above-captioned investigation finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and not to review the remainder of the ID. As a result of these determinations the Commission has found that there is no violation of section 337 in the investigation.

ADDRESSES: Copies of the Commission's opinion, the nonconfidential version of the TD, and all other nonconfidential documents filed in connection with this investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, 500 E Street SW., Washington, DC 20436, telephone 202-252-1090.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On May 4, 1989, the presiding ALJ issued her final ID finding no violation of section 337 in this investigation. The Commission has determined to review and clarify certain aspects of the ID's discussion of secondary meaning and likelihood of confusion with regard to the existence and infringement of complainant Cooper Industries, Inc.'s alleged common law trademark. The Commission has determined not to review any other part of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.56 of the Commission's Interim Rules of Practice and Procedure (53 FR 33071, Aug. 29, 1988).

This investigation was instituted by publication of a notice of investigation in the **Federal Register** on August 25, 1988 (53 FR 32478).

By order of the Commission.

Kenneth R. Mason,

Secretary,

Issued: July 7, 1989.

[FR Doc. 89-16340 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-434 (Preliminary)]

12-Volt Motorcycle Batteries From the Republic of Korea

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 683.01 and 683.05 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

Background

On May 17 1989, a petition was filed with the Commission and the Department of Commerce by Yuasa-Exide Battery Corp., Reading, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 12-volt motorcycle batteries from the Republic of Korea. Accordingly, effective May 17 1989, the Commission instituted preliminary antidumping investigation No. 731-TA-434 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 31, 1989 (54 FR 23296). The conference was held in Washington, DC, on June 7 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 3, 1989. The views of the Commission are contained in USITC Publication 2203 (July 1989), entitled "12-Volt Motorcycle Batteries from the Republic of Korea: Determination of the Commission in Investigation No. 731-TA-434 (Preliminary Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of The Commission.

Kenneth R. Mason,

Secretary.

Issued: July 6, 1989.

[FR Doc. 89-16341 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on July 24, 1989, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Janet D. Saxon,

Chief Administrative Law Judge.

Issued: July 3, 1989.

[FR Doc. 89-16342 Filed 7-11-89; 8:45 am]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 19, 1989 through June 29, 1989. The last biweekly notice was published on June 28, 1989 (54 FR 27221).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 11, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's

property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: March 20, 1989

Description of amendments request: The proposed amendments would change the Technical Specifications (TS) to:

1. Clarify the wording of TS 4.2.2.2.f.3. to more accurately and correctly define the grid plane regions of the core where Fxy limits are not applicable.

2. Delete Figure 3.3-1, Time Delay Curves, to correct an error (curves not used) and revise Table 3.3-4 to delete the footnote reference to the deleted Figure 3.3.-1.

3. Correct a typographical error in Table 3.3-3 for spelling of automatic.

4. Change Table 4.3-4 to correct the locations of seismic instrumentation and correct two typographical errors in the Table.

5. Revise the addressee for reporting information to the NRC per 10 CFR 50.4 in TSs 3.11.4, 6.9.1, 6.9.1.10, 6.9.1.11, and 6.9.2 as editorial changes.

6. Modify TS 3.6.4.1. Action a. to add that the provisions of TS 3.0.4 are not applicable and to add an alternate hydrogen sampling capability when one hydrogen analyzer is inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided significant hazards evaluations in Attachment 2 to its request for a license amendment. In the evaluations the licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. We have reviewed the licensee's evaluations.

In our review we used the Commission guidance set forth in 10 CFR 50.92 which provided certain examples of no significant hazards considerations published in the **Federal Register** on March 6, 1986 (51 FR 7744). One of the examples of actions involving no significant hazards consideration, example (i), involves a purely administrative change to the TS, for example, a change to achieve consistency throughout the TS, to

correct an error, or to change nomenclature.

Based on the similarity of proposed changes, 1 through 5 above, to example (i), the NRC staff concludes that these changes in the proposed amendment are not likely to involve a significant hazards consideration. For proposed change 6 above, relating to use of containment hydrogen analyzers, the licensee made the following determination:

1. The proposed change will not increase the probability or consequences of an accident previously evaluated because the proposed change does not eliminate the requirement to monitor hydrogen concentration inside containment during Modes 1 and 2. This change will allow startup of the plant with one hydrogen analyzer inoperable. Hydrogen concentration can be determined with one analyzer inoperable by use of the redundant hydrogen analyzer and by local sampling using existing approved plant post-accident sampling procedures.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not alter the intent of the specification. Redundant monitoring of hydrogen concentration can be performed with one hydrogen analyzer inoperable during plant startup by means of post-accident sampling procedures. Therefore, possibility of a new or different kind of accident from any previously evaluated does not exist.

3. The proposed change will not involve a reduction in a margin of safety because the proposed change does not lessen the requirements for monitoring hydrogen concentration. The proposed change allows for an alternative method for monitoring hydrogen concentration with one hydrogen analyzer inoperable during plant startup. Therefore, no reduction of margin of safety will result from this change.

We agree with the licensee's specific evaluation that the changes meet the three standards in 10 CFR 50.92. Accordingly, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: April 17 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Shearon Harris Nuclear Power Plant, Unit 1 (Harris or SHNPP) to permit core reload and operation with Westinghouse 17x17 VANTAGE 5 fuel assemblies. Harris is presently operating with Westinghouse 17x17 low-parasitic (LOPAR) fuel assemblies. The transition from a complete LOPAR core to a complete VANTAGE 5 core will be accomplished over three cycles. The proposed revisions to the TS support operation with each of the transition cores and all subsequent cores using only VANTAGE 5 fuel.

Design features of the VANTAGE 5 fuel include integral fuel burnable absorbers, intermediate flow mixers, reconstitutible top nozzles, axial blankets, optimized fuel rod diameter, and extended burnup capability. Changes to the TS are required due to the use of VANTAGE 5 fuel and use of the following analytical methods and assumptions:

(1) The Improved Thermal Design Procedure (ITDP);

(2) The WRB-1 and WRB-2 departure from nucleate boiling (DNB) correlations;

(3) Large break loss-of-coolant accident (LOCA) analyses using the 1981 evaluation model and the BASH model;

(4) Small break LOCA analyses using the NOTRUMP model; and

(5) $F_q(z)$ surveillance.

As a result of the above, changes to the following Technical Specifications are proposed:

(1) Core Safety Limits (TS 2.1.1, Figure 2.1-1);

(2) Reactor Coolant Flow Trip Setpoint and Allowable Values (TS 2.2.1, Table 2.2-1);

(3) Overtemperature delta T and Overpower delta T Reactor Trip Setpoint (TS 2.2.1, Table 2.2-1);

(4) DNB Correlations, DNB Ratio Limits, Power Range Neutron Flux High Rate, and F delta H Limit Uncertainties (Bases 2.1.1);

(5) Rod Drop Time (TS 3.1.3.4);

(6) Heat Flux Hot Channel Factor $F_q(Z)$ (TS 3/4.2.2. Bases 3/4.2.2);

(7) Reactor Coolant System Flow Rate and Nuclear Enthalpy Rise Hot Channel Factor (TS 3/4.2.3);

(8) DNB Parameters (TS 3/4.2.5, Table 3.2.1, Bases 3/4.2.5); and

(9) Engineered Safety Features Actuation System Instrumenatation Trip Setpoints (TS 3/4.3.2, Table 3.3-4).

In addition, the proposed amendment would revise TS 3.1.3.5, 3.1.3.6, and 3.2.1 to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which contains the values of those limits. The COLR also has been included in the Definitions Section of the TS to note that it is the unit-specific document that provides these limits for the current operating reload cycle. As such, the Peaking Factor Limit Report, Section 6.9.1.6 of the current administrative controls, is incorporated into the COLR. Futhermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.1.6. This specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed changes are in response to this Generic Letter.

This proposed amendment also includes two Cycle 2 administrative corrections: (1) the deletion of Surveillance Requirement 4.2.1.1.a.2 requiring monitoring and logging of indicated Axial Flux Difference (AFD) for a 24-hour period after the automatic computer monitoring is returned to an operable status as a result of relaxed AFD monitoring, and (2) deletion of a reference to TS 3.1.1.1 in Action 5 of TS 3.3.1 (Table 3.3-1) because it is no longer applicable. Since the two Cycle 2 corrections relate to previously approved changes, they are administrative in nature.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no

significant hazards consideration determination:

a. The probability or consequences of an accident previously evaluated is not significantly increased.

The VANTAGE 5 reload fuel assemblies are mechanically and hydraulically compatible with the current low parasitic (LOPAR) fuel assemblies, control rods, reactor internals interfaces, the fuel handling equipment, and the refueling equipment. The VANTAGE 5 design dimensions are essentially equivalent to the current SHNPP LOPAR assembly design from an exterior assembly envelope and reactor internals interface standpoint. Also, the implementation of VANTAGE 5 fuel does not cause a significant change in the physics characteristics of the SHNPP cores beyond the normal range of variation seen from cycle to cycle. Thus, both fuel types satisfy the design basis for SHNPP as proposed for this amendment.

The proposed changes have been assessed from a core design and safety analysis standpoint. No increase in the probability of occurrence of any accident was identified, but an extensive reanalysis, as described in the Reload Transition Safety Report, was required to demonstrate compliance with the revised SHNPP Technical Specifications as proposed herein. These reanalyses applied methods which have been previously found acceptabe by the NRC. The results, which includes transition core effects, show changes in consequences of accidents previously analyzed. However, the results are all clearly within pertinent acceptance criteria and demonstrate the plant's capability to operate safely at 100 percent power.

The use of a Core Operating Limits Report follows the guidelines set forth in NRC Generic Letter 88-16, Removal of Cycle-Specific Parameter Limits from Technical Specifications. The use of this report is administrative in nature and does not impact the present analyses or future analyses since the relaxed axial offset control and rod insertion limits will continue to be calculated with approved NRC methodology.

The Cycle 2 corrections which include the elimination of Surveillance Requirement 4.2.1.1.a.2 requiring monitoring and logging of indicated AFD for a 24-hour period after the automatic computer monitoring is returned to an operable status and the deletion of a reference to LCO 3.1.1.1 in Action 5 of TS 3.3.1 are strictly administrative in nature and as such, do not significantly increase the probability or consequences of an accident previously evaluated.

Thus, it is concluded that there is not a significant increase in the consequences of an accident previously evaluated.

b. The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis reports is not created. These proposed changes do not significantly affect the overall method and manner of SHNPP operation and can be accommodated without compromising the performance or qualification of safety-related equipment. Thus, the creation of a new accident or different kind of accident from any previously evaluated accident is not considered a possibility.

c. The margins of safety as defined in the bases of the Technical Specifications are not significantly reduced.

The analysis of the LOPAR and VANTAGE 5 fuel is based on the NRC approved Improved Thermal Design Procedure (ITDP) (WCAP-8567, "Improved Thermal Design Procedure"). The LOPAR fuel analysis uses the WRB-1 DNB correlation, while the VANTAGE 5 fuel analysis utilizes the WRB-2 DNB correlation. These DNB correlations take credit for the significant improvement in the accuracy of the critical heat flux predictions in comparison with previous DNB correlations. The WRB-2 DNB correlation also takes credit for the VANTAGE 5 fuel assembly mixing vane design. A DNBR limit of 1.17 is applicable for both the WRB-1 and WRB-2 correlations. In addition, the W-3 DNBR correlation is used where appropriate.

When appropriate, the design method employed to meet the DNB design basis is the ITDP Uncertainties in plant operating parameters, nuclear and thermal parameters, and fuel fabrication parameters are considered statistically such that there is at least 95 percent probability at a 95 percent confidence level that the minimum DNBR will be greater than or equal to 1.17 for the limiting power rod. Plant parameter uncertainties are used to determine the plant DNBR uncertainties. These DNBR uncertainties, combined with the DNBR limit, establish a DNBR value which must be met in plant safety analyses. In addition to the above considerations, specific plant DNBR margin is included in the analyses. A part of the plant-specific margin is used to accommodate a transition core penalty due to the localized flow redistribution resulting from the VANTAGE 5 intermediate flow mixing grids and an appropriate fuel rod bow DNBR penalty. Since the parameters uncertainties are considered in determining the design DNBR value, the plant safety analyses are performed using values of input parameters without uncertainties. The change to ITDP and the use of new DNBR correlations does not involve a significant reduction in the margin of safety since the DNB design basis (i.e., that there is a 95% probability with a 95% confidence level that the hottest rod does not experience DNB) remains unchanged. In addition, the increased core hydraulic resistance due to the IFM grids results in an increase in the control rod scram time to the dashpot from 2.2 seconds to 2.7 seconds. This increase, as well as the other effects of the changes in the design, have been incorporated in the non-LOCA and LOCA transient analyses. In some cases, an increase in a parameter (such as pressure or peak clad temperature) occurs and may reduce the margin between the anaysis and the pertinent acceptance criterion. The results of the new non-LOCA analyses indicate that the ANS Condition II, III, and IV acceptance criteria as endorsed by NRC NUREG-0800 are still met. The results of the new LOCA analyses indicate that for breaks up to a double-ended severence of the reactor coolant piping, the Emergency Core Cooling System will meet the acceptance criteria of 10CFR50.46.

The use of the Core Operating Limits Report is adminministrative and does not impact existing analyses or future analyses since the relaxed axial offset control limits and rod insertion limits will continue to be determined for each cycle using NRC approved methodology. As indicated in proposed Technical Specification 6.9.1.6, these limits shall continue to be determined so that all applicable limits of the safety analyses are met.

The Cycle 2 corrections are administrative in nature and as such, do not significantly reduce the margins of safety as defined in the bases of the Technical Specifications.

Therefore, the results of the changes are clearly within all pertinent design and safety acceptance criteria using approved methods. Thus, there is no significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 5, 1989

Description of amendment request: The amendment request modifies the procedure for obtaining the gross radioactivity for the reactor coolant specific activity determination. Specifically, the note on Item 1 of Technical Specification (TS) Table 4.4-4 would be deleted and the count described in Bases 3/4.4.8 would be performed in its place. This change will remove the gaseous activity determination from this gross activity determination.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if

operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Deleting the detailed analysis of the RCS liquid required by the note and performing a gross beta/gamma activity determination in its place does not physically alter any safety related systems nor does it affect the way in which any safety related systems perform their functions. As such, the proposed change can not increase the probability of a previously evaluated accident.

The proposed amendment revises the method in which RCS specific activity is determined. The existing Technical Specification requires the RCS gaseous activity be determined and included in the overall RCS liquid specific activity. RCS gaseous activity would not be determined by the proposed analysis. Recent testing has demonstrated that for the purposes of the gross radioactivity determination, RCS gaseous activity is insignificant when compared to overall RCS liquid activity. Specific activity was determined using both the existing analysis and the proposed analysis. The results of these analyses were on the same order of magnitude. A degradation of fuel performance would be readily detectable by an increase in the sample's non-gaseous fission products. As such, the proposed analysis is adequate to fulfill the intent of the gross radioactivity determination required by Technical Specification Table 4.4-4, Item 1. Therefore, the proposed amendment does not significantly increase the consequences of a previously evaluated accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce any new equipment nor does it require any existing equipment or systems to perform a different type of function than they are currently designed to perform. No Technical Specification operating limits are affected by this change. Therefore, the proposed amendment does not significantly increase the consequences of a previously evaluated accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The intent of the gross radioactivity determination required by Technical Specification Table 4.4-4, Item 1 is to verify that RCS liquid specific activity is maintained within the specific activity limits of Technical Specification 3.4.8.b. These limits were established to maintain doses at the site boundary below 10 CFR 100 guidelines in the event of a steam generator tube rupture accident. For the purposes of this determination, RCS gaseous activity is insignificant when compared to overall RCS liquid activity. Therefore, elimination of gaseous activity determination does not affect the adequacy of the proposed analysis. This conclusion was supported by the performance of both the existing analysis and the proposed analysis on RCS liquid samples. The specific activities determined by these analyses were on the same order of magnitude. A degradation of fuel performance would be readily detectable by an increase in the sample's non-gaseous fission products. As such, the proposed analysis accomplishes the intent of the gross radioactivity determination and does not result in a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: June 9, 1989

Description of amendment request: The amendment will change the Minimum Critical Power Ratio (MCPR) safety limit from 1.04 to 1.06. The change is necessary because a new fuel type (GE8x8NB) is being added to the core.

The amendment will also specify the fuel types located in the core for the upcoming cycle. Fuel type GE8x8NB will be added and fuel types 8x8R and P8x8R will be deleted. Fuel type GE8 will be renamed as fuel type GE8x8EB.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis to support a no significant hazards consideration determination for the MCPR change:

1. The NRC accepted methodology used to derive the updated safety limit MCPR of 1.06 applies the same criteria as that used to derive the current safety limit MCPR value of 1.04. The updated safety limit MCPR value of 1.06 assures that fuel cladding protection equivalent to that provided with the safety limit MCPR value of 1.04 is maintained. Thus; the consequences of accidents previously evaluated are not significantly increased. The safety limit MCPR does not affect any physical system or equipment which could change the probability of an accident. Therefore, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

2. Adoption of the proposed MCPR safety limit value does not affect the function of any component or system. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The safety limit MCPR value is determined for cycle specific application of fuel types as described in NEDE-24011-P-A, "General Electrical Standard Application for Reactor Fuel, to meet Criterion 10 of 10CFR50, Appendix A. Analyses of the limiting anticipated operational occurrences for each cycle are used in conjunction with the applicable safety limit MCPR value to determine cycle specific operating limit MCPR values. Use of the 1.06 safety limit MCPR for Cycle 9 will result in equivalent fuel cladding protection as that provided with the current cycle limit of 1.04. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided examples of amendments that are considered not likely to involve significant hazards considerations (see 51 FR 7744). One such example, (i) is a purely administrative change to technical specifications, for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The part of the amendment request which lists the fuel

types for the upcoming cycle comes under this example.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, specifying the fuel types for the upcoming cycle is one example of a change not likely to involve significant hazards considerations. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: May 26, 1989

Description of amendment request: The amendment would revise paragraph 4 of attachment 2 to the Facility Operating License to clarify the requirements for conducting air-roll tests of the Transamerica Delaval, Inc. (TDI) diesel generators. Under the proposed amendment, if one diesel generator is inoperable, any demonstration of operability of the second diesel shall not be preceded or followed by air roll tests until the first diesel generator is declared operable. The amendment would also add reference to the latest date of issuance of a supplemental Safety Evaluation (July 8, 1986) relating to diesel generator maintenance and surveillance programs.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed wording change to the license requirement regarding conduct of air-roll testing of the TDI-manufactured standby diesel generators does not adversely affect the design or safety function of any system or component relied upon for prevention or mitigation of previously analyzed accidents. This administrative change to a routine inspection requirement will increase the availability of a safety system for response to analyzed accidents, since a restriction is being added so that both diesels will no longer be purposely taken out of service at the same time. The change of the reference date for the NRC staff Safety Evaluation letter is purely an administrative change that has previously been reviewed and approved by the NRC staff for the Perry Nuclear Power Plant. Therefore, the proposed changes do not involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated.

The proposed change to the air-roll requirement does not alter the design of any system or component which could affect plant safety or operation. Neither does the proposed change alter the safety function of the diesel generators. The diesels and their associated air systems are designed solely to mitigate plant transients, and performance (or non-performance) of an air-roll on the diesel cannot cause challenges to plant systems that would initiate any such transient. The change of the reference date for the NRC staff Safety Evaluation letter is purely an administrative change that has previously been reviewed and approved by the NRC staff for PNPP Consequently, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The license requirement to perform an air-roll test prior to and following planned diesel operation is an augmented inspection designed to detect the unlikely occurrence of cylinder head cracking prior to and following routine maintenance/surveillance related diesel operation. The proposed change would not affect the automatic capabilities of the diesel, nor would it alter the performance of the augmented inspection unless another diesel is already inoperable. The proposed change would increase the availability of the remaining Standby Diesel Generator when another diesel is already inoperable. In this case, the availability of the remaining diesel is increased which tends to increase the plant's margin of safety. The change of the reference date for the NRC staff Safety Evaluation letter is purely an administrative change that has previously been reviewed and approved by the NRC staff for PNPP Therefore, there is no change to the margin of safety for this administrative change.

Based on the above, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon.

Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Nuclear Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: May 24, 1989

Description of amendments request: These amendments would change Technical Specification (TS) 3/4.7.5 to utilize the seismic qualification of the deep well pumps to enable use of a deep well pump instead of an essential service water pump.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed amendment involves several changes:

The first three changes are administrative. The word "each" was deleted from TS 3.7.5 and Limiting Conditions for Operations (LCO) 3.7.5 a. and c. were revised to reflect this deletion.

The fourth change changes LCO 3.7.5 Action c. to allow continued operation with an inoperable essential service water pump as long as the same train's deep well pump is operable with it's basin level verified every 2 hours to be at least 82%. The provisions of TS 3.0.4 do not apply to this Action.

The fifth change deleted LCO 3.7.5 e. and Action e. which specified surveillance for Rock River level and flow whenever the Rock River level is less than 670.6 Feet Mean Sea Level (MSL). (This same surveillance is now in the proposed LCO 3.7.5 g. and Action g.). Also, the requirement has been deleted to, within 1 hour, notify the NRC of contingency plans to ensure an adequate supply of cooling water.

The sixth change divides LCO 3.7.5 f. and its Action f. into three items, items f, g, and h. Item f, discusses actions to be taken if the National Weather Service (NWS) forecasts that the Rock River level will exceed 702.0 feet MSL. Item g discusses actions to be taken if the Rock River water level is not above 670.6 feet MSL. Item h discusses actions to be taken if the NWS issues a tornado watch for the Byron site.

The seventh change revises the Bases Section 3/4.7.5 to reflect the change made in TS 3.7.5.

The eighth change deletes Surveillance f. which had required that the deep well pumps be run immediately prior to declaring them operable.

The following analysis of the proposed changes for the evaluation of the significant hazards consideration address the eight items from above.

1. *Involve a significant increase in the probability or consequence of an accident previously evaluated.*

Changes (1), (2), and (3) and (7) are administrative in nature and do not involve a significant increase in the probability or consequence of an accident previously evaluated.

Change (4) allows two essential service water pumps, or two deep well pumps, or one essential service water pump and one deep well pump to be Operable for modes 1, 2, 3, 4. There is no significant increase in the probability or consequence of an accident previously evaluated since any of the above makeup sources are capable of providing redundant makeup to meet the Ultimate Heat Sink (UHS) design cooling capability requirements for 30 days following a LOCA on one unit with the second unit shutting down. The single failure criteria is met by providing two independent makeup sources. The 72-hour action requirement is unchanged in the event that one of the redundant makeup sources is inoperable. The basin level is increased to 82% and, a surveillance is initiated every 2 hours thereafter, if a deep well pump is the redundant operable source of makeup. The increase to 82% compensates for the lack of auto makeup and the necessity of manually starting the deep well pumps to initiate makeup. Calculations show that the basin level will be maintained above the level required in the accident analysis of the Updated Final Safety Analysis Report (UFSAR). The deep well pumps have been shown capable of being the redundant makeup supply in the UFSAR accident analysis for flood conditions and a tornado. With the addition of the seismic qualification of the deep well pumps, they meet all conditions as redundunt makeup sources to the UHS; in particular, for Rock River flow and level conditions. In the event of a seismic event with Rock River flow less than 700 cfs, both deep well pumps meet the single failure criteria in that one deep well pump has the capacity to meet the design cooling capability for the 30-day period following a LOCA on one unit with the second unit shutting down and to maintain adequate suction to the essential service water makeup pumps. LCO 3.7.5c still states "Two OPERABLE essential service water makeup pumps" Since the deep well pumps are considered the "backup" makeup sources, in the event the deep well pumps are being used for some time period as the Operable makeup source, the provisions of Specification 3.0.4 would not be applicable provided basin level of at least 82% is being verified every 2 hours. This is reasonable since all design conditions and accident analysis in the UFSAR will be provided for by two independent makeup sources whether these are the essential service water makeup pumps or deep well pumps or some combination. The change to increase basin level to at least 82% and verify it every 2 hours provides the UHS with its required supply to account for the manual initiation of deep well pump makeup to the UHS. Thus basin level is ensured per the design basis accident. Thus, for the reasons above, the change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

Changes (5) and (6) are interrelated. The 670.6 feet MSL level is a level that ensures a 700 cfs flow water and is essentially an alarm setpoint that requires Rock River flow verification every 12 hours. The 664.7 feet MSL level and the 700 cfs flow limit are minimum values to ensure that there will be adequate water levels for essential makeup pump suction in the event of the postulated failure of the Oregon dam (seismic event). With both deep well pumps Operable and Rock River level less than 670.6 feet, the makeup sources would be available even if a seismic event occurred along with the postulated failure of the Oregon dam. It is only when one well water pump is inoperable that the Rock River level and flow would impact makeup capability via the essential service water makeup pump if flow is less than 7000 cfs or level is not greater than 664.7 feet MSL and the dam failed. Thus by deleting LCO 3.7.5e and Action e. and adding the same Rock River flow and level surveillance requirement to Action g., the intent of the requirement is satisfied and there involves no significant increase in the probability or consequence of an accident previously evaluated.

For change (6), LCO 3.7.5 items f, g, and h and Actions f, g, and h are changed to allow 1 hour to verify that both deep well pumps are operable. This does not involve a significant increase in the probability or consequence of an accident previously evaluated. The change allows a minimum time to verify deep well pump operability by verifying that the pump is within its surveillance schedule. The change quantifies a minimum time to verify deep well pump operability and does not involve a significant increase in the probability or consequence of an accident previously evaluated.

For change (6), neither the increase of basin level to at least 82% and the surveillance every 2 hours involves a significant increase in the probability or consequence of an accident previously evaluated. The increased basin level and surveillance rather ensure that the UHS design basis accident heat load will be met with the manual start of the deep well pumps as required and the isolation of blowdown. The time to ensure that the OWWO19A and B valves to the UHS are open under all conditions, including loss of off-site power and loss of instrument air, has been accounted for in the deep well pump capability analysis. Thus all design requirements have been met for the UHS for any accident analyses in the UFSAR.

Change (6) proposes that after the deep well pumps are verified to be operable, the provisions of 3.0.4 are not applicable. With the required level increase in the essential service water basin, the verified operability of the deep well pumps, and the seismic qualification of the deep well pumps, the deep well pumps are designed for all accident conditions assumed in the UFSAR. Therefore, the provision that 3.0.4 is not applicable does not involve a significant increase in the probability or consequence of an accident previously evaluated.

Change (6), which provides the Action to be in Hot Standby within the next 6 hours and Cold Shutdown within the following 30 hours instead of Hot

Shutdown in the 6 hours after Hot Standby, is reasonable because in both cases, Cold Shutdown is achieved within 30 hours. The change allows time to verify both deep well pumps by restoring one or both to operable status within 1 hour. This change allows subsequent action after 1 hour to shut down per the Action requirement. The same basin level exists in both the shutdown methods (TS 3.0.3 and the changed Action) to ensure the cooling capability for the UHS in the unlikely event of the design basis accident. Thus, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Change (6) deletes the 1 hour notification of the NRC. This change does not involve a significant increase in the probability or consequences of any accident previously evaluated. Rather, with the deep well pumps providing makeup capability to the UHS, both units would be required to shut down as required by the Action requirements if the deep well pumps become inoperable.

Change (6) requires both deep well pumps to be operable only when Rock River flow is less than 700 cfs or level is not at least 664.7 feet MSL, instead of when level is less than 670.6 feet MSL. This is consistent with the analysis on the Rock River level and flow requirements for adequate suction to the essential service water makeup pumps in the event of a design basis seismic event. The essential service water makeup pumps are operable at less than 670.6 feet MSL provided Rock River level is greater than 664.7 feet MSL and flow at least 700 cfs. In addition, LCO 3.7.5c and Action c. ensure makeup to the UHS or require a shutdown. It is for the above reasons that the change does not involve a significant increase in the probability or consequence of any accident previously evaluated.

Thus for all of change (6), there is no significant increase in the probability or consequence of any accident previously evaluated.

Change (7), which changes the Bases for LCO 3/4.7.5, is administrative and states that the deep well pumps are seismically qualified. Also, the change deletes the statement for NRC notification of procedures implemented to meet the GDC 44 for cooling systems.

Change (8) deletes a surveillance on the deep well pumps, but since there is a 31-day surveillance on the deep well pumps that verifies flow, there is no effect on the capability of the deep well pump to provide the design makeup flow to the UHS to meet the cooling capability for the design bases accident. In addition, surveillance i verifies at least 550 gpm flow.

Thus, none of the changes involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Create the possibility of a new of different kind of accident from any accident previously evaluated.*

Changes (1), (2), (3), and (7) are administrative in nature and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Change (4) allows operation with redundant makeup sources meeting all design requirements of the FSAR accident analysis which does not create the possibility of a new or different kind of accident.

Change (4) involves a modification to the deep well system. The modification will be reviewed and a 10 CFR 50.59 safety evaluation will be performed. The modification would not increase the possibility of a new of different kind of accident from any accident previously evaluated and the 10 CFR 50.59 safety evaluation would verify this. Any means required to open the OWWO19A and/or B valves as a result of the modification is taken into account in the analysis of the deep well pump capability to meet the design accident cooling capability for the UHS.

Changes (5) and (6) do not involve the modifications to any system. Changes (5) and (6) ensure that Rock River level and flow surveillances are initiated as required, and does not create the possibility of a new or different kind of accident. Change (6) also ensures that deep well pump operability is verified, or Action is taken to shut down. This is consistent with the UFSAR accident analysis that requires the UHS cooling capability for 30 days following a LOCA on one unit and shut down on the other. This does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Change (8) deletes a surveillance requirement which covered by two other surveillance. The change does not increase the possibility of a new or different kind of accident from any accident previously evaluated.

Thus, for each of the proposed changes, there is not created the possibility of new or different kind of accident from any accident previously evaluated.

3. *Involve a significant reduction in a margin of safety.*

Change (1), (2), (3), and (7) are administrative in nature and do not affect the margin of safety.

Change (4) revises the Technical Specifications to allow the deep well pumps to be used as a makeup source to the UHS since the deep well pumps are a redundant makeup supply capable of meeting the design cooling requirements of the UHS. The requirement is to remove the heat load from a design basis LOCA on one unit and normal shutdown on the other unit. In addition, with two independent makeup sources available to meet the single failure criteria, Action 3.0.4 is not applicable. The basin level requirement of at least 82% and the basin level surveillance requirement every 2 hours ensure that the deep well pumps will be manually started to provide makeup to ensure the basin level meets the 50% level required in LCO 3.7.5a.

Changes (5) and (6) satisfy the bases of Technical Specification 3.7.5 to ensure that an adequate makeup supply to the UHS is available for the design accident. In the event of a seismic event with both deep well pumps operable, it ensures that makeup to the UHS will meet design requirements per the UFSAR. Per change (6), when Rock River level is less than 670.6 feet MSL, the Rock River flow and level will be performed every 12 hours thereafter to ensure that flow is less than 700 cfs and level is greater than 664.7 feet MSL. LCO 3.7.5c ensures that a makeup source to the UHS is operable. With Rock River level not above 700 cfs, both deep well pumps are required to be operable and the Action requirements reflect this. With change (6), all design bases for the UHS are met and in the event of its design bases accident there would be sufficient cooling capacity for 30 days.

Change (8) deletes surveillance f that is covered by two other surveillances Thus, none of the changes involves a reduction in the margin of safety.

Therefore, based on the above considerations, the staff has determined that these changes do not involve a significant hazards consideration.

Local Public Document Room location: The Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Acting Project Director: Paul C Shemanski

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 4, 1987 as supplemented December 7 11 and 29, 1987 March 29 May 4 and 18, June 16, July 1, August 8

and 24, and December 15, 1988, and June 12, 1989.

Description of amendment request: The proposed amendments would add a new Technical Specification (TS) 3.7.1.6, a new Surveillance Requirement (SR) 4.7.1.6, and new Bases 3/4.7.1.6 for the steam generator (SG) power-operated relief valves (PORVs). The proposed TS will require the operability of at least three of the four installed SG PORVs, together with their associated remote manual controls and their safety-related gas supply systems, to ensure that reactor decay heat can be dissipated to the atmosphere in the event of a SG tube rupture and loss of offsite power.

The amendments are a partial response to License Conditions 2.C.(16) and 2.C.(10) of Catawba Units 1 and 2 Facility Operating Licenses NPF-35 and NPF-52, respectively.

The above License Conditions and correspondence relate to two separate concerns. The first is the SG tube rupture accident analysis which is outside the scope of this notice as it does not involve license amendments, and the second is the proposed amendments for the SG PORVs' operability. This notice only covers the second concern. The acceptability of the SG tube rupture analysis will be addressed by a separate correspondence.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (ii) of these actions involving no significant hazards consideration relates to a change which constitutes an additional limitation, restriction or control not presently included in the TSs. The proposed amendments are similar in nature to the example provided by the Commission in that they would add a new TS requiring the operability of at least three of the four installed SG PORVs together with their remote controls and gas supply systems and a new SR and Bases. These additions would introduce additional controls not presently in the TSs. Therefore, the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 11, 1988

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to change Table 3.3-9, Remote Shutdown Monitoring Instrumentation.

Specifically, this change will clarify that there are two readout locations for steam generator pressure, steam generator level and auxiliary feedwater flow rate. The locations are the Auxiliary Shutdown Panels and the Auxiliary Feedwater Pump Turbine Control Panel.

These pressure, level and flow rate readouts are supplied from the same pressure, level and flow rate sensors and provide the same information to the two separate locations. Therefore, both readout locations should be listed on the Table.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The proposed changes do not match the examples. However, the staff has reviewed the licensee's request for amendments and has determined that should this request be implemented, it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not affect plant operations, but instead clarifies the current TS.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not modify the plant's configuration or operation. Nothing would be added or removed that would conceivably introduce a new or different kind of accident mechanism or initiating circumstance than those previously evaluated.

(3) Involve a significant reduction in a margin of safety. With the proposed changes, all safety criteria previously evaluated are still met, remain conservative and still maintain the same margin of safety. Accordingly, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287 Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: June 9, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to allow, on a one-time basis, inoperability of the Keowee overhead emergency electrical path for 10 days. Oconee Nuclear Station (ONS) is presently upgrading the reliability of the 230 kv switchyard by replacing Power Circuit Breakers (PCB) with improved breakers. Included in this program is PCB-9. PCB-9 is required for operability of the overhead emergency power path pursuant to TS 3.7.1(b)(2).

The replacement of PCB-9 would require the overhead emergency path to be inoperable for 10 days. The existing TS provide an allowable outage time of 72 hours for PCB-9. The proposed amendments would allow completion of the change out of PCB-9 without requiring a shutdown of all three units. Risk associated with inoperability of the overhead emergency power path for longer than 72 hours has previously been reviewed and found acceptable by the staff. Specifically, TS 3.7.8 establishes a 28 day special inoperability period for the overhead emergency power path due to Keowee Main Step-up Transformer unavailability. The following restrictions are included within TS 3.7.8:

(a) Prior to heating the reactor above 200 degrees F or prior to the restart of the shutdown reactor or within 72 hours of the loss of the Keowee Main Step-up Transformer, the 4160 volt standby buses shall be energized by a Lee gas turbine through the 100 kV circuit. The Lee gas turbine and 100 kV transmission circuit shall be electrically separate from the system grid and offsite and non-safety related loads.

(b) A Keowee hydro unit shall be connected to the underground feeder circuit and this path shall be verified

operable within 1 hour and weekly thereafter.

(c) The remaining Keowee Hydro Unit shall be available to the underground feeder circuit.

(d) Operating in this mode is restricted to periods not to exceed 28 days, and the provisions of this specification may be utilized without prior NRC approval. The U.S. NRC Regional Office, Region II, will be notified within 24 hours.

The proposed amendments will expand the scope of TS 3.7.8 on a one-time basis to allow inoperability of the overhead emergency path due to PCB-9 unavailability for 10 days.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR Part 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Each accident analysis addressed within the ONS FSAR has been examined by the licensee with respect to changes proposed within this amendment request. The design basis of the auxiliary electrical systems is to supply the required engineered safeguards loads of one unit and safe shutdown loads of the other two units and are so arranged that no single failure will jeopardize plant safety. The applicable design basis accidents (Loss of Electric Power Accidents) are addressed in FSAR Chapter 15.8.

Although changes included within this amendment request may involve an increase in the probability of previously analyzed accidents, the consequences of the accidents are within the bounds of FSAR analyses. Upon implementation of the modification, the probability of previously analyzed accidents will be reduced due to the increased fault current interrupting capability of PCB-9 concurrent with the reduced probability of a unit separation from the system grid.

As such, the probability of any Design Basis Accident will not be significantly increased by this change. Consequences of accident analyses addressed in the ONS FSAR will not be affected by this change.

Inoperability of PCB-9 is functionally equivalent to inoperability of the Keowee Main Step-up Transformer in that it renders the overhead emergency power path inoperable. Operation of ONS in accordance with these TS will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

Risk associated with inoperability of the overhead emergency power path for longer than 72 hours has previously been reviewed and found acceptable by the staff with TS 3.7.8. Inoperability of PCB-9 is functionally equivalent to inoperability of the Keowee main step-up transformer. Therefore, operation of ONS in accordance with these TS will not involve a reduction in any margins of safety.

On this basis, the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 12, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications by increasing the quarterly channel calibrations to monthly on the waste gas holdup system explosive gas monitoring system.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). One of these examples (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications; for example, more stringent surveillance requirement. The proposed amendment is directly related to this example in that the current channel calibration of the oxygen and hydrogen monitors is required quarterly or every three months and the licensee proposes to perform the calibration every month. The current system is being replaced with a new and more reliable system but to meet the manufacturer's recommendations, the functional and calibration testing should be performed monthly. The amendment will make the Technical Specification requirement and the vendor recommendation consistent resulting in a more stringent surveillance requirement.

Based on the above, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Frederick J. Hebdon

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: April 12, 1989 as revised June 22, 1989

Description of amendment request: Proposed amendment would change the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications to incorporate the Commission's interim requirements as outlined in Bulletin 88-07 Supplement 1, "Power Oscillations in Boiling Water Reactors (BWRs), and clarify the requirements of certain Actions and Surveillances.

Specifically, the licensee has requested the following changes:

(1) changes to specification 3/4.4.1.1.1 to replace the existing stability controls on two loop operations with those recommended in Bulletin 88-07 Supplement 1;

(2) changes to specification 3/4.4.1.1.2 to replace the existing stability controls on single loop operations with those specified in Bulletin 88-07 Supplement 1;

(3) changes to specification 3.4.1.4 to revise Action a to clarify the thermal power/core flow condition where an idle recirculation loop can be started; and

(4) a change to Figure 3.4.1.1.1-1 related to "Thermal Power Restrictions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed

amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its April 12, 1989 submittal.

The following three questions are addressed below for each of the proposed Technical Specification changes:

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

III. Does the proposed change involve a significant reduction in a margin of safety?

Specification 3/4.4.1.1.1, Recirculation Loops Two Loop Operation

This specification has been revised to replace the existing stability controls on the recirculation system with (at a minimum) those recommended in NRC Bulletin 88-07, Supplement 1.

I. No. The changes to the LCO provide the appropriate limits to ensure that proper actions are taken if SSES Unit 1 is operating in a region of the power/flow map where an instability is more likely to occur. The boundaries of these regions are based upon NRC approved limits for ANF methodology.

Action a is deleted as an editorial change; its purpose as a cross reference is adequately covered by the Applicability sections for the two-loop and single-loop specifications.

New Action a.1 requires when operating in Operational Condition 1 an immediate manual scram if operation in natural circulation occurs, if Region I of the new Figure "Thermal Power Restrictions" is entered, if power range monitoring instrumentation exhibits evidence of instability or if Region II of the Figure is entered and inadequate instability monitoring capability is available. These actions will ensure that the MCPR Safety Limit is not violated, so that an increase in the consequences of an accident previously evaluated will not occur.

Action a.2 requires immediate exit of Region II if entered. This is consistent with the Bulletin, and does not require an immediate scram because no indications of power oscillation have occurred. Action a.3 is provided simply to avoid entry into Specification 3.0.3 should new Surveillance 4.4.1.1.1.4 be failed. It is not appropriate for any more restrictive requirements to be applied to these alarms when the unit is operating outside Regions I and II.

New Action b reflects the current requirements associated with natural circulation operation in Operational Condition 2 and clarifies that a recirculation loop may be attempted to be returned to service during the allowed outage time. This change is an administrative clarification.

New Actions c and d incorporate actions that previously appeared as Surveillance Requirements. This transfer is proposed in order to avoid invoking Specification 3.0.3 due to the lack of a specific action if the pump discharge or bypass valves failed. These "new" actions and the associated deletion of Surveillance Requirement 4.4.1.1.1.1 are entirely administrative in nature.

New Footnote + was added to clarify that the LPRM upscale alarms are not required to be operable in Operational Condition 2 since an instability event is not a concern at low power levels.

Existing Surveillance 4.4.1.1.1.4 is deleted since a baseline noise level will no longer be used to detect and suppress power oscillations. The new surveillance is provided to ensure operability of the newly required LPRM upscale alarms, and frequencies of testing were chosen based on NRC approved methods for determining surveillance intervals for similar instrumentation (ref. GE NEDC 30851P-A).

Based on the above, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated. The stability related changes are consistent with current NRC guidance and approved analytical methods where applicable, and the transferring of certain surveillances to actions will preclude unnecessary shutdowns due to Specification 3.0.3.

II. No. The proposed changes relating to stability use the current guidance contained in NRC Bulletin 88-07 Supplement 1, which will ensure that a new or different kind of event will not occur. They accomplish this by requiring reactor scrams in unstable regions and additional instability detection capability.

The editorial changes shifting Surveillance Requirements to Actions cannot create a new event.

III. No. See I above. The stability changes are designed to protect the margin of safety to the MCPR Safety Limit. The editorial changes improve safety margin by precluding unnecessary plant shutdowns.

Specification 3/4.4.1.1.2, Recirculation Loops Single Loop Operation

This specification has been revised to replace the existing stability controls on the recirculation system with (at a minimum) those recommended in NRC Bulletin 88-07, Supplement 1.

I. No. The changes to the LCO provide the appropriate limits to ensure that proper actions are taken if SSES Unit 1 is operating in a region of the power/flow map where an instability is more likely to occur. The boundaries of these regions are based upon NRC approved limits for ANF methodology.

Action a is deleted as an editorial change; its purpose as a cross reference is adequately covered by the new Actions a and b.

New Action a.1 requires an immediate manual scram when operating in Operational Condition 1 if operation in natural circulation occurs, if Region I of the new Figure "Thermal Power Restrictions" is entered, if power range monitoring instrumentation exhibits evidence of instability, or if Region II of the Figure is entered and inadequate instability monitoring capability is available. These actions will ensure that the MCPR Safety Limit is not violated, so that an increase in the consequences of an accident previously evaluated will not occur.

Action a.2 requires immediate exit of Region II if entered. This is consistent with the Bulletin, and does not require an immediate scram simply because no indications of power oscillation have occurred. This action does not allow the start of a recirculation loop to exit Region II. Action a.3 is provided simply to avoid entry into Specification 3.0.3 should new Surveillance 4.4.1.1.2.2 be failed. It is not appropriate for any more restrictive requirements to be applied to these alarms when the unit is operating outside Regions I and II.

New Action b reflects the current requirements associated with natural circulation operation in Operational Condition 2.

New Actions e and f incorporate actions that previously appeared as Surveillance Requirements. This transfer is proposed in order to avoid invoking Specification 3.0.3 due to the lack of a specific action if the pump discharge bypass valves failed. These "new" actions and the associated deletion of Surveillance Requirements 4.4.1.1.2.6 and 4.4.1.1.2.8 are entirely administrative in nature.

New Footnote + was added to clarify that the LPRM upscale alarms are not required to be operable in Operational Condition 2 since an instability event is not a concern at low power levels.

The revision to existing Action b is purely editorial in nature.

Existing Actions c and e and Surveillance 4.4.1.1.2.2 are deleted since a baseline noise level will no longer be used to detect and suppress power oscillation. The new actions and surveillance is provided to ensure operability of the newly required LPRM upscale alarms, and frequencies of testing were chosen based on NRC approved methods for determining surveillance intervals for similar instrumentation (ref. GE NEDC 30851P-A).

Based on the above, none of the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated. The stability related changes are consistent with current NRC guidance and approved analytical methods where applicable, and the transferring of certain surveillances to actions will preclude unnecessary shutdowns due to Specification 3.0.3.

II. No. The proposed changes relating to stability use the current guidance contained in NRC Bulletin 88-07 Supplement 1 to ensure that an unanalyzed event will not occur. They accomplish this by requiring reactor scrams in unstable regions, additional instability detection capability, and precluding a recirculation pump start during single loop

operation in a potentially unstable region of the power/flow map.

The editorial changes shifting Surveillance Requirements to Actions cannot create a new event.

III. No. See I above. The stability changes are designed to protect the margin of safety to the MCPR Safety Limit. The editorial changes improve safety margin by precluding unnecessary plant shutdowns.

Specification 3.4.1.4, Idle Recirculation Loop Startup

Action a has been revised to clarify the thermal power/core flow condition where an idle recirculation loop can be started.

I. No. This requirement is consistent with new Action a.2 of Specification 3.4.1.1.2, Single Loop Operation, which was reviewed above. The requirement to preclude a recirculation pump start in a potentially unstable region of the power/flow map will ensure that a new or different kind of event will not occur, and is consistent with the guidance in NRC Bulletin 88-07 Supplement 1.

II. No. See I above.

III. No. See I above.

Change to Figure 3.4.1.1.1-1

I. No. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The decay ratios used to develop the proposed changes to the Figure were calculated with NRC approved methods. None of the actions required upon entry into Region I or II are proposed to be changed from the proposal submitted in Reference 1. Therefore, the actions based upon information in the figure will still ensure that the MCPR Safety Limit is not violated. Based on the above, the proposed revision to Figure 3.4.1.1.1-1 does not involve a significant increase in the probability or consequences of an accident previously evaluate.

II. No. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The revision to the figure is consistent with NRC guidance which is specifically designed to ensure that a new event involving a reactor core instability event will not occur.

III. No. The proposed change does not involve a significant reduction in a margin of safety. This change will continue to protect, as stated in Reference 1, the margin of safety to the MCPR Safety Limit. This revision to Reference 1 ensures that the Region I and Region II boundaries which provide that protection are appropriate for U1C5 based on new information which allowed a larger region of operation. Further steps were taken to conservatively extrapolate these boundaries to rated powers, thereby providing limits which will not have to change in response to future changes in the drive flow/core flow relationship. Based on the above, the proposed revision to Figure 3.4.1.1.1-1 will not involve a reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW Washington, DC 20037

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: May 26, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to correct various administrative errors. The proposed TS changes are discussed in three groupings: (1) corrections of grammar and page headings, (2) elimination of notes which no longer apply, and (3) correction of transcription errors with respect to component designations and setpoints. There are 44 pages affected by Group 1 changes (including 12 index pages), 14 pages affected by Group 2 changes and 22 pages affected by Group 3 changes. On some pages, the licensee has proposed multiple changes (e.g., on page 3/4 7-28, the description for the location of fire hose stations is being revised from "west wall" of Reactor Enclosure to "SW Corner" of Reactor Enclosure on three elevations to more precisely designate the physical locations of the present fire hose stations).

Group 1 items include proposed TS revisions to correct grammatical errors, page headings and subheadings to improve readability. For example, on page i of the Index, a page heading of "INDEX" will be added. On page 3/4 3-11 the word valve should be plural and therefore an "s" is being added.

Group 2 items include proposed TS revisions to eliminate notes and clauses which no longer apply to Limerick Unit 1. For example, on page 3/4 6-4 of the current TS there is a note identified by a double asterisk which describes a test interval extension which expired on May 26, 1986. This note is no longer applicable and can therefore be removed.

Group 3 items include correction of transcription errors with respect to component designations and setpoints. The proposed changes will result in consistency with design documents which correctly represent the component designations and setpoints. For example, on page 3/4 3-81 the current designation HSS-51-1F014A is incorrect and will be corrected to HV-51-10F014A.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analysis contained in their May 26, 1989 letter states the following in response to the three NRC criteria referenced above:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes correct three types of administrative errors: 1) grammar, page headings and subheadings, 2) notes which no longer apply and 3) transcription errors with respect to component designations and setpoints. None of these changes will affect any plant hardware, plant design, safety limit settings, or plant system operation, and therefore do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in Item (1) above, the proposed TS changes correct errors and will provide consistency throughout the TS. The proposed changes do not affect any equipment nor do they involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses remain valid. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

As discussed in (1) above, the proposed changes, which correct errors and provide consistency throughout the TS, do not affect any equipment involved in potential initiating events or safety limit settings and therefore, do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination as to whether the

proposed amendment involves a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: May 31, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to clarify the actions which must be taken when operating with the Containment Cooling Mode of the Residual Heat Removal (RHR) System in a degraded mode. Additional proposed changes improve the structure and readability of the specifications.

The changes would affect pages 115a, 116, and 127 and result in the following: (1) removal of "Subsystem" from the heading for Sections 3.5.B and 4.5.B; (2) removal of "one ESW pump" from the list of Containment Cooling Mode equipment specified in Sections 3.5.B.1, 4.5.B.1 and the corresponding Bases section, since the Emergency Service Water (ESW) System requirements are addressed by TS Sections 3.11.D and 4.11.D; (3) deletion of Specification 3.5.B.2 (and renumbering of the succeeding specifications) since the requirements relating to containment cooling would also be applied to containment spray, which negates the need for a separate specification; (4) removal of the requirements for inoperable RHR pump(s) since the requirements are already covered in Sections 3.5.A.3 and 4.5.A.3; (5) more clearly identifying the RHR Service Water (RHRSW) operability test as monthly and the flow rate test as every three months, which is consistent with similar tests performed on related systems; and (6) addition of a new specification which states that reactor operation can continue for seven days with two RHRSW pumps inoperable and adding of the corresponding surveillance test for the remaining components.

The revised wording of the specifications in Sections 3.5.B and 4.5.B would also clarify that all of the remaining components of the containment cooling subsystems shall be demonstrated operable when the RHRSW system is in a degraded condition. However, for situations involving an inoperable containment cooling subsystem (e.g., loss of an RHR pump or loss of two associated RHRSW pumps), only the redundant containment cooling subsystem needs to be demonstrated operable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The license has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

a. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes conservatively clarify the containment cooling action requirements and surveillance requirements; thus, providing greater assurances that the full complement of containment cooling capability will be available in the event of a loss-of-coolant accident. These changes are administrative in nature and do not involve modification of any existing equipment, systems, or components; nor do they relax any administrative controls or limitations imposed on existing plant equipment. Implementation of these changes will require only minor revisions to the plant's procedures to reflect the technical specification changes. No changes to the surveillance testing program are required. These proposed changes to the Technical Specifications can not alter the conclusions of the plant's accident analyses or radiological release analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

b. create the possibility of a new or different kind of accident from any accident previously evaluated. Each of the proposed changes are purely administrative in nature. They clarify the intent of the Technical Specifications, improve the consistency within the Technical Specifications, and provide a more conservative interpretation of the containment cooling action times. They do not involve modification to any of the plant's systems, equipment, or components; nor do they place the plant in an unanalyzed configuration.

c. involve a significant reduction in the margin of safety. The changes are administrative in nature and do not reduce the post-LOCA [Loss of Coolant Accident] heat removal capability of the containment cooling mode of RHR [Residual Heat Removal System]. The proposed changes do not involve modification to any of the plant's systems, equipment, or components; nor do they affect the containment cooling subsystem's design basis, performance capability, or NPSH [Net Positive Suction Head] requirements.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: June 14, 1989

Description of amendment request: The proposed amendment would update the suppression chamber water temperature instrumentation in Table 3.2-6, "Surveillance Instrumentation," to reflect modifications installed to meet Regulatory Guide 1.97 Specifically the amendment would: (1) change the ranges of the suppression chamber temperature recorders from 50 350° F and the ranges of the indicators from 50 250° F so that each range is 30 230° F· (2) change the number of channels provided by design from four to two; and (3) change the minimum number of operable instrument channels from two to one. Thus, the change would reflect the upgrade from four instrument channels (with each channel consisting of a single temperature element and either an indicator in the Control Room or a recorder in the relay room) to two independent channels (with each channel connected to 16 temperature elements) consisting of one indicator and one recorder per channel. The consequence, therefore, would be to redefine and correct the meaning of the term "channel" to reflect this separation. Also, the number of channels provided by design and the minimum number of operable instrument channels specified for the suppression chamber water temperature would be consistent with

the number of channels specified in the table for the drywell pressure instruments.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The changes update Table 3.2-6 to accurately reflect a plant modification. The changes do not impact the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report]. The peak temperature for these analyses are bounded by the new temperature range.

2. create the possibility of a new or different kind of accident from those previously evaluated. The suppression chamber temperature monitoring system does not perform any automatic functions. The revised temperature range provides sufficient information to the control room operators to prevent and mitigate the consequences of reactor accidents. The Technical Specification requirements for two temperature indicators and two temperature recorders are unchanged by this amendment package. The changes do not create any new failure modes; nor do they allow plant operation in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The changes do not relax any administrative controls or limitations. The changes update the suppression chamber water temperature instrumentation in accordance with Regulatory Guide 1.97. There is no change to the safety margin since the new temperature range encompasses the analytical temperatures established by the plant's safety analyses.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: June 14, 1989

Description of amendment request: The proposed amendment would correct Technical Specifications (TS) Table 3.2-6, "Surveillance Instrumentation, to indicate that the total number of reactor pressure instruments provided by plant design is three, rather than the present five indicated in the table. This change would make the table consistent with plant design and correct an error introduced in Amendment 48 which inadvertently identified the total number of recorders and indicators as the number of channels available by design.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is purely administrative in nature and corrects an error introduced in Amendment 48 to the Technical Specifications. There are no changes to setpoints, safety limits, surveillance requirements, or limiting conditions for operation. The change does not impact previously evaluated accidents; nor does it affect safe plant operations.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely administrative in nature and corrects the Technical Specifications. The change does not involve modification to any of the plant's systems, equipment, or components; nor does it allow the plant to operate in an unanalyzed condition.

3. involve a significant reduction in the margin of safety. The proposed change is purely administrative in nature. The change corrects the number of instrument channels which are available (by design) to satisfy the requirements of having two operable reactor pressure instrument channels. The change does not involve any plant modifications, nor does it affect the FSAR [Final Safety Analysis Report] information regarding reactor vessel instrumentation. The number of instrument channels associated with monitoring reactor pressure is not reduced by this proposed amendment.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 27 1989 and supplemented on April 3, 1989.

Description of amendment request: Changes the Technical Specifications to add clarification and consistency to the refueling specifications with respect to reference measurements, load setpoints and travel limits which will, in turn, permit control rods to be transported in a vertical position. In addition, the minimum allowable Source Range Monitor (SRM) count rate is increased to agree with SRM requirements imposed elsewhere in the specifications.

Basis for proposed no significant hazards determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would

not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

Significant Hazards Consideration Evaluation

1. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a change to any structure, component or system that affects the probability of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The consequences of all previously evaluated accidents have been analyzed and the following conclusions have been reached:

(1) The changes to TS 3.9.1.b.3 and 3.9.6 clarify the use of the main hoist as the only hoist permitted for fuel movement within the reactor pressure vessel (RPV).

(2) The change to TS 4.9.6.1.b does not allow a fuel bundle to be lifted any higher than previously permitted and adds a minimum height-hoisted tolerance to ensure that a bundle will have adequate clearance over the fuel transfer chute floor.

(3) The requested change to TS 4.9.6.1.d does raise the setpoint at which the fuel-loaded rod block is actuated, however, the setpoint remains below the redundant interlock setpoint of 550 pounds and at a value conservatively less than the weight of a fuel bundle; therefore, the basis for the fuel-loaded rod block (to ensure no control rod is removed while fuel is being handled) remains satisfied.

(4) The change to 4.9.6.2.b and 4.9.6.3.b raises, by approximately two feet, the height to which a control rod assembly can be lifted by the auxiliary hoists; however, this height remains conservatively within the analysis for a fuel handling (bundle drop) accident. Additionally, the calculated radiation dose rate (3.6 mr/hr *at* the surface of the water in the refueling cavity) from a control rod withdrawn to the amendment requested height will remain less than the calculated dose rate from a fuel bundle withdrawn to its current uptravel limit by the main hoist (7.6 mr/hr *one foot above* the surface of the water in the refueling cavity).

(5) The elimination of the fuel loaded rod block interlock for the monorail and frame-mounted auxiliary hoists does not impact an evaluated accident. The rod block is unnecessary for these two auxiliary hoists because they are specifically precluded from lifting any fuel bundle by the wording of the proposed TS 3.9.6, by procedure, and by the overload cutoff limits of TS 4.9.6.b.

(6) The revision to 4.9.2.c and its associated footnote adds conservatism by ensuring at least 3 cps on the SRMs regardless of signal-to-noise ratios.

2. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The changes proposed in the measurement point of reference and the associated dimensional revision to the uptravel limit setpoint for fuel bundles do not introduce any actual change in uptravel limits. Fuel bundles will be hoisted to the same height as the present TS permits. The change to the height to which a control rod may be lifted is within the bounds of the present UFSAR analysis for a fuel bundle lifted to its permitted limit considering both a dropped fuel bundle accident and radiological dose rate at the refueling platform. There is no new accident consideration introduced by combining the surveillance requirements for the frame-mounted and monorail mounted auxiliary hoists since the previous TS requirements were identical for each. Eliminating the fuel-loaded rod block for these two hoists eliminates a surveillance requirement which is meaningless since the hoists are not permitted to handle fuel bundles.

The revision to 4.9.2.c and its associated footnote is more conservative, requiring the higher 3 cps SRM count rate regardles of signal-to-noise ratio.

3. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed increase in height to which a control rod may be hoisted is within the bounds of the previous analysis for a fuel bundle drop. Although the calculated radiation dose rate, at the refueling cavity water surface, from a control rod raised to the proposed uptravel limit will be somewhat greater than the dose rates corresponding to the current uptravel limit, the dose rate will remain well below the levels currently produced by a fuel bundle at its uptravel limit. The increase in the setpoint for the fuel-loaded rod block interlock for the main hoist is within the present setpoint for the redundant fuel-loaded rod block interlock setpoint. The fuel-loaded rod block interlock has no safety importance for the auxiliary hoists since they do not handle fuel bundles. The revision which increases the required minimum SRM counts adds to the margin of safety.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: May 22, 1989

Description of amendment request: The change to the Technical Specifications would: (1) revise Specification 4.0.3 to clarify when a missed surveillance constitutes a violation of the operability requirements of a Limiting Condition for Operation and to clarify the applicability of the action requirements and the time during which the limits apply, and (2) to clarify Specification 4.0.4 for mode changes as a consequence of action requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has concluded with respect to the May 22, 1989 submittal that: (1) the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are designed to resolve the two generic concerns previously identified and addressed by the NRC staff in Generic Letter (GL) 87-09 "Section 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Condition for Operation and Surveillance Requirements" The changes proposed in GL 87-09 have been determined by the staff to result in improved TS. The changes proposed for the Virgil C. Summer Nuclear Station do not affect any of the accidents previously evaluated in the safety and analysis report; (2) the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not reflect a change in plant equipment, but resolve inconsistencies and existing undue

restrictions with the TS. The changes were determined by the NRC staff in GL 87-09 to result in improved TS. The licensee determined that the proposed changes would not induce the possibility of an accident not previously identified in the safety analysis report; (3) the proposed changes would not involve a significant reduction in a margin of safety as defined in the basis to any Technical Specification. These changes resolve inconsistencies and remove undue restrictions from the Technical Specifications.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 8, 1989

Description of amendment request: The amendment would change the Technical Specifications (TS) by changing Table 1.2, Operational Condition, and TS 3/4 9.1, Reactor Mode Switch, to allow the reactor mode switch to be placed in the refuel position for moving a single control rod with the reactor in Operational Condition 3 (hot shutdown) and Operational Condition 4 (cold shutdown). The present TS permit movement of the control rod to recouple it to its drive. The change would allow movement of a single control rod in Operational Conditions 3 and 4 for additional purposes, such as venting of the control rod drive, timing of the control rod scram and friction testing of the control rod.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. A single control rod can be withdrawn under control of the reactor mode switch refuel position one-rod-out interlock in Operational Conditions 3 and 4. Although this change would allow an increase in the frequency of single control rod withdrawals, the probability of previously analyzed accidents is not affected. The one-rod-out interlock associated with the refuel position of the reactor mode switch provides protection against prompt reactivity excursions. This interlock is explicitly assumed in the safety analysis for control rod removal error during refueling. A prompt reactivity excursion could potentially result in fuel failure. The one-rod-out interlock, together with the requirements for adequate SHUTDOWN MARGIN during refueling, provide protection against prompt reactivity excursions by preventing withdrawal of more than one control rod and ensuring the core remains subcritical with any one control rod withdrawn. The addition of surveillance requirements for the one-rod-out interlock will assure the interlock is operable prior to withdrawal of a control rod in Operational Conditions 3 and 4.

b. The consequences of previously analyzed accidents in Operational Conditions 3 and 4 are not affected by this proposed change. The SHUTDOWN MARGIN requirements of TS 3.1.1. require the reactor to be subcritical when all control rods are fully inserted except for the single control rod having the highest reactivity worth being fully withdrawn. The single failure proof one-rod-out interlock of the reactor mode switch refuel position permits only a single control rod to be withdrawn. The proposed change will not result in the reactor having the potential for attaining criticality in Operational Conditions 3 and 4 or affect the initial conditions assumed in any design basis accident analysis.

c. Therefore, the probability and consequences of previously analyzed accidents are not increased.

2. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

a. Single control rods can be withdrawn in Operational Conditions 3 and 4 under the existing Technical Specifications to permit control rod recoupling. The proposed change would merely expand this provision to other control rod maintenance and testing activities performed in Operational Conditions 3 and 4. The withdrawal of individual control rods in Operational Conditions 3 and 4 is a mode of operation permitted by existing Technical Specifications.

b. The additional control rod maintenance and testing activities which could be performed in Operational Conditions 3 and 4 are permitted by the existing Technical Specifications in Operational Conditions 1, 2, and 5. Examples of activities which could be performed include venting of control rods following a reactor scram or control rod drive system outage, normal control rod insertion/withdrawal timing and adjustment, control rod scram time testing and control rod friction testing.

c. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. This change would not involve a significant reduction in the margin of safety.

a. The one-rod-out interlock of the reactor mode switch refuel position and the SHUTDOWN MARGIN requirement of TS 3.1.1 ensure the reactor will be maintained subcritical during single control rod withdrawals. This change will only permit one control rod to be withdrawn when shutdown.

b. Therefore, this change will not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW Washington, DC 20036

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: February 17 1989 and June 20, 1989 (TS 266)

Description of amendment request: The proposed amendments would correct errors in the Browns Ferry Nuclear Plant, (BFN), Unit 2, Technical Specifications (TS) as follows: (1) Table 3.2.F (page 3.2/4.2-32), Instrument Number (RR-90-322A) change the instrument number to read RM-90-306 and RR-90-360, correct typographical error in the type Indication and Range column (correct units from curies per cubic centimeter to microcuries per cubic centimeter), delete the Iodine and

Particulate indications and range. (2) Notes to Table 3.2.F (pages 3.2/4.2-33) correct typographical errors in footnote 7 (change TS 6.7.2 to 6.9.1.4 and 6.7.2 to 6.9.2) and add footnote 9 (clarifies the function of subject instrument to Noble gas only); (3) Table 4.2.F item 23 (page 3.2/4.2-55) correct instrument number and type to read Wide Range Gaseous Effluent Radiation Monitor and recorder (RM-90-306 and RR-90-360); (4) Page 6.0-29 item 6.9.2.10 correct the word high-range to wide-range.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis, using standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequence of any accident previously evaluated. The proposed changes correct typographical errors and nomenclature, provides consistency between Table 3.2.F, Notes to Table 3.2.F, and Table 4.2.F in addition to the other appropriate sections of the TS. These changes are administrative in nature and do not change any safety analysis for which BFN is licensed.

Removal of the iodine and particulate monitors from Table 3.2.F does not significantly increase the probability of an accident. BFN currently has a system installed that meets the NRC requirements of NUREG 0737 item II.F.1, II.F.2, and Regulatory Guide 1.97. In the event of an accident, BFN has one designed release point, the vent stack. Being in compliance with the subject NRC requirements, BFN continuously samples the plant gaseous effluent for postaccident releases of radioactive iodines and particulates. The iodines and particulates are measured through laboratory analysis of particulate and carbon filters.

In addition, a recorder (RR-90-360) is being added to the TS. This provides a retrievable record of what instrument RM-90-306 was monitoring. Adding this recorder serves no safety function nor provides any input signals to any isolation functions for mitigation of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. This proposed change does not change any safety related equipment, safety functions, or plant operations. This change does not create any new accident mode or release pathway of radioactive effluents to the environment.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The typographical corrections will provide a more accurate identification and description for Table 3.2.F, Notes for Table 3.2.F, and Table 4.2.F which will assist the plant personnel working with this equipment.

Deletion of the iodine and particulate monitors from Table 3.2.F will not decrease the margin of safety since BFN will continue to sample and analyze the subject filters to determine any quantities of particulates and iodines that may be released. The onsite laboratory equipment, used by trained technicians in accordance with approved procedures, ensures that the analysis can be performed to support the needs of plant and offsite personnel in the event of an accident.

The addition of the recorder (RR-90-360) will only provide a means for recording gaseous effluents from the vent stack. This will also provide a chart record that is retained for historical purposes. Again this recorder does not serve any safety related or accident mitigation function.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant Unit 2, Limestone County, Alabama

Date of amendment request: April 14, 1989 as supplemented by letter dated April 14, 1989 (TS 268).

Description of amendment request: The proposed changes would add License Condition 2.C.5.(a), add a new Definition Section 1.0.NN, and revise Technical Specification (TS), Sections 6.5.1.6, 6.5.2.8 and 6.8.1 for Browns Ferry, Unit 2 (BFN2). These changes will allow BFN2 to implement a NRC approved Appendix R Safe Shutdown Program, under the controls of the BFN2 TS. These changes follow the NRC guidance provided in Generic Letter 86-10.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of these technical specifications (TS) provide consistency between the operating license, the Appendix R Safe Shutdown Program, and the BFN Appendix R Safe Shutdown Analysis. These proposed changes are administrative in nature and do not alter the intended function or design basis of any safety-related equipment as addressed in the BFN Final Safety Analysis Report (FSAR). Implementation of these changes ensures that the Appendix R Safe Shutdown Program is maintained in a manner consistent with NRC guidance. By maintaining this Program in accordance with the proposed TS, BFN will ensure the equipment needed to perform safe shutdown in accordance with the BFN Appendix R Safe Shutdown Analysis is properly maintained and is functional to meet the requirements of 10 CFR 50 Appendix R.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated. This is an administrative change which places controls on an approved NRC Program. These changes will not eliminate or modify any protective functions or equipment that are required for BFN to achieve and maintain reactor shutdown capabilities as required by 10 CFR 50 Appendix R. Implementation of these proposed changes will not result in an additional release pathway to the environment. In developing the BFN Appendix R Safe Shutdown Program an analysis was performed in order to identify that equipment needed to comply with 10 CFR 50 Appendix R. Implementing this Program and the proposed TS does not negate the other safety analyses or accident scenarios in which BFN was licensed for.

(3) The proposed change does not involve a significant reduction in the margin of safety. This proposed amendment is administrative and places various administrative controls on an NRC approved BFN Appendix R Safe Shutdown Program. Implementing these changes enhances the overall safety of BFN. The program identifies that equipment required by the Appendix R Safe Shutdown Analysis to shutdown the reactor in accordance with 10 CFR 50 Appendix R. In addition, it also provides testing and monitoring requirements along with compensatory measures if the subject equipment cannot fulfill its function. The proposed TS allows BFN to change the Program under the guidelines of 10 CFR 50.59 which is an approved industry practice and consistent with NRC Generic Letter 86-10. Any changes made under 10 CFR 50.59 are required to be submitted to NRC in an annual report. This process will enable NRC to independently keep abreast with any changes that may be made.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the

application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: June 20, 1989 (TS 272)

Description of amendment request: The proposed changes would add a new Section 3.5/4.5.M to the Browns Ferry, Unit 2 (BFN), Technical Specifications (TS) and would revise the existing Section 3.6/4.6.F These changes will incorporate more restrictive surveillance requirements and Limiting Conditions of Operation (LCO) to address reactor core thermal-hydraulic stability considerations as specified in NRC Bulletin 88-07 Supplement 1 [Power Oscillations in Boiling Water Reactors (BWRs) December 30, 1988] and General Electric (GE) interim corrective actions provided to all BWR licensees in November 1988. These proposed changes define the reactor core regions of operation which are acceptable or unacceptable and provide required actions needed to exit operating in an unacceptable region. Specifically, operation in Region I and II as defined in Figure 3.5.M.1 of the proposed TS changes would be restricted.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

(1) This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of the proposed TS change decreases the probability of core thermal-hydraulic oscillations by precluding operating conditions where instabilities have occurred at other plants. In addition, the proposed change will provide additional assurance that core oscillations that do occur will be suppressed prior to exceeding fuel integrity limits. The proposed change does not have any adverse safety effect on any affected safety system nor are the assumptions of the safety analyses affected by restricting operation to outside of Region I and II. Therefore, the proposed change reduces the probability and consequences of potential core oscillations and does not increase the probability or consequences of any other previously analyzed event.

(2) This proposed change does not create the possibility of a new or different kind of accident from any previously analyzed. Restricting operation to outside of Region I and II does not create any new failure mechanisms. Plant procedures currently preclude normal operation in those regions. Emergency entry into a restricted region is permitted to protect plant safety equipment provided that the prescribed actions (i.e., scram or exit) for the region entered are performed. Operator actions to exit Region II will be performed in compliance with all plant procedures, fuel preconditioning restrictions, and technical specifications.

(3) This change does not involve a significant reduction in a margin to safety. The proposed changes are conservative in nature and provide increased assurance that the fuel safety limit MCPR will not be violated due to core oscillations. These changes are consistent with NRC and GE guidelines. The implementation of this tech spec will actually increase this margin of safety at BFN by not allowing the plant to operate in Regions I or II. If one of these Regions are entered specific operator actions are required which will place the plant in a more conservative and safety condition than current BFN Tech Specs required.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-327 Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment requests: June 20, 1989 (TS 89-24)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant (SQN), Unit 1, Technical Specifications (TS). The proposed change is to revise Surveillance Requirement (SR) 4.6.5.1.b.2 to allow a one-time extension of the 12-month ice-weighing interval for weighing the ice baskets in the ice condenser inside containment. This extension is from December 15, 1989 until the Unit 1 Cycle 4 refueling outage, which is scheduled for April to June of 1990.

Basis for proposed no significant hazards consideration determination: TVA provided the following information in its submittal to support the proposed change:

TVA is requesting an extension of SR 4.6.5.1.b.2 to postpone weighing of ice until the Unit 1 Cycle 4 refueling outage, which is projected to began April 1, 1990. The last ice-weight surveillance performed for SQN Unit 1 was completed September 16, 1988. SR 4.6.5.1.b.2 requires that the next ice-weighing surveillance be performed within 12 months of that date (i.e., September 15, 1989). Applying the provisions of TS 4.0.2 would allow an extension of the surveillance interval by a maximum of 3 months (i.e., December 15, 1989). TVA is requesting an additional 3-1/2 month extension to allow the ice-weighing outage to be conducted coincident with the Unit 1 Cycle 4 refueling outage. This 3-1/2 month extension would provide increased plant availability (elimination of a 20- to 30-day mode 5 outage to weigh ice) and would allow for more efficient use of manpower.

SR 4.6.5.1.b.2 requires that each basket contain at least 1,200 pounds (lbs) of ice and that the average ice weight for the bay analysis and the group-row analysis not be less than 1,200 lbs per basket at a 95 percent level of confidence at the start of the surveillance interval. SQN's 1,200-lb TS limit is based on a containment analysis that assumes a 1,080-lb per basket ice weight. The 1,200-lb per basket TS limit contains a 10 percent conservative allowance for ice loss through sublimination during the interval between weighings and a 1 percent conservative allowance for ice-weighing instrument error. The TS limit thereby provides a weight-per-basket ice basket ice weight that is more than 11 percent higher than the per basket ice weight assumed for the ice condenser design.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN [Unit 1] in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed. TVA proposes to modify the SQN Unit 1 TSs to revise Surveillance Requirement 4.6.5.1.6.2 to allow a one-time extension of the 12-month ice-weighing

interval. The last ice-weight surveillance was performed September 16, 1988. TVA is requesting a one-time extension to allow the next ice-weighing to be conducted during the Unit 1 Cycle 4 refueling outage that is currently scheduled to begin April 1, 1990.

The ice condenser system is provided to absorb [the] thermal energy release following a LOCA or HELB [Loss-of-Coolant Accident or High Energy Line Break] and to limit the peak pressure inside containment. The current ice condenser analysis for SQN is based on a minimum of 1,080 lbs of ice per basket. TVA's calculation shows that for the bay analysis, using the predicted sublimination rate of 18-1/2 months, all bays would have an average basket weight in excess of 1,080 lbs. TVA's calculation shows that for the group-row analysis using the predicted sublimination rate for 18-1/2 months, all group-rows would have an average basket weight above 1,080 lbs with the exception of group 3 row 1. The predicted average basket weight in this region was 1,026 lbs, which is 5 percent low. TVA evaluated the impact of the low weight in group 3 row 1. TVA's evaluation addressed the potential for and the effects of group 3 row 1 melting out at a time earlier than the time assumed in SQN's FSAR containment.

Based on TVA's evaluation and the improved surveillance history of the SQN ice baskets, TVA considers the distribution of ice to be acceptable for satisfying the basic safety function of the ice condenser for the proposed one-time extension. The proposed change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. TVA's request for a 3-1/2 month extension of the 12-month ice-weighing interval will not result in a new or different kind of accident from that previously analyzed in SQN's FSAR. SQN's ice condenser serves to limit the peak pressure inside containment following a loss of coolant accident (LOCA) or high-energy line break (HELB). TVA has evaluated SQN's FSAR analysis in conjunction with the preliminary containment pressure analysis for SQN to show that sufficient ice would be present during the requested extension period to keep the peak containment pressure below SQN's containment design pressure of 12 psig.

(3) Involve a significant reduction in a margin of safety. The ice condenser system is provided to absorb [the] thermal energy release following a LOCA or HELB to limit the peak pressure inside containment. The current ice condenser analysis for SQN is based on a minimum of 1,080 lbs of ice per basket.

TVA's calculation shows that for the bay analysis, using the predicted sublimination rate of 18-1/2 months, all bays would have an average basket weight in excess of 1,080 lbs.

TVA's calculation shows that for the group-row analysis using the predicted sublimination rate for 18-1/2 months, all group-rows would have an average basket weight above 1,080 lbs with the exception of group 3 row 1. The predicted average basket weight in this region was 1,026 lbs, which is 5 percent low. TVA evaluated the impact of the low weight in group 3 row 1. TVA's evaluation addressed the potential for and the effects of a group 3 row 1 melting out at a time earlier than the time assumed in SQN's FSAR containment analysis. TVA's evaluation shows that the conservatisms contained in SQN's current containment analysis and the results of the preliminary containment pressure analysis for SQN (i.e., "Westinghouse LOCA Mass and Energy Release Model for Containment Design March 1979 version, WCAP-10325-P-A, May 5, 1983) provide sufficient ice in all regions of the SQN Unit 1 ice bed to keep the peak containment pressure below 12 psig, and to prevent premature burn-through of the ice bed.

Based on TVA's evaluation and the improved surveillance history of the SQN ice baskets, TVA considers the distribution of ice to be acceptable for satisfying the basic safety function of the ice condenser for the proposed one-time extension. The proposed change, therefore, does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for an amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: April 28, 1989

Description of amendments request: These proposed amendments would clarify the reporting requirements for operation of the Overpressure Mitigating System (OMS) and delete two schedular commitments that have been implemented.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee proposes to amend the Technical Specification (TS) 15.6.9.2.C to clarify the reporting requirements for operation of the OMS by specifying that operation of either the pressurizer power operated relief valves in the low temperature overpressure protection mode or the residual heat removal system relief valves be reported to the Commission as required under the Unique Reporting Requirements of the TS. Additionally, the licensee proposes to remove two schedular commitments contained in the footnotes of two TS tables. The first schedular commitment is contained in Table 15.3.5-1 and is related to the setting limit for item 10, "Loss of Voltage. Since the associated relays have been installed as required, the footnote associated with their installation is no longer appropriate. The second schedular commitment is contained in Table 15.7.4-2 and is related to item 7.a, "Oxygen Monitor." The oxygen monitor was installed as required and the footnote is no longer appropriate. The licensee has determined that the proposed changes are strictly administrative in nature and involve no physical plant modifications and no changes in plant operations or procedures. As a result, the licensee concludes that the aforementioned changes to the TS do not involve a significant hazards consideration.

The staff has reviewed the licensee's evaluation of the proposed amendments, and agrees with the licensee's conclusion.

Furthermore, the Commission has provided guidance concerning the application of the significant hazards consideration criteria by providing examples (51 FR 7751) of actions that are considered not likely to involve a significant hazards consideration. One of the examples of actions not likely to involve significant hazards considerations is (i), a "purely administrative change to Technical Specifications...." All of the changes proposed by the licensee fall within the scope of this example. Therefore the staff proposes to determine that the proposed changes to the TS do not involve significant hazards considerations.

Local Public Document Room location: Joseph P Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of applications for amendment: April 24, 1989

Brief description of amendment: These amendments modified the ANO-1 and ANO-2 Technical Specifications to reflect planned changes in Arkansas Power and Light organization for Arkansas Nuclear One. The amendments also changed the designated members at the Plant Safety Committee (PSC) including the PSC Chairman.

Date of issuance: June 21, 1989

Effective date: June 21, 1989

Amendment Nos.. 124 and 98

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17 1989 (54 FR 21298). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1989.

No significant hazards consideration comments received: Nos. 124 and 98

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: June 23, 1987 as revised March 29, 1989. Description of amendments: The amendments add surveillance and radioactive release requirements for incinerated oil to the Radiological Environmental Technical Specifications (RETS).

Date of issuance: June 26, 1989

Effective date: June 26, 1989

Amendment Nos.. 134 and 164

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 8, 1988 as amended July 21, 1988.

Brief description of amendment: The amendment makes numerous administrative and editorial changes, typographical error corrections and title changes. In addition, changes to the size and composition of the Plant Operations Review Committee (PORC) have been made.

Date of issuance: June 26, 1989

Effective date: June 26, 1989

Amendment No. 22

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1988 (53 FR 19832) and March 22, 1989 (54 FR 11845). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 3, 1982, as supplemented by letters dated August 29, 1984, March 21, 1988 and April 20, and May 4, 1989

Brief description of amendment: This amendment revises the requirements dealing with leak rate testing of the containment air lock door seals and the associated action statement when allowable leakage rate (La) is exceeded. The additional information submitted by letters dated March 21, 1988, April 20, and May 4, 1989, served as clarification showing that the provisions of 10 CFR Part 50, Appendix J are met, and in no way does this additional information invalidate the findings of the proposed no significant hazards consideration published on September 21, 1983.

Date of issuance: June 1, 1989

Effective date: June 1, 1989

Amendment No.. 126

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43135). The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated June 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 28, 1988

Brief description of amendment: This amendment increases the containment leakage test pressure from 49.6 psig to 53.3 psig. In addition, surveillances 4.6.1.2.d.3 and 4.6.1.2.f, which referred to a seal system that is not used at CR-3, have been deleted.

Date of issuance: June 22, 1989

Effective date: June 22, 1989

Amendment No.. 118

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17 1989 (54 FR 21307). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: February 3, 1989

Brief description of amendments: The amendments modified the Technical Specifications related to primary containment isolation valves

Date of issuance: June 20, 1989

Effective date: June 20, 1989

Amendment Nos.. 164 and 101

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13765). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1988 as supplemented November 30, 1988, January 17 and February 28, 1989.

Brief description of amendment: This amendment modified License Condition 2.C(13) and Technical Specification Table 3.3.6-2, Item 1.b, High Power Setpoint, to allow continued operation of the facility with up to 100° F reduction from the rated feedwater temperature of 420° F during the normal fuel cycle.

Date of issuance: June 23, 1989

Effective date: June 23, 1989

Amendment No.. 37

Facility Operating License No. NPF-47 The amendment revised the Technical Specifications and license.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39170). The November 30, 1988, January 17 and February 28, 1989 submittals provided clarifying information and did not change the finding of the initial notice or the scope of the amendment request.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: September 22, 1988

Brief description of amendment: Revises facility Technical Specification 3.4.5a to clarify the requirement that the Control Room Air Treatment System be operable whenever reactor building integrity is required.

Date of issuance: June 19, 1989

Effective date: June 19, 1989

Amendment No.: 106

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 19, 1989 (54 FR 21311). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: January 24, 1989

Brief description of amendment: The amendment changes the Millstone Unit 3 Technical Specifications (TS), to allow Cycle 3 operation, as follows: (1) TS 3/4.2.2 "Heat Flux Hot Channel Factor Four Loops Operating and Three Loops Operating" would be changed to eliminate the reference to fuel assembly grid locations, (2) TS 5.3.1., "Fuel Assemblies" would be changed to properly describe the Cycle 3 fuel assemblies, (3) TS 5.3.2, "Control Rod Assemblies" would be changed to allow use of silver indium cadmium control rods and (4) TS 6.9.1.6, "Radial Peaking Factor Limit Report" would be changed to allow submittal of the report prior to each cycle's initial criticality.

Date of issuance: June 28, 1989

Effective date: June 28, 1989

Amendment No.. 37

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7636). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 28, 1989, as supplemented by letter dated April 27 1989 (Reference LAR 89-01)

Brief description of amendments: The amendments revised Section 6, Administrative Controls, of the Technical Specifications to change the requirements for Plant Staff Review Committee (PSRC) membership, quorum, qualifications, and for the review and approval of procedures, tests, and experiments.

Date of issuance: June 22, 1989.

Effective date: June 22, 1989.

Amendment Nos.. 41 and 40.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18950), as superseded by notice dated May 17 1989 (54 FR 21314). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: September 14, 1988

Brief description of amendment: This amendment revised the Unit 1 Technical Specifications to increase the minimum level of water that must be maintained in the spray pond to support operation of Unit 2.

Date of issuance: June 16, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 25

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7640). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 27 1989

Brief description of amendment: This amendment changed the Technical Specifications (TSs) to revise the effluent dose limits to a per site rather than a per unit basis.

Date of issuance: June 19, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 26

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9922). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 10, 1989

Brief description of amendment: The amendment revised the Technical Specifications on the Residual Heat Removal Service Water and the Emergency Service Water Systems to reflect operation of Limerick Unit 2.

Date of issuance: June 20, 1989

Effective date: Upon issuance of an operating license to Limerick Generating Station, Unit No. 2.

Amendment No. 27

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18953). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: April 10, 1989

Brief description of amendment: This amendment revised the Technical Specifications to: (1) delete the requirement that the Average Power Range Monitors be operable when the plant is in the cold shutdown condition, (2) revise the reactor coolant leakage requirements to be similar to the leakage rates in generic letter 88-01, (3) modify the table on minimum shift crew composition to permit the SRO for Unit 1 to serve the same position for Unit 2 when Unit 2 is in cold shutdown, being refueled or is defueled, (4) clarify the location of the temperature sensors used to detect leakage from the main steam lines, (5) permit snubber surveillance to be performed when a unit is operating and (6) correct an error in the test value listed for the hydrogen recombiner phase resistance to ground for the heater elements.

Date of issuance: June 20, 1989

Effective date: June 20, 1989

Amendment No. 28

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18954). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: February 14, 1986

Brief description of amendment: This amendment made administrative changes to the Technical Specifications (TSs) to achieve consistency, remove outdated material, make minor text changes and correct errors.

Date of issuance: June 22, 1989

Effective date: Within 30 days of the date of issuance.

Amendment No. 29

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 27 1989 (54 FR 18176). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 22, 1989

Brief description of amendment: The amendment clarifies the surveillance requirements for maintaining the Emergency Core Systems and the Reactor Core Isolation Cooling System discharge piping filled.

Date of issuance: June 22, 1989

Effective date: June 22, 1989

Amendment No.. 132

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18955). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: January 16, 1986

Brief description of amendment: This amendment revises the Rancho Seco License to remove the requirements for certain fire doors and dampers described in the Safety Evaluation referenced in section 2.C.(4) of the license. The issuance of this amendment is based on the re-evaluation of fire areas in the 1985 Rancho Seco Updated Fire Hazards Analysis.

Date of issuance: June 20, 1989

Effective date: June 20, 1989

Amendment No.. 111

Facility Operating License No. DPR-54: Amendment revised Section 2.C(4) of the license.

Date of initial notice in **Federal Register:** May 17 1989 (54 FR 21315). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 27 1989 (TS 88-31)

Brief description of amendments: The Amendments modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TS). The changes implement Generic Letter (GL) 85-19 and affect the actions taken when the plant is not in compliance with the limiting condition for operation (LCO) 3.4.8, Specific Activity, for radioiodine in the reactor coolant system. The changes (1) delete the Action a for Modes 1, 2 and 3, eliminating the reporting requirement for the number of hours above the allowable dose equivalent Iodine 131 (I-131) limit, (2) delete the part of the Action a for Modes 1, 2, 3, 4 and 5 that involves the special report requirement for I-131 and add an additional requirement in TS Section 6.9, Annual Reports, to include an annual report to NRC regarding instances when the I-131 specific activity limit was exceeded; and (3) delete the discussion within the Bases Section 3/4.4.8, Specific Activity, of the reporting requirement for operation in excess of 500 hours above the dose limit in a 6-month period.

The proposal to delete the statement, in the Bases Section 3/4.4.8, of restricting plant operation in excess of 800 hours above the dose limit in a 12-month period was not acceptable because it conflicted with a statement in GL 85-19 that licensees are expected to take actions to do this. This was discussed with TVA on May 30, 1989, and TVA proposed to state in the Bases that "operation with specific activity exceeding 1.0 microcuries/gram dose equivalent I-131 but within the limits shown on Figure 3.4-1 should be limited to no more than 800 hours per year since the activity levels allowed by Figure 3.4-1 increase the 2-hour thyroid dose at the site boundary by a factor of up to 20 following a postulated steam generator tube rupture. This statement is consistent with GL 85-19 and is, therefore, acceptable. This revision to the Bases statement does not affect the TS for Sequoyah.

Effective date: June 19, 1989

Amendment Nos.: 117 107

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9934). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 12, 1987 as clarified on January 29, 1988. The January 29, 1988 clarification did not alter the basis for the proposed no significant hazards consideration finding.

Brief description of amendment: The amendment revises the Technical Specifications to add operability and post accident monitoring instrumentation installed to satisfy Regulatory Guide 1.97

Date of issuance: June 22, 1989

Effective date: June 22, 1989

Amendment No.. 113

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** April 8, 1987 (52FR11374). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 27 1989

Brief description of amendments: These amendments revise the Technical Specifications relating to the canal level, canal safety-related level actuation instrumentation and the emergency service water pumps.

Date of issuance: June 19, 1989

Effective date: June 19, 1989

Amendment Nos. 130 and 130

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 10, 1989 (54 FR 14403). The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated June 12, 1989, and in a Safety Evaluation dated June 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 31, 1989, as supplemented June 1, 1989.

Brief description of amendment: The amendment changed some of the boundaries of, and allowed or required operations within, regions of the power-flow map with potential for thermal hydraulic stability in the regions by using the Advanced Nuclear Fuels ANNA Stability Monitoring System. The affected technical specifications are 3/4.2.6, 3/4.2.7 3/4.2.8 and 3/4.4.1. In addition, page B 3/4 2-1 and page 6-1 are revised to correct administrative errors introduced in recent amendments.

Date of issuance: June 23, 1989

Effective date: June 23, 1989

Amendment No.. 71

Facility Operating License No. NPF-21: Amendment changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18963). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By August 11, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with

reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Northeast Nuclear Energy Company, Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 9, 1989 as supplemented June 16, 1989

Brief description of amendment: The amendment modifies the Technical Specifications (TS) as follows: (1) TS Table 3.3-6, "Radiation Monitoring for Plant Operation," is changed to allow containment purge and exhaust isolation area monitors (RE41 and RE42) to be inoperable during performance of the containment integrated leak rate test (ILRT), (2) TS Table 3.3-11, "Fire Detection Instruments, is changed to require that the fire protection instruments in the electrical penetration area (Elevation 24' 6") be operable during the ILRT and (3) TS 3.7.12.2, "Spray and/or Sprinkler Systems, and TS Table 3.7-4, "Fire Hose Stations, is changed to allow the inoperability of the containment cable penetration area sprinkler system and containment fire hose stations during the ILRT.

Date of Issuance: June 28, 1989

Effective date: June 28, 1989

Amendment No.. 38

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. Published in **Federal Register** May 31, 1989 (54 FR 23317). The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated June 28, 1989.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457

NRC Project Director: John F Stolz

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: June 13, 1989

Brief description of amendment: The amendment revised the actuation circuitry for auxiliary feedwater to actuate on narrow-range steam generator level, deleted the high steam generator level turbine trip from actuation on wide-range level, and added a new environmentally qualified wide-range steam generator level channel on each steam generator.

Date of issuance: June 23, 1989

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 129

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, final determination of no significant hazards consideration, and statement concerning consultation with the State of California are contained in a Safety Evaluation dated June 23, 1989.

Attorneys for licensees: Charles R. Kocher, Assistant General Counsel and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Local Public Document Room location: General Library, University of California, Post Office Box 19557 Irvine, California 92713.

NRC Project Director: George W. Knighton

Tennessee Valley Authority; Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 16, 1989 (TS 89-31)

Brief description of amendments: This amendment revises Specification 3.1.3.2, "Position Indication Systems Operating, of the Sequoyah Nuclear Plant, Unit 1, Technical Specifications (TS). The change adds a footnote to Action Statement a.1 for an inoperable rod position indicator for a control rod in a shutdown bank. The footnote states that, for the remainder of the Unit 1 Cycle 4 operating cycle, Action a.1 will be superseded and the position of the non-indicating control rod will be determined by a method other than that specified in Action a.1. The provisions of Specification 3.0.4 are not applicable for Action a.1 for the remainder of the Unit 1 Cycle 4 operating cycle. The Tennessee Valley Authority (TVA) committed, in its letter dated June 16, 1989, to repair the inoperable control rod indicator during the first shutdown of Unit 1 of sufficient duration that the indicator can be repaired but no later than the Unit 1 Cycle 4 refueling outage.

The Commission determined, pursuant to 10 CFR 50.91, that this amendment should be implemented as soon as possible. The amendment would

permit TVA to continue determining the position of the control rod, in the shutdown bank with the inoperable RPI, without subjecting the thimble tubes to excessive wear. It has no adverse effect on safety and would be beneficial to overall plant safety. Excessive wear of the thimble tubes results in a degradation of the reactor coolant system pressure boundary and can create the possibility of a non-isolable leak of reactor coolant. The proposed change will reduce the likelihood of the reactor coolant boundary being compromised and should be permitted with minimum delay. Consequently, the NRC staff determined that exigent circumstances existed which justify reducing the public notice period normally provided for licensing amendments. A Public Notice that the NRC staff proposed to amend the operating license of Unit 1, by close of business on June 23, 1989, was published in the *Chattanooga News Free Press* and the *Chattanooga Times* on Wednesday, June 21, 1989.

Date of issuance: June 23, 1989

Effective date: June 23, 1989

Amendment No: 118

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** No notice was published. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 5th day of July, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[FR Doc. 89-16183 Filed 7-11-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-206]

Southern California Edison Co., San Diego Gas and Electric Co., San Onofre Nuclear Generating Station, Unit No. 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Southern California Edison Company, *et al.*, (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action: By letter dated July 30, 1987 the licensee requested approval of an exemption from the technical requirements of Section III.G.3 of Appendix R to 10 CFR 50 to the extent that it requires that a fixed fire suppression system be installed in an area for which an alternate shutdown capability has been provided. Specifically, the pipe tunnel (Fire Area 1-AB-11 34) is not protected by a fixed fire suppression system.

The licensee justifies the exemption on the basis of the low combustible loading, limited access, existing fire protection and the capability to safely shut down the plant with undamaged systems that are physically and electrically independent of the fire area.

The technical requirements of section III.G.3 are not met in this area because of the lack of a fixed fire suppression system.

The principal concern with the existing fire protection in the pipe tunnel is that a fire of significant magnitude could occur which would damage redundant safe shutdown systems. However, the in-situ fire loaing is low. If all of the combustibles were totally consumed by fire, the equivalent fire severity is about nine minutes as determined from the ASTM E-119 time-temperature curve.

The combustible inventory consists of cables in trays. A fire involving this material would be characterized, initially, by slow burning, low heat generation and the production of moderate quantities of smoke. The smoke would be detected by the existing fire detection system which would transmit an alarm automatically to the control room. The fire department would be dispatched to the scene and would put out the fire using manual fire fighting equipment.

If severe damage to safe shutdown systems occurred prior to the arrival of the fire department, a capability exists to safely shut down the plant which the licensee has affirmed is physically and electrically independent of the fire area. On this basis the lack of a fixed fire suppression system is not considered safety significant.

The Need for the Proposed Action: The proposed exemption is required to allow the pipe tunnel not to have a fixed fire suppression system.

Environmental Impacts of the Proposed Action: Because the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of safety to that achieved by compliance with Appendix R (prevention of severe fires that could damage redundant safe shutdown systems), the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action: Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of San Onofre Nuclear Generating Station, Unit No. 1, dated October 1973.

Agencies and Persons Consulted: The NRC has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 30, 1987 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW Washington, DC 20555, and at the General Library,

University of California, P.O. Box 1955, Irvine, California 92713.

Dated at Rockville, Maryland, this 5th day of July 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-16333 Filed 7-11-89; 8:45 am]

BILLING CODE 7590-01-M

Availability of Technical Position on Postclosure Seals, Barriers and Drainage System in an Unsaturated Medium

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG-1373 "Technical Position on Postclosure Seals, Barriers and Drainage System in an Unsaturated Medium," including appendices that provide the staff disposition of comments from the public on the September 1988 draft of the technical position and the Advisory Committee on Nuclear Waste (ACNW) on the final technical position.

ADDRESSES: Copies of NUREG-1373 including the staff disposition of comments from the public on the September 1988 draft and from the ACNW on the final technical position may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG-1373 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brian E. Thomas, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/492-0435.

SUPPLEMENTARY INFORMATION: This Technical Position (TP) is undertaken to document the Division of High-Level Waste Management (DHLWM) staff's position on the requirements for the design, testing and emplacement of postclosure seals, barriers and drainage system. The need for this Position stems from the DHLWM staff's concern about the proposed sealing concepts for water inflow and gaseous outflows as described in DOE publications. The objectives of this Position are to provide guidance regarding design considerations for seals of shafts, ramps, boreholes, and the underground facility. Adherence to this Technical Position will result in the implementation of criteria acceptable to the DHLWM staff for meeting the requirements of the Commission's regulations and will help to assure the adequacy of the information provided in support of the License Application.

On September 30, 1988 the NRC published the Notice of Availability for the draft TP and solicited public comments. As a result, sixty-six comments were received from four different parties. The NRC staff reviewed the comments and, as a result, changes and clarifications have been incorporated into the TP Staff responses to the comments have been documented separately and included as appendices to the TP The final position has also been reviewed by the ACNW

Dated at Rockville, Maryland this 30 day of June 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 89-16334 Filed 7-11-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26996; File No. SR-Amex-89-15]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Proposed Amendments to the "Admission of Members" Section of the Exchange Rules.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on June 26, 1989, the American Stock Exchange, Inc. ("Amex" 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

15 U.S.C. 78s (b)(1) (1982).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b-4 of the Act [2] is proposing to amend the Admission of Members" section of the Exchange's rules to update them and to require posting of prospective member organizations, allied members and approved persons.[3]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Amex 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 Amex 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 Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Admission of Members" section of the Exchange's Rules sets forth the Exchange's procedures for the admission of regular, associate and allied members.[4] It is being proposed that the section be expanded to also cover admission of options principal members, limited trading permit holders, and regular member organizations. This will consolidate in one location all relevant information related to the admissions process.

Paragraph 9176 is proposed to be amended to clarify that options principal member applicants and limited trading permit holders must satisfy the same requirements that apply to regular member applicants. In addition, this amendment will provide notice to regular and options principal member applicants and limited trading permit holders of existing Exchange membership standards regarding financial responsibility, broker-dealer

17 CFR 240.19b-4 (1988).

Paragraphs 9175-9180 of the Amex Guide currently set forth the Exchange's membership requirements and admissions procedures.

See Paragraphs 9176-9178 of the Amex Guide.

application, floor member sponsors, the Amex orientation seminar, initiation and processing fees, and signing the Exchange Constitution. It is also proposed that Paragraphs 9177 and 9178 be amended to clarify admission requirements for associate and allied member applicants respectively. Finally, the Exchange proposes to add new Paragraph 9179 to detail the admission requirements to which prospective member organizations must adhere.

It is also proposed that Paragraphs 9177 and 9178 regarding associate and allied members, respectively, be amended to reflect new posting procedure. The Exchange currently posts on the trading floor bulletin board for seven days the name of all prospective regular, option principal and limited trading permit holders. The revisions to Paragraphs 9177 and 9178 will conform the posting period for associate membership to this procedure and the revisions to Paragraph 9178 will establish a posting requirement for allied membership. In addition, new Paragraph 9179 will specify that posting is required for member organizations and approved persons.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the proposed amendments promote just and equitable principles of trade and remove impediments to a free and open market by providing accurate and up-to-date information on the admissions process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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 solicited or received with respect to the proposed rule change.

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 Amex 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 Amex. All submissions should refer to the file number in the caption above and should be submitted by August 2, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16317 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26997; File No. SR-NYSE-89-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Auxiliary Closing Procedures for "Expiration Fridays"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] notice is hereby given that on June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" 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.

[1] 15 U.S.C. 78s(b)(1) (1982).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a change in the cut-off time for the entry of certain market-at-the-close orders in so-called "Pilot Stocks" on "Expiration Fridays" from 3:30 p.m. to 3:00 p.m. Information as to imbalances of 50,000 shares or more, which is currently disseminated as soon as possible after 3:30 p.m., would be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance.

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 test of these statements may be examined at the places specified in Item IV below and is set forth in Sections A. B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In September 1986, the Exchange adopted auxiliary closing procedures for use on days when stock index options and options on stock index futures expire concurrently.[2] These procedures currently apply to 52 stocks (the so-called "Pilot Stocks" comprised of the 50 highest capitalized stocks included in the Standard and Poor's 500 Stock Price Index ["S&P 500"], and two component stocks of the Major Market Index ["XMI"] that are not among the S&P top 50) for all monthly expiration days. They require the entry of all market-at-the-close orders in positions relating to any strategy involving any stock index futures, stock index options, or options on stock index futures by 3:30 p.m.

[2] The Exchange has adopted these procedures pursuant to a request of the Commission staff. *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, Commission to Robert J. Birnbaum, President NYSE, dated September 16, 1986.

These procedures also require the specialist to make public market-at-the-close order imbalances of 50,000 shares or more in these stocks as soon as possible after 3:30 p.m. In addition, the procedures prohibit the entry of market-at-the-close orders that do *not* offset a published imbalance.

The proposed change moves the cut-off time for the above procedures from 3:30 to 3:00 p.m., with imbalance information to be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The same order entry restrictions vis-a-vis the imbalance would apply.[3]

The purpose of the proposed rule change is to allow for more "sunshine" on market conditions for the Pilot Stocks, by moving the cut-off time for current procedures, as described above, from 3:30 to 3:00 p.m. and by requiring the publication of updated imbalances at 3:30 p.m. This extra half-hour, along with the additional imbalance information, will allow market participants more time to respond to published market-at-the-close imbalances, which should further reduce end-of-day market volatility.

(b) Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] The Commission approved this proposal on an accelerated basis for the June 16, 1989 Expiration Friday only in Securities Exchange Act Release No. 26914 (June 9, 1989), 54 FR 25922.

[4] 15 U.S.C. 78f(1982).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, written comments regarding this proposed rule change.

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

III. 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 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 persons, 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 at 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 NYSE.

All submissions should refer to File No. SR-NYSE-89-11 and should be submitted by August 2, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16318 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27002; File No. SR-Phlx-89-22]

Self-Regulatory Organization; Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Relating to Preferential Allocation of Cash Index Participation Exercise Notices

On May 9, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Phlx Rule 1009B governing Allocation of Cash Index Participation ("CIP") Exercise Notices to provide a procedure for preferred allocation of such notices.

The proposed rule changes was noticed in Securities Exchange Act Release No. 26879 (May 31, 1989), 54 FR 24453 (June 7 1989). No comments were received on the proposed rule change.

Currently, pursuant to Phlx Rule 1009B, each member organization is required to establish fixed procedures for the allocation of CIP exercise notices assigned to a short position in CIPs in such member organization's customers' accounts. Such allocation shall be made on either a "first-in, first-out" basis, automated random selection basis that has been approved by the Phlx, or on a manual random selection basis. Further, each member organization is required to inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. The Phlx proposes to amend Exchange Rule 1009B by rescinding completely the current text of the rule and replacing it with a new Rule 1009B.

Proposed new Rule 1009B provides that a holder of a short CIP position desiring to receive priority consideration in being assigned an exercise notice of a holder of a long CIP position may provide notice of such intent ("Priority Notice") on or before a time specified and made public by the Exchange and which is in accordance with the Rules of the Options Clearing Corporation ("OCC").[3] A CIP short who makes an

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Priority Notices may be tendered on any day that the OCC accepts notices of exercise of the CIP cash-out privilege from CIP purchasers. Thus, Priority Notices may be tendered on a daily or quarterly basis because the OCC accepts notices of exercise of the CIP cash-out privilege on a daily and quarterly basis. *See* OCC Rules 1903 and 1904.

effective tender of a Priority Notice will receive priority consideration from the OCC in being assigned an exercise notice of a CIP long. In the event that there are greater short CIP positions for which Priority Notices are received than long CIP positions for which exercise notices are received, the OCC will allocate exercise notices on a random basis among only short CIP positions for which Priority Notices have been received. In this regard, all Priority Notices, regardless of the time of day that they are received (as long as they are received by the OCC prior to the acceptance of Priority Notice cut-off time), will be given equal priority in being considered for assignment of exercise notices. A Priority Notice is effective for only the business day on which it is tendered and accepted. Each member organization shall establish fixed procedures for the allocation of priority consideration exercise notices.

Proposed new Rule 1009B also preserves several requirements of rescinded Rule 1009B. First, allocation of notices among customers not desiring priority consideration shall be made on a "first-in, first-out" or automated random selection basis approved by the Exchange, or on a manual random selection basis. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options shall apply to the allocation of CIP exercise notices. Second, each member organization must obtain prior Exchange approval before instituting or changing a method of allocation. Third, each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of CIP exercise notices.

The Phlx states that the proposed rule change is designed to foster cooperation and coordination among persons engaged in facilitating transactions in CIPs by providing a mechanism to reflect CIP seller preferences in CIP assignment procedures.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder. More specifically, providing CIP shorts with a means by which they will receive priority consideration from the OCC in being assigned CIP exercise notices may assist CIP investors in the performance of more proficient asset allocation and risk management strategies. In addition, preferential allocation of CIP exercise notices should serve to ensure a more uniform and efficient operation of the Phlx cash-out process.[4] Moreover, the proposed rule change will facilitate the protection of CIP investors and ensure adequate disclosure in connection with CIPs by clarifying, the case of the CIP the "preferred assignment" language contained in the Index Participations ("IPs") Disclosure Document ("IDD").[5]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

July 6, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16319 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17044; 812-7308]

The Mitsubishi Bank, Limited; Application

July 5, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: The Mitsubishi Bank, Limited ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the offer and sale of its equity securities, either directly or in the form of American Depositary Shares represented by American Depositary Receipts, rights and other convertible or equity related securities (the "Securities").

Filing Date: The application was filed on May 1, 1989, and an amendment to the application was filed on June 30, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 31, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW Washington, DC 20549. Applicant, c/o Allen L. Thomas, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300.

Applicant's Representations

1. Like other major commercial banks in Japan and the United States, Applicant, together with its consolidated subsidiaries, primarily operates as an international commercial bank receiving deposits and making commercial loans. At March 31, 1988, on a consolidated basis, approximately 51% of Applicant's total assets were represented by loans (together with advances, leasing and other receivables), and approximately 74% of its total liabilities were deposits. During the fiscal year ended March 31, 1988, income from loans accounted for approximately 54% of Applicant's total income, and interest paid on deposits represented approximate 63% of Applicant's total expenses.

2. Applicant is currently engaged in the conduct of a commercial banking business in Japan, which includes receiving deposits, making loans, discounting bills, investing in securities, conducting domestic money transfers and foreign exchange transactions and performing other related services such as safekeeping, collections and issuing guaranties, acceptances and letters of credit. At September 30, 1988, Applicant

---

The OCC has informed the Phlx that it has made the necessary technical system changes to accommodate the Phlx proposed rule change. *See* Securities Exchange Act Release No. 26879 (May 31, 1989), 54 FR 24453, 24454.

See IDD at 7. The IDD is a special disclosure document which explains, in detail, the economic and risk characteristics of IPs (including CIPs), the mechanism of buying, selling, and exercising IPs, and the market in which IPs trade.

[6] 15 U.S.C. 78s(b)(2) (1982).

17 CFR 200.30-3(a)(12) (1988).

had 244 branch offices, 29 sub-branches, 11 agencies, seven wholly-owned subsidiaries, and 11 associated companies in Japan.

3. Applicant ranks as the fourth largest commercial bank in the world in terms of consolidated assets. At March 31, 1988, Applicant and its consolidated subsidiaries had worldwide assets of ¥43,311 billion ($346 billion) and worldwide deposits equivalent to ¥31,167 billion ($249 billion). Net income for the year ended March 31, 1988 was ¥121 billion ($1.0 billion) and total stockholders' equity was equivalent to ¥1,028 billion ($8.2 billion) at that date.

4. Applicant, as a Japanese commercial bank with subsidiaries, agencies and branches in the United States, is subject to a regulatory structure which is comparable to that imposed on United States banks. The Banking law (Law No. 59 of 1981, as amended) (the "Bank Law") grants authority to the Japanese Ministry of Finance (the "MOF") to supervise Japanese banks. The MOF's supervision pursuant to the Bank Law requires Applicant, among other things, to file a detailed annual report concerning its affairs. Under the Bank Law, the MOF's supervisory control extends to numerous areas. Further, all Japanese banks maintain current accounts with The Bank of Japan, the central bank of Japan, by which The Bank of Japan is entitled to supervise, examine and audit the banks.

5. As a result of its operations in the United States, Applicant is subject to the provisions of the International Banking Act of 1978, as amended (the "IBA"), and to the Bank Holding Company Act of 1956, as amended (the "BHCA"). By virtue of its ownership of The Bank of California, N.A., Applicant is a registered bank holding company under the BHCA. Applicant is also subject to the supervision, examination and regulatory authority of the banking departments of each of the seven states in which Applicant has a branch, agency or representative office.

6. Applicant wishes to be able to look to the United States equity capital markets as a source of funds. Applicant could raise equity capital in the United States in a public or private primary offering of equity securities (of any class or type which Applicant may at the time be authorized under Japanese law to issue), either directly or in the form of ADRs. Applicant also wishes to be able to establish an ADR program with a listing on a national securities exchange.

Applicant's Legal Analysis

1. Approval of the application is necessary and appropriate in the public interest, because it would advance the goals of the IBA, give Applicant access to the United States capital markets and expand investment opportunities for United States investors. Approval of the application would also be consistent with the protection of investors because the existing regulatory structure to which Applicant is subject affords sufficient protection for investors.

2. The purposes of the 1940 Act were to curb abuses frequently perpetrated by a particular type of investment vehicle. United States banks were exempted because they were already subject to an extensive regulatory structure that afforded protection to investors and because their operations did not give rise to the abuses sought to be prevented by the 1940 Act. These two basic reasons for an exemption are equally applicable here. A commercial bank such as Applicant is simply a different type of institution than an investment company. The two institutions differ in purpose, function, role in the economy and applicable regulation. Applicant is primarily engaged in the business of commercial banking, not the business of an investment company.

Applicant's Conditions

Applicant agrees to the imposition of the following conditions if the requested order is granted:

1. Any public offering in the United States of Securities will be made only pursuant to a registration statement under the Securities Act of 1933 ("1933 Act"). Any such offering will be done on the basis of disclosure documents that are appropriate and customary for such registration, and in any event at least as comprehensive as those used in public offerings of similar securities in the United States by foreign issuers.

2. Any placement in the United States of Securities under circumstances not requiring registration under the 1933 Act will meet the prevailing standards for exemption from registration under the 1933 Act. Applicant will not effect any such placement without obtaining an opinion of United States counsel that the placement is exempt from the registration requirements of the 1933 Act or the statement of the staff of the SEC that it would not recommend that the SEC take any action under the 1933 Act if such Securities are not registered. Any such placement will be done on the basis of disclosure documents that are appropriate and customary for such placement, and in any event at least as comprehensive as those used in placements of similar securities in the United States by foreign issuers.

3. In connection with any offering or placement of Securities in the United States, Applicant agrees that it will expressly submit itself to the jurisdiction of any state or federal court in the City and State of New York in respect of any action abased on such Securities. Applicant further agrees to appoint an agent located in the City and State of New York (which may be Applicant's New York branch) to accept any process which may be served in any action. Such consent to jurisdiction will be irrevocable as long as such Securities remain outstanding. Applicant agrees that, as long as such Securities remain outstanding, it will appoint a successor agent for service if the agent first appointed is discharged or is unwilling or unable to continue to serve as agent for service. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such Securities or otherwise in connection with such Securities.

4. Applicant will only issue Securities in the United States as long as it is supervised and examined by governmental authorities in Japan having the power of supervision of banks in that country and by state or federal authorities in the United States having the power and supervision over banks in the United States.

5. Applicant represents that it has no present intention to curtail its banking operations in Japan so that it will cease to be regulated as a bank in Japan.

6. Applicant represents that it has no present intention to curtail its banking operations in the United States so that it will cease to be regulated as a bank in the United States. If, however, such operations in the future are curtailed, so that Applicant agrees that it will continue to comply with its undertaking concerning appointment of an agent in New York City and submission to jurisdiction until such time as there shall be no holders in the United States of Securities of the Applicant issued in reliance upon any SEC order issued on the application.

7 Applicant consents to any SEC order being expressly conditioned on its compliance with the foregoing conditions and representations contained in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-16313 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17045; File No. 811-1931]

New England Variable Annuity Fund II

July 6, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 8(f) of the Investment Company Act of 1940 ("the 1940 Act").

Applicant: New England Variable Annuity Fund II.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on February 1, 1989.

Hearing or Notification of Hearing: If on 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 July 31, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW Washington, DC 20549. Applicant, 501 Boylston Street, Boston, MA 02117

FOR FURTHER INFORMATION CONTACT: Staff Attorney Michael V Wible (202) 272-2190 or Acting Assistant Director Clifford E. Kirsch (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 commerical copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants's Representations

1. Applicant registered under the 1940 Act of August 26, 1969 as a diversified, open-end management company.

2. Applicant is a separate account of New England Mutual Life Insurance Company. ("The New England"), a Massachusetts mutual life insurance company.

3. Applicant assigned, sold, conveyed, transfered, and delivered all of its assets to New England Variable Annuity Fund I (the "Surviving Fund"), a separate account of The New England, pursuant to an Agreement and Plan of Combination dated June 10, 1987 (the "Plan"). Accumulation units of Applicant were converted into accumulation units of the Surviving Fund and a total of 1,102,213.673 accumulation units of the Surviving Fund having an aggregate value of $9,235,097.89 were issued to holders of accumlation units of Applicant pursuant to the Plan adopted on April 24, 1987 by the holders of accumulation units of Applicant.

4. Immediately preceding the combination, the Fund had 1,308,326.316 accumulation units outstanding, total net assest of $9,235,097.89 and a per unit net asset value of approximately $7.06.

5. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceedings. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. Applicant has no securityholders. There are no former securityholders of Applicant to whom disbursement in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16314 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC-17046; File No. 811-5061]

Select*Protector Variable Account

July 6, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Select*Protector Variable Account.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 5, 1989.

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 July 31, 1989. Request a hearing in writing, giving the nature of your interest, the reasons for the request and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 20 Washington Avenue, S., Minneapolis, MN 55401.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Michael V Wible, (202) 272-2190 or Acting Assistant Director Clifford E. Kirsch, (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) 253-4300)).

Applicant's Representations

1. On March 2, 1987 Applicant filed on Form S-6 a registration statement under the title of Flexible Premium Life Insurance Policies. The registration statement did not become effective, nor has any initial public offering been made.

2. Applicant represents that it has never acquired any assets. Applicant has no debts or outstanding liabilities, and is not a party to any litigation or administrative proceeding.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16315 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24916]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 6, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed

transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments 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 July 31, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice 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 Portfolios Corporation (70-7612) Energy Initiatives, Incorporated

General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Second Floor, Wilmington, Delaware 19801, and Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey, 07054, each a subsidiary company of General Public Utilities Corporation, a registered holding company, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By prior Commission order in this matter, EII was authorized, among other things, to acquire, through one or more Delaware limited partnerships ("Partnerships"), a 50% ownership interest in three closely held California corporations ("collectively, Energy Companies"), including two state institutions and a university (HCAR No. 24885, May 10, 1989). Each Energy Company is the lessee under a long-term lease of a natural gas-fired cogeneration facility which is a qualifying facility under the Public Utility Regulatory Policies Act of 1978.

GPC and EII now request an extension of time, until December 31, 1989, to complete the transactions previously authorized therein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-16312 Filed 7-11-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Announcement of Additional Public Forums on Rural Transportation Issues

AGENCY: Office of the Secretary, DOT.

ACTION: Public forums announcement.

SUMMARY: A **Federal Register** Notice published July 5, 1989 [54 FR 28143] announced a series of six public forums on rural transportation issues to be held in various locations around the country. These meetings are a key component of the information gathering process leading to development of a national transportation policy. In addition to the six previously announced public forums in Moscow, Idaho; Gallup, New Mexico; Montpelier, Vermont; London, Kentucky; Sioux Falls, South Dakota; and Jackson, Mississippi; the Department will be holding two previously unannounced public forums in Morgantown, West Virginia and Augusta, Maine.

All interested parties, whether representing an organization or themselves, are invited to participate in these public forums. Oral statements will be limited to 10 minutes per individual; written statements or comments will also be accepted. Notification of your intent to participate should be received by the Chairman of the Rural America Transportation Cluster Group not later than 5 working days before the date of the hearing you will attend.

DATES: Public forums on rural transportation issues are scheduled from 8:30 a.m. to 5:00 p.m. on the following previously unannounced dates:

August 15, 1989—Morgantown, West Virginia.

August 17 1989—Augusta, Maine.

ADDRESSES: The public forums will be held in the following locations:

Agricultural Sciences Building Auditorium, Evansdale Campus, West Virginia University, Morgantown, West Virginia.

Augusta Civic Center, Community Drive, Augusta, Maine.

FOR FURTHER INFORMATION CONTACT: These seeking further information or wishing to participate in a public forum should contact: Mr. H. Joseph Rhodes, Chairman, Rural Transportation Cluster Group, Room 3317 HPP-1, 400 Seventh Street SW Washington, DC 20590, (202) 366-0587

SUPPLEMENTARY INFORMATION: A top priority of the Department of Transportation during the remainder of 1989 will be to develop a comprehensive national transportation policy and accompanying implementation strategies which reflect the role of transportation in a changing national and international environment. Early next year, the Secretary of Transportation will issue a National Transportation Policy Statement that will set forth the policy guidelines and strategies for meeting the Nation's transportation needs over the next decade and into the 21st Century.

A key component of this policy development process will be to reach out to transportation users, the transportation industry, interest groups (including government agencies), transportation employees, and the Congress for their views on issues, problems, and recommended solutions. In addition to public forums, this outreach effort will involve solicitation of written comments from the public (see **Federal Register** Notice published July 3, 1989), meetings with key transportation and other organizations, site visits, and other events to obtain the views of concerned parties and individuals and to build a consensus for a national policy.

A **Federal Register** Notice published on July 5 contains further information regarding the overall national transportation policy development process and transportation issues of particular importance to Rural America.

Issued this 7th day of July, 1989, in Washington, DC.

H. Joseph Rhodes,

Chairman, Rural Transportation Cluster Group.

[FR Doc. 89-16332 Filed 7-11-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Department Circular—Public Debt Series—No. 19-89]

Treasury Notes of July 15, 1996, Series G-1996

Washington, July 6, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites

tenders for approximately $7,250,000,000 of Untied States securities, designated Treasury Notes of July 15, 1996, Series G-1996 (CUSIP No. 912827 XT 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent for each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated July 17 1989, and will accrue interest from that date, payable on a semiannual basis on January 15, 1990, and each subsequent 6 months on July 15 and January 15 through the date that the principal becomes payable. They will mature July 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in bond-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, July 12, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 11, 1989, and received no later than Monday, July 17 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve

Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in § 3.5. must be made or completed on or before Monday, July 17 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 13, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, July 17 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-16365 Filed 7-7-89; 3:03 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 132
Wednesday, July 12, 1989

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).

UNITED STATES INSTITUTE OF PEACE

Meeting

TIME AND DATE: 4:00–7:00 p.m. Monday, July 24, 1989.

PLACE: First Floor Conference Room, 1550 M Street, NW., Washington, DC.

STATUS: Open.

PURPOSE AND AGENDA: The ninth of a monthly series of Public Workshops scheduled by the United States Institute of Peace, this event will focus on the Summer 1989 *National Interest* article by Deputy Assistant Secretary of State for Policy Planning Francis Fukuyama entitled "The End of History?" In his essay Fukuyama claims that the passing of Marxism-Leninism as an ideological force implies the victory of liberal democracy as an idea and "the growing 'Common Marketization of international relations. While he does not suggest that this means the end of conflict in the world, Fukuyama believes that large-scale conflicts, that is, those involving states driven by "the grip of history" (i.e., by ideology), will become things of the past. We will ask a distinguished group of scholars and policymakers to comment upon and discuss Fukuyama's views. Public observance is welcomed.

CONTACT: Ms. Kimber Schraub, Telephone 202–457–1700.

Dated: July 10, 1989.

Charles Duryea Smith,

General Counsel.

[FR Doc. 89–16469 Filed 7–10–89; 2:38 pm]

BILLING CODE 3155-01-M

federal register

Wednesday
July 12, 1989

Part II

Department of Justice

Immigration and Naturalization Service

8 CFR Part 100 et al.

Temporary Disqualification From Financial Assistance, Applicant Processing for Legalization Program, and Temporary/ Permanent Residence Status Adjustment for Aliens; Final Rules and Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245A

[INS No. 1038-89]

RIN 1115-AA55

Temporary Disqualification of Certain Newly Legalized Aliens From Receiving Benefits From Federal Programs of Financial Assistance

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 245A(h) of the Immigration and Nationality Act ("Act"), as amended by section 201 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603 ("IRCA"). Section 245A(h) provides that, with certain exceptions, aliens granted lawful temporary resident status pursuant to 245A(a) ("legalization") are not eligible for a period of five years after such grant to receive benefits from programs of financial assistance furnished under Federal law on the basis of financial need. The Attorney General is required by section 245A(h)(1)(A)(i) of the Act, to identify such programs after consultation with other appropriate heads of the various departments and agencies of government. The intended effect is to lessen the impact of legalization on benefit programs.

EFFECTIVE DATE: July 12, 1989. The compliance date of the rule will be determined by each of the administering Federal agencies for its programs, but in no event later than October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paul W Virtue, Deputy General Counsel, Immigration and Naturalization Service, Room 7048, 425 I Street, NW., Washington, DC 20536, (202) 633-3195.

SUPPLEMENTARY INFORMATION:

Section 245A(a) of the Immigration and Nationality Act as amended by Pub. L. 99-603, 100 Stat. 3359, provides for the legalization of status of certain individuals who have been residing illegally in the United States since before January 1, 1982. Section 245A(h) of the Act provides that, with certain exceptions, aliens legalized under section 245A will be ineligible for five years for "any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of Title IV of the Social Security Act). Section 245A(h)(2) of the Act provides that such temporary ineligibility does not apply (A) to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 510(e) of Pub. L. 96-422, 94 Stat. 1799, as in effect on April 1, 1983), or (B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act, Pub. L. 74-271, 49 Stat. 620). The five-year period of eligibility begins on the date an alien is granted lawful temporary resident status under section 245A(a) of the Act.

Section 245A(h) of the Act also provides that, subject to the same exceptions, aliens legalized under section 245A of the Act will be temporarily ineligible for medical assistance under a State plan approved under Title XIX of the Social Security Act (Medicaid), Pub. L. 74-271, 49 Stat. 620 (except certain emergency services and services to pregnant women or aliens who are under 18 years of age) and for benefits financed by the Food Stamp Act of 1977 as amended by Pub. L. 95-400, 92 Stat. 856 (which includes, but is not limited to, section 19 therein, the Puerto Rico Block Grant).

It is also noted that a different provision, section 210(f) of the Act, provides that, with certain exceptions, aliens granted lawful temporary resident status under section 210 of the Act (Lawful Residence for Certain Special Agricultural Workers) are temporarily ineligible for aid under a State plan approved under part A of Title IV of the Social Security Act (aid to families with dependent children), Pub. L. 74-271, 49 Stat. 620, or for Medicaid. It is further noted that section 210A(d)(6) of the Act provides in effect that an alien granted lawful temporary resident status under section 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) shall be subject to the same ineligibility rules as aliens legalized under section 245A of the Act except that the provision in section 245A(h) relating to assistance under the Food Stamp Act of 1977 Pub. L. 95-400, 92 Stat. 856, shall not apply, and assistance furnished under the Legal Services Corporation Act, Pub. L. 88-452, 78 Stat. 508, or Title V of the Housing Act of 1949, 63 Stat. 413, shall not be construed to be financial assistance for which such additional special agricultural workers are temporarily ineligible.

No such temporary ineligibility is in effect for: (1) aliens granted the status of an alien lawfully admitted for permanent residence pursuant to section 249 of the Act (Record of Admission for Permanent Residence in the Case of Certain Aliens who Entered the United States Prior to July 1, 1924 or January 1, 1972); (2) a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96-422, as in effect on April 1, 1983); or (3) assistance (other than aid to families with dependent children) which is furnished to an alien who is aged, blind, or disabled (as defined in section 1614(a)(1) of the Social Security Act).

In addition, State and local governments may, at their discretion, provide that aliens legalized under section 245A or 210A of the Act are ineligible for certain other programs. Section 245A(h)(1)(B) of the Act states that a State or political subdivision therein may, to the extent consistent with sections 245A(h) (1)(A), (2), and (3) of the Act, provide that such legalized aliens are ineligible for a period of five years, for the programs of financial assistance or for certain medical assistance which are furnished under the law of that State or political subdivision therein.

Criteria Used To Identify Programs

The Department of Justice, after consulting with representatives of various appropriate departments and agencies of the Federal Government has developed a list of programs of financial assistance furnished under Federal law on the basis of financial need for which newly legalized aliens are ineligible for a period of five years.

The criteria used by the Department of Justice to identify programs of financial assistance furnished under Federal law are as follows:

1. Federal financial assistance is furnished for the benefit of individuals in financial need.

(A) Financial assistance in the form of grants, wages, loans, loan guarantees, or otherwise, is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers.

(B) Benefits under the program are targeted to individuals in financial need. Either (i) in order to be eligible,

individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (ii) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

2. The financial assistance is not furnished under a Federal disaster relief program.

3. Eligibility does not require United States citizenship.

4. Assistance under the program is not expressly precluded from being construed as financial assistance by section 245A(h)(4) of the Act. This paragraph provides that assistance furnished under the following provisions of law shall not be construed to be such financial assistance:

(A) The National School Lunch Act, 60 Stat. 230.

(B) The Child Nutrition Act of 1966, Pub. L. 89-642, 88 Stat. 885.

(C) The Vocational Education Act of 1963, Pub. L. 88-210, 77 Stat. 403.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, 95 Stat. 358.

(E) The Headstart-Follow Through Act, Pub. L. 88-452, 78 Stat. 508.

(F) The Job Training Partnership Act, Pub. L. 97-300, 96 Stat. 1322.

(G) Title IV of the Higher Education Act of 1965, Pub. L. 89-329, 79 Stat. 1219.

(H) The Public Health Service Act, 37 Stat. 309.

(I) Titles V XVI, and XX, and parts B, D, and E of Title IV of the Social Security Act, 49 Stat. 620 (and Titles I, X, XIV and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

Some of the programs that are listed in § 245a.5(c) of this final rule provide for Federal financial assistance to intermediate State or local government agencies or private entities. In several programs of this kind, the intermediate government agency or private entity uses the funds for many different programs of its own. Only some of these private or State or local government programs provide benefits for which aliens legalized under section 245A or 210A of the Act are, with certain exceptions, temporarily ineligible, specifically those programs having both of the following characteristics: (A) The distribution of financial assistance directly or indirectly (through intermediate public or private entities) to eligible individuals or to private suppliers of goods or services to such individuals, or the distribution to such individuals of goods or services of a kind that is offered by private suppliers, and (B) targeting to individuals in financial need.

Analysis of Comments

A Proposed Rule was published on August 24, 1987 (52 FR 31784-31786) adding 8 CFR 245a.4, which sets forth a proposed list of programs of Federal financial assistance identified by the Attorney General. Interested persons were given the opportunity to submit written comments on the Proposed Rule on or before September 23, 1987 Forty-six comments were received within that period.

Most of the commenters stated their belief that the list in the Proposed Rule was overbroad in that it included programs that were not furnished "on the basis of financial need" or were not programs of "financial assistance furnished under Federal law. Other issues raised by the comments related to the application of the ineligibility provisions to families where not all members are newly legalized aliens (the "family issue"), and whether to "grandfather in" newly legalized aliens who are currently receiving benefits under a program on the ineligible list. These concerns will be addressed in turn.

A. Financial Assistance Furnished on the Basis of Financial Need

Many commenters objected to a portion of the criterion included in the Proposed Rule for use in determining whether Federal assistance programs involve "financial assistance furnished on the basis of financial need. In particular such commenters disagreed that programs should be included if benefits under the program are "targeted to individuals in financial need" in the sense that "distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

These commenters believe that only programs applying an individual means test should be covered. They believe that section 245A(h) does not contemplate disqualification of persons from programs of Federal financial assistance aimed at the development or rehabilitation of property in low-income neighborhoods. The programs at issue include the Urban Development Action Grants, Operating Assistance for Troubled Multifamily Housing Projects (Flexible Subsidy Program), and Rental Housing Rehabilitation administered by HUD.

The Department of Justice remains of the opinion that these programs are appropriately listed. The statutory language directs the Attorney General to designate programs of financial assistance furnished on the basis of financial need. Each of the three programs at issue requires the applicant (State or local government, or property owner) to show that the Federal funds will be used to benefit economically depressed areas. To the extent such funds are used to provide housing to low-income individuals, they constitute Federal financial assistance furnished on the basis of financial need. Nothing in the statutory language or the legislative history suggests that only programs using an individual means test can be programs of financial assistance furnished on the basis of financial need must use.

Our review of the legislative history of this section indicates that Congress intended to minimize two potential adverse impacts of legalization: (a) The financial burden of newly legalized aliens on U.S. taxpayers, and (b) the reduction of benefits to disadvantaged citizens and lawful permanent residents ("LPRs") under Federally funded programs because of the participation of newly legalized aliens.

The effect of making legalized aliens eligible to receive benefits under an entitlement program, i.e., an assistance program not subject to a fixed annual spending limit, would be higher program cost and hence a heavier burden on the taxpayers of this country (unless the funding for one or more other programs, which might well be more in the national interest, were reduced or eliminated). With respect to a non-entitlement program, the effect of making legalized aliens eligible would depend on whether the program's annual spending limit is reached. If not, then the effect would be the same. If, however, there is excess demand for the benefits of a non-entitlement program; if, that is, the program's annual spending limit would be exceeded should all persons meeting the minimum eligibility requirements receive the benefits for which they would be eligible if such spending limit were not in effect, then permitting legalized aliens to receive benefits would force American taxpayers and their elected representatives to choose one or a combination of three possibilities: (a) Letting some citizens and LPRs be deprived of the benefits of the program, or increasing the annual cost of the

program through (b) increasing the burden on taxpayers, or (c) reducing or eliminating one or more other, possibly more beneficial, Federal programs.

It is true that a certain portion of funds for Urban Development Action Grants is expended for projects which benefit the public at large, e.g., sewers, roads, sidewalks, parks. However, a significant percentage of the funds is directed toward providing housing for low and moderate income persons. It is this portion of the assistance which is intended to be covered by the rule. Accordingly, in the final rule the Urban Development Action Grant Program is marked with an asterisk (*) to clarify the extent to which financial assistance provided under that program is covered by the rule.

B. Program of Financial Assistance Furnished Under Federal Law

A majority of the comments were directed at the Proposed Rule's interpretation of the statutory term "program of financial assistance furnished under Federal law. The most frequent objection raised concerned the inclusion of the Legal Services Corporation on the ineligible list because, these commenters believe, legal advice and assistance received from the Legal Services Corporation cannot reasonably be classified as "financial assistance furnished under Federal law. Many of these same commenters also pointed out that, by its own enabling legislation, the Legal Services Corporation is not an agency or instrumentality of the Federal Government, as they believe the statute requires. Finally, many commenters stated their belief that to make newly legalized aliens ineligible for services provided by the Legal Services Corporation would be to effectively deny access to the courts for many low income newly legalized aliens.

The Department of Justice believes that it is irrelevant that legal services are not financial assistance. The statute provides that legalized aliens are not eligible for certain kinds of programs, namely, those involving "financial assistance furnished on the basis of Federal law on the basis of financial need. Legal services provided to individuals by the Legal Services Corporation do constitute benefits from such a program. Indeed, the language of section 210A(d)(6) of the Act specifically provides that the provisions of section 245A(h), making newly legalized aliens ineligible for financial assistance furnished under Federal law, apply to an alien legalized under section 210A—

In the same manner as they apply to an alien granted lawful temporary residence under section 245A; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 *et seq.*) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*) shall not be construed to be financial assistance described in section 245A(h)(1)(A)(i).

Applying standard rules of statutory construction, this language implies the Congress believed that assistance furnished by the Legal Services Corporation is a benefit of a "program of financial assistance furnished under Federal law" within the meaning of section 245A(h). Otherwise this language would be mere surplusage. There is no reason to believe that such benefits were regarded differently from benefits under the housing programs that this same section also excepts from the ineligibility rule and that the legislative history clearly shows were understood by the Congress to be covered by section 245A(h).

Neither is the Department of Justice persuaded by the objection that the Legal Services Corporation is not technically an agency or instrumentality of the Federal Government. Many of the recipients of Federal monies are State and local government agencies, quasi-governmental, charitable or private entities which use such funds to finance benefits to individuals in financial need. It is the Department's view that the focus of the inquiry as to whether a benefit comes from a "program of financial assistance furnished under Federal law on the basis of financial need" should not be either (a) the public or private legal status of the entity that distributes the benefit to the ultimate recipient, or (b) the form the benefit to the ultimate recipient takes, whether a cash grant (or loan, loan guarantee, etc.) or goods or services, but rather that the benefit is financed with Federal funds that are targeted to those in financial need.

The Department also notes that although Legal Services Corporation is a private organization, it is described as a "quasi-official agency" in The United States Government Manual, the "official handbook of the Federal Government" (see the preface of such manual, at iii), published by the Office of the Federal Register. It is so described because it is required by statute to publish in the **Federal Register** certain information about its programs and activities.

The comment that inclusion of Legal Services Corporation on the list of programs will effectively deny access to the courts by newly legalized aliens is unfounded. Pro bono and low cost programs, not supported by Federal funds under the Legal Services Corporation, are available through local bar associations nationwide. Furthermore, although newly legalized aliens would undoubtedly benefit if they were eligible for such program during the ineligibility period, the same is true with respect to the other programs from which Congress believed it necessary to exclude them temporarily. Finally, regardless of the policy issues involved, the Department does not have the discretion to exempt legalized aliens from section 245A(h) with respect to any program covered by the statutory language unless an explicit exception is provided.

Another frequent objection to the Proposed Rule's application of "financial assistance furnished under Federal law" was the inclusion on the proposed list of employment and job training programs administered by the Department of Labor (Senior Community Service Employment Program) and the Office of Personnel Management Federal Employment for Disadvantaged Youth—Part-time (Stay-in-School) and Summer (Summer Aides) programs. The issue raised was whether wages paid for services rendered could legitimately be considered "financial assistance furnished under Federal law" since consideration was exchanged for payment. It is the position of the Department of Justice that the employment opportunities are made available through Federal funds and are filled on the basis of financial need. The inclusion of these programs on the list is consistent with the Congressional intent of preventing the displacement of citizens and lawful permanent residents from Federal programs by newly legalized aliens.

In addition, the Department of Energy has pointed out that one of the programs included on the proposed list, the Minority Honors Vocational Training Program, is limited to United States citizens. Accordingly, the program has been removed from the list.

C. The Family Issue

Another frequently expressed concern was how to administer the ineligibility provisions of the Proposed Rule to prevent the receipt of assistance by newly legalized aliens without applying the ineligibility to other members of the same family who may not be ineligible; that is, family members who are U.S. citizens or lawful permanent resident aliens. This situation is most likely to arise in the case of assistance which benefits, and is based upon, the income of all members of a household (e.g., fuel assistance payments under the Low-

income Home Energy Assistance program administered by the Department of Health and Human Services).

The Department of Justice understands the concerns raised by these comments. However, Congress did not statutorily exempt those newly legalized aliens who are members of "mixed" families from the ineligibility provisions of section 245A(h). Nor did it give the Department any authority to do so by regulation. It should also be noted that the Attorney General's statutory obligation under section 245A(h)(1)(A)(i) is only to "identify" the programs of Federal financial assistance from which newly legalized aliens are ineligible to receive benefits. The programs are actually administered by various other Federal agencies, which must comply not only with this statute and regulation, but with the programs' authorizing statutes, and the agencies' own regulations and responsibility to administer programs efficiently. Consequently, the Department suggests that these concerns be expressed to the appropriate administering agency.

D. Grandfathering Benefits

The Department has no authority to "grandfather in" newly legalized aliens who are currently receiving benefits under a program listed in this rule. Although it is possible that efficient administration of certain programs may require a limited amount of "grandfathering, this would be a decision for the agency administering such programs.

The Housing Act of 1987

Following publication of the Proposed Rule and prior to publication of this Final Rule, Congress amended section 214 of the Housing and Community Development Act of 1980, to provide:

Sec. 214(a) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is

(6) an alien lawfully admitted for temporary or permanent residence under section 245A of the Immigration and Nationality Act.

(b) For purposes of this section the term "financial assistance" means financial assistance made available pursuant to the United States Housing Act of 1937 section 235 or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965.

Housing and Community Development Act of 1987 Pub. L. 100–242 section 164 (1988) (codified as amended at 42 U.S.C. 1436a). The programs referred to in section 214(b) and administered by the Secretary of Housing and Urban Development have been eliminated from the list included in § 245a.5(c) of this Final Rule.

Pub. L. 100–242 also amended Title V of the Housing Act of 1949 (Farm Housing), 42 U.S.C. 1471–1490o, to provide eligibility for lawful temporary residents for certain programs administered by the Secretary of Agriculture. Section 302 provides, in pertinent part, as follows:

(a) Resident Aliens.—Section 501 of the Housing Act of 1949 is amended by adding at the end the following new subsection:

(h)(1) The Secretary may not restrict the availability of assistance under this title for any alien for whom assistance may not be restricted by the Secretary of Housing and Urban Development under section 214 of the Housing and Community Development Act of 1980.

The Title V programs which were included in the list in the Proposed Rule have been eliminated from the Final Rule.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This is not a "major rule" within the meaning of section 1(b) of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and permanent resident status.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 245a—[AMENDED]

1. The authority for Part 245a continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat. 3359; 8 U.S.C. 1101 note.

2. Part 245a is amended by adding the following section:

§ 245a.5 Temporary disqualification of certain newly legalized aliens from receiving benefits from programs of financial assistance furnished under federal law.

(a) Except as provided in § 245a.5(b), any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 245A of the Act (Adjustment of Status of Certain Entrants Before January 1, 1982, to that of Person Admitted for Lawful Residence) or 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) is ineligible, for a period of five years from the date such status was obtained, for benefits financed directly or indirectly, in whole or in part, through the programs identified in § 245a.5(c) of this chapter.

(b)(1) Section 245a.5(a) shall not apply to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96–422, as in effect on April 1, 1983), or in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(2) With respect to any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 210A of the Act only, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996, et seq.) or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance referred to in § 245a.5(a).

(3) Section 245a.5(a) shall not apply to benefits financed through the programs identified in § 245a.5(c), which are marked with an asterisk (*), except to the extent that such benefits:

(i) Consist of, or are financed by, financial assistance in the form of grants, wages, loan, loan guarantees, or otherwise, which is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers, and

(ii) Are targeted to individuals in financial need; either (A) in order to be eligible, individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (B) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

(c) The programs of Federal financial assistance referred to in § 245a.5(a) are those identified in the list set forth below. The General Services Administration (GSA) Program Numbers

set forth in the right column of the program list refer to the program identification numbers used in the Catalog of Federal Domestic Assistance, published by the United States General Services Administration, as updated through December, 1986.

	GSA Program Numbers
Department of Agriculture:	
Farm Operating Loans	10.406
Farm Ownership Loans	10.407
Department of Health and Human Services:	
Assistance Payments—Maintenance Assistance (Maintenance Assistance; Emergency Assistance; State Aid; Aid to Families with Dependent Children)	13.780
Low-Income Home Energy Assistance	13.789
*Community Services Block Grant	13.792
*Community Services Block Grant—Discretionary Awards	13.793
Department of Housing and Urban Development:	
Mortgage Insurance—Housing in Older, Declining Areas (223(e))	14.123
Mortgage Insurance—Special Credit Risks (237)	14.140
Operating Assistance for Troubled Multifamily Housing Projects (Troubled Projects (Flexible Subsidy) Program)	14.164
*Community Development Block Grants/Entitlement Grants	14.218
*Community Development Block Grants/Small Cities Program (Small Cities)	14.219
Section 312 Rehabilitation Loans (312)	14.220
*Urban development action grants	14.221
*Community Development Block Grants/State's Program	14.228
Section 221(d)(3) Mortgage Insurance for Multifamily Rental Housing for Low and Moderate Income Families (Below Market Interest Rate)	14.136
Department of Labor:	
Senior Community Service Employment Program (SCSEP)	17.235
Office of Personnel Management:	
Federal Employment for Disadvantaged Youth—Part-Time (Stay-in-School Program)	27.003
Federal Employment for Disadvantaged Youth—Summer (Summer Aides)	27.004
Small Business Administration:	
Small Business Loans (7(a) Loans)	59.012
Department of Energy:	
Weatherization Assistance for Low-Income Persons	81.042
Department of Education:	
Patricia Roberts Harris Fellowships (Graduate and Professional Study; Graduate and Professional Study Opportunity Fellowships; Public Service Education Fellowships)	84.094
Legal Training for the Disadvantaged (The American Bar Association Fund for Public Education)	84.136
Allen J. Ellender Fellowship Program (Ellender Fellowship)	84.148
Legal Services Corporation:	
Payments to Legal Services Corporation	

Dated: June 21, 1989.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89-15789 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Parts 100, 103, 242, 264, and 299

[INS No. 1020R-89]

RIN 1115-AA39

Applicant Processing for the Legalization Program; Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends certain regulations to conform to regulation changes published elsewhere in this issue. These provisions relate to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this rule is to make final the provisions set forth in the interim rule concerning changes to the regulations brought about by the Service's processing of applications for adjustment of temporary resident aliens for lawful permanent residence status.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, enacted on November 6, 1986, provided for the legalization program. Under the first phase of the program, eligible aliens were afforded temporary resident status. This rule finalizes the interim rule that described the permanent resident application process of the legalization program, which was published at 53 FR 43984 on October 31, 1988, with request for comments. Forty-eight responses representing 71 individuals and interested organizations, were received. The Service wishes to thank the many interested parties for their useful comments regarding the October 31, 1988 regulations. All comments were reviewed and, as a result, several changes were incorporated into this final rule.

This rule changes the list of legalization offices; deletes the reference to the appellate authority concerning the application (I-695) for replacement of Form I-688 (Temporary Resident Card); makes editorial changes; and provides the display control numbers and edition dates for Form I-698, Application to Adjust Status from Temporary to Permanent Resident, Form I-699, Certificate of Satisfactory Pursuit; and Form I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

Summary of the Final Rule

Section 100.4(f) is amended to provide a list of legalization offices which will accommodate applicants for permanent residence. The Service wishes to assure interested parties that it will continue to carefully consider decisions to close legalization offices. The Service will continue to strive to keep the maximum number of legalization offices open within funding constraints.

In addition to the legalization offices listed in § 100.4(f) the following Service offices will conduct interviews for permanent residence.

Eastern Region

District offices—Baltimore, MD; Boston, MA; Buffalo, NY; Philadelphia, PA; Portland, ME; and San Juan, PR; Sub-offices—Albany, NY· Charlotte Amalie, VI; Christiansted, VI; Camden, NJ; Hartford, CT; Norfolk, VA; Pittsburgh, PA; St. Albans, VT, and Syracuse, NY.

Northern Region

District offices—Anchorage, AK, Cleveland, OH; Detroit, MI; Helena, MT, Kansas City, MO; Omaha, NB; Portland, OR; Seattle, WA; and Saint Paul, MN; Sub-offices—Boise, ID; Cincinnati, OH; Indianapolis, IN; Milwaukee, WI; Salt Lake City, UT, St. Louis, MO; and Yakima, WA.

Southern Region

District offices—Atlanta, GA; and New Orleans, LA; Sub-offices—Charlotte, NC; Jacksonville, FL, Louisville, KY; Memphis, TN; Oklahoma City, OK, and Tampa, FL.

Western Region

District offices—Honolulu, HI; Sub-offices—Agana, GU; Reno, NV· and Tucson, AZ.

Section 103.1(f)(2)(xxxii) is removed as there exists no appeal from a decision on a Form I-695, Application for Replacement of Form I-688A, Employment Authorization Card, or Form I-688, Temporary Resident Card.

Section 103.1(n) provides for the approval or denial of applications for permanent residence by the district directors at both legalization and other Service offices. Comments were received expressing the concern that since personnel in other than legalization offices had little experience with the Legalization Program, sufficient training should be provided. In some instances after a legalization office is closed personnel from that office are reassigned to the office that continues to do legalization work in that locality. This provides an experienced corps of personnel to continue performing legalization work. In addition, the Service conducted on-site regional training sessions with representatives from every office that will be conducting Phase II legalization work. This training was supplemented by the respective regional legalization staffs. The Service has also prepared and distributed a Phase II procedures manual for use by field personnel.

Section 103.7(b) provides for an application fee for the filing of an I-698, Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603). Several comments were received concerning the application fee. Numerous commentors supported the Service's decision to provide for a family cap of $240. Comments were also received stating that the fee was too high. Before setting the $80 fee and family cap of $240, the Service carefully reviewed the resource requirements for operation of the second phase of the Legalization Program. The cost of the Legalization Program is self-funding through application fees and the fee set is necessary to cover the costs of the second phase of the program.

Section 242.21(b) concerning prohibited appeals is amended by deleting the reference to § 245a.2(c)(5) since that section is deleted elsewhere in this issue of the **Federal Register**.

Section 299.1 is amended to provide for the edition dates for Forms I-698, Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603); I-699, Certificate of Satisfactory Pursuit; and I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

Section 299.5 is amended to correct an editorial error. The word "adjustment" is changed to "adjust"

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR Part 299.5.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Authority delegations (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 242

Deportation, apprehension, custody, hearing, and appeal.

8 CFR Part 264

Reporting and Recordkeeping requirements.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

The interim rule published at 53 FR 43984-43986 on October 31, 1988, is adopted as final with the following changes:

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act; 8 U.S.C. 1103.

2. Section 100.4(f) is amended by revising the list of legalization offices to read as follows:

§ 100.4 Field service.

(f)

Legalization Offices

Eastern Region

NEW—Paterson, NJ (XPT)
NYC—Manhattan, NY (XMA)
WAS—Arlington, VA (XAR)

Northern Region

CHI—Chicago, IL (XLS), Forest Park, IL (XLI)
DEN—Denver, CO (XDE)
KS—Wichita, KS (XWI)

Southern Region

DAL—Arlington, TX (XDA), Lubbock, TX (XLU)
ELP—El Paso, TX (XEL), Albuquerque, NM (XAL)
HLG—Harlingen, TX (XHA)
HOU—Houston, TX (XHU)
MIA—(Miami) Hialeah, FL (XOP), Fort Lauderdale, FL (XWS)
SNA—Austin, TX (XAU), Corpus Christi, TX (XCO), Laredo, TX (XLR), San Antonio, TX (XSN)

Western Region

LOS—Anaheim, CA (XAH), El Monte, CA (XEM), Los Angeles, CA (XHO), Huntington Park, CA (XHP), East Los Angeles, CA (XLA), Buena Park, CA (XNK), North Long Beach, CA (XLB), Oxnard, CA (XOX), Pomona, CA (XPO), Riverside, CA (XRV), Santa Ana, CA (XSA), San Fernando, CA (XSR), Gardenia, CA (XTO), N. Hollywood, CA (XVN)
PHO—Phoenix, AZ (XPH), Las Vegas, NV (XLV)
SND—Escondido, CA (XES), San Diego, CA (XSD)
SFR—Bakersfield, CA (XBA), Fresno, CA (XFR), San Francisco, CA (XSF), Salinas, CA (XSI), San Jose, CA (XSO), Stockton, CA (XST)

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR 1982 Comp., p. 166.

§ 103.1 [Amended]

4. Section 103.1 is amended by removing paragraph (f)(2)(xxxii).

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

5. The authority citation for Part 242 continues to read as follows:

Authority: 66 Stat. 173, 208, 214, 235; 100 Stat. 3537; 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362.

§ 242.21 [Amended]

6. Section 242.21(b) is amended by changing the reference "§ 245a.2(c) (5), (6), or (7)" to read "§ 245a.2(c) (6) or (7)"

PART 299—IMMIGRATION FORMS

7 The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR Part 2.

8. Section 299.1 is amended by revising the entries for Forms I-698, I-699, and I-803 to read as follows:

§ 299.1 Prescribed forms.

I-698 (08/10/88)—Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603).
I-699 (10/20/88)—Certificate of Satisfactory Pursuit.

I-803 (09/27/88)—Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

9. Section 299.5 is amended by revising the entry for Form I-698 to read as follows:

§ 299.5 Display of control numbers.

I-698 Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99-603).....1115-0155

Dated: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-15792 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

---

8 CFR Parts 103 and 245

[INS No.. 1003-89]

RIN 1115-AA31

Powers and Duties of Service Officers; Availability of Service Records, Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: On March 3, 1987 the Service published an interim rule implementing sections 117 202, and 203 of Pub. L. 99-603, the Immigration Reform and Control Act, (IRCA), at 52 FR 6320. The interim rule was corrected on April 27 1987 (52 FR 13827). This final rule amends certain portions of the corrected interim rule based on comments received during the comment period and in compliance with Pub. L. 100-525, the Immigration Technical Corrections Act of 1988. This final rule changes the language of the corrected interim rule to comply with language changes to IRCA contained in Pub. L. 100-525, clarifies the appeal process in Cuban-Haitian adjustment cases, clarifies the effect of the interim rule on renewed adjustment applications under Part 242 of the regulation, and adds three sections to the regulation regarding the waiver provisions of section 212(a)(19) of the Act that were made available to Cuban-Haitian Adjustment applicants by Pub. L. 100-525.

DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633-5014

SUPPLEMENTARY INFORMATION: The Service received five comments to the interim rule published on March 3, 1987 In addition, on October 24, 1988, the President signed Pub. L. 100-525, "Immigration Technical Corrections Act of 1988" which amended in part, sections 117 and 202 of IRCA, the subject of the interim rule. Three commenters offered opinions concerning § 245.1(c)(1) of the interim regulation concerning the definition of which individuals are in "legal immigration status. Two commenters felt the Service was too restrictive in its interpretation and should include individuals who are not in lawful nonimmigrant status but in the United States under some other status which is condoned by the Service (e.g. voluntary departure). One commenter felt the Service was too liberal in this provision, and more people should be deemed ineligible. The Technical Corrections Act amended the statutory language upon which this section of the regulation is based from "legal status" to "lawful status. It is the Service view that the original definition of "legal immigration status" (now "lawful status") comports with Congressional intent in enactment of the provision. The Service has, therefore, made no changes to this paragraph other than this amendatory language of Pub. L. 100-525.

One commenter addressed § 245.1(c)(2) of the interim regulation stating that if an individual's nonimmigrant stay expires while an adjustment application is pending with the Service, that applicant should be able to renew his or her adjustment application before an immigration judge in proceedings under part 242 of the regulation if the adjustment application was denied by the district director. The Service agrees with this interpretation, but has added appropriate language to § 245.2(a)(5)(ii) of the regulation rather than § 245.1(c)(2) for the sake of clarity.

One commenter also expressed opposition to the amendment of § 245.1(c)(3) regarding the effect of a departure and reentry of an individual who has not maintained a legal status and to a paragraph in the Supplementary Information of the interim regulation referring to the effect of the amendment on the Stateside Criteria Program. The interim regulation as written is consistent with the statute in these areas and will not be amended. The Stateside Criteria Program has been terminated by the Department of State and is no longer an issue.

One commenter addressed issues raised in § 245.6 of the regulation, recommending that Cuban Haitian adjustment applications be renewable in subsequent deportation proceedings, rather than appealable to the Associate Commissioner, Examinations under Part 103 of the regulations. The regulation as written gives individuals whose applications have been denied adequate administrative review, and there is no need to place an extra burden on immigration judges, as suggested by this comment. In this final rule, the Service has added Cuban-Haitian Adjustment applications to the list of applications appealable to the Associate Commissioner in § 103.1, to clarify any misconception of the appellate authority.

In addition to considering the comments, the Service has also amended the interim regulation to reflect changes in language in the statute by Pub. L. 100-525 and to reflect regulations published May 1, 1987 regarding the definition of the term "resided continuously" as used in section 245A(a)(2) of the Immigration and Nationality Act, as amended.

This final rule also reflects changes to section 202(a)(2) of IRCA brought about by Pub. L. 100-525, allowing the Attorney General to waive, at his discretion, the provisions of section 212(a)(19) of the Act, and making the amendment effective as if it was included in the enactment of IRCA. New §§ 245.6 (f) and (g) are added, outlining the factors that will be considered by the district director in determining whether the Attorney General's discretion should be granted, and outlining the procedure to be followed by individuals whose applications were denied prior to enactment of Pub. L. 100-525, but who now would like to reopen their adjustment cases to allow the Service to consider a waiver request for section 212(a)(19) ineligibility as provided in Pub. L. 100-525.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 8 CFR Parts 103 and 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Parts 103 and 245 of the Code of Federal Regulations are amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1303–1304, 1443, 28 U.S.C. 1746; 31 U.S.C. 9701; E.O. 12356, 3 CFR., 1982 COMP p. 166, 8 CFR Part 2.

2. Section 103.1 is amended by adding a new paragraph (f)(2)(xxxii) to read as follows:

§ 103.1 Delegations of Authority.

(f)

(2)

(xxxii) Application for status as permanent resident under § 245.6 of this title.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for Part 245 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1159, 1182, 1255, 8 CFR Part 2.

4. In § 245.1, paragraphs (b)(5), (b)(6), (c)(i) introductory text, (c)(2) introductory text, (c)(2)(ii), and (c)(3) are revised to read as follows:

§ 245.1 Eligibility.

(b)

(5) Any alien who on or after November 6, 1986 is not in lawful immigration status on the date of filing his or her application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) or a special immigrant as defined in section 101(a)(27) (H) or (I);

(6) Any alien who files an application for adjustment of status on or after November 6, 1986, who has failed (other than through no fault of his or her own or for technical reasons) to maintain continuously a lawful status since entry into the United States, except an applicant who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27) (H) or (I) of the Act;

(c) *Definitions*—(1) *Lawful Immigration Status.* For purposes of section 245(c)(2) of the Act, the term "lawful immigration status" is limited to individuals who are:

(2) *No fault of the applicant or for technical reasons.* The parenthetical phrase "other than through no fault of his or her own or for technical reasons" shall be limited to:

(ii) A technical violation resulting from inaction of the Service (as for example, where an applicant establishes that he or she properly filed a timely request to maintain status and the Service has not yet acted on that request). An individual whose refugee or asylum status has expired through passage of time, but whose status has not been revoked, will be considered to have gone out of status for a technical reason.

(3) *Effect of departure.* The departure and subsequent reentry of an individual who was employed without authorization in the United States after January 1, 1977 does not erase the bar to adjustment of status in section 245(c)(2) of the Act. Similarly, the departure and subsequent reentry of an individual who has not maintained a lawful immigration status on any previous entry into the United States does not erase the bar to adjustment of status in section 245(c)(2) of the Act for any application filed on or after November 6, 1986.

5. In § 245.2, paragraph (a)(5)(ii) is revised to read as follows:

§ 245.2 Application.

(a) *General.*

(5)

(ii) *Under section 245.* If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status as a preference or nonpreference alien shall not be approved until an immigrant visa number has been allocated by the Department of State. No appeal lies from the denial of an application by the district director, but the applicant retains the right to renew his or her application in proceedings under Part 242 of this chapter, or under Part 236 if the applicant is a parolee and meets the two conditions outlined in § 245.2(a)(i). At the time of renewal of the application, an applicant does not need to meet the statutory requirement of section 245(c) of the Act, or the regulatory requirements of § 245.1(f), if in fact those requirements were met at the time the renewed application was initially filed with the district director.

6. In § 245.6, paragraphs (a), (c)(2), and (d)(2) are revised, and new paragraphs (f), (g), and (h) are added to read as follows:

§ 245.6 Adjustment of status of certain Cuban and Haitian nationals under the Immigration Reform and Control Act of 1986 (Pub. L. 99–603).

(a) *Application.* Each person applying for the benefit of adjustment of status under section 202 of Pub. L. 99–603 was required to file a separate Form I–485 (Application for Lawful Permanent Residence), without fee, with the district director having jurisdiction over the applicant's place of residence. Each application was accompanied by Form I–643 (Health and Human Services Statistical Data Sheet), the results of a medical examination given in accordance with § 245.3 of this Part, and, if the applicant had reached his or her 14th birthday but was not over 79 years of age, Form G–325A and an applicant fingerprint card (Form FD 258). No application for benefits under section 202 of Pub. L. 99–603 could be initially filed after November 7 1988.

(c)

(2) Is eligible for an immigrant visa and otherwise admissible to the United States under section 212(a) of the Act, except for paragraphs (14), (15), (16), (17), (20), (21), (25), and (32), which do not apply; or paragraph (19) which may be waived at the discretion of the Attorney General;

(d)

(2) *Continuously resided.* The term "continuously resided" as used in section 202 of Pub. L. 99–603 has the same meaning as the term "resided continuously" as defined in § 245a.1(c)(i) of this Part.

(f) *Waiver.* In accordance with Pub. L. 100–525 the provisions of paragraph 212(a)(19) of the Immigration and Nationality Act may be waived by the Attorney General in any case filed under section 202 of Pub. L. 99–603. Generally, a determination of

excludability under section 212(a)(19) will be waived for purposes of section 202 of Pub. L. 99-603 if the exclusion charge is a result of fraud or willful misrepresentation at the time of initial entry of the applicant into the United States prior to January 1, 1982, absent any other significant negative factors. Generally, a determination of excludability under paragraph (19) will not be waived for purposes of section 202 if the exclusion charge is a result of fraud or willful misrepresentation occurring in connection with an attempt to establish eligibility for permanent resident status either by a visa petition, application for an immigrant visa, or application for adjustment of status, after the initial entry into the United States, absent any significant positive factors. The district director will consider the following factors in determining whether the discretion of the Attorney General should be exercised:

(1) Number of excluding actions in which the applicant has engaged;

(2) Length of time since the excluding action;

(3) Immediate family members in the United States;

(4) Criminal record of the applicant;

(5) Exhibition of rehabilitation since the excluding action;

(6) Employment history in the United States; and

(7) Any other circumstances or situations the district director deems relevant.

(g) *Waiver in a pending case.* An individual whose application for benefits under section 202 of Pub. L. 99-603 is pending with the Service may request a waiver of section 212(a)(19) by supplementing his or her application with a letter. The letter must include the following facts:

(1) The identity of the applicant, including name, date and place of birth, and alien file number;

(2) The fact that the decision was made in accordance with section 202 of Pub. L. 99-603, and is submitted in compliance with the requirement to request a waiver of section 212(a)(19) of the Act;

(3) The circumstances which are to be waived; and

(4) A discussion of the factors upon which the decision is to be based, as listed in paragraph (f) in this section.

(h) *Motions to reopen.* An individual whose application for the benefits of section 202 of Pub. L. 99-603 was denied by the Service solely on the basis of ineligibility under section 212(a)(19) prior to the passage of Pub. L. 100-525 may file a motion to reopen the proceedings in accordance with the provisions of § 103.5 without fee. Motions to reopen applications which were properly filed under section 202 during the time period specified in the statute may be filed at any time. No separate application form for a waiver need be submitted with a motion to reopen filed in accordance with this paragraph. No separate appeal process is available if a waiver request is denied, other than to appeal denial of the request for adjustment of status. In addition to the requirements of § 103.5 of this part, these motions must contain the following:

(1) The identity of the applicant, including name, date and place of birth, and alien file number;

(2) The fact that the decision was made in accordance with section 202 of Pub. L. 99-603, and is submitted in compliance with the requirement to request a waiver of section 212(a)(19) of the Act;

(3) The circumstances which are to be waived; and

(4) A discussion of the factors upon which the decision is to be based, as listed in paragraph (f) of this section.

Dated: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-15788 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

---

8 CFR Part 245A

[INS Number: 1022-R-89]

RIN Number 1115-AA52

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule addresses the adjustment of status of temporary resident aliens to that of aliens lawfully admitted for permanent residence, in accordance with section 201 of the Immigration Reform and Control Act of 1986 (IRCA). The Service, as the result of the publication of this rule, finalizes the provisions affecting the adjustment of temporary resident aliens to permanent residence.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub.L. 99-603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment of the Immigration and Nationality Act ("INA") in 1952, reflected a resolve to strengthen law enforcement to control illegal immigration. It also reflected the Nation's concerns for certain aliens who had resided illegally in the United States. The theme of this legislation was focused upon regaining control of our Nation's borders and eliminating the illegal alien problem in this country through the firm yet fair enforcement of our Nation's laws.

The Immigration and Naturalization Service took a number of steps to ensure the new legislation would be implemented effectively, efficiently and fairly. Service officials engaged in continuing dialogue with members of the public and representatives of interested organizations on how the legalization provisions of "IRCA" would be implemented.

The temporary resident phase of the Legalization Program began on May 5, 1987 and ended on May 4, 1988. The temporary resident phase of the Legalization Program was the first step for illegal aliens to become full and active members of the American society. The temporary resident phase of the program proved to be an overwhelming success with more than 1,700,000 applicants taking advantage of the opportunity to come out of the shadows.

In order to complete the process of becoming a lawful permanent resident of the United States, individuals who gained lawful temporary resident status during phase I of the Legalization Program are required to make application for such permanent resident status.

An interim rule was published in the **Federal Register** at 53 FR 43986 on October 31, 1988. Forty-eight comments, representing 71 individuals and organizations were received. These comments were reviewed and, as a result, several changes have been incorporated into this final rule. The Service appreciates the time and significant effort put forth by all concerned parties.

Summary of the Final Rule

This rule makes final the provisions found in the interim rule published at 53 FR 43986 on October 31, 1988 pertaining to the requirements for certain temporary resident aliens, who are otherwise eligible, to adjust their status to that of aliens lawfully admitted for permanent residence in the United States and the procedures to be used

during this process. Some changes made in this final rule to the interim regulations as a result of public comment caused the changing of similar regulations found in Part 245a.4 dealing with the Extended Voluntary Departure (EVD) class of temporary resident aliens. In addition, as a result of public comment, court proceedings, and the provisions of the Immigration Technical Corrections Act of 1988 (ITCA), this rule makes changes to certain other regulations not found in the interim rule.

The following summarizes the processing method that is being used by the Service for the processing of applications for permanent residence during this phase of the legalization program: The Service is utilizing a processing method that features direct mail of applications to four Regional Processing Facilities (RPFs) located at Williston, Vermont (Eastern); Lincoln, Nebraska (Northern); Dallas, Texas (Southern); and Laguna Niguel, California (Western). After preliminary processing of applications at the Regional Processing Facilities, applicants are interviewed at selected Service offices (including district offices, suboffices, and legalization offices) throughout the country. The adjustment of temporary resident aliens to permanent residence consists of five major segments: Pre-submission of applications; Regional Processing Facility processing (pre-interview); INS field and legalization office processing; Regional Processing Facility processing (post-interview); and Immigration Card Facility (ICF) processing.

In the pre-submission of applications segment the Service is distributing information and forms for the adjustment to permanent resident phase of the Legalization Program. Several commentors urged the Service to continue its public information and outreach efforts for Phase II of the Legalization Program. The Service has and will continue these efforts. The Service is confident that awareness of the Legalization Program is high. In testimony before the Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary, United States Senate, the Government Accounting Office reported that a market research study found that 92 percent of undocumented Hispanics were aware that the Legalization Program exists (over 84% of the legalization phase I applicants were Hispanic). In addition, the Service has received over 460,000 applications for permanent residence as of mid-June, 1989. The publicity and outreach campaign for Phase II is more selective since the Service knows who the temporary residents are and where they reside. This being the case, local level publicity and outreach methods are being employed along with national efforts.

In the Regional Processing Facility (RPF) processing (pre-interview) segment, all pre-interview processing tasks (e.g., data entry, fee receipting, application review, scheduling of interviews, etc.) are being performed. If during the review of the application at the Regional Processing Facility it is determined that the applicant has met all eligibility requirements (continuous residence, English language/U.S. history and government, etc.) and there was no indication of fraud in Phase I, the application may be approved. In this situation, the applicant would be notified by the RPF to appear for processing at the INS field or legalization office for an Alien Registration Receipt Card (I-551).

In the INS field and legalization office segment, applicants are interviewed as well as processed for Alien Registration Receipt Cards (I-551). The interview may include an English language/U.S. history and government examination for those applicants who wish to satisfy the standards for section 312 (requirements as to understanding the English language, history, principles and form of government of the United States) of the Immigration and Nationality Act.

In the RPF processing (post-interview) segment, appeal processing and other post-interview administrative procedures occur.

In the final segment, the Immigration Card Facility processing segment, Alien Registration Receipt Card (I-551) production is completed and the card is mailed to the address specified by the alien as his or her place of residence.

Section 245a.1(i) is amended as a result of receipt of comments that the Service should clarify in regulation what is now the policy concerning public cash assistance, by deleting the words, "or his or her immediate family members" The receipt of public cash assistance by immediate family members will not have a bearing on an applicant's eligibility for legalization.

Section 245a.1(r) is amended to include a list of qualified designated entities (QDEs) Phase II activities. Numerous comments were received concerning this definition. Several commentors suggested that the Service should consider adding QDEs in good-standing as allowable representatives under 8 CFR 292.1 for IRCA permanent resident applicants. The Immigration Reform and Control Act of 1986 (IRCA) does not provide for Qualified Designated Entity involvement in the second phase of the Legalization Program. The Service feels the certification procedures found in 8 CFR 292 should be followed by all organizations and it is not proper to single out QDEs in good-standing for blanket certification.

Section 245a.1(s) defines the term "satisfactorily pursuing" as used in section 245A(b)(1)(D)(i)(II) of the Act. Numerous comments were received on this section. Overwhelmingly, commentors supported the Service's various options an applicant could pursue in order to "satisfactorily pursue a course of study" The Service is genuinely concerned that temporary residents enter the mainstream of American society in a fair and equitable manner within the statutory framework provided by the Congress. Comments received on § 245a.1(s)(1) generally endorsed the minimum 60 hour course length. Several commentors cited that increasing the completed amount of hours to 40 adversely affected State Legalization Impact Assistance Grant (SLIAG) allotments. The Service consulted with the Department of Health and Human Services and was informed that in planning for educational requirements, State estimates for educational assistance under SLIAG should have been based on the 100 hour minimum standard that was contained in the proposed rule or the 60 hour minimum standard that was contained in the interim rule. The minimum number of attendance hours should not have been used in preparing allotment requests. Commentors also urged the Service to "grandfather" in those applicants who may have already completed 30 hours of a course thereby not requiring these applicants to complete an additional 10 hours. The Service considered this recommendation but does not concur. The interim rule which was effective at the beginning of the permanent resident phase of the Legalization Program, November 7 1988, contained the 40 hour completion requirement. No applications were adjudicated under the 30 hour requirement found in the proposed rule. In addition, Congressional intent calls for legalization applicants to attain basic citizenship skills. The Service has considered numerous input from the public before providing for the minimum 40 hour attendance requirement and the minimum 60 hour course length. The Service considers these hourly requirements both realistic and fair.

Section 245a.1(s)(2), as a result of comments received, is amended to

define "GED" as General Educational Development. In addition, the Service was advised by one commentor that not all states use a standard "GED English Proficiency Examination" The Service therefore will include language that provides for states to use their usual GED English proficiency test. Language is also added to clarify that the high school/GED curriculum include at least 40 hours of instruction in English and U.S. history and government.

Comments received concerning § 245a.1(s)(3) brought attention to the fact that "U.S. History" was absent from the standard curriculum language. The term has been added. Also, the interim rule contained the 30 hour completion requirement in the curriculum language. This has been changed to correctly reflect the 40 hour requirement. Language is also added to provide for use of a learning institution's standard of "acadamic year"

Section 245a.1(s)(4) is amended by adding the standard curriculum language for clarification purposes.

Several comments were received concerning § 245a.1(s)(5). Commentors agreed with the deletion of the "statement of intent" language that appeared in the interim rule. Commentors urged the Service to replace the word "home" with another term as it was deemed as too restrictive. The Service agrees and will replace the word "home" with the words "individual study" to recognize that applicants may have studied at various locations. Language is also added to reflect the fact that the Service may also administer proficiency tests along with other qualified administrators. Qualified Designated Entities in good-standing may also be designated as qualified administrators and language stating this fact has also been added. One commentor asked how an applicant would know whether he or she passed the proficiency test. An applicant will receive a document that reflects the test results. A Certificate of Satisfactory Pursuit (I-699) will not be issued to such an applicant. The Service also adds the name of the proficiency test ("IRCA Test for Permanent Residency"). Finally, a point of contact is provided for those who wish to participate in testing.

Comments received on § 245a.1(u) concerned clarification of the definition of curriculum. Commentors stated that it was unclear whether these definitional standards applied to the other alternatives found in § 245a.1(s) concerning "satisfactorily pursuing" The definitional standard does apply to § 245a.1(s) (1) through (4). The proficiency test provided for in § 245a.1(s)(5) was developed to conform to these definitional standards.

New § 245a.1(v) is added to conform with the requirements of the Immigration Technical Corrections Act of 1988 (ITCA). As a result of the ITCA, section 245A(b)(1)(D)(ii) of the Immigration and Nationality Act was amended to expand the exception for certain individuals of the basic citizenship skills requirement to include developmentally disabled individuals. Section 245a.1(v) defines the term "developmentally disabled" The term's meaning is the same as found in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987 Pub. L. 100-146, enacted on October 29, 1987 Section 245a.3(b)(4)(ii) is also amended as a result of the ITCA.

Section 245a.2(a)(2)(i) is removed as a result of the outcome of court proceedings. This provision, published in the May 1, 1987 implementing regulations, required an alien who was subject to an Order to Show Cause issued on or after November 6, 1986 and prior to May 5, 1987 and who had established prima facie eligibility for adjustment of status under section 245A(a) of the Act to file an application for adjustment during the period beginning on May 5, 1987 and ending on June 3, 1987 All cases that were denied because the applicant failed to satisfy the provision of 8 CFR 245a.2(a)(2)(i) will be reviewed to determine if the applicant is otherwise eligible for the legalization benefits sought. If the applicant is found to be otherwise eligible, the application will be reopened. The applicant will be so notified of the reopening and will be invited to report to the nearest legalization office to obtain employment authorization.

Section 245a.2(c)(5) is removed and reserved because of the deletion of § 245a.2(a)(2)(i).

Section 245a.2(d)(4) is amended as a result of comments received that the Service should bring the provisions of this section in line with the Service's operational guidelines on determining financial responsibility. The Service will not deny an application for temporary residence as a result of finding an applicant subject to section 212(a)(15) of the Act without applying the Special Rule for determination of public charge.

Section 245a.2(k)(4) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "and his or her family" For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Section 245a.3(a) is redesignated § 245a.3(a)(1) and amended for editorial purposes and new § 245a.3(a)(2) is added to address the application for adjustment from temporary to permanent resident status. Under the provisions of the Immigration Reform and Control Act of 1986, a temporary resident alien who has resided in the United States for a period of eighteen (18) months may make application for permanent resident status during the twelve-month period beginning on the day after the temporary residence period has been completed. The majority of the comments received centered around the manner of determining when an applicant was eligible to file an application for permanent residence and expressed concern that applicants would find it difficult to determine when they could apply. The Service addressed this issue in an interim rule published at 54 FR 13360, April 3, 1989. The interim rule provided for the submission of applications anytime after the grant of temporary residence but prior to the end of an applicant's twelve-month period of eligibility to apply for adjustment to permanent residence. Temporary residents are encouraged to submit their applications as soon as possible. Applications must be submitted by the end of the 30-month period from the date the application for temporary residence was approved. Language is therefore included in § 245a.3(a)(1) to reflect the fact that applicants will receive the entire 30-month period of time in which to apply from the time of the granting of the application for temporary residence.

An applicant will still be considered a temporary resident from the date of filing their temporary resident application. In this way, every applicant is provided with the statutorily guaranteed 30-month period and still receives the benefit of having the time count from the date of filing for permanent residence and for naturalization purposes. In addition, this regulatory construction is considered fair for the purposes of State Legalization Impact Assistance Grant (SLIAG) funding. The Service began accepting applications on November 7 1988. Applications received anytime subsequent to the granting of lawful temporary residence but prior to an applicant's eligibility to apply date are being held by the Service as a convenience to the public. These applications are considered "filed" on the applicant's eligibility date.

To further provide assistance to temporary residents, the Service will mail a notice to all temporary resident aliens who have not yet filed an application for permanent residence. The notice will state that an application for permanent residence can be submitted at anytime after the date temporary residence was granted and before the date the eligibility period to file for permanent residence ends. In addition, another mailer will be sent to all temporary residents who have not submitted their application before 60 days prior to the end of their eligibility period reminding them to apply.

New § 245a.3(a)(2) is added to provide that no application for permanent residence will be denied, for failure to apply, before the end of 30 months from the date of actual approval of the temporary resident application. This provision conforms with the statute which guarantees a 30-month period from the granting of temporary residence.

Section 245a.3(b) is amended as a result of one commentor recommending that the Service should be able to accept applications mailed from outside of the United States and to reflect the change in the acceptance of applications as reflected in § 245a.3(a)(1). The Immigration Reform and Control Act of 1986 does not specifically require that an applicant must be actually in the United States at the time of filing an application. Therefore, the phrase "physically present in the United States" will be deleted from this section.

Section 245a.3(b)(1) is amended to add clarifying language relating to the filing of an application, the continuous residence and the interview requirements.

Comments received on § 245a.3(b)(2) recommended clarification of the standard used to excuse an absence or absences outside the 30/90 day rule and the officials who have the authority to excuse such absences. The Service will amend the language for clarification purposes and to include the director of the Regional Processing Facility as an official who can excuse absences. Concerning the determination of the abandonment of residence, the Service will consider the totality of an applicant's information in concluding whether the absence or totality of absences represents a meaningful interruption of continuous residence.

Section 245a.3(b)(4)(ii) is amended as a result of the comments received, as well as, the provisions of the Immigration Technical Corrections Act of 1988. Commentors urged the Service to clarify that a formal waiver application (I-690) was not required for an individual who is waived or exempted from the requirements of § 245a.3(b)(4)(i). The Service will add clarifying language. In addition, clarifying language is provided pertaining to the term "physically unable to comply" Comments were also received requesting the Service to include persons who are learning disabled. The Service will follow the intent of Congress in using the definition of "developmentally disabled" One commentor also recommended the Service qualify the exemption for an individual who was over 50 years of age and resided in the United States for 20 years to conform with Section 312 of the Immigration and Nationality Act (INA). Section 312 of the INA relates to qualifications for naturalization and exempts a "50/20" applicant from the requirement to demonstrate an understanding of the English language including the ability to read, write, and speak. Under section 312, a "50/20" applicant is not exempt from demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. The Service will not implement the recommendation since this section provides an exemption from the demonstration of the basic citizenship skill requirements that equates to the "satisfactorily pursuing" criteria found in § 245a.1(s). The exemption afforded by this section to a "50/20" applicant does not, therefore, exempt the applicant from the history and government requirement of section 312 at the time of petitioning for naturalization.

Section 245a.3(b)(4)(iii)(A) is amended to address clarification concerns expressed by commentors. Language will be added to clarify that the passing of an INS authorized standardized "section 312" test will satisfy the basic citizenship skills requirement as does the INS directly administered test. The Service will accept an applicant's passing of a standardized test as of November 7 1988 since the Service authorized the Educational Testing Service (ETS) version of the standardized test on November 4, 1988. This section is also changed to provide for the presentation of an Educational Testing Service (ETS) notice of passing test results at the time of filing an I-698, application for permanent residence, subsequent to the filing of an I-698, or at the time of interview. The Service also provides for independently verifying the test results. Concerning the manner in which the examination of an applicant's ability to read and write English is conducted, the Service will follow the guidance provided in section 312 of the Immigration and Nationality Act. Finally, several commentors supported the use of the standardized list of 100 questions. The list is reproduced at the end of this regulation.

Concerning § 245a.3(b)(4)(iii)(B) commentors requested that the Service allow for not only the presentation of an I-699, Certificate of Satisfactory Pursuit, but also for other evidence of "satisfactory pursuit" or evidence of having passed an INS authorized standardized exam after the failing of the English and/or U.S. History and Government portion of the examination conducted at the time of interview. The Service has provided for the demonstration of the basic citizenship skills requirement in various ways and certainly would not prohibit an applicant from exercising any option during the pendency of his or her application. This section will, therefore, be amended to allow for the presentation of an I-699, or any other evidence of satisfying the basic citizenship skills requirement. Several commentors expressed concern about the validity of an applicant's I-688 during the six-month retest period. The issue of I-688 validity is addressed in § 245a.3(d)(5). An applicant would receive an extension of validity of the I-688 if needed. Finally, language is added to clarify that a second interview opportunity will be afforded an applicant before his or her application is denied, the denial being based solely on the failure to pass the basic citizenship skills requirement.

Section 245a.3(b)(4)(iv) is amended by replacing the term "General Equivalency Diploma" with "General Educational Development" to conform with § 245a.1(s)(2). Commentors also suggested the Service accept "other credible documentation" in addition to a high school diploma. The Service feels that the documentation is readily available and will not include the recommended language. Language is also added which defines the Service's proficiency test as the "IRCA Test for Permanent Residency" This section is also changed to provide for the presentation of a Certificate of Satisfactory Pursuit (I-699) at the time of filing an I-698, application for permanent residence, subsequent to the filing of an I-698, or at the time of interview.

Section 245a.3(b)(5) is amended to provide for the certification process by which district directors and the Director of Outreach will certify educational programs as recognized courses of study that provide instruction in English and

U.S. History and Government. One commentor raised the possibility of a program operating within more than one INS district jurisdiction being certified by one district director while not being certified by another district director. The Service acknowledges that the possibility exists and therefore will provide for a review of a denied certification decision by the appropriate Regional Commissioner where the petitions of a local, cross-district program are approved in one district and denied in another within the same State. Minor editorial changes have also been made.

Numerous comments were received concerning § 245a.3(b)(6). Commentors urged the Service to modify the requirement of submitting notices of participation within 30 days after publication of the interim rule (October 31, 1988) or within thirty days after creation of the course of study. The Service agrees and adds language that allows for the submission of a notice of participation as soon as possible since a Form I-699, Certificate of Satisfactory Pursuit, will not be accepted until a notice of participation is on file with the Service. The Service will endeavor to review notices of participation as promptly as possible. Language is also added which clarifies that notices of participation shall be submitted by blanket certified course providers to only the district director in whose jurisdiction the program is conducted and that course providers notify the district director in writing of any change to the information contained in the notice of participation. Additionally, it was recommended that service providers receive an I-804, Certificate of Attorney General Recognition to Provide Course of Study for Legalization: Phase II, if a notice of participation is submitted that complies with INS regulations. The Service concurs and will so provide for the issuance of an I-804 certificate. Commentors were concerned that the different regional jurisdictions would encounter difficulty in verifying approved course providers located in other regions. Lists of course providers, therefore, will be disseminated to all four INS Regional Processing Facilities to address this issue. Language is also added to provide for each district director compiling and maintaining lists of recognized courses within his or her district.

Section 245a.3(b)(7) explains the fee structure for courses. Comments were received requesting clarification of the reaching of a determination of whether a fee was proper. The Service wishes to be flexible and consider the various factors that can have a bearing on the setting of course fees. To clarify the Service's position language is added which cites some factors that can be used in determining whether the fee charged is appropriate. The list is not exhaustive. The Service will also seek the assistance of various Federal, State and local entities, as the need arises (e.g., State Departments of Education) to determine the appropriateness of course fees.

Section 245a.3(b)(8) provides information on the Federal Textbooks on Citizenship. Two commentors inquired as to how textbooks would be distributed. Textbooks are distributed as provided for in section 332 of the Immigration and Nationality Act (e.g., public schools conducting courses of instruction in preparation for citizenship).

Section 245a.3(b)(9) addresses the maintenance of student records by course providers. One commentor urged to make the requirement for the maintenance of student records prospective since it was stated that many providers did not collect all of the required information. The Service feels that course providers will, in most instances, have maintained information on individuals to the extent necessary to meet the intent of this section and, therefore, will not change this section.

Section 245a.3(b)(10) addresses the issuance of the Certificate of Satisfactory Pursuit (I-699). This section is amended by redesignating paragraph (b)(10)(vii) as paragraph (b)(10)(viii) and adding a new paragraph (b)(10)(vii) to provide that a Certificate of Satisfactory Pursuit (I-699) can be accepted from a course provider who is decertified. Language is added to state that certificates will not be accepted from a school or program that has been decertified unless the applicant had enrolled in and been issued a certificate prior to the decertification, provided that no fraud was involved. One commentor suggested the Service attempt to verify course attendance via computerized data lists from State Departments of Education. The suggestion has merit and the Service will look into the requirements of establishing such a procedure. The Service cannot, however, at this time amend this section to provide for such a procedure due to the technical, legal and time elements involved.

Section 245a.3(b)(12) is amended to correct a section reference.

Section 245a.3(c) is amended for clarification purposes. Section 245a.3(c)(4) defines as an ineligible class for permanent residence those aliens who are not granted temporary residence. The statute provides for the adjustment of temporary residents to permanent residence. An alien would, therefore, have to be a temporary resident alien in order to be adjusted to permanent residence. Aliens who have their temporary residence status terminated would, therefore, be ineligible for permanent residence and new section 245a.3(c)(5) will so state.

Section 245a.3(d)(2) is amended to clarify the role of Qualified Designated Entities (QDEs) in good-standing in the certification of documents process and for editorial purposes. In addition, language is added to provide for the proper way to authenticate a certification. One commentor recommended the elaboration of what constitutes a complete application including all required documentation. Each case will dictate the extent of what documentation is required. It is not possible to address in the regulations the numerous possibilities that exist regarding documentation to support an applicant's claim to eligibility for permanent residence. The Service will only request documentation as needed to properly adjudicate cases or investigate fraud.

Section 245a.3(d)(4) is amended by deleting the term "(Pub. L. 99-603)" from the title description of the I-693 since the I-693 is now used as the medical examination form for all applicants for adjustment of status. Several commentors agreed with the language provided in the interim rule. Additional clarification was requested as to how an applicant should support that he/she previously submitted a medical examination form reflecting a serologic test for HIV A statement of the prior submission of the medical examination form will suffice as the Service will check an applicant's file to verify the statement. Language reflecting this clarification is added. The Service is also amending this section to include the basic criteria an applicant should address when filing for a waiver of the ground of excludability under section 212(a)(6)—HIV infection.

Section 245a.3(d)(6) provides for the adjudication of an application for permanent residence based on the existing record. Numerous comments were received concerning this section. Commentors in general supported the provisions set forth in the interim rule. Concern was expressed, however, that the Service not return the I-698 application along with a request for additional action for reasons of increasing the chance of loss of the application. The Service will add

language that clarifies when an application has to be returned. An application will be returned when it is not acceptable for filing (e.g., lacks the appropriate fee or is incomplete). The application will not be returned once accepted and the need arises for additional information or documentation. In this case a notice, requesting the additional information or documentation, will be sent to the applicant. In addition, the Service will hold in abeyance the adjudication of a case on the basis of the existing record where no response has been received to the two requests for additional information and/or documentation until the end of the 30-month period beginning from the time of the granting of the application for temporary residence.

Section 245a.3(e) is amended to provide for holding in abeyance the adjudication of a case on the basis of the existing record where an applicant has failed to appear for two scheduled interviews until the end of the 30-month period beginning from the time of the granting of the application for temporary residence. The Service has provided for similar action concerning adjudication of a case on the basis of the existing record where no response has been received to two requests for additional information and/or documentation (§ 245a.3(d)(6)). The Service will not automatically schedule another interview until the applicant or the applicant's attorney or accredited representative contacts the Service and requests another interview. Commentors expressed concern over an apparent contradiction between this section and the discussion contained in the summary of the interim rule concerning the need for an interview. An application may be approved at the Regional Processing Facility. This action, however, does not relieve the need for an applicant to appear at a Service office for the purpose of being processed for an I-551 permanent residence card. The Service, therefore, uses the term "interview" to refer to both an adjudicative interview and an interview for the purposes of I-551 processing. Commentors also stated that there appears to be no flexibility in the scheduling of interviews. This is not the case. The automated scheduling system allows for the rescheduling of interviews. The Service would like to remind all interested parties, however, that scheduled interviews should be kept if possible as rescheduling introduces delay in case processing, thus prolonging an applicant's wait for the completion of permanent residence processing.

Section 245a.3(f), concerning the inapplicability of numerical limitations, is added due to the inadvertent omission of this section from the October 31, 1988 interim rule. The remaining sections of this part are redesignated accordingly.

Section 245a.3(g)(2) is amended to correct an improper reference concerning the section that contains grounds of exclusion that cannot be waived. This section is also amended to require a waiver of certain grounds of exclusion before the granting of permanent residency, where the alien was excludable at the time of temporary residency and failed to apply for a waiver in connection with his or her application for temporary residence, or becomes excludable subsequent to the date temporary residence was granted.

Concerning § 245a.3(g)(3)(ii) changes are made to conform to the provisions of the Immigration Technical Correction Act of 1988. Specifically, the public charge ground of exclusion can be waived for an applicant who is or was an aged, blind or disabled individual as defined in section 1614(a)(1) of the Social Security Act. A formal waiver application (I-690) is not required if an applicant received a waiver for the public charge ground as a result of filing a waiver application during Phase I (temporary residence).

Section 245a.3(g)(4) is amended to correct editorial errors and does not change in substance. Commentors generally agreed with the provisions of the section.

Section 245a.3(g)(4)(iii) is amended as a result of the comments received concerning the Service's public cash assistance policy, and to correct an improper reference concerning the section that contains application of the Special Rule and is further amended by deleting the words, "and his or her family" For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Concerning § 245a.3(i) commentors cited an improvement in the interim rule provisions over those contained in the proposed rule. The Service wishes to reiterate its position that denials will be based on the totality of the information at the Service's disposal. In addition, the appeal mechanism provided in § 245a.3(j) affords an opportunity for administrative review of all denials.

Section 245a.3(j) provides for appeals to adverse decisions. One commentor recommended that the period for submission for appeal be lengthened to ninety days and that the denial notifications be sent registered mail. The Service has provided for more time for the submission of legalization appeals than normally provided for in § 103.3(a) for appeals of other Service denials. It is also felt that the use of certified mail is sufficient service of notification.

Section 245a.3(m) is amended to clarify that the required period for continuous residence for naturalization will begin from the date of adjustment to permanent residence.

Section 245a.3(n)(3) is amended, for clarification purposes, to reflect the intended prosecution of both the applicant and/or the individual supplying a false writing or document for use in the permanent resident application process.

Section 245a.3(n)(4) is amended to conform with the provisions of the Immigration Technical Corrections Act of 1988 concerning reports to Congress and for furnishing information at the discretion of the Attorney General in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. Two commentors urged the Service to delete this section entirely stating that the section is neither necessary nor consistent with the statute (IRCA). Section 245A(a)(1)(c) allows the Attorney General and subsequently the Service to collect information on relatives of temporary resident applicants for the eventual use in support of visa petitions filed on their behalf. The Service also added language in the interim rule to provide for the use of legalization information for naturalization applications to assist in the verification of an applicant's claim that he or she is relieved from section 312 requirements (English and U.S. History and Government) and to verify legal resident status if needed. It is thus to the applicant's benefit for the Service to make use of information contained in granted legalization files for naturalization purposes. The Service, therefore, will not delete this section.

Section 245a.4(a)(10) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "or his or her immediate family members" The receipt of public cash assistance by immediate family members will not have a bearing on an applicant's eligibility for legalization.

Section 245a.4(b)(4)(v) is amended as a result of the comments received concerning the Service's public cash assistance policy, to bring the provisions of this section in line with the Service's operational guidelines on determining financial responsibility. The Service will

not deny an application for temporary residence as a result of finding an applicant subject to section 212(a)(15) without applying the provisions of § 245a.4(b)(11)(iv)—the application of the Special Rule for determination of public charge.

Section 245a.4(b)(11)(iv)(C) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "and his or her family" For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Section 245a.4(c)(1) is removed to conform to the changes made in § 245a.3(a) (1) and (2) concerning the adjustment of status of temporary residents to permanent residence. This section provided for the application for adjustment from temporary to permanent resident status for the "Extended Voluntary Departure" (EVD) class of temporary resident aliens. The removal of this section allows for the regulations affecting the application process for all other classes of temporary resident aliens to also apply to the EVD class of temporary resident aliens. An EVD temporary resident alien can now also submit an application for adjustment to permanent resident status at anytime after the granting of temporary residence but on or before the end of 30 months from the date the temporary resident application was approved by the Service.

Section 245a.4(c)(2) is redesignated due to the removal of § 245a.4(c)(1).

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information collection requirements contained in this regulation have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

The interim rule published at 53 FR 43986–43997 on October 31, 1988, is adopted as final with the following changes:

Accordingly, Part 245a of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245A—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

1. The authority citation for Part 245a continues to read as follows:

Authority: 8 U.S.C. 1103, 1255a, 1255a note, and 8 CFR 2.1.

2. In § 245a.1, paragraphs (i), (r) and (s) (2), (3), (4), and (5) are revised, ((s) introductory text is republished), and paragraph (v) is added to read as follows:

§ 245a.1 Definitions.

(i) "Public cash assistance" means income or needs-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(r) A qualified designated entity in good-standing with the Service means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989.

Subsequent to January 30, 1989, and throughout the period ending on November 6, 1990, a QDE in good-standing may: (1) Serve as an authorized course provider under § 245a.3(b)(5)(i)(C) of this chapter; (2) Administer the IRCA Test for Permanent Residency (proficiency test), provided an agreement has been entered into with and authorization has been given by INS under § 245a.1(s)(5) of this chapter; and, (3) Certify as true and complete copies of original documents submitted in support of Form I-698 in the format prescribed in § 245a.3(d)(2) of this chapter.

(s) "Satisfactorily pursuing, as used in section 245A(b)(1)(D)(i)(II) of the Act, means:

(2) An applicant presents a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and U.S. history and government); or

(3) An applicant has attended for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. history and government); or

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987 and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by the district director or the Director of the Outreach Program under § 245a.3(b)(5)(i)(D) of this chapter; or

(5) An applicant attests to having completed at least 40 hours of individual study in English and U.S. history and government and passes the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States. Such test may be given by INS, as well as, State Departments of Education (SDEs) (and their accredited educational agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by INS. Those SDEs and QDEs wishing to participate in this effort should write to the Director of the INS Outreach Program at 425 "I" Street, NW., Washington, DC 20536, for further information.

(v) The term "developmentally disabled" means the same as the term "developmental disability" defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987 Pub. L. 100-146. As a convenience to the public, that definition is printed here in its entirety:

The term "developmental disability" means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

3. Section 245a.2 is amended by removing and reserving paragraphs (a)(2)(i) and (c)(5), and; by revising paragraphs (d)(4) introductory text, and (k)(4) to read as follows:

§ 245a.2 Application for temporary residence.

(a)

(2)

(i) [Reserved]

(c)

(5) [Reserved]

(d)

(4) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (d)(3)(i) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the special rule will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(k)

(4) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level, may be admissible under paragraph (k)(2) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

4. Section 245a.3 is revised to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* (1) An alien may submit an application for lawful permanent resident status, with fee, immediately subsequent to the granting of lawful temporary resident status. Any application received prior to the alien's becoming eligible for adjustment to permanent resident status will be administratively processed and held by the INS, but will not be considered filed until the beginning of the nineteenth month after the date the alien was granted temporary resident status as defined in § 245a.2(s) of this chapter. (2) No application shall be denied for failure to timely apply before the end of 30 months from the date of actual approval of the temporary resident application.

(b) *Eligibility.* Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 30 months from the date of actual approval of the termporary resident application. The alien need not be physically present in the United States at the time of application; however, the alien must establish continuous residence in the United States in accordance with the provisions of paragraph (b)(2) of this section and must be physically present in the United States at the time of interview and/or processing for permanent resident status (ADIT processing);

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application, Form I-687 (not the "roll-back" date) and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director or the Director of the Regional Processing Facility that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)A) Can demonstrate that the alien meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the

history and government of the United States); or

(B) Is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4)(i) of this section must be met by each applicant. However, these requirements shall be waived without formal application for persons who, as of the date of application or the date of eligibility for permanent residence under this part, whichever date is later, are:

(A) Under 16 years of age; or

(B) 65 years of age or older; or

(C) Over 50 years of age who have resided in the United States for at least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in Section 245a.2(d)(3) of this chapter; or

(D) Developmentally disabled as defined at § 245a.1(v) of this chapter. Such persons must submit medical evidence concerning their developmental disability; or

(E) Physically unable to comply. The physical disability must be of a nature which renders the applicant unable to acquire the four language skills of speaking, understanding, reading, and writing English in accordance with the criteria and precedence established in OI 312.1(a)(2)(iii) (Interpretations). Such persons must submit medical evidence concerning their physical disability.

(iii) (A) Literacy and basic citizenship skills may be demonstrated for purposes of complying with paragraph (b)(4)(i)(A) of this section by:

(*1*) Speaking and understanding English during the course of the interview for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary literacy level. The test of an applicant's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject matter covered in the revised (1987) Federal Textbooks on Citizenship or other approved training material. The test questions shall be selected from a list of 100 standardized questions developed by the Service. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowledge and understanding; or

(*2*) By passing a standardized section 312 test (effective retroactively as of November 7 1988) such test being given in the English language by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS). The scope of the test is based on the 1987 edition of the Federal Textbooks on Citizenship series written at the elementary literacy level. An applicant may evidence passing of the standardized section 312 test by submitting the approved testing organization's standard notice of passing test results at the time of filing Form I-698, subsequent to filing the application but prior to the interview, or at the time of the interview. The test results may be independently verified by INS, if necessary.

(B) An applicant who fails to pass the English literacy and/or the U.S. history and government tests at the time of the interview, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests, submit evidence of passing an INS approved section 312 standardized examination or submit evidence of fulfillment of any one of the "satisfactorily pursuing" alternatives listed at § 245a.1(s) of this chapter. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements. An applicant whose period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

(iv) To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at § 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" (Form I-699) issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(s) (1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under § 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under § 245a.1(s)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of "Satisfactory Pursuit" may be submitted at the time of filing Form I-698, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A90M number must appear on any such evidence submitted). An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a "Certificate of Satisfactory Pursuit" must occur subsequent to May 1, 1987

(5) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if the course materials for such instruction include textbooks published under the authority of section 346 of the Act, and it is

(i) Sponsored or conducted by: (A) An established public or private institution of learning recognized as such by a qualified state certifying agency; (B) An institution of learning approved to issue Forms I-20 in accordance with § 214.3 of this chapter; (C) A qualified designated entity within the meaning of section 245A(c)(2) of the Act, in good-standing with the Service; or (D) Is certified by the district director in whose jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally.

(ii) A program seeking certification as a course of study recognized by the Attorney General under paragraph (b)(5)(i)(D) of this section shall file Form I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II, with the Director of Outreach for national level programs or with the district director having jurisdiction over the area in which the school or program is located. In the case of local programs, a separate petition must be filed with each district director when a parent organization has schools or programs in more than one INS district. A petition must identify by name and address those schools or programs included in the petition. No fee shall be required to file Form I-803;

(A) The Director of Outreach and the district directors may approve a petition

where they have determined that (1) a need exists for a course of study in addition to those already certified under § 245a.3(b)(5)(i) (A), (B), or (C); and/or (2) of this chapter the petitioner has historically provided educational services in English and U.S. history and government but is not already certified under § 245a.3(b)(5)(i) (A), (B), or (C); and (3) of this chapter the petitioner is otherwise qualified to provide such course of study;

(B) Upon approval of the petition the Director of Outreach and district directors shall issue a Certificate of Attorney General Recognition on Form I-804 to the petitioner. If the petition is denied, the petitioner shall be notified in writing of the decision therefor. No appeal shall lie from a denial of Form I-803, except that in such case where the petitions of a local, cross-district program are approved in one district and denied in another within the same State, the petitioner may request review of the denied petition by the appropriate Regional Commissioner. The Regional Commissioner shall then make a determination in this case;

(C) Each district director shall compile and maintain lists of programs approved under paragraph (b)(5)(i)(D) of this section within his or her jurisdiction. The Director of Outreach shall compile and maintain lists of approved national level programs.

(6) *Notice of participation.* All courses of study recognized under § 245a.3(b)(5)(i)(A) through (C) of this chapter which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation to the district director in whose jurisdiction the program is conducted. Acceptance of "Certificates of Satisfactory Pursuit" (Form I-699) shall be delayed until such time as the course provider submits the Notice of Participation, which notice shall be in the form of a letter typed on the letterhead of the cou2se provider (if available) and include the following:

(i) The name(s) of the school(s)/program(s).

(ii) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(iii) The complete names of persons who are in charge of conducting English and U.S. history and government courses of study.

(iv) A statement that the course of study will issue "Certificates of Satisfactory Pursuit" to temporary resident enrollees according to INS regulations.

(v) A list of designated officials of the recognized course of study authorized to sign "Certificates of Satisfactory Pursuit" and samples of their original signatures.

(vi) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will not be excessive.

(vii) Evidence of recognition under 8 CFR 245a.3(b)(5)(i)(A), (B), or (C) (e.g., certification from a qualified state certifying agency; evidence of INS approval for attendance by nonimmigrant students, such as the school code number, or the INS identification number from the QDE cooperative agreement).

The course provider shall notify the district director, in writing, of any changes to the information contained in the Notice of Participation subsequent to its submission within ten (10) days of such change.

A Certificate of Attorney General Recognition to Provide Course of Study for Legalization (Phase II), Form I-804, shall be issued to course providers who have submitted a Notice of Participation in accordance with the provisions of this section by the distict director. A Notice of Participation deficient in any way shall be returned to the course provider to correct the deficiency. Upon the satisfaction of the district director that the deficiency has been corrected, the course provider shall be issued Form I-804. Each district director shall compile and maintain lists of recognized courses within his or her district.

(7) *Fee structure.* No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in § 245a.3(b)(10) and/or (12) of this section. Once fees are established, any change in fee without prior approval of the district director or the Director of Outreach may justify de-certification. In determining whether or not a fee is excessive, district directors and the Director of Outreach shall consider such factors as the means of instruction, class size, prevailing wages of instructors in the area of the program, and additional costs such as rent, materials, utilities, insurance, and taxes. District directors and the Director of Outreach may also seek the assistance of various Federal, State and local entities as the need arises (e.g., State Departments of Education) to determine the appropriateness of course fees.

(8) The Citizenship textbooks to be used by applicants for lawful permanent residence under section 245A of the Act shall be distributed by the Service to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are also available at certain public institutions.

(9) *Maintenance of Student Records.* Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student, for a period of three years from the student's enrollment, the following information and documents:

(i) Name (as copied exactly from the I-688A or I-688);

(ii) A-number (90 million series);

(iii) Date of enrollment;

(iv) Attendance records;

(v) Assessment records;

(vi) Photocopy of signed "Certificate of Satisfactory Pursuit" issued to the student.

(10) *Issuance of "Certificate of Satisfactory Pursuit" (I-699).* (i) Each recognized course of study shall prepare a standardized certificate that is signed by the designated official. The Certificate shall be issued to an applicant who has attended a recognized course of study for at least 40 hours of a minimum of 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English and U.S. history and government course prescribed. Such standards shall conform with the provisions of § 245a.1(s) of this chapter.

(ii) The district director shall reject a certificate if it is determined that the certificate is fraudulent or was fraudulently issued.

(iii) The district director shall reject a Certificate if it is determined that the course provider is not complying with INS regulations. In the case of non-compliance, the district director will advise the course provider in writing of the specific deficiencies and give the provider thirty (30) days within which to correct such deficiencies.

(iv) District directors will accept Certificates from course providers once it is determined that the deficiencies have been satisfactorily corrected.

(v) Course providers which engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs. INS will not accept Certificates from these providers.

(vi) Certificates may be accepted if a program is cited for deficiencies or decertified at a later date and no fraud was involved.

(vii) Certificates shall not be accepted from a course provider that has been decertified unless the alien enrolled in

and had been issued a certificate prior to the decertification, provided that no fraud was involved.

(viii) The appropriate State agency responsbile for SLIAG funding shall be notified of all decertifications by the district director.

(11) *Designated official.* (i) The designated official is the authorized person from each recognized course of study whose signature appears on all "Certificates of Satisfactory Pursuit" issued by that course;

(ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students;

(iii) (A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must specify a "designated official" Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time;

(B) Each designated official shall have read and otherwise be familiar with the "Requirements and Guidelines for Courses of Study Recognized by the Attorney General" The signature of a designated official shall affirm the official's compliance with INS regulations;

(C) The name, title, and sample signature of each designated official for each recognized course of study shall be on file with the district director in whose jurisdiction the program is conducted.

(12) *Monitoring by INS.* (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5).

(B) Verify the existence of curriculm as defined in § 245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that "Certificates of Satisfactory Pursuit" are being issued in accordance with § 245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with § 245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in compliance in accordance with § 245a.3(b)(7).

(ii) If INS has reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provider is not performing accordance to the standards established in either § 245a.3(b)(10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified. The appropriate State agency shall be notified in accordance with § 245a.3(b)(10)(viii) of this chapter. A copy of the notice of decertification shall be sent to the State agency.

(13) Courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where selection of qualified staff is limited, or where budget constraints restrict options, the following list of qualities for teacher selection is provided as guidance. Teacher selections should include as many of the following qualities as possible:

(i) Specific training in Teaching English to Speakers of Other Languages (TESOL);

(ii) Experience as a classroom teacher with adults;

(iii) Cultural sensitivity and openness;

(iv) Familiarity with compentency-based education;

(v) Knowledge of curriculum and materials adaptation;

(vi) Knowledge of a second language.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors in the United States.

(2) An alien who is inadmissible to the United States as an immigrant, except as provided in § 245a.3(g)(1).

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act has not filed an application for permanent resident status under section 245A(b)(1) of the Act by the end of 30 months from the date of actual approval of the temporary resident application.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(5) An alien whose temporary resident status has been terminated under § 245a.2(u) of this chapter.

(d) *Filing the application.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I-698. The application will be mailed to the designated Regional Processing Facility having jurisdiction over the applicant's residence. Form I-698 must be accompanied by the correct fee and documents specified in the instructions.

(2) *Certification of documents.* The submission of original documents is not required at the time of filing Form I-698. A copy of a document submitted in support of Form I-698 filed pursuant to section 245A(b) of the Act and this part may be accepted, though unaccompanied by the original, if the copy is certified as true and complete by

(i) An attorney in the format prescribed in § 204.2(j)(1) of this chapter; or

(ii) An alien's representative in the format prescribed in § 204.2(j)(2) of this chapter; or

(iii) A qualified designated entity (QDE) in good standing as defined in § 245a.1(r) of this chapter, if the copy bears a certification by the QDE in good-standing, typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: _____
Date: _____
Name: _____
QDE in good-standing representative
Name of QDE in good-standing: _____
Address of QDE in good-standing: _____
INS-QDE Cooperative Agreement Number: _____

(iv) *Authentication.* Certification of documents must be authenticated by an original signature. A facsimile signature on a rubber stamp will not be acceptable.

(v) *Original documents.* Original documents must be presented when requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and complete by such parties and must bear

their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application (I-698) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(4) Applicants who filed for temporary resident status prior to December 1, 1987 are required to submit the results of a serologic test for HIV virus on Form I-693, "Medical Examination of Aliens Seeking Adjustment of Status" completed by a designated civil surgeon, unless the serologic test for HIV was performed and the results were submitted on Form I-693 when the applicant filed for temporary resident status. Applicants who did submit an I-693 reflecting a serologic test for HIV was performed prior to December 1, 1987 must submit evidence of this fact when filing the I-698 application in order to be relieved from the requirement of submitting another I-693. If such evidence is not available, applicants may note on their I-698 application their prior submission of the results of the serologic test for HIV This information shall then be verified at the Regional Processing Facility. Applicants having to submit an I-693 pursuant to this section are not required to have a complete medical examination. All HIV-positive applicants shall be advised that a waiver of the ground of excludability under section 212(a)(6) of the Act is available and shall be provided the opportunity to apply for the waiver. To be eligible for the waiver, the applicant must establish that:

(i) The danger to the public health of the United States created by the alien's admission to the United States is minimal,

(ii) The possibility of the spread of the infection created by the alien's admission to the United States is minimal, and

(iii) There will be no cost incurred by any government agency without prior consent of that agency. Provided these criteria are met, the waiver may be granted only for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest in accordance with § 245a.3(g)(2) of this chapter.

(5) If necessary, the validity of an alien's temporary resident card (I-688) will be extended in increments of one (1) year until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application lacking the proper fee or incomplete in any way shall be returned to the applicant with request for the proper fee, correction, additional information, and/or documentation. Once an application has been accepted by the Service and additional information and/or documentation is required, the applicant shall be sent a notice to submit such information and/or documentation. In such case the application Form I-698 shall be retained at the RPF If a response to this request is not received within 60 days, a second request for correction, additional information, and/or documentation shall be made. If the second request is not complied with by the end of 30 months from the date the application for temporary residence, Form I-687 was approved the application for permanent residence will be adjudicated on the basis of the existing record.

(e) *Interview.* Each applicant regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I-551. Each applicant shall be interviewed by an immigration officer, except that the adjudicative interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 30 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record.

(f) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful permanent resident status under section 245A(b) of the Act.

(g) *Applicability of exclusion grounds.*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (g)(3) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under section 245A(b)(1) of the Act. In the event that the alien was excludable under any provision of section 212(a) of the Act at the time of temporary residency and failed to apply for a waiver in connection with the application for temporary resident status, or becomes excludable subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), and (29) (subversives);

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Determination of "Likely to become a public charge" and Special Rule.* Prior to use of the special rule for determination of public charge, paragraph (g)(4)(iii) of this section, an alien must first be determined to be excludable under section 212(a)(15) of the Act. If the applicant is determined to be "likely to become a public charge, he or she may still be admissible under the terms of the Special Rule.

(i) In determining whether an alien is "likely to become a public charge financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to

become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income, and vocation.

(ii) The Special Rule for determination of public charge, paragraph (g)(4)(iii) of this section, is to be applied only after an initial determination that the alien is inadmissible under the provisions of section 212(a)(15) of the act.

(iii) *Special Rule.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (g)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

(h) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exceed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(i) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. Applications for permanent residence under this chapter will not be denied at local INS offices (districts, suboffices, and legalization offices) until the entire record of proceeding has been reviewed. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. If inconsistencies are found between information submitted with the adjustment application and information previously furnished to the Service, the applicant shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I-694. If an application is denied, work authorization will be granted until a final decision has been rendered on an appeal or until the end of the appeal period if no appeal is filed. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding. An alien whose application is denied will not be required to surrender his or her temporary resident card (I-688) until such time as the appeal period has tolled, or until expiration date of the I-688, whichever date is later. After exhaustion of an appeal, an applicant who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted within his or her eligibility period.

(j) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) the appellate authority designated in § 103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility with the required fee within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility. Briefs filed after submission of the appeal should be mailed directly to the Regional Processing Facility. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(k) *Motions.* The Regional Processing Facility director may reopen and reconsider any adverse decision *sua sponte.* When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(l) *Certifications.* The Regional Processing Facility director or district director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded back to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(m) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of filing of the application for permanent residence or the eligibility date, whichever is later. For purposes of making application to petition for naturalization, the continuous residence requirements for naturalization shall begin as of the date the alien's status is adjusted to that of a person lawfully admitted for permanent residence under this part.

(n) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection

with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof"

(2) No information furnished pursuant to an application for permanent resident status under this section shall be used for any purpose except: (i) To make a determination on the application; or (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (n)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information contained in granted legalization files may be used by the Service at a later date to make a decision (i) On an immigrant visa petition or other status filed by the applicant under section 204(a) of the Act; (ii) On a naturalization application submitted by the applicant; (iii) For the preparation of reports to Congress under section 404 of IRCA, or; (iv) For the furnishing of information, at the discretion of the Attorney General, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of Title 13, Unites States Code.

(o) *Rescission.* Rescission of adjustment of status under 245a shall occur under the guidelines established in section 246 of the Act.

5. Section 245a.4 is amended by revising paragraphs (a)(10), (b)(4)(v) introductory text, (b)(11)(iv)(C), and (c) introductory text to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

(a)

(10) "Public cash assistance" means income or need-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(b)

(4)

(v) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the Special Rule under paragraph (b)(11)(iv)(C) of this section will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

(11)

(iv)

(C) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level may be admissible under this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(c) *Adjustment from temporary to permanent resident status.* The provisions of § 245a.3 of this part shall be applied to aliens adjusting to permanent residence under this part.

Date: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-15790 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

INS Number: 1218-89]

United States History/Government Questions and Answers for Adjustment of Status from Temporary Resident to Permanent Resident

ACTION: Notice.

SUMMARY: This notice provides a listing of the possible questions relating to the history and government of the United States that will be asked during the interview for adjustment of status from temporary to permanent resident in accordance with 8 CFR 245a.3(b)(4)(iii)(A). This notice also provides the answers to these questions to ensure a uniform basis of acceptable responses.

DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202)786-3658.

SUPPLEMENTARY INFORMATION: The scope of testing an alien's knowledge and understanding of the history and form of government of the United States at the time of interview for adjustment to permanent resident status under section 245A of the Immigration and Nationality Act, as added by section 201 of the Immigration Reform and Control Act of 1986 (IRCA), is limited to subject matter covered in the 1987 edition of the Federal Citizenship Text series. The Immigration and Naturalization Service (INS) has developed a list of 100 standardized United States history and government questions derived from the content of these texts written at the elementary literacy level for use in the examination at the time of interview in accordance with the provisions of 8 CFR 245a.3(b)(4)(iii)(A). The following list of 100 standardized United States history and government questions, as well as the answers, and being provided as a service to the public for use as a study/teaching guide.

Questions

1. What are the colors of our flag?
2. How many stars are there in our flag?
3. What color are the stars on our flag?
4. What do the stars on the flag mean?
5. How many stripes are there in the flag?
6. What color are the stripes?
7 What do the stripes on the flag mean?
8. How many states are there in the Union (United States)?
9. What is the 4th of July?
10. What is the date of Independence Day?
11. Independence from whom?
12. What country did we fight during the Revolutionary War?
13. Who was the first President of the United States?
14. Who is the President of the United States today?
15. Who is the Vice-President of the United States today?
16. Who elects the President of the United States?
17 Who becomes President of the United States if the President should die?
18. For how long do we elect the President?
19. What is the Constitution?
20. Can the Constitution be changed?
21. What do we call a change to the Constitution?
22. How many changes or amendments are there to the Constitution?
23. How many branches are there in our government?
24. What are the three branches of our government?
25. What is the legislative branch of our Government?
26. Who makes the laws in the United States?
27 What is Congress?
28. What are the duties of Congress?
29. Who elects Congress?
30. How many senator are there in Congress?
31. Can you name the two senators from your state?
32. For how long do we elect each senator?
33. How many representatives are there in Congress?
34. For how long do we elect the representatives?
35. What is the executive branch of our government?
36. What is the judiciary branch of our government?
37 What are the duties of the Supreme Court?
38. What is the supreme law of the United States?
39. What is the Bill of Rights?
40. What is the capital of your state?
41. Who is the current governor of your state?
42. Who becomes president of the United States if the President and the Vic-President should die?
43. Who is the Chief Justice of the Supreme Court?
44. Can you name the thirteen orignial states?
45. Who said, "Give me liberty or give me death"?
46. Which countries were our principal allies (friends) during World War II?
47 What is the 49th state of the Union (United States)?
48. How many terms can a President serve?
49. Who was Martin Luther King, Jr.?
50. Who is the head of your local government?
51. According to the Constitution, a person must meet certain requirements in order to be eligible to become President. Name one of these requirements.
52. Why are there 100 Senators in the Senate?
53. Who selects the Supreme Court justices?
54. How many Supreme Court justices are there?
55. Why did the Pilgrims come to America?
56. What is the head executive of a state government called?
57 What is the head executive of a city government called?
58. What holiday was celebrated for the first time by the American colonists?
59. Who was the main writer of the Declaration of Independence?
60. When was the Declaration of Independence adopted?
61. What is the basic belief of the Declaration of Indpendence?
62. What is the national anthem of the United States?
63. Who wrote the Star-Spangled Banner?
64. Where does freedom of speech come from?
65. What is the minimum voting age in the United States?
66. Who signs bills into laws?
67 What is the highest court in the United States?
68. Who was President during the Civil War?
69. What did the Emancipation Proclamation do?
70. What special group advises the President?
71. Which President is called the "Father of our country"?
72. What is the 50th state of the Union (United States)?
73. Who helped the Pilgrims in America?
74. What is the name of the ship that brought the Pilgrims to America?
75. What were the 13 original states of the U.S. called?
76. Name 3 rights or freedoms guaranteed by the Bill of Rights?
77 Who has the power to declare war?

78. Name one amendment which guarantees or addresses voting rights?
79. Which President freed the slaves?
80. In what year was the Constitution written?
81. What are the first 10 amendments to the Constitution called?
82. Name one purpose of the United Nations?
83. Where does Congress meet?
84. Whose rights are guaranteed by the Constitution and the Bill of Rights?
85. What is the introduction of the Constitution called?
86. Name one benefit of being a citizens of the United States?
87 What is the most important right granted to U.S. citizens?
88. What is the United States Capitol building?
89. What is the White House?
90. Where is the White House located?
91. What is the name of the President's official home?
92. Name one right guaranteed by the first amendment?
93. Who is the Commander in Chief of the U.S. military?
94. Which President was the first Commander in Chief of the U.S. military?
95. In what month do we vote for the President?
96. In what month is the new President inaugurated?
97 How many times may a Senator be re-elected?
98. How many times may a Congressman be re-elected?
99. What are the 2 major political parties in the U.S. today?
100. How many states are there in the United States?

Answers

1. Red, White, and Blue
2. 50
3. White
4. One for each state in the Union (United States)
5. 13
6. Red and White
7 They represent the original thirteen states
8. 50
9. Indpendence Day
10. July 4th
11. England
12. England
13. George Washington
14. George Bush
15. Dan Quayle
16. The electoral college
17 Vice-President
18. four years
19.The supreme law of the land
20. Yes
21. Amendments
22. 26
23. 3
24. Legislative, Executive, and Judiciary
25. Congress
26. Congress
27 The Senate and The House of Representatives
28. To make laws
29. The people
30. 100
31. (insert local information)
32. 6 years
33. 435
34. 2 years
35. The President, cabined, and departments under the cabinet members.
36. The Supreme Court
37 To interpret laws
38. The Constitution
39. The first 10 amendment of the Constitution
40. (Insert local information)
41. (insert local information)
42. Speaker of the House of Represntatives
43. William Rehnquist
44. Connecticut, New Hampshire, New York, New Jersey, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, Rhode Island, and Maryland
45. Patrick Henry
46. United Kingdom, Canada, Australia, New Zealand, France, Russia (U.S.S.R.)
47 Alaska
48. 2
49. A civil rights leader
50. (Insert local information)
51. Must be a natural born citizen of the United States; Must be at least 35 years old by the time he/she will serve; Must have lived in the United States for at least 14 years
52. Two (2) from each state
53. Appointed by the President
54. Nine (9)
55. For religious freedom
56. Governor
57 Mayor
58. Thanksgiving
59. Thomas Jefferson
60. July 4, 1776
61. That all men are created equal
62. The Star-Spangled Banner
63. Francis Scott Key
64. The Bill of Rights
65. Eighteen (18)
66. The President
67 The Supreme Court
68. Abraham Lincoln
69. Freed many slaves
70. The Cabinet
71. George Washington
72. Hawaii
73. The American Indians (Native Americans)
74. The Mayflower
75. Colonies
76. 1. The right of freedom of speech, press, religion, peaceable assembly and requesting change of government.
2. The right to bear arms (the right to have weapons or own a gun, though subject to certain regulations).
3. The government may not quarter, or house, soldiers in people's homes during peacetime without the people's consent.
4. The government may not search or take a person's property without a warrant.
5. A person may not be tried twice for the same crime and does not have to testify against him/herself.
6. A person charged with a crime still has some rights, such as the right to a trial and to have a lawyer.
7 The right to trial by jury in most cases.
8. Protects people against excessive or unreasonable fines or crucial and unusual punishment.
9. The people have rights other than those mentioned in the Constitution.
10. Any power not given to the federal government by the Constitution is a power of either the state or the people.
77 The Congress
78. 15th, 19th, 24th, 26th
79. Abraham Lincoln
80. 1787
81. The Bill of Rights
82. For countries to discuss and try to resolve world problems; to provide economic aid to many countries.
83. In the Capitol in Washington, DC
84. Everyone (citizens and non-citizens living in the U.S.)
85. The Preamble
86. Obtain federal government jobs; travel with a U.S. passport; petition for close relatives to come to the U.S. to live
87 The right to vote
88. The place where Congress meets
89. The President's official home
90. Washington, DC (1600 Pennsylvania Avenue, NW.)
91. The White House
92. Freedom of: speech, press, religion, peaceably assembly and, requesting change of the government
93. The President
94. George Washington
95. November
96. January
97 There is no limit
98. There is no limit
99. Democratic and Republican
100. Fifty (50)

Date: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Nationality Service.

[FR Doc. 89-15791 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M

federal register

Wednesday
July 12, 1989

Part III

Environmental Protection Agency

40 CFR Part 763

Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036G; FRL-3476-2]

Asbestos; Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule under section 6 of the Toxic Substances Control Act (TSCA) to prohibit, at staged intervals, the future manufacture, importation, processing, and distribution in commerce of asbestos in almost all products, as identified in the rule. EPA is issuing this rule to reduce the unreasonable risks presented to human health by exposure to asbestos during activities involving these products. The rule requires that asbestos-containing products that are subject to the bans be labeled to promote compliance with and enforcement of the rule. The rule provides that exemptions from the rule's bans on manufacture, importation, processing, and distribution in commerce may be granted by EPA in very limited circumstances.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on July 26, 1989. The effective date of this rule is August 25, 1989, except for the information collection requirements of 40 CFR 763.173, 763.178, and 763.179. These information collection requirements have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will issue a notice in the future establishing an effective date for the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, Telephone: (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: The preamble accompanying this final rule is divided into the following Units:

I. Authority
II. TSCA Actions to Date
III. Provisions of the Rule
A. General Provisions
B. Manufacture, Importation, and Processing Bans
C. Bans on Distribution in Commerce
D. Labeling
E. Exemption Application Procedures
F Military Exemptions
G. Recordkeeping
IV Summary of Analysis Supporting this Final Rule
V. Regulatory Assessment
A. Health Effects and Magnitude of Exposure to Asbestos
B. Environmental Effects
C. Asbestos Substitutes
D. Economic Effects of the Rule
E. Other Options Considered
F Summary of Individual Product Categories
VI. Other EPA Statutes
VII. Analysis under Section 9(a) of TSCA
A. Other Authorities Affecting Asbestos
B. EPA's Determination Under Section 9(a) of TSCA
VIII. Enforcement
IX. Confidentiality
X. Rulemaking Record
XI. References
XII. Regulatory Assessment Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

This rule prohibits the manufacture, import, processing, and distribution in commerce of certain asbestos-containing products. The rule also requires that asbestos-containing products that are subject to this rule be labeled to facilitate compliance with and enforcement of the rule.

Public reporting burden for this collection of information is estimated to average less than 2 hours annually per firm over the 3-year period reviewed for the analysis of regulatory burden. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate of annual burden is a relatively low figure because of the small number of firms affected by the regulatory actions taken during the period reviewed for the analysis of regulatory burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for EPA.

I. Authority

Section 6(a) of TSCA authorizes EPA to impose certain regulatory requirements on activities involving a chemical substance or mixture if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to human health or the environment. Section 6(a)(1) authorizes EPA to prohibit or limit the manufacture, processing, or distribution in commerce of substances or mixtures if EPA finds that these activities pose an unreasonable risk. Section 6(a)(2) authorizes EPA to prohibit or limit such activities for a particular use of such substances or mixtures. Section 6(a)(3) authorizes EPA to require labels for such substances or mixtures. Sections 6 and 8(a) authorize EPA to require the maintenance of records related to enforcement of EPA actions under section 6. These sections of TSCA provide EPA the authority to issue this rule.

II. TSCA Actions to Date

EPA issued an Advance Notice of Proposed Rulemaking in the **Federal Register** of October 17 1979 (44 FR 60061), announcing its intent to explore the use of section 6 of TSCA to reduce the risk to human health posed by exposure to asbestos. EPA then issued a reporting rule under section 8(a) of TSCA in the **Federal Register** of July 30, 1982 (47 FR 33207 40 CFR 763.60), to collect information on industrial and commercial uses of asbestos. Information collected under that rule, as well as analyses developed by EPA and other organizations, were evaluated and used to support a proposed rule, published in the **Federal Register** of January 29, 1986 (51 FR 3738).

In the proposed rule EPA found that exposure to asbestos poses an unreasonable risk to human health and discussed regulatory options for prohibiting or restricting the mining and importation of bulk asbestos and the manufacturing, importation, and processing of asbestos-containing products as means of reducing the risk. The following options were discussed in the proposed rule:

1. Two options involving bans of some products soon after promulgation of the final rule and a phase out of others over 10 years by means of a permit system for asbestos use.

2. A 2-stage ban, with the first ban, on asbestos construction products and clothing, to begin soon after promulgation of the final rule and the second ban, on friction products, to begin in 5 years, and after promulgation of the final rule, the collection of additional data on other products.

3. A 3-stage ban on all asbestos products to begin soon after the

promulgation of the final rule, and 5 years and 10 years after promulgation.

Requiring labeling of asbestos-containing products was also discussed. EPA received over 200 comments in response to the proposed rule.

Prior to issuing the proposal, EPA received and granted two TSCA section 21 petitions (15 U.S.C. 2620). Under section 21 of TSCA, a person may petition EPA to initiate a proceeding for the issuance of a rule under various sections of TSCA. One petition requested the prohibition of the future use of asbestos in asbestos-cement pipe; this petition was granted in the **Federal Register** of October 18, 1979 (44 FR 60155). The other petition requested the prohibition of the future use of asbestos in motor vehicle brakes; this petition was granted in the **Federal Register** of December 18, 1984 (49 FR 49311). In granting these peititions, EPA stated that it would, as part of the rulemaking proceeding and the final rule, consider including prohibitions of the future use of asbestos in asbestos-cement pipe and in motor vehicle brakes. Both uses are prohibited by this final rule.

Pursuant to section 6(c)(2) of TSCA, EPA also provided interested parties opportunities to participate in a legislative hearing on the proposed rule in July 1986, and in extensive cross-examination of EPA personnel and contractors on factual issues relating to the rule in October 1986.

Since the end of cross-examination in October 1986, EPA has updated the data collections and regulatory analyses used to support the findings on which this rule is based. EPA believes that adequate data and analyses existed in the rulemaking record for the proposal to support the options discussed therein. The data collections and analyses were updated due to the passage of time since the publication of the proposal and in response to specific public comments that the data base supporting the proposed rule, gathered largely in 1982, was outdated.

EPA has gathered updated data relating to: (1) Asbestos consumption, (2) manufacturing, import, and processing volumes of asbestos-containing products, (3) trends in the development of non-asbestos substitutes, (4) costs of capital conversion to the production of non-asbestos products, (5) production, processing, use, and disposal practices for asbestos-containing products, and (6) occupational and non-occupational release and exposure from the manufacture, processing, installation, use, repair, removal, and disposal of asbestos-containing products. These data were derived from, among other sources, the 1987 EPA Asbestos Exposure survey, the 1987 EPA Asbestos Market survey, and 1987 Occupational Health and Safety Administration (OSHA) compliance data. EPA has also modified and updated its Asbestos Regulatory Cost Model (ARCM), Health Benefits Model, and asbestos exposure models which were used to evaluate the costs and benefits of various regulatory options. Additionally, EPA has furthered its analysis of the availability and possible hazards posed by asbestos substitutes.

These updated data and analyses were reflected in documents released for public comment in notices published in the **Federal Register** of April 1, 1988 (53 FR 10546), and May 4, 1988 (53 FR 15857). EPA received over 40 public comments in response to these notices. In addition, EPA allowed further cross-examination of EPA personnel and contractors on factual issues related to the updated analytical data base in September 1988. The materials released for public comment contain the technical basis for the actions taken in this final rule. EPA afforded the opportunity for public comment on the updated documents and for further cross-examination as an exercise of its discretion and as a means of ensuring that any remaining disputed issues of material fact in the updated data and analyses could be identified and resolved before promulgation of this final rule. EPA has reviewed the comments received and the testimony elicited and has updated the record accordingly.

Pursuant to its procedural rules at 40 CFR 750.4(b), EPA also announced to interested parties in the **Federal Register** of September 16, 1988 (53 FR 36227), the opportunity to provide EPA with reply comments relating to the rulemaking proceeding. EPA received reply comments from three commenters.

The record which serves as the basis for the actions taken in this rule consists of over 45,000 pages of analyses, comments, testimony, correspondence, and other materials. The record for this rule also incorporates by reference the extensive record developed by OSHA in its rulemaking to lower its Permissible Exposure Level (PEL) for asbestos, published in the **Federal Register** of June 20, 1986 (51 FR 22612). EPA has fully considered these materials in developing this final rule. In addition, all significant testimony or public comments made on the proposed rule, in conjunction with the legislative hearing, cross-examination hearing, or reply comments, or in response to the materials announced in the April and May 1988 **Federal Register** notices, cited above, were considered in the development of the final rule. EPA's responses to all significant comments are found either in this preamble or in a separate Response to Comments document that is available in the Public Docket (Ref. 40).

Based on the numerous detailed analyses performed by EPA in support of this rule and after careful consideration of the extensive public comments received, EPA has concluded that the continued commercial manufacture, import, processing, and distribution in commerce of the products identified in this rule poses an unreasonable risk of injury to human health under section 6 of TSCA.

III. Provisions of the Rule

A. General Provisions

Consistent with an option described in the proposal, this rule imposes a 3-stage ban on the manufacture, importation, processing, and distribution in commerce of various asbestos-containing products. The rule also contains a requirement that products subject to a manufacture, importation, and processing ban, but not yet subject to a ban on distribution in commerce, be labeled in the manner described at § 763.171. In addition, the rule includes procedures for requesting an exemption from the rule's provisions.

The effective dates of the various bans are as follows (with exceptions as noted in Unit III.B of this preamble for some asbestos friction products):

Manufacture, Import, and Processing Ban:
- Stage 1—August 27 1990
- Stage 2—August 25, 1993
- Stage 3—August 26, 1996

Distribution in Commerce Ban:
- Stage 1—August 25, 1992
- Stage 2—August 25, 1994
- Stage 3—August 25, 1997

B. Manufacture, Importation, and Processing Bans

As of the dates indicated below, the manufacture, importation, and processing of all asbestos-containing products within the categories listed must cease as follows for each stage:

Stage 1: Manufacture, importation, and processing of the following products must cease by August 27 1990:

Flooring Felt
Roofing Felt
Pipeline Wrap
Asbestos/Cement (A/C) Flat Sheet
A/C Corrugated Sheet
Vinyl/Asbestos Floor Tile
Asbestos Clothing

Stage 2: Manufacture, importation, and processing of the following products must cease by August 25, 1993:

Beater-Add Gaskets (except specialty industrial gaskets)
Sheet Gaskets (except specialty industrial gaskets)
Clutch Facings
Automatic Transmission Components
Commercial and Industrial Friction Products
Drum Brake Linings [Original Equipment Market (OEM)] [1]
Disc Brake Pads for Light- and Medium-weight Vehicles (LMV) (OEM) [1]

State 3: Manufacture, importation, and processing of the following products must cease by August 26, 1996:

A/C Pipe
Commercial Paper
Corrugated Paper
Rollboard
Millboard
A/C Shingle
Specialty Paper
Roof Coatings
Non-Roof Coatings
Brake Blocks
Drum Brake Linings [Aftermarket (AM)]
Disc Brake Pads, LMV (AM)
Disc Brake Pads, HV (AM)

In addition, any new asbestos-containing products for which commercial manufacture, importation, or processing is initiated after the effective date of this rule will be banned as of the effective date of Stage 1, unless EPA approves the use or product pursuant to an exemption application. In other words, if a person devises a new application for asbestos that is not covered by the product categories defined in this rule, and the person wishes to commence commercial manufacture, importation, and processing of the product after August 25, 1989, manufacture, importation, and processing of the product must cease by August 27 1990, and distribution in commerce of the product must cease by August 25, 1992. These bans on manufacture, importation, processing, and distribution in commerce may be avoided only if a person applies to EPA for an exemption from the bans and the application is granted.

[1] These bans affect products used as original equipment in vehicles introduced in the 1994 model year. For example, if new model year products are introduced annually by a producer in October, asbestos brake products may be used in vehicles made by that producer before the introduction of model year 1994 vehicles in October 1993, but not thereafter. In addition, products manufactured, imported, or marketed for use as aftermarket replacement parts for brake systems designed to use non-asbestos brake pads and drums are banned from manufacture, importation, and processing as of August 25, 1993.

Pursuant to section 12(a)(2), EPA finds that the manufacture or processing for export of the asbestos-containing products that are subject to this rule will present an unreasonable risk of injury to human health. Therefore, the manufacture and processing of the asbestos-containing products for export is not exempted from this rule under section 12(a)(1), and is subject to this rule's bans on manufacture, processing, and distribution in commerce bans. Much of the life cycle and a significant portion of risk posed by export products occurs in the United States. The most significant source of exposure that could be quantified by EPA for this rule is primary and secondary manufacturing. During primary manufacture asbestos fibers are introduced into the production process. During secondary manufacture, an asbestos fiber-containing component is used. EPA has concluded that these activities cause significant occupational and non-occupational exposures to workers and their families, populations surrounding plant sites, and the general population. In light of the high individual risk caused by exposure to asbestos, EPA has concluded that exposures due to manufacturing or processing of these asbestos-containing products for export pose an unreasonable risk of injury to human health in the United States.

EPA has not found that asbestos-containing products imported into the United States for the sole purpose of shipment to another country pose an unreasonable risk. Therefore, such activities are not subject to this rule's bans. However, for the reasons described above, imported products that are repackaged or otherwise processed in the United States before shipment to another country are subject to the rule's bans.

The proposal would have exempted the import of small quantities of otherwise banned asbestos-containing products for personal use from the rule's bans. EPA received comments indicating that many new automobiles are imported by individuals. However, EPA is uncertain about the extent of any risk reduction that would be achieved by a ban on these activities. Therefore, the final rule's ban on importation excludes the act of bringing small quantities of articles into the United States for normal personal or business activities (not including distribution of asbestos-containing products in commerce) involving the use of a banned product either alone or as a component or part of a larger object. Similarly, the definition of import excludes activities such as the movement of automobiles with asbestos-containing products as integral parts of the auto, back and forth across the United States border during the normal course of personal or business activities. The final rule bans the import of products that are purchased or otherwise acquired outside of the United States for the sole purpose of resale.

For example, after the effective date of the ban on OEM brake pads, a 1994 or later model year automobile containing banned asbestos-containing parts cannot be purchased in Canada or another country and be transported by a person to the United States for resale. However, the rule does not ban the import by a person of such a vehicle for personal use in the United States. For purposes of enforcing this provision, EPA will consider a vehicle to be imported for personal use if the person importing the vehicle imports no more than one vehicle containing banned products every 5 years. If a person imports a vehicle more frequently, EPA will presume that the activity is subject to the rule's bans. Other activities that are excluded from the definition of import include driving across the U.S. border in a 1994 or later model year automobile containing banned products during the course of transacting business or for recreational purposes, or purchasing a used (i.e., pre-1994 model year) vehicle containing asbestos brakes in another country and transporting it into the United States.

C. Bans on Distribution in Commerce

Available evidence shows that the release of asbestos fibers occurs not only in the manufacture and processing of asbestos products, but also in their use and maintenance. EPA proposed to ban activities involving asbestos products because of this life cycle risk. The proposed ban also implicitly would have prohibited the eventual distribution of these products in commerce because persons would not be permitted to manufacture, import, or process asbestos products.

Consistent with the intent of the proposal, this final rule explicitly prohibits the distribution in commerce of asbestos products within the specified timeframe after manufacture, importation, and processing bans for the products become effective. The time periods for distribution in commerce were established to afford affected parties sufficient time to sell existing stocks and therefore limit the likely economic impact of the ban. This was done after balancing the likely risks presented by continued use of asbestos products with the economic impact of an outright ban on this activity.

As stated above, this rule bans the distribution in commerce of asbestos

products after manufacture, importation, and processing bans for the products become effective. The ban on distribution in commerce for products subject to the Stage 1 manufacture, importation, and processing ban will become effective on August 25, 1992. For Stage 2 products, the ban on distribution in commerce will become effective on August 25, 1994. For Stage 3 products, the ban on distribution in commerce will become effective on August 25, 1997

Remaining "stock-on-hand" of an affected product must be disposed of within 6 months of the effective date of the ban on distribution in commerce. Remaining stocks include all units of the product in the possession or control of the person subject to the distribution in commerce ban. Disposal must be by means that are in compliance with applicable local, State, and Federal restrictions.

The rule's distribution in commerce ban does not cover all actions taken with respect to asbestos-containing products. For purposes of the rule, the term "distribution in commerce" does not cover end use activities, for example, sale, resale, holding, or delivery, with respect to asbestos products by persons who use the product after it is manufactured, imported, or processed. For example, the term "distribution in commerce" does not include the resale of homes or motor vehicles that contain asbestos-containing parts or products or the installation of asbestos-containing brake pads in a person's automobile after the distribution in commerce of such brake pads is banned. (However, it is a violation of this rule for a person to engage in selling brake pads to anyone.) This provision also does not cover the disposal of asbestos-containing products.

EPA recognizes that some asbestos-containing products which are excluded from the ban may be very similar in form to asbestos-containing products that are banned. For example, this rule's bans do not cover the manufacture, importation, processing, and distribution in commerce of high-grade electrical paper, a product which may be similar in some cases to millboard or other asbestos paper products. Persons might try to manufacture or distribute the excluded products for uses that are banned. Such activities would violate this rule's bans because this conversion of use will be interpreted by EPA to be processing or distribution in commerce of the banned products. The definitions of processing and distribution in commerce are broad and will be interpreted by EPA to cover activities which involve the conversion of excluded asbestos-containing products in this manner.

D. Labeling

Products that are subject to a current or future ban on manufacturing, processing, import, or distribution in commerce must be labeled as follows:

Notice—This product contains *ASBESTOS*. The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert the effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are *violations of Federal law*.

The purpose of this labeling requirement is to facilitate efforts by manufacturers, importers, processors, and distributors to comply with this rule's bans and EPA's efforts to enforce the rule.

Labels must be applied by manufacturers, importers, and processors to specified products produced after the dates listed below, and to all stock-on-hand of these products in their possession or control at that time. The effective dates of the labeling requirement are as follows:

Products	Date by which products must be labeled
Products banned in Stage 1	Aug. 27, 1990
Products banned in Stage 2, plus aftermarket disc and drum brake products.	Aug. 25, 1992
All other products banned in Stage 3.	Aug. 25, 1995

Therefore, a manufacturer, importer, or processor of a product banned in Stage 2 must label all stock-on-hand of the product as of August 25, 1992, as well as any further stock of that product manufactured, imported, or processed after that date. Products must be labeled at the times indicated to ensure that a substantial portion of the stock in the chain of distribution after the effective date of the manufacture, importation, or processing bans are labeled to facilitate enforcement and compliance efforts. Asbestos-containing brake pads, drum brake linings, and brake blocks must be labeled earlier than other products because of the relatively long potential shelf life of brake products and to facilitate compliance with the two-part ban of asbestos friction products.

For purposes of this labeling requirement, "stock-on-hand" means all units of the product in the possession or control of the manufacturer, importer, or processor. This includes products stored by a separate commercial entity, but still within the direction or control of the manufacturer, importer, or processor.

Manufacturers, importers, and processors must insert in the label they apply to their products the effective date of the ban on distribution in commerce for that product. Labels must be displayed prominently on product packaging, as described below. Labels must be either printed on product packaging or in the form of either a sticker or tag made of plastic, paper, metal, or another durable material and securely adhered or attached to product packaging. Labels must be securely attached so that they cannot be removed without being defaced or destroyed. They must be written in English in block letters and numerals. Text in other languages is permitted in addition to the English language text. The color of the text must contract with the background of the label. Labels must be applied in a visible location on the exterior of the immediate packaging in which a product is distributed in commerce. However, if the product packaging has no visible surfaces larger than 5 square inches, the person subject to the labeling requirement must either securely attach a tag containing the required language to the product packaging or must label the next outer container in which the smaller wrapped products are packed for storage, transport, or distribution. Labels must be applied directly onto products which are stored, shipped, or distributed in commerce without packaging or wrapping. However, if a product is otherwise properly labeled and is removed from the properly labeled packaging only when distributed to the end user, the product does not need to also be labeled directly.

Compliance with the labeling requirements of this rule does not fulfill labeling requirements established under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261).

E. Exemption Application Procedures

EPA believes that exemptions from the rule's bans on future manufacture, importation, processing, and distribution in commerce will fall into two different categories, those involving existing asbestos-containing products or existing uses of asbestos in products and those involving new uses of asbestos in products or new asbestos products. This rule provides two approaches to obtaining an exemption from these bans.

EPA has already determined that activities involving most asbestos-containing products present unreasonable risks of injury to human health. Therefore, procedures in the final rule for evaluating exemption

applications involving manufacture, importation, processing, and distribution in commerce of asbestos-containing products in categories identified in this rule or uses of asbestos in these products place the burden upon the applicant to show that he or she has made demonstrable good faith efforts to develop substitutes for its product and that granting the exemption will not result in an unreasonable risk of injury to human health.

EPA is uncertain about the facts and circumstances that will attend any potential exemption involving new asbestos-containing products or new uses of asbestos. In view of this uncertainty about these products or uses, EPA believes that it is appropriate to employ a different process for reviewing exemptions for new asbestos products or uses. Thus, requests for exemption for new products or uses will be treated as a petition to amend this rule pursuant to section 21 of TSCA. Such petitions should comply with the procedures of section 21 and contain, at a minimum, the type of information set forth in this final rule for exemption applications.

The remainder of this Unit discusses general exemption procedures for applications involving products identified in the rule. Exemptions for military uses are discussed in Unit III.F of this preamble.

1. *Information requirements.* This provision allows that EPA will exempt products from the rule's bans if an applicant can show that the activity described in the application will not result in an unreasonable risk of injury to human health and that the applicant has made demonstrable good faith efforts to develop substitutes that do not pose an unreasonable risk. EPA will balance the various information received in an exemption application in determining whether the applicant has met the criteria for granting an exemption. Applicants for exemptions must submit to EPA data or discussions addressing each of the following issues regarding their product:

a. Data demonstrating the exposure level over the life cycle of the product that is the subject of the application.

b. Data concerning:

i. The extent to which non-asbestos substitutes for the product that is the subject of the application fall significantly short in performance under necessary product standards or requirements, including laws or ordinances mandating product safety standards.

ii. The costs of non-asbestos substitutes relative to the costs of the asbestos-containing product and, in the case in which the product is a component of another product, the effect on the cost of the end use product of using the substitute component.

iii. The extent to which the product or use serves a high-valued use.

c. Evidence of demonstrable good faith attempts by the applicant to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use that is the subject of the application.

d. An explanation of why the continued manufacture, importation, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

Exemption applications which do not contain these items of information and the other information required under § 763.173(d) will be considered incomplete and will be returned to the applicant without further action by EPA. Exemption applications that are returned as incomplete can be resubmitted with the additional required information. The resubmitted application will carry the resubmittal date as the date of receipt.

2. *Procedures for submitting exemption applications.* Exemption applications cannot be submitted for products subject to the following bans before the dates indicated, as follows:

Manufacture, Importation, and Processing

Stage 1—August 25, 1989
Stage 2—February 26, 1992
Stage 3—February 27 1995

Distribution in Commerce

Stage 1—February 26, 1990
Stage 2—February 26, 1993
Stage 3—February 26, 1996

EPA believes that, because of the rapid development of asbestos substitutes, decisions on exemption applications made before these dates would be premature. However, EPA will consider, if appropriate, arguments made for an exemption from a ban on distribution in commerce for a product at the time and applicant submits an application for an exemption from a manufacture, importation, or processing ban.

Exemption applications must be addressed to: TSCA Document Processing Center (TS-790), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street SW Washington, DC 20460, ATTN: Asbestos Exemption.

3. *EPA review and decision.* EPA's review periods for exemption applications for existing products will vary, depending on the timeliness of their submission and the adequacy of the data that is submitted. If a complete exemption application is submitted more than 1 year before the effective date of the applicable ban (or 9 months before the effective date of the ban in the case of Stage 1 manufacture, importation, and processing bans), EPA will complete its review of the application and issue its decision prior to the effective date of the ban. If EPA fails to meet this deadline, the applicant will be granted an automatic extension of up to 1 year, or until EPA decides whether to approve the application, during which the applicant can continue the activity that is the subject of the application. EPA will render its decision during the extension period.

For example, if a ban becomes effective on September 1, 1994, an exemption application for a product subject to that ban cannot be submitted to EPA before March 1, 1993. To ensure a decision by EPA on an application before the ban's effective date, the applicant must submit the application to EPA before September 1, 1993.

If an exemption application is submitted less than 1 year before the effective date of the applicable ban or after the ban, EPA will issue a decision as soon as is feasible. The submitter of this "late" application must cease the banned activity as of the effective date of the ban unless EPA grants the exemption.

For example, if a manufacture or importation ban becomes effective on September 1, 1994, and an application for a product subject to the ban is received by EPA on April 1, 1994, EPA will render its decision on the application as soon as is feasible. If EPA has not rendered a decision granting the exemption by September 1, 1994, the applicant must cease manufacture or importation of the product.

If EPA denies an exemption application before the effective date of a ban, the applicant must cease the activity as of the effective date of the ban, or within 30 days after receipt of the denial if it is issued less than 30 days before the effective date of the ban. If a denial is rendered during an extension period, the applicant must cease the banned activity within 30 days after the issuance of the denial.

For example, if the effective date of a ban is November 1, 1994, and EPA renders a denial on June 1, 1994, the activity must cease by November 1, 1994. If the effective date of the ban is July 1, 1994, and EPA renders a denial on June 15, 1994, the activity must cease by July 15, 1994. Further, if an extension period runs until December 1, 1994, and

EPA issues a denial on June 1, 1994, the activity must cease by July 1, 1994.

The time frames discussed in the preceding paragraphs for EPA's review of exemption applications do not apply to applications pertaining to new uses of asbestos. Applications for new uses will be subject to the deadlines for EPA review and decision specified in section 21 of TSCA.

Upon receipt of a complete exemption application, EPA will issue a notice in the **Federal Register** announcing receipt of the application and inviting comments. EPA will consider any comments received in determining whether to grant or deny the application. EPA may request further information from the applicant to assist in determining whether the exemption application meets the rule's criteria.

When denying an application, EPA will send the applicant a copy of the denial via registered mail. This written denial is a final Agency action for purposes of judicial review.

If EPA proposes to grant an application, EPA will issue a notice in the **Federal Register** requesting comments on its proposal or the submission of supplementary information. EPA will consider any comments received when preparing its final decision. A final grant of an exemption application will be issued by **Federal Register** notice and, likewise, is a final Agency decision for purposes of judicial review. The notice will state the length of the exemption period granted by EPA. In addition, if an application is approved, EPA may notify the applicant that the labeling requirements of § 763.171 have been stayed until a later date indicated by EPA or otherwise modified in the exemption application approval.

Exemption renewal applications cannot be submitted earlier than 15 months before the end of the exemption period, unless so allowed in the notice granting the original exemption. Notices received between 15 months and 1 year before the end of the exemption period will be granted or denied before the end of the exemption period. Renewal applications received thereafter will be granted or denied by EPA as soon as is feasible. The activity that is the subject of the renewal application may not continue beyond the original exemption period unless EPA grants the renewal.

4. *Factors considered in evaluating exemption applications.* EPA has concluded that the future manufacture, importation, processing, and distribution in commerce of most asbestos-containing products results in an unreasonable risk of injury to human health. The rule seeks the elimination of these risks by banning the future use of asbestos in many products in U.S. commerce. Therefore, exemptions will be granted by EPA only in those instances where a clear showing is made by an applicant that the activity described in the exemption application meets the criteria set out in this preamble and rule. The criteria require the applicant to demonstrate that the activity described in the application will not result in an unreasonable risk of injury to human health and that the applicant has made demonstrable good faith efforts to develop substitutes that do not pose an unreasonable risk. EPA believes that these criteria are consistent with the findings in this rule, yet provide applicants an opportunity to demonstrate that they are entitled to an exemption in certain non-routine circumstances.

EPA's evaluation of exemption applications will involve a balancing of a number of factors which go into determining whether the exemption criteria have been met. These factors include the availability of suitable substitutes and the feasibility of substituting for asbestos in the product, asbestos exposure risks posed by the continued use of the asbestos product, whether the asbestos use is a high-valued use, and the efforts of the applicant to develop substitutes. EPA will grant an exemption only after carefully balancing all the factors presented in an application. The paragraphs that follow provide guidelines which EPA will follow in applying the above-stated exemption criteria in making decisions on exemption applications.

Generally, EPA does not intend to grant exemptions to applicants who are merely seeking to avoid their share of the costs imposed by the actions taken in this rule. Also, EPA does not intend to grant exemptions that would indefinitely extend the use of asbestos in products.

EPA has concluded that exposure to asbestos during the life cycles of the products that are subject to this rule poses an unreasonable risk of injury to human health. Therefore, EPA does not intend to grant exemption applications that are based solely on the rationale that relatively low levels of exposure exist, because exposure levels may be only one of several factors balanced in detemining whether the use described in an exemption application would pose an unreasonable risk. EPA has also found that suitable non-asbestos substitutes exist for most uses of asbestos. Therefore, if a non-asbestos substitute exists for a product and is in use by one or more of the producers in the market for the product, EPA does not intend to grant an exemption to one producer based on the cost or difficulty of modifying its production process or of setting up a supply system for obtaining the substitute. EPA has, in establishing the effective dates for the bans, afforded sufficient time to allow producers and distributors to develop and implement transition plans. Therefore, EPA does not intend to grant an exemption because an applicant has yet to purchase the necessary equipment, to set up systems of supply for substitutes, or to make other transition plans.

Also, EPA does not intend to grant or renew an exemption if the applicant has failed to make a tangible, documented effort to identify, develop, and use suitable non-asbestos substitutes for the product which is the subject of the exemption application.

In addition, EPA does not intend to grant an exemption merely because using a substitute is somewhat more costly in the production of a product than using asbestos. However, EPA may grant an exemption for an existing asbestos product if, in addition to other factors, a non-asbestos substitute for the product has not been developed or adapted, despite the best efforts of the requestor, or if available substitutes are unreasonably expensive to purchasers.

F Military Exemptions

EPA and the Department of Defense will develop a Memorandum of Understanding establishing mechanisms for dealing with asbestos-containing products used for military purposes. Along with the criteria for consideration of general exemptions described in the preceding Unit, consideration will be given to the military nature of such uses and the mission of the Department of Defense. EPA and the Department of Defense will jointly develop procedures for exemptions from this rule for asbestos-containing products used for military purposes.

G. Recordkeeping

To ensure compliance with this rule, and to assist enforcement efforts, EPA is requiring under the authority of sections 6 and 8 of TSCA that all manufacturers, importers, and processors of certain asbestos-containing products keep records. Section 8(a) provides broad authority for EPA to require manufacturers, importers, and processors to keep records. Section 8(a) exempts small businesses from reporting in certain cases. However, EPA may require manufacturers, importers, and processors of a substance subject to a rule under section 6 of TSCA to maintain records. Since asbestos is

already subject to rules under section 6 and is also subject to this one, the small business exemption of section 8(a) would not apply. EPA believes that these recordkeeping requirements represent very little burden and are necessary for the enforcement of this rule.

EPA also has authority under section 6 to require recordkeeping and reporting related to the other regulatory requirements imposed by EPA under section 6. In this case, section 6 provides the authority to apply the recordkeeping requirements to distributors of asbestos-containing products who are not also manufacturers, importers, or processors of these products subject to section 8(a). EPA has used this section 6 recordkeeping and reporting authority previously in its polychlorinated biphenyl and asbestos rules promulgated under TSCA section 6 in 40 CFR Parts 761 and 763.

1. *Inventory.* As of the effective date of a ban on manufacture, importation, or processing, all manufacturers, importers, and processors of products subject to the ban must take an inventory of their stock-on-hand of the banned products. This inventory must consist of a count of the number of product units in stock, in terms of the unit measure or form in which the product is used or sold, and the location of current stock. "Stock-on-hand" covers all stock owned or controlled by the manufacturer, importer, or processor. This includes stock in a storage location owned by the person, as well as stock in storage locations owned by others if the stock remains within the direction or control of the person. Results of this inventory must be retained by the manufacturer, importer, or processor for 3 years after the effective date of the ban. The purpose of this inventory is to serve as a baseline for EPA's enforcement of the rule's bans on manufacture, importation, processing, and distribution in commerce. Inventory results will be compared by EPA inspectors with the business records maintained under § 763.178(b)(1) to determine compliance with this rule.

2. *Records.* Manufacturers, importers, and processors must maintain a copy of all labels used in compliance with § 763.171 for 3 years after the effective date of the ban on distribution in commerce to which the label applies. For example, if the label is required for a product banned from distribution in commerce as of October 1, 1992, the records regarding the label must be maintained until October 1, 1995.

Manufacturers, importers, processors, and those persons subject to bans on distribution in commerce must maintain normal business and sales records recording the dates and quantities purchased of all products subject to bans. These records must be maintained for transactions from the effective date of the manufacture, importation, or processing ban for a product until the effective date of the ban on distribution in commerce for the product. These records must be maintained for 3 years after the effective date of the ban on distribution in commerce for a product.

For example, if a manufacturer produces an asbestos-containing product that is subject to a manfacture ban that takes effect on September 1, 1993, the manufacturer must by that date, make an inventory of the stock-on-hand of the banned product as of that date. A record of the inventory must be maintained until September 1, 1996. The manufacturer must also keep records of all sales or transfers of the product between September 1, 1993, and the effective date of the ban on distribution in commerce (for purposes of this example, September 1, 1994). These records must be maintained by the manufacturer until at least September 1, 1997

IV Summary of Analysis Supporting This Final Rule

EPA's basis for this rule, as described in the proposal, remains largely unchanged. EPA's unreasonable risk findings under section 6 of TSCA are based on extensive data gathering, modeling, analysis, and review of public comments. EPA's findings are summarized briefly in this preamble. This preamble also addresses significant public comments raised during the course of this rulemaking. EPA has addressed other comments in a separate Response to Comments document, which is incorporated by reference in this preamble and is included in the public docket. The following documents are also contained in the public docket and serve as the primary, although not exclusive, basis for the actions taken in this rule.

1. *Regulatory Impact Analysis,* EPA, 1988. This document analyzes the costs and benefits of various options for regulating the risks of exposure to asbestos, and includes an analysis of available substitutes for asbestos-containing products, a regulatory flexibility analysis, and materials on the models and computational procedures used, survey results, health effects and studies, costs of converting capital equipment from asbestos-using processes, the producer surplus loss determination, economic impacts data and analyses, and sensitivity analyses.

2. Three documents evaluating the magnitude of potential routes of human exposure to asbestos: (a) *Asbestos Exposure Assessment,* EPA, 1988. This document analyzes the occupational exposure to asbestos and asbestos releases from manufacturing plants and commercial operations in the U.S.

(b) *Asbestos Modeling Study,* EPA, 1988. This document analyzes the ambient exposure levels resulting from the release of asbestos to the atmosphere from industrial and commerical sources.

(c) *Non-occupational Asbestos Exposure Report,* EPA, 1988. This document analyzes the level of consumer and ambient exposures to asbestos.

3. Three reports evaluating the extensive data base on human health hazards posed by asbestos: (a) *Airborne Asbestos Health Assessment Update,* EPA, 1986. This document was prepared by EPA's Office of Research and Development and was reviewed, critiqued, and updated in response to peer review comments from the Environmental Health Committee of the EPA Science Advisory Board (SAB). The SAB advises the EPA Administrator on scientific matters.

(b) *Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos,* CPSC, 1983. This document was written by a panel of seven scientists selected by CPSC from a list of nominees by the National Academy of Sciences after a nationwide solicitation.

(c) *Asbestiform Fibers: Non-occupational Health Risks,* National Academy of Sciences, Committee on Non-occupational Health Risks of Asbestiform Fibers, 1984. This document was written by an expert panel of 13 members.

4. *Health Hazard Assessment of Non-Asbestos Fibers,* EPA, 1988. This document evaluated the potential hazard posed by major non-asbestos fiber substitutes for asbestos. This document was based in part on *Recent Epidemiological Investigations on Populations Exposed to Selected Non-Asbestos Fibers,* EPA, 1988.

Other materials used in the development of this rule are cited in the text of this preamble and listed in Unit XI of this preamble.

V Regulatory Assessment

Section 6 of TSCA authorizes EPA to promulgate a rule prohibiting or limiting the amount of a chemical substance that may be manufactured, processed, or distributed in commerce in the U.S. if

EPA finds that there is a reasonable basis to conclude that the manufacturer, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of these activities, presents or will present an unreasonable risk of injury to human health or the environment.

Section 6(c)(1) of TSCA requires EPA to consider the following factors when determining whether a chemical substance presents an unreasonable risk:

1. The effects of such substance on human health and the magnitude of the exposure of human beings to such substance.

2. The effects of such substance on the environment and the magnitude of the exposure of the environment to such substance or mixture.

3. The benefits of such substance for various uses and the availability of substitutes for such uses.

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small businesses, technological innovation, the environment, and public health.

To determine whether a risk from activities involving asbestos-containing products presents an unreasonable risk, EPA must balance the probability that harm will occur from the activities against the effects of the proposed regulatory action on the availability to society of the benefits of asbestos. EPA has considered these factors in conjunction with the extensive record gathered in the development of this rule. EPA has concluded that the continued manufacture, importation, processing, and distribution in commerce of most asbestos-containing products poses an unreasonable risk to human health. This conclusion is based on information summarized in the following paragraphs and discussed in the units that follow.

EPA has concluded that exposure to asbestos during the life cycles of many asbestos-containing products poses an unreasonable risk of injury to human health. EPA has also concluded that section 6 of TSCA is the ideal statutory authority to regulate the risks posed by asbestos exposure. This rule's pollution prevention actions under TSCA are both the preferable and the least burdensome means of controlling the exposure risks posed throughout the life cycle of asbestos-containing products. Findings supporting this conclusion include the following:

1. Exposure to asbestos causes many painful, premature deaths due to mesothelioma and lung, gastrointestinal, and other cancers, as well as asbestosis and other diseases. Risks attributable to asbestos exposure and addressed by this rule are serious and are calculated for this rule using direct evidence from numerous human epidemiological studies. Studies show that asbestos is a highly potent carcinogen and that severe health effects occur after even short-term, high-level or longer-term, low-level exposures to asbestos. Asbestos exposure is compatible with a linear, no-threshold dose-response model for lung cancer. In addition, there is no undisputed evidence of quantitative differences in potency based on fiber size or type.

For the quantitative risk assessment performed as part of this rulemaking, EPA used dose-response constants for lung cancer and mesothelioma that were the geometric means of the "best estimates" from a number of epidemiological studies. If EPA had instead used an upper bound estimate, as is normally done by the scientific community and in EPA regulatory risk assessment when only data from animal studies is available to extrapolate human health risk, predicted lung cancer deaths could increase by a factor of 10 and mesothelioma deaths could increase by a factor of 20 (Ref. 1).

2. People are frequently unknowingly exposed to asbestos and are rarely in a position to protect themselves. Asbestos is generally invisible, odorless, very durable, and highly aerodynamic. It can travel long distances and exist in the environment for extended periods. Therefore, exposure can take place long after the release of asbestos and at a distant location from the source of release.

3. Additions to the current stock of asbestos-containing products would contribute to the environmental loading of asbestos. This poses the potential for an increased risk to the general population of asbestos-related disease and an increased risk to future generations because of asbestos' longevity.

4. Asbestos fibers are released to the air at many stages of the commercial life of the products that are subject to this rule. Activities that migh lead to the release of asbestos include mining of the substance, processing asbestos fibers into products, and transport, installation, use, maintenance, repair, removal, and disposal of asbestos-containing products. EPA has found that the occupational and non-occupational exposure existing over the entire life cycles of each of the banned asbestos-containing products poses a high level of individual risk. EPA has determined that thousands of persons involved in the manufacture, processing, transport, installation, use, repair, removal, and disposal of the asbestos-containing products affected by this rule are exposed to a serious lifetime asbestos exposure risk, despite OSHA s relatively low workplace PEL. In addition, according to the EPA Asbestos Modeling Study, millions of members of the general U.S. population are exposed to elevated levels of lifetime risk due to asbestos released throughout the life cycle of asbestos-containing products. EPA believes that the exposure quantified for the analyses supporting this rule represent an understatement of actual exposure.

5. Release of asbestos fibers from many products during life cycle activities can be substantial. OSHA stated in setting its PEL of 0.2 f/cc that remaining exposures pose a serious risk because of limitations on available exposure control technologies. Even with OSHA's controls, thousands of workers involved in the manufacture and processing of asbestos-containing products are exposed to a lifetime risk of 1 in 1,000 of developing cancer. Many other exposures addressed by this rule are not affected by engineering controls required by OSHA's PEL or by other government regulation. Because asbestos is a highly potent carcinogen, the uncontrolled high peak episodic exposures that are faced by large populations pose a significant risk.

6. Because of the life cycle or "cradle-to-grave" nature of the risk posed by asbestos, attempts by OSHA, the Consumer Product Safety Commission (CPSC), and other EPA offices to regulate the continued commercial use of asbestos still leave many persons unprotected from the hazards of asbestos exposure. Technological limitations inhibit the effectiveness of existing or possible exposure control actions under non-TSCA authorities. Many routes of asbestos exposure posed by the products subject to this rule are outside the jurisdictions of regulatory authorities other than TSCA. EPA has determined that the residual exposure to asbestos that exists despite the actions taken under other authorities poses a serious health risk throughout the life cycle of many asbestos-containing products. This residual exposure can only be adequately controlled by the exposure prevention actions taken in this rule.

7 Despite the proven risks of asbestos exposure and the current or imminent existence of suitable substitutes for most uses of asbestos, asbestos continues to be used in large quantities in the U.S. in the manufacture or processing of a wide variety of commercial products. Total annual U.S.

consumption of asbestos dropped from a 1984 total of about 240,000 metric tons to less than 85,000 metric tons in 1987 according to the U.S. Department of Interior, Bureau of Mines data. This change suggests that the use of substitutes has increased markedly since the proposal. However, the 1987 consumption total indicates that significant exposure due to the commercial use of asbestos and the resultant risks would continue for the foreseeable future absent the actions taken in this rule.

Evidence supports the conclusion that substitutes already exist or will soon exist for each of the products that are subject to the rule's bans. In scheduling products for the different stages of the bans, EPA has analyzed the probable availability of non-asbestos substitutes. In the rule, the various asbestos products are scheduled to be banned at times when it is likely that suitable non-asbestos substitutes will be available. However, the rule also includes an exemption provision to account for instances in which technology might not have advanced sufficiently by the time of a ban to produce substitutes for certain specialized or limited uses of asbestos.

8. EPA has calculated that the product bans in this rule will result in the avoidance of 202 quantifiable cancer cases, if benefits are not discounted, and 148 cases, if benefits are discounted at 3 percent. The figures decrease to 164 cases, if benefits are not discounted, and 120 cases, if benefits are discounted at 3 percent, if analogous exposures are not included in the analysis. In all likelihood, the rule will result in the avoidance of a large number of other cancer cases that cannot be quantified, as well as many cases of asbestos-related diseases. Estimates of benefits resulting from the action taken in this rule are limited to mesothelioma and lung and gastrointestinal cancer-cases-avoided, and do not include cases of asbestosis and other diseases avoided and avoided costs from treating asbestos diseases, lost productivity, or other factors. EPA has estimated that the cost of this rule, for the 13-year period of the analyses performed, will be approximately $458.89 million; or $806.51 million if a 1 percent annual decline in the price of substitutes is not assumed. This cost will be spread over time and a large population so that the cost to any person is likely to be negligible. In addition, the rule's exemption provision is a qualitative factor that supports the actions taken in this rule. EPA has concluded that the quantifiable and unquantifiable benefits of the rule's staged-ban of the identified asbestos-containing products will outweigh the resultant economic consequences to consumers, producers, and users of the products.

9. EPA has determined that, within the findings required by section 6 of TSCA, only the staged-ban approach employed in this final rule will adequately control the asbestos exposure risk posed by the product categories affected by this rule. Other options either fail to address significant portions of the life cycle risk posed by products subject to the rule or are unreasonably burdensome. EPA has, therefore, concluded that the actions taken in this rule represent the least burdensome means of reducing the risk posed by exposure to asbestos during the life cycles of the products that are subject to the bans.

10. Based on the reasons summarized in this preamble, this rule bans most asbestos-containing products in the U.S. because they pose an unreasonable risk to human health. These banned products account for approximately 94 percent of U.S. asbestos consumption, based on 1985 consumption figures. The actions taken will result in a substantial reduction in the unreasonable risk caused by asbestos exposure in the U.S.

A few minor uses of asbestos and asbestos products are not included in the ban. These uses, which account for less than 6 percent of U.S. asbestos consumption based on 1985 data, do not pose an unreasonable risk, based on current knowledge. For some product categories, EPA was unable to find that the products pose an unreasonable risk because asbestos exposure is minimal over the product's life cycle relative to the exposures posed by other products. In other instances EPA currently has insufficient information about either asbestos exposure attributable to the products or the future availability of suitable substitutes to make a finding of unreasonable risk. Exposure information was considered insufficient in cases where monitoring data was largely unavailable for most major stages of a product's life cycle and too little was known about exposures during these stages to estimate exposure by analogy to those posed by other products. When no information is available for a product indicating that cost-effective substitutes exist, the estimated cost of a product ban is very high. In all of these cases, the risk reduction potential that EPA could quantitatively or qualitatively estimate as a result of possible regulatory actions could not be justified in light of the resultant costs, under the criteria of section 6 of TSCA.

Human health effects of asbestos and EPA's cancer risk extrapolation are discussed in Units V.A.1 and V.A.2 of this preamble. The extent of human exposure to asbestos and the resulting risks are discussed in Unit V.A.3 of this preamble. Asbestos substitutes are discussed in Units V.C. and V.F of this preamble. EPA's evaluation of the viability of other regulatory options under TSCA is discussed in Unit V.E. of this preamble. EPA's evaluation of the viability of actions under authorities other than TSCA to control the risk posed by asbestos exposure is discussed in Units VI and VII of this preamble. EPA's estimates of the costs and benefits of this rule are discussed in Unit V.D. of this preamble. EPA's evaluations of the risks posed by the different categories of asbestos-containing products are summarized in Unit V.F of this preamble.

A. Health Effects and Magnitude of Exposure To Asbestos

1. *Health effects.* The human health effects caused by exposure to asbestos are well-documented. This Unit reiterates the major health effects and the uncertainties that exist regarding this subject. More comprehensive analysis can be found in the *Airborne Asbestos Health Assessment Update* (Ref. 1), the *Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos* (Ref. 2), and *Asbestiform Fibers: Non-occupational Health Risks* (Ref. 3). Further responses to comments on this subject can be found in the Response to Comments document.

Asbestos is a chemical substance as that term is defined in section 3(2) of TSCA. It is well-recognized that asbestos is a human carcinogen and is one of the most hazardous substances to which humans are exposed in both occupational and non-occupational settings. As OSHA stated in its final rule, published in the **Federal Register** of June 20, 1986 (51 FR 22612), establishing a 0.2 fibers-per-cubic-centimeter (f/cc) PEL for asbestos, "OSHA is aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure." There is wide agreement that all types of asbestos fibers are associated with pulmonary fibrosis (asbestosis), lung cancer, and mesothelioma. Gastrointestinal cancer and other cancers at extrathoracic sites, as well as other lung disorders and diseases, have also been associated with asbestos exposure, although the consistency and magnitude of the excess risks of these

diseases are not as great as for lung cancer and mesothelioma. All of these asbestos-related diseases are life-threatening or disabling and cause substantial pain and suffering.

The conclusions reached by EPA regarding the health effects of asbestos exposure represent a widely accepted consensus of opinions of health agencies, scientific organizations, and independent experts. The major health effects of asbestos are summarized below.

a. *Lung cancer and mesothelioma.* Lung cancer has been responsible for the largest number of deaths attributable to occupational exposure to all of the principal commercial asbestos mineral types: chrysotile, amosite, crocidolite, and anthophyllite. Excess lung cancers have been documented among workers involved in asbestos mining and milling and in the manufacturing and use of a variety of asbestos products. Lung cancer risk appears to increase with both the level and duration of exposure. The latency period for the disease is generally 20 years or more after exposure. This means that lung cancer usually does not manifest itself until 20 years after the disease-initiating exposure. Most persons who develop lung cancer die within 2 years of diagnosis.

While both asbestos and cigarette smoking can separately increase risk of lung cancer, together they appear to interact synergistically to multiply lung cancer risk in humans. Commenters have suggested that smoking should be controlled to reduce the very high lung cancer risk due to combined asbestos exposure and smoking. However, even complete control of the smoking factor, if possible, would leave a substantial health risk since the asbestos-related risk of lung cancer to nonsmokers and of mesothelioma (which is apparently not affected by smoking) would remain.

Mesothelioma is a rare cancer of the lining of the lung (pleural mesothelioma) or abdominal cavity (peritoneal mesothelioma). Mesothelioma has been associated with occupational exposure to chrysotile, amosite, and crocidolite. Epidemiological studies suggest that mesothelial risk rises rapidly with time from the onset of exposure. Risk also increases with both intensity and duration of exposure. The latency period for the disease is generally between 25 and 30 years. In almost all instances, the disease is rapidly fatal, with survival times of less than 2 years after diagnosis. There is no evidence that cigarette smoking increases the risk of developing asbestos-induced mesothelioma.

Most epidemiological studies have been conducted on occupational populations exposed to high airborne concentrations of asbestos for relatively long periods of time. However, short-term occupational exposures have been shown to cause serious health effects. For example, one group of asbestos factory workers with less than 2 months of occupational exposure had a two-fold increase in lung cancer risk (Ref. 4). Also, many documented cases of mesothelioma have been linked to extremely brief exposures to relatively high concentrations of asbestos (Ref. 1).

There is also direct evidence of adverse health effects from non-occupational asbestos exposure. Increased risk of pleural abnormalities and mesothelioma have been observed in families of asbestos workers, presumably due to the dissemination of fibers in the home from contaminated work clothes. Mesotheliomas have also been documented in populations whose only identified exposure was living near asbestos mines or asbestos product factories, or shipyards with heavy asbestos use (Ref. 1).

Animal studies confirm the epidemiological findings regarding the health effects of asbestos exposure. All commercial forms of asbestos have been shown to produce lung tumors and mesothelioma in laboratory animals with no substantial differences between the form of asbestos forms in carcinogenic potency.

b. *Gastrointestinal cancer.* A number of epidemiological studies have documented significant increases in the incidence of gastrointestinal cancer due to occupational exposure to asbestos. Gastrointestinal cancers consist largely of cancers of the esophagus, stomach, colon, and rectum. However, the magnitude of gastrointestinal cancer risk is lower than that of lung cancer or mesothelioma and no dose-response data are available.

A number of commenters argued that the evidence indicating a positive association between gastrointestinal cancer and asbestos exposure is weak and inconclusive. They indicated that unidentified facts may cause the excess gastrointestinal cancers. Commenters suggested that many of the excess cancers attributed to gastrointestinal sites may be due to misdiagnosis of peritoneal mesotheliomas. Other commenters contended that in the absence of any positive experimental evidence, the epidemiology data alone do not support the conclusion that exposure to asbestos can cause gastrointestinal cancer.

EPA recognizes that the evidence supporting an association between gastrointestinal cancer and asbestos exposure is not as strong as that which is available to support an association between asbestos exposure and lung cancer and mesothelioma. However, after weighing available information, EPA believes that there is evidence of a strong causal relationship between asbestos exposure and gastrointestinal cancer excess. This evidence includes the following: (1) A statistically significant increase in gastrointestinal cancer was found in 10 of 23 epidemiological studies. (2) A consistent relationship exists between increased gastrointestinal cancer risk and increased lung cancer risk (approximately 10 to 30 percent of the lung cancer excess). (3) It is biologically plausible that asbestos could be associated with these tumor sites, because it is conceivable that the majority of fibers inhaled are cleared from the respiratory tract and subsequently swallowed, allowing the fibers to enter the gastrointestinal tract (Ref. 5). Additionally fibers may be swallowed directly. (4) One study demonstrated some evidence of carcinogenicity in male rats fed diets containing intermediate range size chrysotile asbestos (65 percent 10 microns in length) (Ref. 6).

Further, EPA does not accept the argument that all gastrointestinal cancers identified in the epidemiology studies described above are the result of misdiagnosis. Cancers of some gastrointestinal cancer sites (e.g., stomach and pancreas) could be the result of misdiagnosis of peritoneal mesotheliomas. However, this does not account for all of the excess cancers seen at sites such as the colon or rectum. OSHA, in its final rule lowering the asbestos PEL concluded that the studies conducted to date "constitute substantial evidence of an association between asbestos exposure and a risk of incurring gastrointestinal cancer. EPA agrees with this conclusion.

c. *Cancers at other sites.* Increased risk of cancers other than mesothelioma and lung and gastrointestinal cancers have been observed in populations occupationally exposed to asbestos. An excess of laryngeal cancer in asbestos workers has been reported in a number of studies (Ref. 2). Available data, however, indicate that there may be an interaction between smoking and asbestos exposure in the etiology of laryngeal cancer. Elevated risk of kidney cancer has also been observed in two epidemiological studies (Refs. 7 and 8). In addition, an increased incidence of

ovarian cancer has been found among female workers in three studies (Refs. 9, 10, and 11). Therefore, evidence suggest an association between asbestos exposure and cancers other than lung cancer, mesothelioma, and gastrointestinal cancer. However, because of study limitations, inconsistencies among studies, and the possibility of misdiagnosis of disease, the relationship between asbestos exposure and cancer at these extrathoracic sites is not clear. Because of this uncertainty, EPA did not calculate the risk of cancers at other sites for purposes of the quantitative risk assessment for this rule.

d. *Asbestosis.* Asbestosis is a disabling fibrotic lung disease that has been associated with high levels of occupational exposure to asbestos. Clinical signs and symptoms associated with asbestosis include shortness of breath, pulmonary functional changes, basal rales, and small, mainly irregular, opacities on chest radiographs. Asbestosis can both appear and progress many years after the termination of exposure. All types of asbestos have been associated with the development of asbestosis. Epidemiological data indicate that the incidence rate increases and the disease becomes more severe with increasing dust level and duration of exposure. This has also been confirmed in animal studies via inhalation exposure. It is not clear whether an exposure threshold exists for asbestosis. However, there is no available evidence that disabling asbestosis is caused by non-occupational asbestos exposure or relatively low levels of occupational exposure. Therefore, the risk of disabling asbestosis from low levels of exposure to asbestos was not calculated for purposes of the quantitative risk assessment performed for this final rule.

e. *Effect of fiber type.* A number of commenters argued that chrysotile, the major commercial form of asbestos, is far less carcinogenic than the amphibole asbestos types (e.g., amosite and crocidolite) and thus, different carcinogenic potency values for chrysotile and amphiboles should be used for quantitative risk assessment.

For lung cancer, EPA finds the evidence supporting this argument to be inconclusive and inconsistent. Some of the lowest unit risk factors observed for lung cancer are among cohorts exposed to predominantly chrysotile asbestos (Refs. 12 and 13). However, some of the highest unit values are also from exposure to primarily chrysotile (Refs. 14 and 15). This suggests that chrysotile exposures can confer an extremely high risk of lung cancer. The cause of the observed variability in lung cancer unit risk for chrysotile in different studies is unknown, but some of the variabilities can be attributed to differences in the fiber characteristics associated with different processes, uncertainties due to small numbers in epidemiological studies, and incorrect estimates of the exposures of earlier years (Refs. 1 and 2).

For mesothelioma, EPA recognizes that peritoneal mesotheliomas have largely been associated with crocidolite exposure and that there is some epidemiological evidence suggesting that crocidolite is more potent than chrysotile in inducing pleural mesothelioma. However, definitive conclusions concerning the relative potency of various fiber types in inducing mesothelioma cannot be made on the basis of available epidemiological information. This is because: (1) Mesotheliomas are difficult to diagnose; (2) dose-response information for mesothelioma for individual fiber types is unavailable; (3) exposure data are inadequate; and (4) exposure to crocidolite fibers could be higher because they become airborne more easily than other fiber types. Further, numerous animal studies have demonstrated that chrysotile is at least as potent as amphiboles in inducing both mesothelioma and lung cancer by inhalation, as well as by injection or implantation.

Available information indicates that the combined epidemiological and animal evidence fail to establish conclusively differences in mesothelioma hazard for the various types of asbestos fibers. In view of the inconsistencies and uncertainty regarding this issue, EPA believes that it is prudent and in the public interest to consider all fiber types as having comparable carcinogenic potency in its quantitative assessment of mesothelioma risk. EPA does recognize that some evidence exists indicating that amphiboles may be more potent in inducing mesothelioma than chrysotile. However, the need for further study to resolve this issue, and the resulting delay in EPA's risk assessment for asbestos, cannot be justified given the volume of data showing the carcinogenic potency of all fiber types. Similar conclusions were reached previously by other scientific bodies and agencies (Refs. 2, 3, and 16).

f. *Effect of fiber dimension.* A number of commenters stated that while long fibers (>5 microns) are associated with biological activity, fibers less than 5 microns in length may be innocuous. According to these commenters, short fibers to not contribute to any significant risk to humans and therefore EPA should base its cancer risk estimates on only fibers longer than 5 microns in length.

Injection or implantation studies in animals indicate that longer, finer fibers of the same asbestos fiber type appear to have greater carcinogenic potential than shorter, thicker fibers (Refs. 1, 2, and 3). Results of several recent inhalation studies also indicate that long fibers (>5 microns) are more carcinogenic than short fibers (<5 microns) (Refs. 17 and 18). However, studies performed to date have not established fiber dimensional thresholds for potency.

Although animal studies have provided an indication of the qualitative relationship between fiber dimension and carcinogenic potency, they are not used for quantifying dose-response relationships for humans because EPA believes that extrapolation of data from human exposures in the workplace to human exposure in non-occupational settings is more appropriate. EPA based most of its estimates of non-occupational exposure in terms of the total mass of asbestos released to air. To estimate health risks from the non-occupational exposure, the mass measurements need to be converted to the equivalent optical fiber concentration (fibers longer than 5 microns and greater than 0.25 μm in diameter) that are used as dose measurements in workplaces for which dose-response relationship has been developed. Some data exist that relate optical fiber counts to the total mass of asbestos. The range of conversion factors between optical fiber count mass concentration is large (5 to 150 $\mu g/m^3/f/ml$) because these values vary with different environments and sampling techniques, and any average value derived from this range has a large uncertainty. Despite the uncertainties, they are the best data available for such assessments and therefore EPA believes that for the purpose of extrapolating to low mass concentration from fiber count, the approximate geometric mean, 30 $\mu g/m^3/f/ml$ is appropriate (Ref. 1). Additionally, uncertainty may be introduced in the assumption made in this assessment that the fiber size distribution is the same in both occupational and non-occupational air environments. The assumption is considered prudent in view of the fact that qualitatively, short fibers are found more predominantly than long fibers in both occupational and non-occupational settings. The same approach has been

adopted by the National Academy of Sciences (Ref. 3) and the Chronic Hazard Advisory Panel (CHAP) on Asbestos (Ref. 2) in estimating human health risk associated with low-level non-occupational exposure to asbestos.

g. *Potency values.* Commenters stated that cancer risks vary from one industry segment to another and maintained that EPA should use different potency values for different industries in its quantitative cancer risk assessment for asbestos. Most of the commenters singled out two segments of the asbestos industry, manufacturers of chrysotile friction products and A/C products made from chrysotile, in which the lung cancer risks were considerably lower than those in chrysotile textile production.

EPA has concluded that the data supporting this suggestion are not convincing because of significant methodological or statistical uncertainties in these studies. Further, when the 95 percent confidence limits on the potency factors for lung cancer are considered along with the uncertainties associated with estimates of exposures, there is considerable overlap of the unit risk estimates across industry segments and fiber types (Ref. 1). Accordingly, EPA believes that its use of a geometric mean unit risk derived from 11 studies that cover all industrial processes (with the exception of mining and milling) and that provide a dose-response relationship is reasonable. This approach recognizes that lower cancer risks may exist in some industry segments because of uncertainties in the measurement of exposure or statistical variabilities, but the potency factor for asbestos is considered to be equivalent across industry segments. In fact, a follow-up study (Ref. 24) reported a lung cancer unit risk of 0.0076 for A/C production workers who were exposed predominantly to chrysotile. This value is closer to the best estimate for the fractional increase in lung cancer, K_L, for asbestos exposure, 0.010. This study provides further support for the use of a single potency factor for all asbestos exposure scenarios.

2. *Quantitative Risk Assessment.* Risk assessment usually requires extrapolation between different routes of exposure, from animals to humans, and from test groups to the population at large. Despite uncertainties, risk assessment provides an estimate of the magnitude of risk for making decisions about controlling exposure to a hazardous substance. However, because health risk from asbestos exposure is estimated using direct evidence from a large number of epidemiological studies, the risk posed by asbestos exposure is far more certain than that posed by exposure to other hazardous substances for which only animal data and/or fewer, less conclusive human data are available.

Data from a study of U.S. insulation workers allow models to be developed for the time and age dependence of lung cancer and mesothelioma risk (Ref. 4). Thirteen other epidemiological studies demonstrate a linear dose-response relationship between cumulative occupational asbestos exposure and lung cancer. Although much less data are available regarding a dose-response relationship for mesothelioma, existing data suggest a linear response with dose and duration of exposure. To obtain dose-response estimates for current occupational and non-occupational exposures to asbestos, it is necessary to extrapolate the effects observed in occupational settings with historically high exposure to anticipated effects at low levels of exposure. This is based on a no-threshold linear extrapolation. The assumption of no-threshold low dose linearity for asbestos carcinogenicity is reasonable and well-supported because (1) cumulative dose-response relationship have been shown in several epidemiological studies over a wide range of exposure; (2) threshold dose has not been demonstrated; and (3) the concept is consistent with accepted theories of carcinogenesis.

Both the lung cancer and mesothelioma models used for this final rule have been adopted by OSHA (Ref. 16). The National Academy of Sciences (Ref. 3) also adopted a similar no-threshold model to estimate lung cancer risk to non-occupational populations from exposure to asbestos. No-threshold linear models have widespread support (Refs. 2, 3, 16, 22, and 23). The derivation and validation of the models as well as the assumptions and uncertainties involved in the model, are discussed in detail in Refs. 1, 2, and 21.

$d_{(t-10)}$ = duration of exposure from onset until 10 years (minimum latency period) before present (years).

f = intensity of exposure to fiber equivalents longer than 5 microns (f/cc).

K_L = dose response constant = 0.010. (Refs. 1 and 21)

Because mesothelioma is a very rare form of cancer in the general population, an absolute risk model is used to estimate excess mesothelioma incidence due to asbestos exposure. According to this model, the added risk of mesothelioma is proportional to the cumulative exposure to asbestos and increases in proportion to the third power of time after onset of exposure. This model incorporates a delay of 10 years for the manifestation of disease (i.e., a minimum latency period of 10 years). Four epidemiological studies provided quantitative data suitable for calculation of potency factors for mesothelioma (K_M). EPA (Ref. 1) selected an average value for K_M of 1.0 x 10^{-8} as the best estimate for environmental exposures. Although it was not possible to determine directly the 95 percent confidence limits on K_M, a multiplicative factor of 5 was estimated for the average value of K_M, and a multiplicative factor of 20 was estimated for its application to any unstudied exposure circumstance.

The absolute risk model for mesothelioma can be expressed as:

$$I_M(t, d, f) = K_M \quad f[(t \quad 10) \quad (t \quad 10 - d)^3] \text{ for } t > 10 + d$$

$$^3 10 \quad = K_m \cdot f(t \quad 10)^3 \text{for } 10 + d > t >$$

$$= 0 \text{ for } t < 10 <$$

Lung cancer is best described by a relative risk model. According to this model, excess risk of lung cancer from asbestos exposure is proportional to the cumulative exposure (i.e., the duration of exposure times the intensity of exposure, in terms of fiber-year/cc) and the background risk in the absence of exposure. EPA used this model and data from 11 studies of workers exposed to asbestos in textile production, asbestos product manufacturing, and insulation application to calculate potency factors for lung cancer (K_L, the fractional increase in risk per fiber-year/cc of exposure) (Ref. 1). The geometric mean value of K_L for these studies, 0.010, was used as the best estimate for environmental asbestos exposure. The 95 percent confidence limits for this value are 0.0040 and 0.027 (multiplicative factor of 2.5) based on an analysis of variances in the 11 studies from which the K_L was calculated. The 95 percent confidence limits for K_L that might be applied in any unstudied exposure circumstances are estimated to be a multiplicative factor of approximately 10.

The relative risk model for lung cancer can be expressed as:

$$I_L = I_E [1 + K_L \quad f \quad d_{(t-10)}]$$

where:

I_L = age – specific lung cancer death rate with exposure to asbestos.

I_E = age – specific lung cancer death rate without exposure to asbestos.

t = time from onset of exposure until present (years).

where:

I_M (t, d, f) = mesothelioma incidence at t years from onset of exposure, from duration d, at concentration f.

K_M = carcinogenic potency expressed as the incidence of mesothelioma per unit of exposure in fiber-years ^{3}/cc.
f = intensity of exposure to fiber equivalents longer than 5 microns (f/cc).
t = time after exposure in years.
d = duration of exposure in years. (Refs. 1 and 21)

In extrapolating rates of excess asbestos-related deaths from gastrointestinal cancer, EPA adopted the approach used by OSHA (Ref. 16) in assuming that excess gastrointestinal cancers will be equal to 10 percent of those for lung cancer in each time period. However, this approach may actually understate the rate of gastrointestinal cancers. OSHA noted that this approach could result in an underestimate, and EPA's analysis indicates that the excess gastrointestinal cancer rate could be as high as 30 percent of the lung cancer rate (Ref. 1).

There are inconsistencies in findings among different epidemiological studies with regard to excess mortality for cancers at sites other than the lung, mesothelial linings, and gastrointestinal tract (e.g., laryngeal, kidney, and ovary cancers). Also, there are uncertainties about the development of disabling asbestosis at low exposure. Therefore, EPA has not made numerical estimates of the risks for these asbestos-related diseases for purposes of this analysis. Since estimates of these diseases are not included in the overall risk estimates, EPA believes that the total health risk posed by exposure to asbestos is underestimated.

A number of commenters contended that it is inappropriate to adhere to a linear, no-threshold dose-response model for estimating lung cancer and mesothelioma risk from asbestos exposure. They cited a number of epidemiological studies which they stated show that there is a threshold below which asbestos-related disease does not occur (Refs. 12, 13, 25, and 26). EPA has reviewed these studies and found that they are all insufficient to detect a threshold at low doses (Ref. 1).

Other commenters expressed concern about the low-dose linearity assumption because the shape of the dose-response curve at extremely low doses is subject to conjecture and that the use of no threshold linear model greatly overestimates true risk. Others believe that asbestos is a non-genetic carcinogen. As discussed above, EPA has concluded that the low-dose linearity assumption is reasonable because direct evidence for linearity of carcinogenic response associated with asbestos exposure is found in several epidemiological studies over a wide range of exposure. Whether the response is linear at very low doses is not known (Ref. 1). In the discussion of the choice of mathematical procedures in carcinogen risk assessment, the White House Office of Science and Technology Policy (OSTP) stated: "When data and information are limited, however, and when such uncertainty exists regarding the mechanism of carcinogenic action, models or procedures which incorporate low-dose linearity are preferred when compatible with the limited information" (Ref. 27). EPA generally concurs with this position as reflected in EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992). Thus, given the lack of complete understanding of the mechanisms by which asbestos induces cancer, and the goal of protecting human health, EPA believes that the choice of low-dose linearity is most prudent.

3. *Magnitude of human exposure.* Exposure to asbestos is discussed in more detail in the Asbestos Exposure Assessment (Ref. 29), the Asbestos Modeling Study (Ref. 30), and the Non-occupational Asbestos Exposure Report (Ref. 31). Further responses to comments on this subject can be found in the Response to Comments document.

Most of the population of the United States is exposed to some level of airborne asbestos from asbestos-containing products. Asbestos products have been in wide use in the U.S. for decades. Although U.S. asbestos consumption has declined in recent years, thousands of tons of asbestos are still used annually in the manufacture in the U.S. of the products that are subject to this rule (Ref. 21). Fibers can be released to the air and exposure can occur at all stages of the life cycle of asbestos products, including mining, processing, and the transport, installation, use, repair, removal, and disposal of asbestos-containing products.

Once released, asbestos fibers exhibit a number of characteristics that tend to increase human exposure to them. They are ordorless and fibers of respirable size are largely invisible, presenting risk to persons who are not aware that they are being exposed. They are also extremely durable and possess aerodynamic properties that allow them to remain suspended in the air for a long time and to reenter the air readily after settling out. Asbestos, therefore, can persist for a very long time in the environment and can travel extended distances through the air. These factors increase the intensity, duration, and area of exposure and complicate attempts to control or reduce exposure.

EPA has quantified many of the life cycle exposures anticipated from the continued manufacture, importation, processing, and use of the asbestos products that are subject to this rule. EPA estimates that over 135,000 full-time equivalent (FTE) workers are exposed during the life cycles of these products to levels of asbestos carrying lifetime risks of between 7 in 10,000 and 7 in 1,000 (Ref. 29). At least 40 million consumers face a potential hazard as they install, use, repair, and dispose of these products (Ref. 31). In addition, the general population is exposed to asbestos that is released into the ambient air during all of these activities. Both consumers and members of the general population frequently incur individual lifetime risks of 1 in 1,000,000 or greater of developing cancer from these exposures (Ref. 31).

There are other exposures associated with the continued production of asbestos products that cannot be readily quantified, but which could pose a significant risk to large populations. As discussed in more detail below, many releases of asbestos from asbestos products take place intermittently and over long periods, making them difficult to measure. Because of the difficulty of obtaining accurate monitoring data for these releases, they have not been quantified for purposes of this rule's analyses, but qualitative evidence indicates that cumulatively, they are probably significant. Similarly, because it is difficult to quantify the tendency of asbestos to be resuspended in air, EPA has not quantified in its analyses the risk posed by asbestos that is repeatedly reentrained after settling out. However, some reentrainment certainly occurs, and asbestos may pose some threat years after its initial release from asbestos products. These exposures, although unquantified, have the potential to affect large numbers of people for long periods of time. Thus, in addition to the exposures quantified for this rule, they are a source of considerable concern.

a. *Occupational exposures.* Since EPA's proposed rule was issued, OSHA has promulgated new occupational exposure standards for asbestos, lowering the 8-hour Time Weighted Average (TWA) PEL from 2.0 to 0.2 f/cc (51 FR 22612). OSHA has also set an Excursion Limit (EL) of 1 f/cc as a half-hour TWA in a September 1988 amendment to the standards (53 FR 35610). The probable impact of the 0.2 f/cc PEL on workers' exposures to asbestos was discussed in the proposal. As noted both in that proposal and in OSHA s rulemaking, exposures at the

new PEL still pose significant risks, as do exposure at the EL. OSHA notes that the new PEL and EL do not represent "safe" levels of asbestos exposure, but are the lowest levels that industry can feasibly achieve during current control technologies. EPA estimates that under the new PEL, approximately 135,000 FTE workers engaged in the manufacture, processing, installation, repair, and disposal of the products to be banned are exposed to levels of airborne asbestos between 0.02 f/cc and 0.2 f/cc (Ref. 29). Assuming that workers are exposed to these levels over a 45-year working lifetime, they incur individual risks of between 7 in 10,000 and 7 in 1,000 of developing cancer (51 FR 22644).

A number of commenters criticized the occupational exposure data base used to support the proposal as being outdated and incomplete. Much of that data came from the 1982 TSCA section 8(a) reporting rule (40 CFR 763.60). In response to these comments and because of the passage of time since the proposal, EPA has updated and expanded its analysis of occupational exposures, making use of available literature and data bases and conducting surveys of asbestos use and exposure levels. Materials used by EPA in the updated analysis include OSHA and Mine Safety and Health Administration (MSHA) compliance inspection reports, National Institute for Occupatioal Safety and Health (NIOSH) studies, academic and industry studies, and public comments. In 1986 and 1987 EPA conducted the Asbestos Exposure Survey and gathered exposure and release information on the manufacture of most of the major asbestos product categories from primary and secondary manufacturers of asbestos products. EPA gathered data on populations engaged in manufacturing in the 1986–87 Asbestos Market Survey.

EPA was able to obtain extensive information on occupational exposures during primary and secondary manufacturing for many product categories. Air monitoring data for primary and secondary manufacturing were available for many products from the 1986–87 EPA Exposure Survey, OSHA inspections, and numerous studies. EPA has estimated that approximately 9,300 workers in the U.S. are exposed to asbestos during the primary and secondary manufacturing of the products that are affected by this rule (Ref. 29). These exposures are listed in Table I of this Unit.

EPA also gathered information on occupational exposures from the installation, repair, and disposal of most friction and construction products, the two product groups for which exposures are likely to be highest during these life cycle stages. For the installation and removal of construction products (roofing felt and A/C pipe, sheet, and shingle), air monitoring data were available from several studies. Occupational populations (in terms of FTEs) were estimated on the basis of crew size, productivity, and total manufacture and import volumes of the products. Exposures associated with the replacement and repair of friction materials were estimated in a similar fashion. EPA estimates that 125,400 FTEs are exposed to asbestos during the installation, repair, and disposal of asbestos friction and construction products. More than 125,400 workers are actually exposed to asbestos during these processes (OSHA estimates that 556,320 persons are exposed), but many are exposed on a less than a full-time basis (Ref. 29). FTE exposures are listed in Table I of this Unit.

Very little monitoring data on occupational exposures during installation, repair, and disposal were available for the other asbestos products that are subject to this rule, and EPA's estimates therefore do not include exposures from the installation, repair, and disposal of these products. However, on the basis of the limited data that exist for these products and on the basis of data for similar products and processes, EPA believes that significant exposures during installation, repair, and disposal of these products do take place (Ref. 57). Therefore, EPA believes that its analysis underestimates exposures associated with these products. EPA conducted an analysis in order to gauge the possible impact of the absence of some occupational exposure data on calculations of the rule's benefits; the results of this analysis appear in Table II of this Unit and Table VIII of Unit V.D.

In general, when data relating to a certain type of exposure could not be obtained, EPA did not quantify that type of exposure, reflecting what EPA considers to be a reasonable approach to risk assessment. EPA finds the exposures quantified for this rule sufficient in themselves to support EPA's risk assessment conclusions for asbestos. However, EPA notes that if all exposures to asbestos from the products affected by this rule could have been quantified, the benefits calculated for this rule would probably have been significantly greater than noted in EPA's risk assessment, lending further support to EPA's unreasonable risk finding for asbestos.

Much of EPA's occupational exposure data base for this rule represents exposure that took place before OSHA's lowered PEL of 0.2 f/cc became effective in 1986. To estimate exposures taking place after the lowering of the PEL, EPA first lowered to 0.2 f/cc all data points which reported exposures above 0.2 f/cc. EPA then averaged these points with those points that were reported as lower than 0.2 f/cc for each job category in each product category. For purposes of this analysis, EPA considered it appropriate to assume that previously high exposures will probably not be lowered significantly below the PEL. OSHA determined that 0.2 f/cc, which is 10 times lower than the previous PEL, was the lowest PEL that most of the asbestos industry could feasibly achieve using work practices and engineering controls. The asbestos industry challenged OSHA's standards, arguing that a PEL of 0.5 f/cc was the lowest feasible standard, and OSHA acknowledged that some industry sectors might not be able to control exposures to 0.2 f/cc without the use of respirators. Thus, while EPA believes that it is possible that some companies are below the 0.2 f/cc PEL by some margin, it is probable that others are not and that some of these actually exceed the PEL. EPA believes that adjusting previously high exposure points to 0.2 f/cc is a reasonable means of adjusting for facilities that may be above the PEL.

In estimating the benefits of its 0.2 f/cc PEL, OSHA used somewhat different assumptions than EPA has in this rule to estimate the impact of the PEL on workplace exposure levels. OSHA's analysis adjusted all exposures in its data base that were at or above 0.2 f/cc to 0.15 f/cc in cases where OSHA assumed that engineering controls were used. In cases where OSHA assumed that respirators were used, OSHA reduced the exposures by a factor equal to the effective protection factor of the respirator. OSHA assumed that exposures below 0.2 f/cc would be reduced by 20 percent due to engineering controls. OSHA's approach assumes not only general compliance with its fiber level standards, but also that, on average, those subject to the PEL will reduce their workplace exposures significantly below the standards to ensure compliance. OSHA did not factor non-compliance into its analysis of the costs and benefits of the PEL because both costs and benefits decline in proportion to any non-compliance, leaving cost-benefit ratios for the OSHA rule unchanged.

On the other hand, EPA's assessment of the costs and benefits of this rule is affected by non-compliance with the OSHA PEL. EPA's approach assumes general compliance with the PEL, but also accommodates the possibility that some level of non-compliance with the standard exists. As is discussed further below, OSHA issued many citations for violations of the asbestos standards in the first year after they went into effect. Using OSHA's fiber level adjustment assumptions in place of EPA's to estimate the effects of this rule results in an approximately 20 percent lower estimate of cancer-cases-avoided for occupational settings. However, if a non-compliance rate of 2 percent (a relatively low rate based on non-compliance rates in other Federal health and environmental regulatory settings) is assumed in conjunction with the OSHA fiber level adjustments, the resulting estimated benefits are virtually the same as those estimated using EPA's assumption about fiber level average exposure (Ref. 21). Therefore, EPA believes that its assumptions are appropriate for purposes of calculating the benefits of this rule. In practice, given some level of non-compliance with OSHA's asbestos regulations, actual cancer cases that would have occurred as a result of that non-compliance will now be prevented by this rule's product bans.

One commenter maintained that EPA should base its analyses solely on the data collected before OSHA promulgated its asbestos standard and should not adjust the data to reflect compliance with the standard. However, EPA considers it reasonable to assume that previously high exposure levels have been reduced to some lower level as a result of OSHA's action, and as discussed above, EPA has selected the PEL as a logical approximation of this level. Other commenters contended that EPA's approximation of occupational exposures taking place after the lowering of the PEL was too high, arguing that because exposure levels vary considerably from day to day, industry keeps average exposures significantly below the PEL to guarantee constant compliance. These commenters made similar arguments during OSHA's rulemaking setting the new PEL. However, in that instance, the commenters used the variability argument to support a claim that the PEL was infeasible because average exposures could not be kept low enough to guarantee constant compliance. OSHA refuted this argument, noting that day-to-day variability can be reduced by employers and that while exposures might be above the PEL some of the time, a finding of technological feasibility does not require that employers be able to comply with a standard constantly (51 FR 22653).

Moreover, data from recent OSHA inspections do not support the assertion that current exposures are significantly below the PEL. OSHA cited employers for nearly 1,000 violations of its asbestos standards in the first year after the standards went into effect, and the violation most frequently cited was the failure of employers to institute engineering controls to maintain employee exposure at or below the PEL (Ref. 32). Personal monitoring data from recent inspections showed that 91 out of 655 establishments inspected had concentrations of airborne asbestos above the PEL, and the average concentration level for all establishments inspected was 0.29 f/cc, 45 percent higher than the PEL (Ref. 33). While respirators were in use in many of the establishments with air concentrations higher than the PEL, 20 percent of these establishments were cited for violations of respiratory protection provisions or for violations of the PEL (Ref. 49).

On a related issue, some commenters stated that EPA had ignored the effect of using best available control technology (BACT) to reduce exposures, arguing that industry-wide exposure values are "not relevant to determination of the consequences of an effective PEL and consistent use of good work practice. As is discussed more fully in Unit V.E. and in the Response to Comments document, EPA has analyzed the likely effectiveness of mandating the use of BACT and has concluded that this regulatory option would not sufficiently reduce exposures to asbestos from the products affected by this rule. For calculating the cancer-cases-avoided through regulation, EPA considers existing rather than best-case exposures to be the appropriate baseline. The evidence discussed in the preceding paragraphs indicates that many workplaces do not utilize BACT and that the adjustments EPA has made to its exposure data account for the impact of the 0.2 f/cc PEL. Where BACT is utilized. EPA's analysis has taken it into account. For instance, in its analysis of exposures during brake repair, EPA estimated that 9.6 percent of brake repair shops used BACT, and EPA calculated an average of industry-wide exposures including the relatively low exposures from this group.

On September 14, 1988 (53 FR 35610), OSHA amended its Asbestos Standards to incorporate an EL, which limits allowable short-term exposures to 1 f/cc over a half-hour period. OSHA took this action after noting that controlling episodic exposures to asbestos would lower the significant risk posed by asbestos in the workplace. However, while the EL will probably reduce workplace exposures, EPA does not believe that this reduction will be very great. EPA bases its judgment on a number of observations regarding the nature of and circumstances surrounding episodic exposures.

First, many exposures that are episodic are also unpredictable, defying attempts to control them. In industrial settings, episodic exposures are likely to be associated with unexpected events such as equipment breakdown (53 FR 35620). In the maintenance and repair sector of the construction industry, episodic exposures take place when individuals who only occasionally come into contact with asbestos materials and who may not recognize such materials disturb them accidentally or unwittingly in the course of their work (53 FR 35624). OSHA directs employers to conduct initial monitoring of employees' exposures where they "may reasonably be expected" to exceed the excursion limit. However, if peak exposures cannot reasonably be expected, they are unlikely to be either monitored for or protected against.

Second, the initial monitoring required to measure short-term, peak exposures where they are expected to occur is subject to error. To obtain accurate estimates of short-term exposures, monitoring must be conducted using the strictest sampling strategies and analytical techniques. If the proper protocol is not observed precisely, violations of the EL can go undetected (53 FR 35618 and 35619).

Third, where violations of the EL are detected and control measures are implemented, these control measures will frequently be ineffective. OSHA expects that for many of the employees exposed to predictable bursts of airborne asbestos, including workers in industry and in building maintenance and repair, respirator use will prove the only feasible means of controlling exposure (53 FR 35616 and 35624). Unfortunately, respiratory protection has not been found to be very reliable. OSHA ranked respirator use last in its recommended hierarchy of controls in its 1986 revision to the asbestos standards, observing:

> Respirators are capable of providing adequate protection only if they are properly selected for the concentrations of airborne contaminants present, properly fitted to the employee, properly and conscientiously worn

by the employee, carefully maintained, and replaced when they have ceased to provide adequate protection. While theoretically it is possible for all of these conditions to be met, it is more often the case that they are not (51 FR 22692).

The drawbacks cited above are aggravated if those using the respirators are not accustomed to working with them or with asbestos. OSHA states in its amendment establishing the EL that it "is concerned about relying on respirator use to meet the EL in the maintenance and repair sector of the construction industry, where contact with asbestos is often only occasional (53 FR 35624). Finally, even if all the conditions mentioned above are met, respirators will do nothing to reduce the quantity of asbestos released into the immediate environment of respirator wearers. Thus, during the activity that generates the airborne asbestos, persons near the respirator wearer can be exposed to levels that are quite high even if they do not violate the EL, and after the activity, all persons in the area, including those who have removed their respirators, can be exposed to dust that remains airborne or that is reentrained after settling out.

Like respirators, other control measures may reduce some short-term exposures without having much impact on long-term exposures. Some control measures replace one opportunity for exposure with another. For instance, to reduce short-term exposures during brake repair, OSHA recommends that mechanics utilize either a solvent spray or a vacuum enclosure equipped with a High Efficiency Particulate and Aerosol (HEPA) filter. While both of these controls can be effective in reducing short-term exposures during the brake job, exposures can be high later if the asbestos-contaminated solvent is allowed to remain in the area to evaporate, or if care is not taken during the removal of the HEPA filter from the vacuum device (Ref. 29). Because establishments using HEPA vacuum enclosures are exempt from monitoring under the OSHA standard, high exposures during filter removal may not be detected. Again, as is the case for respirators, the effectiveness of the brake repair control measures in reducing overall exposures depends heavily on the knowledge and conscientiousness of the user. This is also true for shrouded tools, the control measure recommended by OSHA for reducing short-term exposures during the cutting of A/C pipe (53 FR 35622).

Fourth, the implementation of additional control measures will be difficult, expensive, and time-consuming for much of the regulated community, discouraging compliance with the EL. For instance, although some brake repair establishments servicing large government fleets utilize HEPA vacuum enclosures, smaller establishments repairing brakes less frequently are less likely to invest in these relatively expensive devices. Moreover, while employees in government brake repair shops are usually paid by the hour, employees in private establishments are often paid by the job, which discourages the use of time-consuming work practices and engineering controls (Ref. 50). A similar situation exists in the maintenance and repair sector of the construction industry where, as noted earlier, many smaller building firms may find it difficult to institute adequate respirator programs. In these industry sectors and others, limitations on resources and time may discourage the diligent use of control measures that is required to achieve substantial reductions in occupational exposures to asbestos. The record of compliance with OSHA's 0.2 f/cc PEL supports this projection. The provisions most frequently violated in the year after OSHA's 1986 PEL went into effect included the requirements to conduct initial and daily monitoring, to institute engineering controls, and to institute a respirator program, all of which are as important to achieving the EL as the PEL. In fact, achievement of the EL requires stricter application of these requirements than does achievement of the PEL, making uniform compliance more difficult. Moreover, the structure of the brake repair and building maintenance and repair industries, in which numerous, small businesses are the norm, will also make enforcement of the EL difficult.

In summary, attempts to reduce short-term exposures are likely to have only a limited effect in eliminating the exposure risks posed by asbestos. Peak exposures are both unpredictable and difficult to detect. Efforts to control them must rely largely on respirators and work practice controls, control measures whose effectiveness is uneven, depending upon the conscientiousness of the user. Implementation of these control measures also requires resources that employers and employees may have difficulty investing, and the record of compliance with the 0.2 f/cc PEL indicates that in many cases, the investment will not be made. For these reasons, occupational exposures will probably not be greatly lowered as a result of the EL. Although the estimates given below may slightly overestimate occupational exposures in those cases where the impact of the EL is greatest, EPA believes that any overestimate is likely to be minor overall.

The following table summarizes EPA s estimates of occupational exposures to asbestos by product category and process. This table and the other tables in this Unit present exposure levels in terms of millions of fibers breathed per year (10^6 f/yr), an index of exposure that accounts for varying breathing rates, air concentration levels, and frequencies and durations of exposure among workers, consumers, and the general population. Assuming an 8-hour workday, a 250-day work year (both conditions do not always hold in the industries below), and a breathing rate of 1.3 m^3/hr, 100×10^6 fibers/year = 0.038 f/cc. Assuming a 45-year working lifetime exposure, exposure to 100×10^6 fibers/year carries a risk of 1.29×10^{-3} (1.29 in 1,000) of developing cancer (51 FR 35610). In many cases, blank spaces in the table signify that information was not available, not that no exposure takes place. The high fiber levels and relatively low populations given for the repair and disposal of A/C shingle, A/C sheet, and roofing felt are a result of the FTE approach to the calculation of benefits (cancer-cases-avoided). In reality, per person fiber levels are lower and populations are higher. Except as noted, all exposure information presented in this Unit of the preamble dates from 1985, the most recent year for which a complete set of data was available in the Market and Exposure Surveys. In calculating the cancer-cases-avoided through the rule, however, EPA has assumed that exposed populations would decline at the same rate as production volumes.

TABLE I—OCCUPATIONAL EXPOSURES

Product	Primary manufact.		Secondary manufact.		Install.		Repair/disposal	
	Pop.	10^6 f/yr	Pop.	10^6 f/yr	Pop.	10^6 f/yr	Pop.	10^6 f/yr
Commercial paper								
Rollboard								

TABLE I—OCCUPATIONAL EXPOSURES—Continued

Product	Primary manufact.		Secondary manufact.		Install.		Repair/disposal	
	Pop.	10^6 f/yr	Pop.	10^6 f/yr	Pop.	10^6 f/yr	Pop.	10^6 f/yr
Millboard	12	145	448	57				
Pipeline wrap	35	134						
Beater-add gaskets	235	110	1,296	57				
Roofing felt					396	439	263	296
Flooring felt								
Corrugated paper								
Specialty paper	2	111	149	57				
V/A floor tile								
A/C pipe	286	270			933	296		
A/C flat sheet	53	478			49	723	61	2,080
A/C corrugated sheet					7	723	9	2,080
A/C shingles	11	473			323	130	225	244
Drum brake linings	1,565	385	2,719	125			86,398	376
Disc brake pads, LMV	916	390	300	146			32,568	386
Disc brake pads, HV	15	385					117	390
Brake blocks	283	377	19	127			3,935	388
Clutch facings	239	406	48	166			73	125
Automatic transmission components	11	113						
Friction materials	191	398	28	195			43	120
Asbestos clothing								
Sheet gaskets	167	208	885	276				
Roof coatings	582	273						
Non-roof coatings	553	220						

[1] No U.S. manufacture or import.
[2] Exposures listed include a relatively small number of exposures posed during the production of specialty industrial gaskets, which are not banned by this rule.
[3] Repair and disposal figures include rebuilding only.

EPA was not able to quantify all occupational exposures to asbestos. As noted earlier, there are few data on exposures during the installation, use, repair, removal, and disposal of a number of products, although exposure is believed to take place during these processes for many of these products. Moreover, existing exposure data do not reflect the elevated levels of airborne asbestos that can result from unpredictable episodic events, such as the accidental disturbance of asbestos material by a maintenance worker.

As a means of representing part of this recognized but unmeasured exposure, EPA estimated occupational exposures associated with the installation, repair, and disposal of certain products on the basis of the limited data that exist for these products and processes and on the basis of exposure data for similar products and processes. Populations (in terms of FTEs) were estimated on the basis of production volumes and the person-hours typically required for the activity of concern. These estimates are presented in the table below, and are used as indicated in this preamble to assess the possible impact of the absence of some occupational exposure data on calculations of the rule's benefits.

TABLE II—ANALOGOUS EXPOSURE ESTIMATES

Product	Installation		Repair/Disposal	
	Population	10^6 f/yr	Population	10^6 f/yr
Millboard	20	57	20	57
Pipeline wrap	2,725	52	2,725	23
Beater-add gaskets	53,417	57	53,417	57
Specialty paper	350	57	350	57
A/C pipe	([3])	([3])	1,458	296
Clutch facings			475	395
Sheet gaskets	5,741	276	5,741	276
Non-roof coatings	1,780	390		

[1] Exposures listed include a relatively small number of exposures posed during the production of specialty industrial gaskets, which are not banned by this rule.
[2] Exposures listed under Repair and Disposal here take place in addition to those listed under Repair and Disposal in Table I.
[3] See table I.

In view of the information presented in this Unit, EPA concludes that despite OSHA s recent promulgation of new, stricter standards for exposure to asbestos in the workplace, occupational exposures and risks remain unacceptably high. As noted earlier, OSHA has observed that risks at the 0.2 f/cc PEL remain significant but that feasibility constraints prevent OSHA from setting the PEL any lower. EPA's extensive data base on occupational exposures, including information collected after OSHA's 0.2 f/cc PEL became effective, indicates that individual risk remains higher than 1 in 1,000 for tens of thousands of people who work with asbestos products.

b. *Non-occupational exposures.* Outside of the work environment, most of the U.S. population is exposed to asbestos that is released during the life cycle of asbestos products. Some of these people are consumers who are exposed to asbestos as they install, use, repair, remove, and dispose of asbestos products that they have purchased, such as roofing materials and automotive brakes. Others are exposed to asbestos released into the ambient air during the

manufacture, installation, use, repair, and disposal of asbestos products. Risks from non-occupational exposure are not only incurred by very large populations but occasionally can be quite high. EPA estimates that approximately 40 million consumers and 19 million of those exposed to ambient asbestos incur risks of 1 in 1,000,000 or more of developing cancer from their exposure. Approximately 223,000 of those exposed to ambient asbestos incur lifetime risks of 1 in 10,000 or greater of developing cancer (Ref. 30).

Historically, consumer exposures to asbestos have not received as much attention as occupational exposures to asbestos, but they are a source of significant concern. While consumer exposures are not likely to be as frequent for individual consumers as occupational exposures are for workers, they are likely to be more intense than occupational exposures because consumers generally lack the exposure-reducing equipment and expertise available to protect workers. For instance, consumers replacing their brakes are not likely to use either solvent spray or a HEPA enclosure, the two pieces of equipment recommended by OSHA for use in reducing exposures to asbestos during brake repair. Consumers may in fact employ a shop or household vacuum cleaner to remove asbestos dust from brake assemblies, a technique that can lead to very high exposures because most vacuum cleaners fail to capture asbestos dust and simply force it back out into the air (Ref. 59).

Consumer exposures are also experienced by a much larger population than occupational exposures. According to two recent, independent consumer surveys, approximately 40 million consumers repair their own brakes once every 3 years, and other consumer surveys indicate that at least 840,000 consumers repair their own roofs every 4 years (Ref. 31). These figures do not include consumer populations exposed to asbestos from the installation, repair, and removal of gaskets, A/C sheet, and A/C shingle, other processing during which consumer exposures are likely, but not quantified. Populations annually exposed to asbestos during brake and roof repair are presented along with equivalent information for exposures to ambient asbestos in Table IV of this Unit. Air concentration levels were estimated from occupational data. This may result in underestimates because, as noted above, consumers are unlikely to have access to the exposure-reducing work practices and engineering controls used by workers.

The ability of asbestos to persist and to spread in the environment makes it a hazard to millions of people who may not have any direct occupational or consumer contact with asbestos products. Several tons of asbestos are released to the ambient air during mining and milling, during the manufacture of asbestos products, during brake use and repair, and during construction and demolition (Ref. 29). Additional asbestos is released from asbestos products during other parts of their life cycles. Once released, this asbestos accumulates and spreads in the environment. Air monitoring studies have demonstrated that urban areas, with their high concentrations of motor vehicles, construction, and demolition, generally have levels of airborne asbestos one or two orders of magnitude higher than rural areas. While rural background levels range between 0.01 and 0.1 $\mu g/m^3$ readings in large cities range from 1 $\mu g/m^3$ upward (Ref. 3). Thus, asbestos released during the life cycle of asbestos products is capable of elevating ambient levels of asbestos to several times the background level.

The release estimates and atmospheric modeling that EPA used to estimate ambient exposures capture at least part of the contribution of asbestos-containing products produced and used in the future to ambient levels. For this rulemaking, EPA calculated ambient exposures attributable to releases from mining and milling, the manufacture of asbestos products, brake use and repair, and construction with asbestos products. Since the proposal, these calculations have been expanded and refined to include ambient exposures from brake repair, construction, and demolition.

To estimate ambient exposures attributable to milling and product manufacturing, EPA first estimated air emissions per facility in milling and in each product category, using production volumes and the efficiency of pollution control equipment for each product category. EPA then used atmospheric dispersion modeling based on site-specific meteorological data to estimate ambient concentrations and exposed populations. Because the number of plants involved in the manufacture of asbestos products is quite large, monitoring air concentrations around each plant is impractical. The atmospheric modeling used in EPA's asbestos exposure analyses has been tested on other pollutants and has been found generally to predict their concentrations within a factor of two (Ref. 47).

As explained in the Asbestos Exposure Assessment (Ref. 29), EPA's methodology to estimate asbestos air releases from manufacturing and processing plants is presented in the March 5, 1987 draft EPA report entitled National Emission Standards for Asbestos-Background Information for Proposed Standards (Ref. 46). This document presents emission scenarios based on the only published study on the efficiency of baghouses in the asbestos industry. For each industry, three emissions scenarios were presented for baghouses operating in normal, non-failure mode: minimum, maximum, and "best estimate" emissions. These scenarios were based upon three different assumptions regarding the sensitivity of the gravimetric analytical method used in the study. For all three scenarios, TWA efficiencies were also calculated taking into account occasional baghouse failures. Time-weighted efficiencies for various asbestos product categories range from between 99.965 and 99.659 percent under the maximum emission scenario with occasional baghouse failure assumed to 99.99 percent for all products under the minimum emission scenario with no baghouse failure assumed. Under the "best estimate" emission scenario with occasional baghouse failure assumed, efficiencies range between 99.968 and 99.988.

For the maximum emission scenario with no baghouse failure assumed, a normal operating mode consisting of two efficiencies, 99.95 percent for asbestos product categories with high inlet concentrations (greater than 0.1 grain/cu ft) and 99.67 percent for product categories with low inlet concentrations (less than 0.1 grain/cu ft) was used. The asbestos product categories with high inlet concentrations, for which an efficiency of 99.95 percent was used, are asbestos-cement sheet and pipe, friction materials, and reinforced plastics. Those with low inlet concentrations, for which an efficiency of 99.67 percent was used, are paper, coatings and sealants, gaskets, and textiles. For purposes of comparison, EPA presents some results in this preamble using both the maximum emissions scenario with no baghouse failure assumed and the "best estimate emissions scenario with occasional baghouse failure assumed. However, in many cases, EPA presents results in this preamble using only the maximum emissions scenario with no baghouse failure assumed.

EPA estimates that 122 million people are exposed to ambient asbestos

released during milling and product manufacturing. Under the maximum emission scenario with no baghouse failure assumed, a number of people would incur risks of at least 1 in 1,000 of developing cancer from a lifetime of exposure (Ref. 30). Under the "best estimate" assumption of baghouse efficiency with occasional baghouse failure assumed, many thousands of persons would incur risks of at least 1 in 10,000 of developing cancer from ambient exposure to asbestos from plant emissions.

Table III of this Unit, based on the maximum emissions scenario with no baghouse failure assumed, lists the exposure levels and populations associated with plant releases for each product category. For each category, exposure levels have been averaged over the entire population exposed. As detailed in Unit V.F and in the Asbestos Modeling Study, actual exposures are much higher for some people and lower for others, but the total populations and average exposures presented here provide a general gauge of exposure for each product category and were used to calculate the benefits (cancer-cases-avoided) of the rule.

Averaging has no effect on EPA's calculation of benefits because EPA uses a linear dose-response model to project cancer-cases-avoided. A linear dose-response model assumes that an individual's risk of developing cancer increases at a constant rate with his or her exposure to asbestos. Thus, for populations of equal size, a given increment of exposure carries the same amount of risk regardless of any differences that may exist between the populations in the magnitude of the exposures that they experience in addition to it. For example, if half of a population is exposed to an asbestos concentration of 0.19 f/cc and half is exposed to an asbestos concentration of 0.21 f/cc, the expected incidence of cancer for the entire population can be calculated by "moving, for the purposes of the analysis, 0.01 f/cc of exposure from the 0.21 f/cc population to the 0.19 f/cc population, yielding an average exposure level of 0.2 f/cc for the entire population. For populations of the same size, the 0.01 f/cc carries the same risk whether it is associated with an additional exposure of 0.2 f/cc or of 0.19 f/cc. As long as the cumulative population exposure (the sum of the products of the various exposure levels and the populations exposed to each) remains constant, it can be distributed in any way among the population without affecting the calculation of expected cancer cases. The following Table III, based on the maximum emissions scenario with no baghouse failure assumed, lists the exposure levels and populations associated with plant releases for each product category.

TABLE III—EXPOSURES TO AMBIENT ASBESTOS FROM PRIMARY AND SECONDARY MANUFACTURING

Product	Population exposed	Average exposure (10^6 f/yr)
Commercial paper	0	0
Rollboard	0	0
Millboard	5,747,875	0.0232
Pipeline wrap	4,847,937	0.0476
Beater-add gaskets	37,169,666	0.0373
High-grade electrical paper	254,772	0.405
Roofing felt	0	0
Flooring felt	0	0
Corrugated paper	0	0
V/A floor tile	0	0
A/C pipe	3,313,602	0.167
A/C flat sheet	21,232,368	0.0218
A/C corrugated sheet	0	0
A/C shingle	891,143	0.00361

TABLE III—EXPOSURES TO AMBIENT ASBESTOS FROM PRIMARY AND SECONDARY MANUFACTURING—Continued

Product	Population exposed	Average exposure (10^6 f/yr)
Drum brake linings (LMV)	34,542,107	0.0575
Disc brake pads (LMV)	24,065,022	0.0214
Disc brake pads (HV)	1,704,883	0.000000827
Brake blocks	9,785,424	0.00388
Clutch facings	8,761,571	0.0027
Automatic transmission components	0	0
Friction materials	12,922,247	0.00234
Asbestos clothing	0	0
Sheet gaskets	43,612,019	0.00561
Roof coatings	84,570,429	0.00233
Non-roof coatings	70,389,388	0.0000394

Exposures listed include a relatively small number of exposures posed during the production of specialty industrial gaskets, which are not banned by this rule.

To calculate exposures to asbestos released into the ambient air from mining and construction sites and from brake repair facilities, EPA estimated emissions on the basis of its information on occupational exposures during mining, construction, and brake repair. Then EPA used atmospheric dispersion modelling to calculate concentration levels and exposed populations.

The following Table IV lists the exposures and populations associated with releases from construction and brake repair. The populations exposed are approximately equal to the urban population of the U.S. There are two exceptions: (1) brakes for light- and medium-weight vehicles, for which annual consumer exposures are added in, and (2) roof coatings, for which annual consumer exposures alone are counted.

TABLE IV—EXPOSURES TO AMBIENT ASBESTOS FROM CONSTRUCTION AND BRAKE REPAIR AND EXPOSURES FROM CONSUMER BRAKE AND ROOF REPAIR

Product	Process			
	Installation		Repair and disposal	
	Population	10^6 f/yr	Population	10^6 f/yr
Roofing felt	171,136,373	0.000018	171,136,373	0.0000067
A/C pipe	171,136,373	0.0000264		
A/C flat sheet	171,136,373	0.00000298	171,136,373	0.0000173
A/C corrugated sheet	171,136,373	0.00000043	171,136,373	0.0000025
A/C shingles	171,136,373	0.0000052	171,136,373	0.0000067
Drum brake linings (LMV)			183,793,774	0.0123
Disc brake pads (LMV)			179,442,394	0.00624
Disc brake pads (HV)			170,871,494	0.000000587
Brake blocks			170,871,494	0.0000171
Roof coatings	210,250	1.104		

To calculate exposures to asbestos released into the ambient air through brake use, EPA first calculated the total amount of asbestos emitted from brakes in each of 24 American cities, using studies on brake emissions and

estimates of miles traveled by vehicle type (because emissions vary by vehicle type) in each city. Second, EPA performed atmospheric dispersion modeling of these emissions to estimate concentrations in each city. Third, EPA grouped the cities together by population, obtaining average concentrations for each group. To estimate the populations exposed to each of these average concentrations nationwide, EPA added up the populations living in the U.S. cities similar in size to the cities of each group. Because none of the original 24 cities had fewer than 25,000 inhabitants and because vehicular traffic is less concentrated in rural areas than in cities, populations living in areas with fewer than 25,000 inhabitants were assumed to have no exposure to asbestos released during brake use. Finally, EPA averaged the estimated concentrations over all population groups from areas with more than 25,000 inhabitants, weighting each concentration by the population exposed to it. Using this technique, EPA estimates that 100 million people (the 1980 U.S. population living in areas of more than 25,000 people) are exposed to 8.7×10^{-5} $\mu g/m^3$ of asbestos resulting from the use of asbestos brakes (Ref. 31). The individual risk of developing cancer from a lifetime of exposure to this concentration of asbestos is estimated at approximately 1 in a million, a level which is significant given the very large population exposed. Because populations living in areas with fewer than 25,000 people (55.5 percent of the U.S. population) probably are exposed to at least some asbestos from brake use, this estimate should be considered a lower bound.

In addition to the exposures quantified above, EPA believes that other significant ambient exposures occur that cannot be easily quantified. One type of unquantified exposure results from releases of asbestos that are difficult to measure, such as the gradual weathering and disintegration of construction products used outdoors. A number of studies indicate that these releases are probably significant. Indirect evidence of weathering comes from several studies of corrosion in A/C pipe; soft, acid water has been found to dissolve A/C pipe in some instances (Ref. 64). Because rain water is likely to be both soft and acid, it is likely to be very corrosive to A/C materials.

Direct evidence of weathering supports this projection. A study of erosion in A/C shingle found visible differences in wear between areas of shingle that were exposed to the elements and areas that were protected, and inspection of the worn areas with a scanning electron microscope revealed a network of asbestos fibers on the shingle surface. In addition, concentrations of asbestos as high as 543 million fibers per liter (mfL) were found in runoff collected from roofs covered in A/C single. Ten mfL is considered abnormally high (Ref. 51). Another study detected asbestos releases from construction materials after a shingle storm; several air samples taken after a heavy rain at a school with A/C walkways and roof panels showed significantly elevated asbestos concentrations (Ref. 1). Thus, in areas where there is widespread use of A/C sheet and A/C shingle, weathering is probably an important source of ambient asbestos.

Another type of unquantified exposure results from the tendencies of asbestos to persist in the environment and to reenter the air after settling out. Both the durability and aerodynamic properties of asbestos are well documented. The extraordinary ability of asbestos to survive for long periods under a variety of different conditions is often cited as an important reason for its incorporation into a number of products, including paper products used as insulation, friction materials, asbestos cement products, packings, and gaskets. Reentrainment is supported by studies finding high airborne asbestos concentrations not only near waste piles but upwind as well as downwind of point sources (Ref. 48), a finding most likely to result from the resuspension of asbestos deposited earlier by winds blowing in the opposite direction. This evidence indicates that over time, asbestos builds up to some degree in surface waters and soils and that some of this build-up is continuously reentrained in the air. This process of build-up and reentrainment is referred to as environmental loading. Because the likelihood of reentrainment in the environment depends upon a number of factors that are difficult to measure, including the fraction of asbestos that is washed away by rainfall or buried under later soil deposits, reentrainment has not been included in EPA's atmospheric modeling. Thus, EPA has not quantified exposures attributable to environmental loading. Nonetheless, EPA is very concerned about the possible impact of this process on exposures to ambient asbestos. Given its durability, asbestos may persist in the environment for a decade or more after its original release, and environmental loading is likely to be most severe in urban areas, where large populations both create and come into contact with asbestos releases. In fact, the elevated concentrations of asbestos found by numerous studies in urban areas probably result at least in part from environmental loading. The potential longevity of the risk posed by environmental loading was a major factor in EPA's decision to eliminate that risk at its source by banning most asbestos products.

Some commenters argued that exposures to asbestos released into the ambient air by the manufacture, importation, processing, and use of asbestos-containing products are insignificant because the risks associated with such exposures are very small. However, individual risks from asbestos in the ambient air can be quite high for persons living near asbestos product plants, construction sites, or other sources of release. As noted earlier, under the maximum emission scenario with no baghouse failure assumed, a number of people would incur risks of at least 1 in 1,000 of developing cancer by living in such areas. Under the "best estimate" emissions scenario, many thousands of persons would still incur a risk of at least 1 in 10,000 from ambient exposure to asbestos from plant emissions. Moreover, while most people exposed to ambient asbestos from asbestos-containing products incur individual risks smaller than 1 in 1,000, the number of people exposed is extremely large, making the total risk a concern.

c. *Exposure from imported and exported asbestos products.* EPA has determined that significant exposure is likely from imported asbestos products. Although some exposure to U.S. populations is avoided when asbestos products are manufactured abroad and imported rather than manufactured in the U.S. (foreign exposures and resulting cancer cases are not included in the estimates for this rule), significant exposures still occur after import of the products into this country. U.S. exposures occur during transport, installation, use, maintenance, removal, and disposal of the product. As noted above, large numbers of people are exposed to asbestos during these activities and the level of exposure is often quite high.

Significant exposures also occur during the U.S. portion of the life cycle of asbestos-containing products manufactured in this country for export. These exposures occur during the mining and milling of asbestos fiber and the processing of fiber into products. Families of workers and populations living near mining and manufacturing

sites are also exposed to asbestos as a result of these activities. Therefore, as is discussed in Unit III.B of this preamble, EPA finds under section 12(a)(2) of TSCA that the manufacture or processing for export of asbestos-containing products that are subject to the rule will present an unreasonable risk of injury to human health. Therefore, the manufacture and processing of asbestos-containing products for export is not exempted from this rule under section 12(a)(1), and is subject to the rule's bans.

d. *Exposure conclusions.* In conclusion, EPA finds the intensity, scope, and potential longevity of human exposure to asbestos released during the life cycles of the products subject to this rule cause for serious concern. In spite of efforts to control exposure, asbestos is released and inhaled at all stages of the life cycles of asbestos products; extensive exposures have been quantified for workers, consumers, and the general population. EPA estimates that thousands of asbestos workers and members of the general population incur individual risks near 1 in 1,000 from exposure to asbestos released from the products subject to this rule and that millions of people incur risks near 1 in 1,000,000 from such exposure. These risks are very large. Moreover, evidence indicates that significant exposures take place that cannot be quantified. EPA is especially concerned about exposures from environmental loading, which may occur long after the initial release of asbestos from a product.

B. Environmental Effects

The unreasonable risk finding for this rule is based on the risks to human health posed by exposure to asbestos. These risks are the most readily quantifiable consequences of the commercial use of asbestos and are sufficient to support the actions taken in this rule. However, EPA is concerned about the potential environmental effects of ambient loading due to continued manufacture, importation, processing, and use of commercial asbestos products. Exposure to asbestos fibers has been clearly shown in both human and animal studies to cause severe health effects. Effects on wildlife have not been quantified for purposes of this rule. However, because asbestos fibers are extremely durable and transportable, EPA believes that continued asbestos use will leave a legacy of serious health and environmental effects due to unnaturally high concentrations of asbestos in the ambient air.

C. Asbestos Substitutes

This Unit discusses the relative availability of substitutes for asbestos in asbestos-containing products and the potential health hazards posed by such substitutes. EPA has found that suitable substitutes currently exist for most uses of asbestos. EPA believes that the benefits to society of asbestos-containing products are relatively small because of the current availability of many substitutes and the expected development of others after promulgation of this final rule.

1. *Availability of substitutes.* This subject is described in more detail in Volume III, Appendix F of the Regulatory Impact Analysis (RIA). Further responses to comments on these subjects can be found in the Response to Comments document. The availability of substitutes for the various product groupings subject to this rule are discussed in Unit V.F of this preamble.

The following Table V lists currently-available major substitutes for asbestos-containing products that are banned by this rule and the market shares for each product category projected for the substitutes in the absence of asbestos. This breakdown does not take into account the development of new substitutes or new applications of existing substitutes since the preparation of the RIA. It also does not account for the likely development of new substitutes before the effective date of this rule's bans. EPA is aware that it may not have identified all substitutes for asbestos-containing products and that the costs of the rule may be overstated as a result.

TABLE V —PROJECTED MARKET SHARES OF CURRENT SUBSTITUTES

Product and substitute	Approximate Substitute Market Share (percent)
Pipeline wrap:	
Mineral felt	48
Safelt (R)	32
Duraglass (R)	20
Beater-add gaskets:	
Cellulose	25
Aramid	30
Fibrous glass	20
Polytetrafluoroethylene	10
Graphite	10
Ceramic fibers	5
Sheet gaskets:	
Para-aramid	30
Fibrous glass	25
Graphite	15
Cellulose	15
Polytetrafluoroethylene	10
Ceramic	5
Roofing felt:	
Fiberglass felt	40
Modified bitumen	50
Single-ply membrane	10

TABLE V —PROJECTED MARKET SHARES OF CURRENT SUBSTITUTES—Continued

Product and substitute	Approximate Substitute Market Share (percent)
A/C pipe:	
Polyvinylchloride (PVC)	93
Ductile iron	7
A/C flat sheet:	
Calcium silicate	76
Non-calcium silicate	4
Laboratory sheet	20
A/C corrugated sheet:	
Fiberglass reinforced plastic	48
Aluminum	32
Steel	11
Polyvinylchloride	9
A/C shingles:	
Wood	32
Vinyl	27
Asphalt	20
Aluminum	19
Tile	2
Drum brake linings:	
Non-asbestos organics	99
Semi-metallic	1
Disc brake pads (LMV and HMV):	
Semi-metallic	100
Brake blocks:	
Non-asbestos organics	99
Semi-metallic	1
Clutch facings:	
European woven	50
U.S. woven	30
Molded aramid	10
Molded fiberglass	10
Automatic transmission components:	
Cellulose	100
Other friction materials;	
Fiberglass & para-aramid	100
Millboard:	
Standard board	80
Premium board	20
Specialty paper:	
Earth and cellulose	50
Loose cellulose	50
Roof coatings:	
Cellulose	87
Polyethylene	8
Other	5
Non-roof coatings:	
Synthetic fibers	70
Clay and mineral	30

Substitutes for asbestos products are steadily being developed and accepted in the marketplace. It should be noted that a number of products that are subject to this rule's bans are no longer manufactured or imported in the U.S. In these cases, viable substitutes have apparently forced asbestos-containing products from the U.S. market. An increasing rate of availability and acceptance of substitutes is evidenced by a more rapid decrease in asbestos use in most product categories than was predicted in the RIA for the proposal. Public comments have identified new subsitutes and indicated that substitute prices have decreased substantially beyond the estimates generated in the RIA for this final rule. In addition, EPA believes that this rule will further spur

the development of substitutes, thereby increasing availability and decreasing costs.

2. *Health risk review of fibrous asbestos substitutes.* This Unit addresses the potential health risks caused by exposure to various fibers projected to replace asbestos in products banned by this rule. This subject is discussed in more detail in (1) "Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-asbestos Fibers" (Ref. 35); (2) "Durable Fiber Exposure Assessment" (Ref. 36); (3) "Durable Fiber Industry Profile and Market Outlook" (Ref. 37); and (4) "Health Hazard Assessment of Non-asbestos Fibers" (Ref. 38). Further responses to comments on this subject can be found in the Response to Comments document.

Based on available information and a public health policy regarding asbestos, EPA has more concern about the continued use and exposure to asbestos than it has for the future replacement of asbestos in the products subject to this rule with other fibrous substances. Available information about the fibrous substitutes under review for this rulemaking supports the conclusion that the fibrous substitutes appear to pose a lower human health hazard than asbestos (Ref. 38). However, due to limited data, EPA cannot quantify the risk that may be posed by fibrous asbestos substitutes. EPA believes it is prudent public health policy to regulate asbestos rather than to delay regulation until all risks of substitute products are definitively determined. This conclusion is based on a consideration of (1) Available data on the health hazards and exposures posed by asbestos and its substitutes; (2) the factors that enhance or mitigate fiber pathogenicity; (3) an understanding of the deficiencies of the data available on health hazards and exposures of substitutes; and (4) EPA's public health policy of reducing known, serious health risks.

a. *Background.* EPA, for the proposed rule, performed a review of the available hazard and exposure information on eight fibrous substances that could substitute for asbestos in Asbestos Substitutes and Related Materials" (Ref. 39). In response to public comments received on the proposal, EPA conducted an extensive review of available information and updated its hazard and exposure assessment of fibrous asbestos substitutes (see Refs. 35, 36, 37 and 38).

Specifically, this analysis included six man-made or synthetic fibrous materials (aramid fibers, carbon fiber, ceramic fibers, fibrous glass, mineral wool, and polyolefin fibers), and two naturally-occurring fibers (attapulgite and wollastonite). These eight fibers were individually selected for review because (1) They are commercially important; (2) they are potentially the major fibrous substitutes for asbestos; (3) they represent fiber types with broadly different physical and chemical characteristics; and (4) hazard and exposure data are available. EPA chose to place its emphasis on the review of fibrous substitutes because their morphological similarity to asbestos suggested that they may induce cancer. Other non-fibrous substitutes, specifically, wood and other cellulose products, cement, and bricks, appear to pose little or no health hazard and, for this reason, their potential health effects have not been analyzed in detail for purposes of this rule.

b. *Health effects of fibrous substitutes.* EPA conducted a comprehensive review of the experimental and epidemiological hazard data for the eight fibrous substitutes (Refs. 35 and 38). Available epidemiological and toxicological data indicate that inhalation exposure to some fibrous substitutes may be associated with malignant and non-malignant diseases in humans. However, the evidence of carcinogenicity and fibrogenicity of these substitutes is more limited than for asbestos. Based on available data, EPA has concluded that, under similar experimental conditions, the fibrous substitutes are generally less biologically active and pathogenic than asbestos (Ref. 38). Unlike the fibrous substitutes, asbestos is a well-recognized, potent human carcinogen, which also causes non-malignant pulmonary effects. At this time, EPA cannot make a definitive assessment of the biological activity and pathogenicity of fibrous substitutes in comparison with asbestos because available data on the health effects of the substitutes are incomplete. EPA has not derived a carcinogenic potency for any of the fibrous asbestos substitutes suspected to pose a carcinogenic concern, because either available epidemiological data and/or animal inhalation data are inadequate to establish a quantitative exposure-response relationship or tumor response has only been observed in animals via non-physiological routes of administration, such as intraperitoneal injection (Ref. 38).

One commenter contended that a potency value could be determined for fibrous glass and mineral wool based on epidemiological data and concluded that the potency may be comparable to or exceed the potency established for asbestos. EPA has concluded that a potency value cannot be derived for fibrous glass because the epidemiological evidence for carcinogenicity of these substances is inadequate. The data cited by commenters do not show consistent elevation of lung cancer risks in exposed workers or provide sufficient information to demonstrate a dose-response relationship (Ref. 35). Further, it is not appropriate to compute potency values from the available experimental data because the inhalation studies in animals did not produce tumorigenic responses (Ref. 38). Similarly, carcinogenic potency cannot be determined for mineral wool because dose-response information is not available from existing epidemiological studies (Ref. 35) and no tumorigenic responses were found in available inhalation studies (Ref. 38).

The commenter also stated that a unit cancer risk could be developed for aramid fibers using results from an animal inhalation bioassay for ultrafine para-aramid. The commenter made use of the linearized multi-stage procedure to calculate risk. In calculating the unit cancer risk value, the commenter only considered a subset of the bioassay data (Ref. 56). Consequently, EPA does not believe that the analysis presented by the commenter adequately reflects the results of the bioassay (Ref. 56). EPA is continuing to gather additional information to evaluate potential cancer risk of respirable aramid fibrils. Additionally, EPA is assessing the appropriate model to use to extrapolate cancer risk for aramid fibrils.

Unprocessed commercial-grade para-aramid, a type of aramid fiber, is manufactured in sizes that are too large to be respirable (Ref. 36). In addition, not all types of aramid fibers are expected to produce fibrils (e.g., continuous para-aramid) (Ref. 36). The para-aramid used in the cited animal study was a highly respirable material made specifically for the study (Ref. 38). Although the commercial-grade of para-aramid is believed to have the potential to generate respirable fibers as the small fibrils peel off from the non-respirable core matrix, exposure data are too limited to determine if fibril formation poses a significant concern. Limited monitoring data (combined area samples and personal samples) indicate that exposures to para-aramid fibrils range from not detectable to a maximum of 7.5 f/cc (Refs. 36, 54, and 55). According to a commenter, during manufacture, a maximum likely 8-hour TWA of 0.1 f/cc was recorded. According to the same commenter, during production and processing of

friction materials, the maximum likely 8-hour TWA was less than 0.1 f/cc. Due to the way that the monitoring data were presented, it is difficult to determine if these data are representative of occupational exposure (Refs. 52 and 53). In addition to the limited monitoring data, exposures were only monitored at a few industrial operations which are suspected of producing respirable fibers (Ref. 52). Additionally, it is not known if these operations are representative of the industry (Ref. 53). Based on available information, EPA believes that neither commercial-grade aramid products nor fibrils formed from such products may pose major occupational, consumer, and ambient exposures. Generally, it appears that aramid fibrils tend to curl and clump together, thus reducing their tendency to become or remain airborne. Fibril formation appears to be a by-product of aramid manufacture and processing. Fibrils are not expected to become an integral component of aramid products. In contrast, asbestos becomes airborne easily and can remain airborne for long periods of time.

c. *Respirability.* A basic property which allows a fiber's potential toxicity to be expressed is its respirability, i.e., the ability to penetrate into the lower respiratory tract. Respirable fibers are generally defined as fibers with actual diameters of less than about 3.5 microns or an aerodynamic diameter of less than about 10 microns. Once in the lower respiratory tract, other factors such as fiber length and diameter, surface, and chemical properties are thought to influence biological activity (Ref. 38).

According to available information, a large percentage of the production volume of these fibrous substitutes consists of non-respirable fibers (Ref. 36). Because non-respirable fibers are unlikely to enter and penetrate the lung, such fibers pose minimal risk of inhalation toxicity. However, some portion of the production volume for many of these substitutes contains fibers of respirable size. Such fibers are of concern to EPA. However, available information indicates that fibers in the respirable size range are generally manufactured for specialty uses, such as high-temperature insulation materials, filtration media, ear defenders, spacecraft, and aircraft insulation (Ref. 36). Specialty uses may be of concern in terms of risk to individuals but do not have as great a potential for broad population exposures.

d. *Exposure of fibrous substitutes.* EPA conducted an analysis of the durable fibers industry which included information about producers, uses, and future trends of the eight fibrous substitutes (Ref. 37). EPA also developed an exposure profile of durable fibers (Ref. 36). To this end, EPA conducted a search of the literature and surveyed industry sources. This analysis focused primarily on activities and applications most likely to generate airborne fibers of respirable size. Exposure data for fibrous substitutes, although very limited, were available for all fibers except polyolefins. Most exposure data available in the literature are for fiber manufacture. Exposures during man-made and synthetic fiber production are typically less than 1.0 f/cc because processes are highly automated and often enclosed, meaning that operators are rarely in contact with the fiber (Ref. 36). Many of the packaging operations are also automated and ventilated, and the exhaust is sent to dust collection equipment (Ref. 36). Often the fiber size composition of a sample of airborne material is not noted. When fiber size distinctions have been made, respirable fibers can constitute 50 percent or more of airborne fibers. However, as noted above, airborne fibers typically measured less than 1.0 f/cc. Much of the airborne occupational exposure data available to EPA is outdated. Since many of these data were developed, the industry has become increasingly automated (Ref. 36). Therefore, current exposure levels may be lower.

Production of naturally-occurring substitute fibers presents a different exposure scenario than man-made fibers since the former are mined and milled. Mining and milling have traditionally been "dusty" operations where the use of engineering controls or personal protective equipment are difficult to integrate into the routine operations of the industry. Mining operations are labor intensive and exposures are likely; however, most mining is performed in open pits which allows for some ventilation. Milling operations use mechanical grinding and screening machines and exposure occurs to workers who run these machines. Both dust and fiber concentrations have been shown to significantly exceed OSHA's nuisance dust standards (Ref. 36). During wollastonite milling, a limited study found fiber concentrations ranging from 30 to 80 fibers/cc (Ref. 36).

While worker exposure to attapulgite and wollastonite may be high during certain mining and milling activities, available information indicates low hazard for wollastonite or short fiber attapulgite (Ref. 38). Attapulgite mined in the U.S. is of the short fiber variety (Ref. 36). The U.S. supplies over 90 percent of the world-wide demand for attapulgite (Ref. 37). Based on EPA's analysis (See Unit V.C.1 of this preamble), neither attapulgite or wollastonite are expected to be important asbestos substitutes.

Some commenters cited exposure data for various fibrous products and concluded that the exposures sometimes exceeded the asbestos PEL. These commenters were concerned that exposures may pose a significant risk. In general, production and use of respirable-size man-made fibers and mining and milling of the naturally-occurring mineral fibers, may potentially result in some exposures that exceed exposures from asbestos (Ref. 36). While the data on certain fibrous substitutes indicate that occupational exposure may range from not detectable to levels that exceed the asbestos PEL, levels in excess of the asbestos PEL alone will not lead to significant risks unless the substitutes present a health hazard of a magnitude approaching that of asbestos. As explained above, available information on the hazards of the fibrous substitutes indicate that they are less biologically active and pathogenic than asbestos.

Given the scarcity of exposure data, the numerous types of processes or activities involved, and the variable characteristics of the many fibrous materials, EPA has concluded that reliable projections cannot be made about exposures to fibrous asbestos substitutes. This is contrasted with asbestos manufacturing, processing, and use practices, about which much is known and such conclusions or reasonable projections about exposure can be made.

e. *Risk of fibrous substitutes.* Some commenters stated that EPA should perform risk analyses of the same depth for the non-asbestos substitutes as EPA performed for asbestos. Commenters also stated that EPA's substitute analysis should consider the entire life cycle of the substitute, including the risk associated with non-asbestos raw materials, by-products, contaminants, and energy production. Additionally, some commenters stated that EPA should consider other health and environmental effects in addition to cancer associated with the substitutes, including silicosis and death due to trauma.

For reasons described previously, EPA believes that the available data base on the hazards and exposure to substitute fibers is not sufficient for EPA to perform a quantitative risk analysis. While EPA adopted a life cycle approach to its risk analysis for asbestos, EPA did not include in that

analysis additional risks that may result from: (1) Exposure to raw materials, byproducts, or contaminants associated with production and use of asbestos-containing products; (2) accidents; or (3) energy production and consumption required to produce asbestos products. EPA quantified, to the extent possible, only risks of cancer associated with exposure to asbestos fibers. EPA adopted a similar life cycle approach in its review of substitutes and only evaluated the potential that the fiber itself may cause cancer or non-malignant lung effects. In summary, the review approach adopted for substitutes is comparable to the approach used for asbestos and is only limited by the availability of data.

Some commenters stated that EPA could not conclude, based on available data, that substitutes pose lower risk than asbestos. EPA agrees that the data base is insufficient to quantify the risk of substitutes; however, in spite of the deficiencies of the data base, information is available to indicate that: (1) Some non-fibrous asbestos substitutes pose little or no health risk concern; (2) the inherent biological activity or pathogenicity of the substitute fibers appears to be less than asbestos; (3) a large percentage of the total production volume of fibrous substitutes is non-respirable, and thus does not pose a risk concern; and (4) the diameter size of man-made and synthetic fibers may be controlled, thus enhancing efforts to reduce the presence of contaminants or unnecessary respirable fibers in substitute products.

f. *Policy approach to asbestos and asbestos substitutes.* Regulatory decisions about asbestos which poses well-recognized, serious risks should not be delayed until the risk of all replacement materials are fully quantified. EPA believes that this is a prudent policy since: (1) Asbestos is a human carcingen and poses a serious risk to health; (2) substitute fibers appears to pose less hazard; (3) years are likely to pass before experimental toxicological data are available to quantify or adequately evaluate the possible health effects of substitutes; (4) a decade or more may pass before epidemiological data of the quality that exists for asbestos may be available to confirm any hazards of substitutes identified in experimental data; (5) evolving fiber technology and the advances within the chemical industry are likely to create new substitutes, thus making it quite difficult to ever fully analyze the risks of all possible major substitutes; and (6) risks associated with man-made and synthetic fibers appears easier to control than the risks resulting from asbestos use because fiber diameter size can be technologically controlled.

EPA will control to evaluate hazards and exposures posed by fibrous materials and will determine appropriate regulatory action to mitigate any unreasonable risks that may be identified. EPA may consider regulation of fiber diameter and length of substitute fibers if it is determined that such risk reduction action is needed. EPA recommends, that, whenever feasible, manufacturers, processors and users avoid the production and use of respirable fibers. EPA also strongly encourages manufacturers and processors of fibers to institute quality control practices that minimize if not eliminate the inadvertent production of respirable fibers.

D. Economic Effects of the Rule

EPA has prepared a *Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products* (Ref. 21) which analyzes the potential economic impact of the rule. EPA's assessment of the "reasonably ascertainable economic consequences of the rule, pursuant to section 6(c)(1)(D), is summarized below. The methodologies used by EPA to estimate the costs and benefits of this rule comport with widely-accepted cost-benefit techniques. The methodologies used and the data on which costs and benefit estimates are based have been updated to reflect public comments. Further responses to comments on this subject can be found in the Response to Comments document.

1. *Estimated costs.* Estimated costs were derived using the Asbestos Regulatory Cost Model (ARCM), which is described in the RIA and which primarily used information collected during telephone surveys conducted by an EPA contractor during 1986 and 1987 EPA also used some data obtained under the TSCA section 8(a) asbestos rule to estimate costs. Some information was adjusted to reflect more current data obtained through public comments and from other sources. The sources of information are noted in the record for this rule.

The costs represent the net present value of costs incurred due to changes in asbestos production volume between the years 1987 and 2000, using a social rate of discount of 3 percent. The 13-year time period serves as a reasonable endpoint for the analysis at a point well after all the actions taken in the rule have become effective. The 3 percent rate used to discount costs (and benefits, as discussed below) is a reasonable rate set by consensus by EPA economists. This figure falls within the range of social discount rates suggested by the economics literature.

In estimating the costs of this rule, allowance is made by the economic model to estimate declines in the prices of substitutes. In practice, the cost of a product, in real terms, declines over its production as experience is gained in the manufacturing process. In addition, experience under other regulations has shown that the number of substitutes will increase as a result of product regulation. Some of the new substitutes will be of lower cost than some of the existing substitutes or they will not capture market share from the existing substitutes. Both of these effects will lower the prices of substitutes. Neither of these effects can be fully quantified. However, as the cost of substitutes decreases, the overall cost of this rule will also decrease.

The economic model does not take into account the cost reduction benefits of using substitutes which currently have lower costs than the asbestos-containing products. In other words, the analysis assumes that the price of substitutes, after being adjusted for product life and performance, is always greater than or equal to the price of the comparable asbestos-containing product. This was done to account for differences in the characteristics of asbestos and non-asbestos substitute products that cannot be captured in cost differences. For example, because asbestos-containing products have been traditionally used in these markets, a bias may exist toward the use of asbestos products rather than similarly-priced substitutes. However, this assumption overstates the costs imposed by the rule whenever the substitute actually costs less than the asbestos-containing product and there is no significant difference in product performance characteristics.

EPA attempted to gauge the possible effects of expected declines in the price of substitutes on the overall cost of the rule. The analysis of costs of the actions taken in this rule assumes that the prices of substitutes for asbestos products will decrease by 1 percent annually over the life of the 13-year period analyzed in the ARCM. However, the analysis also assumes that the cost of individual substitute products will always remain greater than or equal to the price of the comparable asbestos-containing product, for the reasons described in the preceding paragraph. EPA believes that the assumption of a limited 1 percent decline in the price of substitutes is a reasonable "best

estimate" in light of the effects of the growing markets for such products, increasing competition and production know-how in these markets, and the likely development of new, more cost-effective substitutes that have not been quantified for the ARCM.

Costs estimated in the RIA include costs to consumers and costs to producers. Consumer losses due to the rule result from increases in costs incurred for asbestos products or substitutes for asbestos products or from inferior performance of substitutes, to the extent that these latter costs could be quantified. It is estimated that consumers will incur $375.4 million in losses as a result of the actions taken in this rule, for the period of the analysis, spread across the retire consumer population.

Producer losses due to this rule would accrue when producers are forced to forego the portion of the return on their capital stock used to produce asbestos products. This occurs when the capital stock used in the production and processing of asbestos-containing products either cannot be used or cannot be used as efficiently in the production of substitute products. It is estimated that the rule will result in $83.49 million in total producer costs.

The rule will also result in some transition costs to workers who are displaced by product bans. These losses are incurred in the form of lost wages and job search costs. EPA believes that these transition costs will be relatively low compared to consumer and producer costs because of: (1) The amount of time allowed for companies to plan before the effective dates of most bans and (2) the already occurring transition to non-asbestos substitutes by many former producers of asbestos products.

The total costs of the rule were estimated first with costs discounted at 3 percent and benefits not discounted (hereafter 3 percent/0 percent) and then with both costs and benefits discounted at 3 percent (hereafter 3 percent/3 percent). The results of both analyses will be cited throughout the text of this preamble. Both analyses support the actions taken in this rule. The total estimated cost of the rule is $458.89 million. This cost will be spread over 13 years and a large population. Therefore, the impact on most persons will be negligible.

Estimated total costs of individual product bans are set forth in the following Table VI:

TABLE VI—COST OF THE RULE BY PRODUCT CATEGORY ASSUMING A 1 PERCENT ANNUAL DECLINE IN THE PRICE OF SUBSTITUTES

Product	Total cost (in $ million, discounted at 3 percent)
Asbestos/cement (A/C) sheet	2.66
A/C shingles	23.57
A/C pipe	128.03
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	3.73
Felt products (flooring and roofing felt and pipeline wrap)	8.38
Gaskets	207.72
Disc and drum brake pads for original equipment market (OEM) and brake blocks	12.97
Disc and brake pads for aftermarket (AM)	12.73
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	15.20
Coatings (roof coatings and non-roof coatings)	46.29

Does not include specialty industrial gaskets.

EPA also analyzed the costs of the rule without the assumption about the declining price of substitutes that is described in the preceding paragraphs. Under this scenario, the total cost of the rule would rise from $458.89 million to $806.51 million. Estimated total costs of individual product bans under this scenario are set forth in the following Table VII:

TABLE VII—COST OF THE RULE BY PRODUCT CATEGORY WITHOUT THE ASSUMPTION OF A 1 PERCENT ANNUAL DECLINE IN THE PRICE OF SUBSTITUTES

Product	Total cost (in $ million, discounted at 3 percent)
Asbestos/cement (A/C) sheet	3.35
A/C shingles	34.18
A/C pipe	227.33
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	4.86
Felt products (flooring and roofing felt and pipeline wrap)	10.87
Gaskets	263.01
Disc and drum brake pads for original equipment market (OEM) and brake blocks	31.68
Disc and brake pads for aftermarket (AM)	25.15

TABLE VII—COST OF THE RULE BY PRODUCT CATEGORY WITHOUT THE ASSUMPTION OF A 1 PERCENT ANNUAL DECLINE IN THE PRICE OF SUBSTITUTES—Continued

Product	Total cost (in $ million, discounted at 3 percent)
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	27.92
Coatings (roof coatings and non-roof coatings)	180.56

Does not include specialty industrial gaskets.

The costs in both of these analyses are likely overstated for a number of reasons. The methodology used in this analysis for dealing with a lack of information tends by design towards overestimating costs and underestimating benefits. This "cautious" approach is taken to ensure that the analysis provides a strong basis for the regulatory decision made in this rule.

A commenter stated that EPA, in the analyses used to support the proposed rule, underestimated the costs of banning the manufacture, importation, and processing of asbestos-containing products. The commenter argued that EPA overestimated the rate of development of asbestos substitutes, underestimated future asbestos consumption rates, and erred in a number of other ways, discussed in more detail in the Response to Comments document, in estimating the costs associated with the various options described in the proposed rule.

For the final rule, EPA has updated the data base used to support its analysis of the costs and benefits of the rule and has modified its analytical approach in response to comments. In addition, the decline in the rate of consumption of asbestos in the U.S. has been more rapid in recent years than was predicted in EPA's models. Total annual consumption of asbestos in the U.S. dropped from a 1984 total of 240,000 metric tons to less than 85,000 metric tons in 1987 This change suggests that the use of asbestos substitutes has increased markedly since the proposed rule was published.

EPA has adopted several conservative assumptions to ensure that the rate of substitution is not overstated in the analysis of the rule's costs. The analysis embodies a low-decline baseline consumption approach. This approach assumes that substitutes have already

been adopted for those market sectors for which substitution for asbestos was relatively uncomplicated. It also assumes a constant rate of asbestos consumption unless EPA is aware of specific instances in which substitution has been made. In addition, the analysis assumes that the price of a substitute for an asbestos product will not fall below the price of the asbestos product for which it is being substituted. Therefore, the analysis adopts a number of assumptions that likely overestimate the costs of the actions taken in this rule rather than underestimate them.

2. *Estimated benefits.* The costs described above will be offset to some extent by a number of avoided costs. While EPA did not attempt to place a value on the loss of life itself, or on associated costs such as "pain and suffering, "loss due to leisure time, or other similar factors, EPA has estimated that the actions taken in this rule will result in the avoidance of at least 202 quantifiable cases of lung and gastrointestinal cancer and mesothelioma when benefits are not discounted and at least 148 cancer cases when benefits are discounted at 3 percent from the time of exposure. These estimates assume the occupational exposure levels based on other analogous exposure scenarios discussed in Unit V.A.3 of this preamble. These estimates do not, for reasons discussed in Unit V.A of this preamble, include the number of asbestosis cases and cases of other diseases avoided. In addition, EPA did not estimate losses due to lost work days or medical care costs. Thus the benefits of the rule (costs avoided by this rule) represent prudent estimates that likely understate actual benefits. The cancer-cases-avoided by individual product category are set forth in the following Table VIII:

TABLE VIII—CANCER-CASES-AVOIDED BY PRODUCT CATEGORY ASSUMING ANALOGOUS EXPOSURE FOR SELECTED PRODUCT CATEGORIES

Product	Discount rate	
	3 percent	0 percent
Asbestos/cement (A/C) sheet	0.96	1.19
A/C shingles	0.23	0.32
A/C pipe	3.17	4.38
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	0.52	0.73

TABLE VIII—CANCER-CASES-AVOIDED BY PRODUCT CATEGORY ASSUMING ANALOGOUS EXPOSURE FOR SELECTED PRODUCT CATEGORIES—Continued

Product	Discount rate	
	3 percent	0 percent
Felt products (flooring and roofing felt and pipeline wrap)	3.53	4.38
Gaskets	32.24	42.54
Disc and drum brake pads for original equipment market (OEM) and brake blocks	14.55	19.68
Disc and brake pads for aftermarket (AM)	88.37	122.11
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	1.45	1.91
Coatings (roof coatings and non-roof coatings)	2.41	3.33

Does not include specialty industrial gaskets.

Analogous exposures could not be assumed for a number of exposures. Therefore, benefits are understated to the extent that these exposures are not included. For example, some exposures result when asbestos fibers are released to air due to weathering of A/C products and other products used in exterior uses.

Also, the analysis did not quantify the increased risk due to high concentration, episodic exposures to asbestos for many products. Further, additions to ambient loading caused by the activities affected by this rule and the resultant risk reduction from this rule's actions could not be adequately quantified. The effect these factors would have on the calculation of benefits is difficult to determine because of technological difficulties in quantifying the extent of these releases and the resultant exposures. However, the effect could be significant because releases via these routes are frequent and, on aggregate, broad-ranging.

EPA also analyzed the benefits that accrue due to the actions taken in this rule if the analogous exposure analysis described in Unit V.A.3 of this preamble are not assumed. In this analysis, in all instances where exposure is believed to exist, but specific exposure data are not available, EPA assumed no exposure. The figures in the following chart, therefore, understate the actual number of cancer-cases-avoided due to this rule to the extent that available monitoring data used in the exposure analysis understates actual exposure to asbestos. In this analysis, estimates of cancer-cases-avoided decrease from 202 cases to 164 cases if benefits are not discounted and from 148 cases to 120 cases if benefits are discounted at 3 percent. The cancer-cases-avoided by individual product category using this analysis are set forth in the following Table IX.

TABLE IX—CANCER-CASES-AVOIDED BY PRODUCT CATEGORY WITHOUT ANALOGOUS EXPOSURE ASSUMPTIONS

Product	Discount Rate	
	3 percent	0 percent
Asbestos/cement (A/C) sheet	0.96	1.19
A/C shingles	0.23	0.32
A/C pipe	2.25	3.11
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	0.43	0.60
Felt products (flooring and roofing felt and pipeline wrap)	2.62	3.25
Gaskets	6.68	8.81
Disc and drum brake pads for original equipment market (OEM) and brake blocks	14.55	19.68
Disc and brake pads for aftermarket (AM)	88.37	122.11
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	1.45	1.91
Coatings (roof coatings and non-roof coatings)	1.29	1.79

Does not include specialty industrial gaskets.

As stated earlier, EPA decided for this rulemaking to estimate potential risk from plant emissions using an assumption of baghouse efficiency of 99.95 percent for some product categories and 99.67 percent for other product categories (the maximum emission scenario with no baghouse failure assumed). However, EPA also estimated the number of cancer-cases-avoided using the assumptions of 99.968 to 99.988 percent efficiency (the best estimate scenario with occasional baghouse failure assumed). These estimates, assuming the occupational exposure levels based on other analogous exposure scenarios discussed above, are 183 cases if benefits are not discounted and 134 cases if benefits are discounted at 3 percent. The cancer-cases-avoided by individual product category using these estimates are set forth in the following Table X.

TABLE X—CANCER-CASES-AVOIDED BY PRODUCT CATEGORY ASSUMING ANALOGOUS EXPOSURES AND ALTERNATIVE EMISSIONS CONTROL RATES

Product	Discount Rate	
	3 percent	0 percent
asbestos/cement (A/C) sheet	0.48	0.59
shingles	0.22	0.31
A/C pipe	2.10	2.90
Products not currently in U.S. production (asbestos protective clothing and vinyl/asbestos floor tile)	0	0
Paper products (commercial paper, rollboard, millboard, corrugated paper, and specialty paper)	0.18	0.25
Felt products (flooring and roofing felt and pipeline wrap)	2.20	2.72
Gaskets[1]	26.83	35.41
Disc and drum brake pads for original equipment market (OEM) and brake blocks	12.72	17.27
Disc and brake pads for aftermarket (AM)	85.38	117.98
Other asbestos friction products (automatic transmission components, clutch facings, and commercial and industrial friction products)	1.29	1.70
Coatings (roof coatings and non-roof coatings)	2.03	2.80

Does not include specialty industrial gaskets

The different assumptions about baghouse efficiency do not have a significant effect on the estimates of cancer-cases-avoided. Under both the best estimate scenario with occasional baghouse failure assumed and the maximum emission scenario with no baghouse failure assumed, EPA believes that the manufacture, importation, processing, and distribution in commerce of these products presents an unreasonable risk of injury to human health.

The rule will result in a number of other significant benefits. However, many of these benefits are either in the future and are relatively small in current terms after discounting or are difficult to quantify. For example, costs avoided include the societal cost of the resources necessary to treat asbestos-related illnesses and the productivity lost as a result of asbestos disease that will be avoided due to actions taken under this rule. EPA has not estimated these costs avoided because they would be relatively small because the types of cancers reviewed in this analysis generally result in death after relatively short periods of treatment or hospitalization. In addition, this total would be further lowered when discounted due to the fact that most asbestos-related diseases appear only after a long latency period.

Continued manufacture, importation, processing, and use of the asbestos-containing products banned by this rule would result in environmental loading of asbestos. The effect of environmental loading is discussed in more detail in Unit V.A.3 of this preamble. The actions taken under this rule will reduce the incremental increase in ambient concentrations of asbestos and thus reduce the risk of asbestos exposure faced by the general population. EPA has not attempted to quantify these benefits, due to the difficulty and probable imprecision of such an analysis. However, EPA believes that the long-term benefits derived from this incremental decrease in ambient concentrations of asbestos will result in substantial benefits because of the large populations that are affected. EPA has also concluded that these benefits can be attained through the source reduction actions taken in this rule, rather than by use of other options considered.

Further, due to the rule's bans, the substantial future costs associated with removal and disposal of asbestos-containing products that would have otherwise been produced and used will be avoided. These included higher removal, demolition, and disposal costs for asbestos products than those for non-asbestos products, as well as higher health risk expenses for asbestos products. Future removal, demolition, and disposal of asbestos construction products will likely be higher because special precautions will probably be necessary to meet OSHA, Clean Air Act (CAA), or other requirements. These costs can be substantial, but they have not been estimated for purposes of this rulemaking because estimates of the timing and frequency of building removal or renovation would be speculative.

Also, the continued use of asbestos will likely exacerbate the heavy burden on courts and workman's compensation boards that have, in recent years, been inundated with claims related to harm caused by asbestos exposure. This rule, by reducing the occurrence of asbestos-related diseases, will eventually reduce the costs related to claims arising out of illnesses and deaths caused by asbestos exposure.

Since the proposal, EPA has observed a rapid development of substitutes for asbestos-containing products. EPA believes that this rule will further stimulate technological innovation in the development of substitutes for asbestos and that this strong trend toward use and acceptance of substitutes will continue.

Different health benefits were estimated in support of the proposal than those development for the final rule. The number of cancer-cases-avoided estimated for the proposal (approximately 1,000 cases and more, depending on the regulatory option) is higher than the estimate for the final rule (202 and 148 cases if analogous exposures are assumed) for a number of reasons: (1) Several product categories are not included in this final rule estimates because they are no longer manufactured or imported in the U.S. (e.g., vinyl-asbestos floor tile). This change accounts for approximately 475 of the cancer-cases-avoided quantified in the proposal rule. (2) The production and exposure data supporting the rulemaking were updated for the final rule. U.S. asbestos consumption has decreased and substitute use had increased since the publication of the proposed rule. Therefore, the proposal's estimates of cancer-cases-avoided were higher than those for the final rule because consumption rates and resulting exposure totals were higher at the time of the proposal. (3) Updated exposure assessments were used in the health benefits model. The updated data were lower for some products than those used for the proposal, meaning that the proposal's estimates of cancer-cases-avoided were higher than those for the final rule. (4) The time frame used for estimating health benefits for the proposal was 15 years: for the final rule, the period is 13 years. Therefore, the final rule analysis covered 2 fewer years of exposure, resulting in fewer estimated health benefits. (5) Some modifications were made to the health effects model used for the final rule [e.g., minor modifications, including quantification of gastrointestinal cancer risk, and the use of a lower dose response constant for mesothelioma (using an average of the dose response constants from a number of studies, rather than the constant from one large study)] that resulted in an estimate of benefits that was approximately 20 percent lower for the final rule than for the proposal.

Several commenters stated that EPA underestimated the benefits associated with the product bans described in the proposed rule. These commenters asserted that the analysis of benefits understanted risks because it did not take into account diseases other than lung and gastrointestinal cancer and

mesothelioma or exposures to families of asbestos workers, and failed to quantify factors like avoided pain and suffering and increased worker productivity. EPA agrees that the benefits of the rule may be understated, possibly to a significant extent, in the supporting analysis due to technological or other limitations. These factors, however, have been considered qualitatively in EPA's analysis.

One commenter argued that EPA significantly overestimated the benefits of the rule by overstating asbestos potency and exposure levels. The lung cancer and mesothelioma potency values used by EPA in its analysis of benefits are well-supported and are consistent with those used by OSHA in reducing its PEL to 0.2 f/cc. The potency values for lung cancer represent the mean of the results of 11 human epidemiological studies on the effects of asbestos exposure. The potency values for mesothelioma represent the mean of the results of 4 human epidemiological studies on the effects of asbestos exposure. In addition, the exposure estimates used in this analysis understate actual exposure for a number of reasons, as explained in Unit V.A.3 of this preamble. Therefore, EPA may have actually understated, not overstated, the benefits of this rule.

Some commenters argued that EPA, in the proposal, improperly failed to discount benefits to be derived from the rule, and in support documents for a final rule, only discounted benefits until the time of the exposure that results in the cancer rather than until the occurrence of the disease. Other commenters argued that EPA should not discount benefits, stating that discounting the benefit of saving human life is inappropriate methodology for this rulemaking.

This final rule provides estimated benefits both with and without discounting. Arguments can be made that estimating benefits without discounting is preferable in cases like this one where the primary benefits derived is the avoidance of human cancer cases. However, arguments also can be articulated supporting the discounting of benefits. EPA believes that if benefits in the form of cancer-cases-avoided are to be discounted, they are properly discounted to the time when risk is reduced or avoided. Since the benefit of a regulation to control a hazardous substance occurs at the time of the reduced exposure, EPA has concluded that the appropriate period over which to discount is until the time of exposure reduction. This approach was used in this case after extensive review of applicable literature and an examination of the inherent biases and features of other approaches.

3. *Small businesses.* EPA has, pursuant to section 6(c)(1)(D) of TSCA, also analyzed the economic impact of this rule on small businesses. The rule will not have a significant effect on small businesses because there are few such businesses affected by the rule and individual company producer losses are not expected to be substantial since capital equipment for the production of asbestos-containing products has little remaining useful life, is inexpensive, or can generally be converted at low cost to manufacture of alternative products. A small fraction of the manufacturers, importers, and processors subject to this rule are small producers and some could be adversely affected by the rule. In addition, a number of small governments may be affected by the ban of some asbestos products, for example A/C pipe. However, the economic impact of this rule is generally spread widely throughout the economy and any concentrated effect will not be focused on specific market sectors or on small businesses.

4. *Evaluation of the rule s economic impact.* The overall costs of this rule are significant. However, the overall benefits of the rule are also significant, although many of the benefits cannot be easily quantified.

The analysis performed to ascertain the economic consequences of the rule likely overstates the costs of the actions. However, the analysis points out several important factors: (1) The societal benefit, or "essentiality, of asbestos has decreased, and continues to do so, as asbestos consumption declines and substitutes for the mineral are developed for many applications; (2) most of the costs associated with the rule are short-term and spread over a relatively large population; (3) the continued development of price- and performance-comparable substitutes for asbestos indicates that the rule will not lead to either dramatic increases in consumer prices or decreases in the availability of products affected by this rule; and (4) the producer and consumer costs imposed by this rule are offset by the rule s benefits (e.g., cancer-cases-avoided, medical costs, and lost productivity avoided), although many of these benefits are either difficult to quantify or to express in monetary terms.

EPA, therefore, finds that, under the standards of section 6 of TSCA, the costs of the rule to be reasonable in light of the unreasonably large number of asbestos-related deaths and serious illnesses that would occur if the actions in this rule were not taken.

E. Other Options Considered

Section 6 of TSCA requires EPA to select the least burdensome means to reduce an unreasonable risk. This Unit describes EPA's evaluation of options that would reduce or eliminate the unreasonable risk to human health posed by exposure to asbestos. Further responses to comments on this subject can be found in the Response to Comments document.

The options considered include the one selected for the final rule, a staged-ban of the manufacturing, importation, processing, and distribution in commerce of a number of categories of asbestos products. EPA selected a staged-ban for this final rule rather than one of the other regulatory options discussed in the proposal or identified in comments because these other options would either fail to adequately reduce the unreasonable risk posed by asbestos exposure or impose an excessive burden. Conversely, the final rule's staged-ban approach prohibits, at different times, the manufacture, importation, processing, or distribution in commerce for uses of asbestos that pose an unreasonable risk. Timing of these bans is based largely on the availability of suitable available or anticipated non-asbestos substitutes for the banned products. Therefore, the staged-ban approach takes into account the potential economic effects of the various bans, while still eliminating the sources of the risk. Other options were discussed in the proposed rule or identified in comments, but were not selected for the reasons described below.

Under two proposed rule alternatives, some product categories would be banned soon after the effective date of the rule and the remaining product categories would be "phased down. This would be accomplished by instituting a permit system which would create limits on the U.S. mining of asbestos and the importation of asbestos and asbestos-containing products. These limits would be based on previous volumes of the affected activity and would be managed by a system of issuing permits allowing gradually declining levels of the indicated activities. The permits would be transferrable. This system would, over time, restrict the total amount of asbestos available for use in the U.S. and limit the amount used in imported products until the rule's objective of a complete phase out was achieved.

In the analysis performed for this rulemaking, EPA concluded that a permit system approach would not be the least burdensome means of reducing the unreasonable risk posed by asbestos for all the products analyzed under the rule. Most commenters who rendered an opinion on the issue opposed the permit system options. Commenters stated that the implementation of these options could create significant administrative problems for EPA and industry, particularly in the area of imported asbestos products. EPA found that implementing the proposal's permit system options for all of the product categories in the rule would result in high administrative costs. EPA also believes that a permit system involving all of the products affected by this rule would be difficult to enforce.

EPA concluded that some uses of asbestos and some product life cycle stages pose a substantially greater risk than others and that the permit systems described in the proposed rule would not necessarily control the highest risk exposures (e.g., persons that produced or used products with high levels of asbestos exposure could purchase permits). Therefore, EPA concluded that the proposed rule's permit system would not adequately control asbestos exposure for the rule's product categories.

Despite EPA's conclusion based on currently available information that a permit system approach is not viable for regulating all of the products analyzed under this rule, EPA recognizes that there are a number of inherent conceptual advantages to employing an economic incentive approach in regulating the risks posed by chemicals. Therefore, as a follow-up to EPA's review of the applicability of a permit system as a regulatory option in this rule, EPA will perform several extensive analyses of the advantages and disadvantages of using various economic incentive approaches, including marketable permit system alternatives, as possible mechanisms for reducing human health and environmental risks from chemicals. These studies will review in greater detail the viability of employing such approaches under regulatory authorities such as section 6 of TSCA.

One study will focus on economic incentive programs that could be applied under TSCA and other authorities, rather than, for example, concentrating on air-emission issues, as does the bulk of the available theoretical literature. The study will identify and evaluate criteria for determining which chemicals or chemical products would be appropriate candidates for the use of economic incentive approaches under TSCA and other authorities. Factors considered in identifying these criteria will include determining the characteristics of a chemical's market, such as its production and use, that would make the chemical a viable candidate for a permit system rather than a deposit system. The study will also examine these criteria in the context of specific candidate chemical substances.

Another study will analyze administrative problems associated with economic incentive approaches with the aim of devising methods that provide equitable and efficient regulation of these chemical substances. For example, the study will examine issues related to imports which complicate implementation and enforcement of economic incentive approaches. The study will also examine mechanisms to overcome complications caused by these factors and evaluate the type and level of assistance to EPA from other agencies (e.g., U.S. Customs Service) that would be necessary to implement and enforce an economic incentives approach.

Based on the analyses performed during this and other rulemakings, there is a continuum in the risks and benefits associated with product categories. Some product categories on the continuum have some characteristics (e.g., a large number of specialized uses or a lagging rate of substitute development) that may make the products amenable to regulation through use of a economic incentive approach based on the criteria developed in the studies described in the preceding paragraphs. Upon completion of these studies, EPA will review this rule and other rules, based on the identified criteria and on then-available information about products and markets. For example, with respect to this rule, this review could determine whether (1) any product categories not included within the rule's bans should be phased out by use of an economic incentives approach, (2) any products banned in Stage 3 for which a significant number of exemptions are likely might be more efficiently phased out via an economic incentives approach, and (3) substitute development could be more efficiently compelled by an economic incentive approach for any products that are the subject of an active exemption. EPA's review will determine whether any of these products exhibit characteristics that lead EPA to conclude that exposures could be more efficiently phased out by use of an economic incentive approach. If, after review of this or any other rule, EPA determines that an economic incentive regulatory approach is warranted for some of the categories, EPA may in the future initiate rulemaking under sections 6 and 8 of TSCA to amend such rules to implement an economic incentive approach.

Even within the stage-ban approach, EPA has considered a number of possible options for the number of stages, the number of years between the stages, and the scheduling of product bans at various stages. The final rule follows the 3-stage ban approach of the proposed rule. EPA has modified the timing of the ban from soon after promulgation and 5 and 10 years after the effective date of the final rule, as discussed in the proposed rule, to 1, 4, and 7 years, respectively, after the effective date of the final rule. This was done because of the passage of time since the proposed rule was published and because EPA's analysis of available data and comments indicates that marked advances have been made in the development of and conversion to suitable substitutes for asbestos in most product areas. The timing for the stages in the final rule are reasonable in terms of the current or anticipated availability of suitable substitutes, based on EPA's analyses. EPA rejected the option in the proposal of a limited 2-stage ban with a TSCA section 8(a) reporting requirement because that option would not sufficiently reduce the unreasonable risk posed by asbestos exposure. In addition, the final rule does not include a ban on the mining and import of bulk asbestos because not all asbestos-containing products are included within the bans on manufacture, importation, processing, and distribution in commerce. However, the risks posed by these activities are expected to decline as the demand for asbestos decreases due to the actions taken in this rule.

Also, in scheduling products for the staged-ban, EPA has analyzed the relative risks posed by the different asbestos-containing products and the probable availability of non-asbestos substitutes. In the rule, the various asbestos products are scheduled to be banned at times when it is likely that suitable non-asbestos substitutes will be available. For example, bans on asbestos-containing brakes pads and drum brake linings are divided into a Stage 2 ban on the original equipment market and a Stage 3 ban on the aftermarket because suitable substitutes might not be available for some aftermarket products until Stage 3. The final rule's approach balances the need

for a reduction in the unreasonable risk of exposure to asbestos with the economic effects of bans on manufacture, importation, processing, and distribution in commerce.

The inclusion in the final rule of a provision allowing for exemptions in limited circumstances is a means of taking into account the size and diversity of the asbestos industry. EPA realizes that, despite EPA's projections, technology might not advance sufficiently by the time of a ban to produce substitutes for a few specialized or limited uses of asbestos in some product categories. In addition, other unforseeable circumstances may occur that would make a ban on a discrete product inappropriate at the scheduled date. In these circumstances, an exemption from the rule's bans may be appropriate if an applicant can show that one is appropriate following the procedures described in Unit III.E of this preamble. However, EPA believes that granting exemptions will not be the norm. The procedures should be used only in exceptional cases and should not be viewed as a means of attempting to postpone a person's share of the economic consequences of the actions dictated by the rule.

Another option considered would involve an immediate ban of the manufacture, importation, processing, importation, and distribution in commerce of all asbestos products. Section 6 of TSCA requires that a range of factors, including the availability of substitutes and the relative costs of regulatory options, be considered in addressing the reasonable risks posed by a chemical substance. EPA rejected an immediate ban option because it would result in potentially severe economic and societal effects. An immediate ban would not account for the current unavailability of viable substitutes for some asbestos-containing products that provide significant benefit and would result in high costs in those markets. Therefore, an immediate ban would not be the least burdensome means to reduce the unreasonable risk posed by asbestos.

EPA also considered requiring asbestos-containing products to be labeled as a means of reducing the risk posed by asbestos exposure. However, EPA has determined that the risk-reduction benefits from a labeling requirement for asbestos-containing products would not be substantial. For example, many of those that would potentially be exposed to asbestos from the labeled products would not have access to the warning labels. In addition, many asbestos products are used in caustic or dynamic environments in which labels cannot survive. Commenters also argued that labels directly applied to products can inhibit product performance. For example, if gaskets were required to be labeled, those who came into contact with the product packaging could have access to the label. However, many gaskets are too small to be effectively labeled. In addition, it would be unlikely that those exposed to the product during use or removal would have access to the label because it might not survive in a hot, fluid environment. The aim of the final rule's labeling requirement is not to serve as a warning, but rather only to facilitate compliance with and enforcement of the rule. The drawbacks of labeling described above do not affect the use of labeling as a compliance and enforcement tool. The labels required by this rule are applied to product wrapping or packaging and are not intended to survive through the entire product life cycle.

Several commenters suggested the consideration of options that would require "controlled use" of asbestos rather than bans on manufacture, importation, processing, or distribution in commerce. These commenters argued that exposure to low levels of asbestos is not an unreasonable health hazard and that EPA should undertake actions in a number of areas to require exposure controls (e.g., workplace controls for brake replacement and repair) rather than enacting a product ban. Commenters also suggested that chrysotile fibers pose a lower hazard than other asbestos fiber types and that controlled-use actions would be more appropriate for chrysotile than would be source reduction actions.

Controlled-use options were rejected because they would be ineffective in reducing exposure at many points in the life cycle of asbestos products. As is discussed in Unit V.A of this preamble, EPA has found that exposure to even low levels of asbestos poses an unreasonable health hazard. In addition, some of the exposures of concern are not amenable to controls (e.g., ambient releases from asbestos friction products during use, from brake replacement and repair work performed by consumers, or from weathering of asbestos products exposed to an outdoors environment).

In other instances, controlled-use aproaches create new exposures or move exposure from one stage of the product life cycle to another. For example, even if asbestos is vented from a workplace, although workers are subject to lower exposure levels, asbestos is still released to the outside ambient air, thereby creating potential exposures for passersby and surrounding populations.

Further, many engineering controls either fail to reduce exposures to asbestos to levels that do not pose a significant risk or create workplace inefficiencies that lead them to not be used. For example, respirators are difficult to fit properly and are often uncomfortable. Poor fit and intermittent use because of discomfort lead to unprotected workers. The problems are especially prevalent in negative pressure respirators, the type most commonly used in workplaces because of their low cost (Ref. 16).

Other agencies and EPA offices have or are currently establishing asbestos exposure control requirements for the workplace. However, because of the extent and nature of the risks posed by asbestos and limitations on available technology and the jurisdictions of the regulatory entities, EPA believes that even those control standards that are based on the best available technology leave an unreasonable level of residual risk in some occupational and non-occupational settings.

Therefore, EPA has concluded that source reduction actions, like those taken in this rule, rather than controlled use approaches are necessary to reduce the unreasonable risk posed by asbestos exposure. In addition, pursuant to the discussion in Unit V.A of this preamble regarding the relative hazards posed by the various asbestos fiber types, EPA has also concluded that this rule's source reduction actions are more appropriate than controlled use approaches for products containing chrysotile fibers.

Some commenters expressed a concern that if EPA bans the manufacture, importation, or processing of some asbestos-containing products, the governments of other countries will be compelled to take similar actions, although suitable non-asbestos substitutes may not be available in those countries. The unreasonable risk finding in this rule is based on a detailed analysis of the risks posed throughout the entire life cycle in the U.S. of the future manufacture, importation, processing, distribution, use, and disposal of the specified asbestos-containing products. The findings which support this rule are not directly applicable to other countries in which factors relating to risk and cost may be significantly different.

F Summary of Individual Product Categories

This Unit describes EPA's unreasonable risk finding for each individual category of asbestos-containing products identified for this rule. It summarizes for each individual product category available information regarding exposure, individual risk levels, the development of substitutes, the results of EPA's analysis of the costs and benefits of a ban, and other qualitative factors that were considered in EPA's unreasonable risk analysis for each category. These discussions reflect public comments received on these subjects. Further responses to comments on these subjects can be found in the Response to Comments document.

In the product category discussions below, information regarding costs, benefits, and product substitutes is derived primarily from the RIA (Ref. 21), which is discussed in Unit V.D of this preamble. Information regarding exposure levels is derived from EPA's Asbestos Exposure Assessment (Ref. 29), Asbestos Modeling Study (Ref. 30), and Non-occupational Asbestos Exposure Report (Ref. 31), which are discussed in Unit V.A.3 of this preamble.

Based on available information, EPA finds that the manufacture, importation, processing, and distribution in commerce of asbestos for use in each of the following product categories, except those discussed in Unit V.F.1 of this preamble, presents an unreasonable risk of injury to human health. The discussions of EPA's findings, below, summarize: (1) The estimated benefits of the actions taken in this rule for each product category, (2) quantifiable asbestos exposure and lifetime risk levels for the product, (3) the projected availability of product substitutes, (4) a description of qualitative factors that were considered in reaching EPA's unreasonable risk conclusion for the product, (5) the estimated costs of the actions taken, and (6) an explanation of any changes in EPA's approach to regulating the product since the proposal.

The individual risk levels quantified for the product categories that are subject to this rule are very high. An individual lifetime risk level of 10^{-3} or greater has been quantified for many persons who are exposed during the primary and secondary manufacture of most of these products. Some other phases of these products' life cycles also result in very high levels of individual risk. An individual lifetime risk level of 10^{-3} means that members of the populations exposed to this level of risk stand a 1 in 1,000 chance of developing cancer during their lifetime as a result of the exposures. EPA considers the risk levels quantified for this rule for asbestos exposures to pose a substantial concern. EPA also believes that the risk levels quantified for this rule represent an underestimate of the actual risk posed by asbestos exposure from these products. A number of exposures to asbestos and the resultant risks, for example, the risks posed by incremental increases in environmental loading caused by the continued manufacture and importation of the asbestos products banned by this rule, are believed to be significant, but could not be quantified for purposes of this rule, often because of limits in exposure monitoring technology. Despite this "cautious" approach to estimating risk, the exposure and risk that can be quantified are sufficient to make an unreasonable risk finding for purposes of this rule.

The costs and benefits cited below include assumptions regarding anticipated declines in substitute prices (discussed in Unit V.D of this preamble) and exposures estimated by analogy for recognized, but unquantifiable, exposures (discussed in Unit V.A.3 of this preamble). EPA believes that this approach presents a prudent, representative analysis of the costs and benefits of the actions taken in this rule with some reasonable adjustments made for unquantifiable exposures or market changes. However, even if these assumptions are not used, EPA has concluded that the continued manufacture, importation, and processing of the asbestos-containing products that are identified in the rule poses an unreasonable risk of injury to human health.

a. *Felt products.* This grouping consists of the flooring felt, roofing felt, and pipeline wrap product categories. All of these categories will be banned in Stage 1. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XI:

TABLE XI—CANCER-CASES-AVOIDED FOR ASBESTOS FELT PRODUCTS

Product	Discount rate	
	3 percent	0 percent
Flooring felt	0	0
Roofing felt	1.21	1.51
Pipeline wrap	2.31	2.86

No current U.S. manufacture or import.

Primary routes of exposure to asbestos from these products occur during primary manufacture, and product installation, repair, removal, and disposal. Quantifiable lifetime risk for these products from occupational exposure ranges from an average of 7.4 x 10^{-4} for secondary manufacture of flooring and roofing felt to an average of 2.5 x 10^{-3} for the primary manufacture of roofing felt. EPA estimates that as many as 1,652 workers may be exposed to asbestos during the installation and removal of roofing felt, incurring individual risks comparable to those for manufacturing. These exposure estimates do not take into account high peak exposure to which homeowners or others may be unknowingly subjected during removal or repair of these products. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

Effective substitutes currently exist for all three of these product categories. These products are largely no longer produced in the U.S., and flooring felt is no longer imported in this country. In the proposal, flooring and roofing felt would have been subject to the Stage 1 ban and pipeline wrap would have been banned at Stage 3 or covered by the permit system. However, EPA received comments indicating that the product categories are not easily distinguishable from one another and that suitable substitutes are currently available for pipeline wrap. EPA therefore concluded that a Stage 1 is appropriate for all three product categories.

The total cost of the actions taken on these product categories are set forth in the following Table XII:

TABLE XII—COST OF THE RULE FOR ASBESTOS FELT PRODUCTS

Product	Total cost in $ million, discounted at 3 percent
Flooring felt	0
Roofing felt	7.31
Pipeline wrap	1.07

No U.S. manufacture or import.

EPA has concluded that a Stage 1 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages, for example, during manufacture, installation, removal, and repair work; (3) homeowners and workers are

potentially subject to uncontrolled exposures during removal and repair work; (4) the cost of taking these actions is reasonable because suitable substitutes exist for all of these products; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely both to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

b. *A/C sheet.* This grouping consists of the flat and corrugated A/C sheet product categories. These categories will be banned in Stage 1. These products were proposed for a Stage 1 ban. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XIII:

TABLE XIII—CANCER-CASES-AVOIDED FOR A/C SHEET

Product	Discount rate	
	3 percent	0 percent
A/C flat sheet	0.85	1.05
A/C corrugated sheet	0.12	0.14

Primary routes of exposure to asbestos from these products occur during manufacture, installation, and repair. Approximately 53 workers are exposed to asbestos during primary manufacture of A/C flat sheet. EPA estimates that as many as 735 workers may be exposed to asbestos during the installation, repair, and disposal of A/C flat sheet, and that as many as 109 workers may be exposed during installation and repair of A/C corrugated sheet. Quantifiable risk posed for these products from occupational exposure is estimated to range from an average of 6.2×10^{-3} for the primary manufacture of A/C flat sheet to 6.7×10^{-3} for repair and disposal of flat and A/C corrugated sheet. Quantifiable risk from non-occupational, lifetime exposures to asbestos released during the manufacture of A/C sheet is estimated at 1×10^{-4} for approximately 4,500 people and at greater than 1×10^{-6} for over 200,000 people.

EPA believes that the exposures quantified for these product categories are understated. Ambient release of asbestos occurs due to weathering of these products during outdoor uses. Cutting, drilling, and sanding take place during secondary processing, installation, repair, and maintenance of these products and result in significant release of asbestos. Homeowners or others may be unknowingly exposed to significant levels of asbestos when they sand these products in preparation for repainting or removing them. Worker exposure estimates for this rule assume compliance with OSHA restrictions, but EPA believes, based on some public comments, that there may be some cutting of A/C products with power saws in violation of OSHA restrictions. Asbestos releases to the ambient air due to weathering of these materials during outdoor uses were not calculated and high peak exposures occurring during cutting or scraping of these products were not quantified for purposes of the rule. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

Effective substitutes exist for all uses of these products. The total costs of the actions taken in this rule for these product categories are set forth in the following Table XIV:

TABLE XIV—COST OF THE RULE FOR A/C SHEET

Product	Total cost in $ million, discounted at 3 percent
A/C flat sheet	2.37
A/C corrugated sheet	0.29

EPA has concluded that a Stage 1 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) homeowners and workers are potentially subject to uncontrolled, high peak exposures during installation, repair, and removal; (4) the cost of taking these actions is reasonable because suitable substitutes exist for all of these products; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

c. *A/C shingles.* This product category covers roof shingles and siding composed of a mixture of cement and asbestos fiber. This category will be banned in Stage 3. This product was proposed for a Stage 1 ban. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on this product category is as follows: 0.32 cases if benefits are not discounted and 0.23 cases if benefits are discounted at 3 percent.

Currently, A/C shingles are rarely used in new building construction and are used primarily for replacement, maintenance, and historical restoration. Primary routes of exposure to asbestos from products in this category occur during manufacture, installation, repair, removal, and disposal. Quantifiable risk posed by these products from occupational exposure is estimated to range from a lower bound of 3.7×10^{-4} for installation to an average of 6.1×10^{-3} for primary manufacturing. Quantifiable risk from non-occupational, lifetime exposure to asbestos emissions released during manufacturing is estimated at 2.1×10^{-5} for approximately 1,500 people and at greater than 1.0×10^{-6} for approximately 8,600 people. EPA believes that a number of factors contributed to exposure being underestimated for this category. Ambient releases result from weathering of these products and high peak exposures potentially occur during cutting, sanding, scraping, and hammering of these products. EPA is concerned about unknowing, inadvertent high peak exposures for homeowners or others during replacement or repair of existing shingles and siding. Such exposures can result from sanding, chipping, cutting, or other activities that result in substantial fiber release. Asbestos releases to the ambient air due to weathering of these materials during outdoors uses were not calculated and high peak exposures occurring during replacement or repair of these products were not quantified for purposes of the rule. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

The traditional appeal of A/C products is their durability and their ability to be fabricated. A number of non-asbestos products are available that are effective substitutes from the perspective of performance. Suitable substitutes, including wood, aluminum, and vinyl sidings and asphalt, cedar wood, and tile shingles, exist for many applications of the products in this category. However, suitable substitutes are not currently available for some products in this category. Therefore, EPA has scheduled the ban of this

product for Stage 3 rather than Stage 1, as originally proposed, to allow for the development of cost-effective substitutes while still addressing risks in a timely manner.

The total cost of the actions taken in this rule for this product category is $23.57 million. EPA believes that this cost estimate may be overstated. This is because the cost analysis for this product category assumed that wood substitutes would capture 32 percent of the A/C shingle market if the asbestos products were banned. This assumption was made largely because wood is more physically attractive than other substitutes, although it is much more expensive and does not perform significantly better.

EPA has concluded that a Stage 3 ban is appropriate for this product category for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) homeowners and workers are potentially subject to uncontrolled exposures; (4) suitable substitutes exist for many of these products and are likely to exist for others by the time of the ban; (5) the cost of taking these actions is reasonable, especially in light of the assumption made regarding the portion of the market substituted for by wood shingles in the estimate of the costs, the time provided for substitute development, and the level of ambient exposure posed by products in this category; and (6) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

d. *Other product categories that are currently out of production.* This grouping consists of the vinyl/asbestos floor tile and asbestos clothing categories. These categories will be banned in Stage 1. These products were proposed for a Stage 1 ban.

These products are no longer produced in the U.S. and are currently imported in, at most, only small quantities. In instances in which these products are still imported, EPA is concerned about the potential for uncontrolled consumer exposure, for example, the sanding, cutting, and removal of vinyl/asbestos floor tile. The fact that these products are no longer in commerce in the U.S. indicates that effective substitutes are available. Therefore, the cost of banning these products is minimal.

EPA has concluded that a State 1 ban is appropriate for this product category for the following reasons: (1) Relatively high quantifiable individual risk levels would exist for these products were significant U.S. manufacture or importation to begin again; (2) these products pose a high potential for ambient release during a number of life cycle states; (3) homeowners and workers would be potentially subject to uncontrolled exposures were significiant U.S. manufacture or importation to begin again; (4) the cost of banning these products is negligible because there is no current signficant manufacture or import of these products and because suitable substitutes exist for them; and (5) these products are included within the ban to ensure that their U.S. manufacture, importation, processing, or import does not resume.

e. *Vehicular brakes.* This grouping includes drum brake linings, disc brake pads and brake blocks used in new and existing motor vehicles. The manufacture or import of 1994 or later model year motor vehicles containing asbestos drum brake linings or asbestos disc pads (hereafter referred to as the original equipment market, or OEM) will be banned in Stage 2. Asbestos brake friction material manufactured, imported, or processed as replacement drum brake linings or disc brake pads for light- and medium-weight (LMV) motor vehicles with brake systems designed to use non-asbestos friction material will also be banned in Stage 2. The manufacture, import, or processing of asbestos brake blocks for heavy-weight (HV) motor vehicles will be banned in Stage 3. In addition, all friction material containing asbestos manufactured, imported, or processed as replacement parts for vehicles designed to use asbestos friction material (hereafter referred to as the aftermarket, or AM) will be banned in Stage 3.

The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XV·

TABLE XV—CANCER-CASES-AVOIDED FOR ASBESTOS VEHICULAR BRAKES

Product	Discount Rate	
	3 percent	0 percent
Drum brake linings (OEM)	6.33	8.38
Drum brake linings (AM)	76.79	106.26
Disc brake pads, LMV (OEM)	0.75	0.99
Disc brake pads, LMV (AM)	11.58	15.85
Disc brake pads, HV (OEM & AM)	0.16	0.22

TABLE XV—CANCER-CASES-AVOIDED FOR ASBESTOS VEHICULAR BRAKES—Continued

Product	Discount Rate	
	3 percent	0 percent
Brake blocks (OEM & AM)	7.31	10.10

In the proposal, EPA discussed two approaches for regulating asbestos vehicular friction material, either banning all such material in Stage 2 or via the operation of a permit system. EPA stated that it would consider a class exemption for replacement parts under the proposal's staged-ban option.

Asbestos brake friction products are some of the most widely-used asbestos products and are a source of broadly ranging exposures to asbestos. EPA has quantified exposures to asbestos from the manufacture, installation, use, and repair of brake friction products. During the life cycle of these products, both occupational and non-occupational exposures to asbestos post a lifetime risk of cancer mortality. The population at risk from these products is larger than that at risk from any other asbestos product category for which exposure has been quantified for this rule.

Occupational exposure to asbestos from the primary and secondary manufacture of friction products is high and affects many people. The 8-hour TWA exposure level quantified for the primary manufacture of all friction products is 0.145 f/cc (Ref. 29). The lifetime risk from this exposure is estimated to be 5.0×10^{-3} with 2,779 workers exposed. The exposure level from secondary manufacture is considerably less than from primary manufacture, because secondary manufacture of friction products does not involve cutting, grinding, and fitting of brake material. However, the TWA exposure level for secondary manufacture is still high, ranging upward from 0.446 f/cc (Ref. 29). The lifetime risk from secondary manufacture ranges from an average of 1.6×10^{-3} for drum brake linings to an average of 1.9×10^{-3} for disc brake pads, with 3,038 workers exposed. Quantifiable risk from non-occupational, lifetime exposure to asbestos released during the manufacturing of drum brakes alone is estimated at 1.0×10^{-4} for 92,008 people and greater than 1×10^{-6} for 2 million people.

Occupational expoure from the installation and repair of asbestos brake pads/linings/blocks may result in significant exposure. The 8-hour TWA exposure level for the servicing of disc

and drum brake systems is estimated to average 0.05 f/cc (Ref. 29). The lifetime risk from this exposure is 1.68×10^{-3} There are an estimated 329,000 brake repair facilities where an FTE population of 1,391,000 mechanics may be exposed to asbestos during installation and repair of asbestos brake friction products. Exposure and, thus, risk have not been quantified for the disposal of asbestos brake friction material.

EPA estimated that approximately 13 million do-it-yourself brake installation and repair jobs are done annually by consumers (Ref. 31). Exposure from consumer brake repair varies depending upon the technique used to repair the brakes, whether the repair is done in a garage or outdoors, and other factors. Release of asbestos fibers into the ambient environment resulting from the braking action of asbestos vehicular brakes contributes to the signficant risk of cancer mortality for members of the general population. EPA has quantified the non-occupational exposures from the use of three friction materials: drum brake linings, disc brake pads (LMV), and brake blocks. EPA estimates that the lifetime risk is one in one million for 101 million Americans, on average.

EPA received a large number of comments concerning exposure associated with the use of asbestos-containing brakes. Several commenters stated that there is very little risk of exposure to asbestos fibers released from brakes, because the asbestos is transformed to forsterite by the high heat generated from the use of brakes. EPA recognizes that only a small percentage of the asbestos in brakes is eventually emitted into the air. The remainder is either trapped in the brake assembly or is transformed into minerals such as forsterite by the heat of abrasion before release. However, asbestos is definitely released from brakes during brake use. The three studies of brake emissions, which EPA relied upon in developing its exposure estimates, all used electron microscopy to obtain positive mineralogical identification of the emissions' components. The studies found that between 0.017 and 0.216 percent of the material released was asbestos. Although these percentages are quite small, the total amount of asbestos released from brake use (approximately 7 tons per year) is large because the total volume of brake emissions is large.

There are devices which can control the release of asbestos during the normal replacement of brakes. These devices, the enclosed cylinder/HEPA vacuum system and the compressed air/solvent spray system, are recommended, but not required, by OSHA as means for reducing exposures below OSHA's PEL and action level (Ref. 16). The OSHA standard prohibits the use of air hoses during brake repair. Under ideal conditions these controls may significantly reduce exposure. However, controls must be used consistently to be effective and additional exposures can be created during the disposal of asbestos-contaminated solvent or during replacement of HEPA vacuum filters. If the devices are used properly and exposures are reduced to the PEL or lower, EPA believes that the residual exposure can still result in an unreasonable risk. The efficacy of controlled use as an approach to risk reduction is discussed in more detail in Units V.A. 3 and V.E. of this preamble.

Several commenters stated that EPA should not ban asbestos friction products, arguing that engineering controls can provide sufficient protection from the risks of asbestos exposure. EPA believes that while these controls, if used consistently, can reduce exposure to the OSHA PEL, EPA's analysis indicates that exposure at levels even below OSHA's 0.1 f/cc action level still pose significant risk. In computing workplace exposures, EPA assumed compliance with the OSHA standard when actual monitoring data was either unavailable or above the OSHA PEL. For example, the EPA exposure data for brake repair facilities estimate asbestos exposure at 0.05 f/cc (Ref. 29). Even at this level, which is one half the OSHA action level of 0.1 f/cc, EPA, using the risk table in the 1986 OSHA rule, calculates a lifetime risk of 1.6×10^{-3} Given the substantial lifetime risk and EPA's concern regarding the consistent and proper use of these controls by mechanics (Ref. 50), EPA does not believe that use of controls during brake repair will sufficiently reduce risk.

Additionally, a controlled use approach as an alternative to a ban of asbestos in friction material would not reduce general population exposures to asbestos originating from brake use. In addition, these controls would not typically be available to the estimated 13 million consumers who annually perform do-it-yourself brake jobs (Ref. 31).

EPA has assessed the current availability of non-asbestos friction material for disc and drum brake system in various vehicle weight classes. This assessment can be found in Volume III of the Regulatory Impact Analysis (Ref. 21). To summarize briefly, use of non-asbestos friction materials in recently-manufactured vehicles is increasing rapidly. There is nearly complete substitution for asbestos in disc pads used in recently-manufactured motor vehicles. Almost 100 percent of disc pads for newly manufactured heavy-weight vehicles are asbestos-free. For light- and medium-weight vehicles, 85 percent of the disc pads used in new vehicles are asbestos-free. Several producers estimate that by 1990, 90 to 100 percent of the disc pads for new vehicles will be asbestos-free.

Evidence also indicates that significant progress is being made in the development of substitutes for drum brake linings used in recently-manufactured motor vehicles. As noted by some commenters, substitution for asbestos in drum brake linings and brake blocks in new model vehicles appears to be more difficult than for disc brakes in new model vehicles. However, according to some commenters, much research is ongoing and some substitutes are currently available for drum brakes in newly-manufactured vehicles. Several commenters stated that asbestos substitutes are more readily available than EPA has estimated and that full conversion to asbestos-free brakes in newly-manufactured vehicles would be feasible in the near future. Some commenters pointed to the rapid conversion to asbestos-free brake friction material in the European market as proof of the technical feasibility of banning similar products in the U.S. For example, Sweden, the Federal Republic of Germany, Switzerland, Austria, Denmark, and Norway have either banned or are phasing out the use of asbestos friction material.

Primary substitutes include semi-metallic materials for disc brakes and non-asbestos organic materials (including fiberglass, para-aramid, mineral fibers, steel wool and fibers, and resins) for drums. Opinions from commenters vary greatly concerning the availability of effective and economical substitutes for brake friction products. While some commenters stated that there are substitutes currently available for most, if not all, brake friction products, other commenters felt that substitutes would be available within 5 to 10 years of the time of the proposal for most, if not all, brake friction products. Several commenters were more pessimistic about the future availability of substitutes. Other commenters indicated that adequate asbestos-free brake blocks may be difficult to develop for new model heavy-weight vehicles because the

weight of the vehicle puts greater demands on the braking system.

While many opinions were offered in comments and elsewhere about the progress being made toward the use of asbestos-free brake friction material, EPA did not receive analytical or quantitative data from commenters documenting technical difficulties encountered regarding substitution for asbestos in brake friction material. EPA acknowledges the inherent research and development variability associated with technological innovation. As a result, EPA decided to delay the ban on asbestos disc brake pads and drum brake linings in new light- and medium-weight vehicles and in replacement disc pads and drum brake linings for light- and medium-weight vehicles with brake systems designed to use non-asbestos until Stage 2. Manufacture, import, and marketing of brake blocks for use in either new heavy-weight vehicles or as replacements will not be banned until Stage 3. These dates are within the range of time frames suggested by comments and the American Society of Mechanical Engineers (ASME) expert panel's recommendations for new vehicles (Ref. 40). Specifically, ASME stated that "* at the present rate of technical progress, most new passenger cars can be equipped with totally new non-asbestos frictional systems by 1991, and most light trucks and heavy trucks with S-cam brakes, by 1992. However, a few low-volume new vehicle applications may not have acceptable non-asbestos friction materials at that time. Heavy truck wedge brake blocks, medium drum brake linings and many off-road vehicle brake linings may not be developed by 1992. Comments submitted to EPA in 1986 in response to its proposal described various lead time frames that would be necessary to permit the transition to non-asbestos OEM friction materials. These schedules varied between 2 and 10 years. The most common time frame pointed to was 4 to 6 years for most friction products, with special considerations given to brake blocks and disc pads for heavy vehicles. Several commenters requested time frames in excess of 10 years be considered for these heavy vehicles. Keeping in mind that these comments were made in 1986, EPA believes that it is reasonable to assume that OEM brake friction material for light- and medium-weight vehicles and heavy-weight vehicles can be asbestos-free by the dates prescribed in the rule.

Commenters generally agreed that it is easier to develop replacement asbestos-free friction materials for use in vehicles that are intentionally designed to use such materials than it is to develop asbestos-free friction materials for use as aftermarket replacement products in vehicles currently in use that have brake systems designed to use asbestos. A number of commenters addressed the current availability and efficacy of asbestos free aftermarket replacements for vehicles designed to use asbestos friction materials. Some of these commenters maintained that substitutes are currently available for all friction material aftermarket applications. Some of the major producers of brake friction products, including aftermarket friction materials, no longer produce asbestos brake friction material. One commenter stated that asbestos replacements for heavy-weight vehicles are no longer available from reliable U.S. producers. On the other hand, some commenters stated that it would be infeasible, primarily for economic reasons, to develop effective asbestos-free substitutes for the aftermarket, while others indicated, in 1986 comments, that it would take 10 years to develop adequate aftermarket substitutes. These comments about the technical infeasibility of replacing asbestos friction material with asbestos-free friction material were not based on performance data, but rather theoretical discussions and anecdotal information. Due to the lack of analytical information, EPA cannot estimate quantitatively the rate at which asbestos-free substitution is occurring for the aftermarket products. EPA has delayed until Stage 3 the ban on aftermarket friction materials manufactured, imported, or marketed for use in brake systems designed to use asbestos. EPA believes this delay will permit time to address technological difficulties in developing aftermarket substitutes for vehicles designed to use asbestos. By the effective date of the Stage 3 ban, many of the vehicles on the road will be asbestos-free because of the Stage 2 ban and the prior manufacture of asbestos-free vehicles. EPA believes that it is important to force technology to develop asbestos-free replacements as rapidly as possible particularity in light of the fact that many commenters have pointed to the current availability of asbestos-free replacement linings/blocks and have noted rapid progress in the development of alternatives to asbestos friction materials. EPA plans to monitor the progress of substitute availability for aftermarket products, thus encouraging substitute producers and aftermarket manufacturers to report progress or technological difficulties that may necessitate modification of certain provisions of the ban.

Comments described technological replacement difficulties or economic disincentives associated with developing asbestos-free friction material replacement parts for older and antique cars or for specialty cars such as race cars. EPA will consider a class exemption for such vehicles if one is requested.

Some commenters stated that a ban on asbestos use in the aftermarket for brake systems designed for asbestos friction products will compromise the performance of braking systems designed for asbestos brakes. Some commenters went so far as to predict that there may be more deaths in vehicle accidents due to poor performance caused by premature substitution than from the health risk posed by continued use of asbestos in friction products. Several commenters stated that EPA has ignored the impact of an asbestos friction product ban on highway safety and that risks associated with substitution should have been considered as part of the rule s analysis of costs and benefits. One commenter urged EPA to confer with the National Highway Traffic Safety Administration (NHTSA) regarding possible motor vehicles safety considerations associated with use of non-asbestos friction materials in vehicular brake systems. EPA and NHTSA have met and discussed potential effects on vehicle safety if asbestos friction materials were banned (Refs. 61, 62, and 63). NHTSA has no objection to the staged ban and technical review approach adopted for this rule (Ref. 28).

Evaluation of the safety concern regarding asbestos substitution voiced by these commenters is complicated by the fact that there are no federal safety standards governing the performance of aftermarket brake friction products. While the NHTSA promulgated safety performance standards in 1968 for brakes in new vehicles, no similar standards exist for replacement parts. NHTSA received two petitions requesting that NHTSA promulgate safety standards for the aftermarket. These petitions noted the present use of inferior grade asbestos and non-asbestos friction materials and the inadvertent mismatching of aftermarket friction material to individual brake systems; the petitioners argued that there is a compelling need to establish performance standards for the aftermarket. NHTSA granted a petition requesting that NHTSA propose a standard requiring that all heavy truck brake linings be rated and marked in

accordance with the requirements of such a standard. Another petitioner requested that NHTSA establish safety standards for motor vehicle aftermarket brakes. While NHTSA denied portions of that petition, NHTSA announced its intent to keep abreast of developments by the Society of Automotive Engineers, as well as other developments in the areas of brake lining performance, the relationship to traffic safety, and the needs of the motoring public. NHTSA will continue to examine these issues as resources permit and review and adjust its position, if appropriate.

EPA believes that without safety standards for the aftermarket, commercially available aftermarket friction material may continue to be of inconsistent quality, regardless of whether asbestos or asbestos-free friction products are used. EPA also acknowledges that a ban on asbestos in the brake friction product categories may increase the uncertainty about brake performance. In light of the controversy surrounding the availability of effective substitutes for aftermarket friction products, coupled with the rapid development and current use of some asbestos-free substitutes and the lack of definitive evidence to resolve the controversy, EPA has decided to delay the ban on asbestos in aftermarket brake friction products until Stage 3 to allow sufficient time to develop adequate substitutes. In spite of the relatively low economic impact associated with an immediate ban of asbestos in the brake friction products category and the high risk associated with asbestos exposure originating from asbestos friction products, EPA believes that it is important to provide this 7-year lead time for the industry to develop and produce safe and effective asbestos-free substitutes. Such an approach is consistent with some comments received by EPA.

The ban on asbestos friction products will become effective in two stages: the OEM for cars and light trucks will be banned in Stage 2 and the OEM for heavy vehicles and the AM for all vehicles will banned in Stage 3. This sequential ban accommodates the variable rate of development noted by commenters. Some commenters proposed many more stages than EPA actually adopted in this final rule. EPA was concerned that a complicated schedule of effective dates for the bans would be burdensome without any real benefit. The 2-stage ban for asbestos brakes adopted in this rule represents time frames that are generally consistent with dates proposed by commenters. While some controversy may continue to exist over the dates when substitutes will be available for different vehicle types, EPA believes that this rule provides sufficient lead time for the development of effective non-asbestos substitute brakes.

In light of these facts and the extensive risk posed by exposure to asbestos from vehicular brakes, EPA believes that it is appropriate and necessary to ban asbestos in vehicular friction material. Nonetheless, as described above, EPA, in consultation with NHTSA, will monitor the pace of substitute development and undertake a technical review 5 years after the effective date of the rule, to ensure the availability of suitable non-asbestos aftermarket brake products. After considering all of these issues, EPA believes that this is the best approach in light of the high risk posed by asbestos, the rapid development of replacement friction materials, the current use of non-asbestos brakes in European countries, the controversy concerning substitute availability and performance, and the current consideration, by NHTSA, of aftermarket safety standards.

The total costs of the actions taken in this rule for these product categories are set forth in the following Table XVI:

TABLE XVI—COST OF THE RULE FOR ASBESTOS VEHICULAR BRAKES

Product	Total Cost (in $ million, discounted at 3 percent)
Drum brake linings (OEM)	7.13
Drum brake linings (AM)	8.79
Disc brake pads, LMV (OEM)	3.56
Disc brake pads, LMV (AM)	3.94
Disc brake pads, HV (OEM & AM)	0.33
Brake blocks (OEM & AM)	1.95

f. *Other friction products.* This grouping includes clutch facings, automatic transmission components, and the industrial and commercial friction products categories. These products will all be banned at Stage 2. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XVII:

TABLE XVII—CANCER-CASES-AVOIDED FOR OTHER FRICTION PRODUCTS

Product	Discount rate	
	3 percent	0 percent
Clutch facings	1.05	1.38
Automatic transmission components	<0.01	<0.01

TABLE XVII—CANCER-CASES-AVOIDED FOR OTHER FRICTION PRODUCTS—Continued

Product	Discount rate	
	3 percent	0 percent
Industrial and commercial friction products	0.40	0.52

Primary routes of exposure to asbestos from these products occur during manufacture and repair. Quantified occupational risk posed by the manufacture and repair of these products ranges from an average of 1.46×10^{-3} for the primary manufacture of automatic transmission components to an average of 5.2×10^{-3} for the primary manufacture of friction materials. Approximately 517 workers in primary and secondary manufacture and 116 FTEs in installation, repair, and disposal are exposed to asbestos. In addition to these occupational risks, EPA has quantified significant non-occupational releases from the primary manufacturing of these three products. Monitoring data are not available for the exposure resulting from the use of these products, although EPA does believe additional exposures from clutches and industrial and commercial friction products are likely.

After assessing the current availability of substitutes and expert opinions concerning the predicted availability of substitutes, EPA believes that suitable substitutes will be available for clutch facings, automatic transmission components, and commercial and industrial friction products by the effective dates of the bans. Over the last several year, EPA has noted the increased use of non-asbestos parts for these products, and believes further development is likely.

The total cost of the actions taken in this rule for these product categories are set forth in the following Table XVIII:

TABLE XVIII—COST OF THE RULE FOR OTHER FRICTION PRODUCTS

Product	Total Cost in $ million, discounted at 3 percent
Clutch facings	12.87
Automatic transmission components	0.22
Industrial and commercial friction products	2.11

The economic impact on this ban will be limited by the fact that most major primary manufacturers of asbestos friction products also produce asbestos-

free substitute products. In fact, all of the U.S. manufacturers of asbestos-containing automatic transmission components also produce asbestos-free products. Currently, asbestos-containing automatic transmission components currently comprise only one quarter of the present market. Considering the rapid substitution in this area and relatively low cost, EPA will ban the manufacture of automatic transmission components at Stage 2.

EPA has concluded that a Stage 2 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) workers and the general population are potentially subject to uncontrolled exposures; (4) suitable substitutes exist for many of these products and are likely to exist for others by the time of the ban; and (5) the cost of taking these actions is reasonable.

g. *Gaskets.* This grouping includes most of the beater-add and sheet gasket product categories. These products, except for specialty industrial applications, will be banned in Stage 2. Specialty industrial gaskets are not banned under this rule (see discussion at Unit V.F.l.x below). The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XIX.

TABLE XIX—CANCER-CASES-AVOIDED FOR GASKETS [1]

Product	Discount rate	
	3 percent	0 percent
Beater-add gaskets	21.48	28.34
Sheet gaskets	10.76	14.20

Does not include specialty industrial gaskets.

Gaskets are materials used to seal one compartment of a device from another in applications such as engine and exhaust manifolds. Asbestos gaskets are used mainly to seal connections and prevent leakage of fluids between solid surfaces.

Primary routes of exposure to asbestos from these products occur during manufacture, repair of machinery containing an asbestos gasket, replacement of the gasket itself, and disposal. Exposure estimates (but not cost or benefit estimates) used in this Unit reflect exposures quantified for all gasket applications, including the small specialty industrial gasket segment of the gasket market that is not banned by this rule. An estimated 2,583 workers are exposed to asbestos during primary and secondary manufacturing of asbestos gaskets. Quantifiable risk of occupational exposure to these products ranges from an average of 7.35×10^{-4} for the secondary manufacture of beater-add gaskets to an average of 3.56×10^{-3} for the secondary manufacture of sheet gaskets. Quantifiable risk from non-occupational, lifetime exposures to asbestos released during the manufacture of beater-add gaskets alone is estimated at 1×10^{-4} for approximately 47,000 people and at greater than 1×10^{-6} for approximately 6 million people. EPA believes that the exposures quantified for these products are underestimated. Exposures that occur during gasket replacement and machinery repair, including activities like scraping of gaskets or on-site fabrication of gaskets, were not quantified by EPA. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

According to comments, production of asbestos-containing sheet and beater-add gaskets has dropped significantly in most applications in recent years and non-asbestos substitutes already possess a large share of both gasket markets. Also, commenters indicated that the majority of the gasket market will be asbestos-free before the end of 1989. The economic impact of this ban will be limited by the fact that significant progress has been made in the development and availability of non-asbestos substitutes for most gasket applications and that most, if not all, major primary manufacturers of asbestos gaskets also produce non-asbestos substitute products. Due to the insufficiency of available price data, these recent trends, and the resultant decreases in the costs of banning this product, are not fully taken into account in the analysis of the benefits of banning these categories. Therefore, EPA believes that the actual cost of the actions taken on these categories is less than that indicated below.

Gaskets were proposed for either a Stage 3 ban or a ban via the operation of a permit system. However, EPA has received comments indicating that the development of suitable substitutes has been more rapid than projected for most applications. EPA is also concerned that consumers and others may be subject to uncontrolled exposures during the repair and replacement of consumer applications of these products.

The total costs of the actions taken in this rule for these product categories are set forth in the following Table XX.

TABLE XX—COST OF THE RULE FOR GASKETS [1]

Product	Total Cost in $ million (discounted at 3 percent)
Beater-add gaskets	111.20
Sheet gaskets	96.52

Does not include specialty industrial gaskets.

EPA has concluded that a Stage 2 ban is appropriate for these product categories (except for specialty industrial gaskets) for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) homeowners and workers are potentially subject to uncontrolled exposures during removal and replacement of gaskets; (4) the overall cost calculated for taking these actions is relatively high, but is likely to be an overestimate because, according to commenters, suitable substitutes exist for many of these products and are likely to exist for others by the time of the ban; and (5) the scheduling of these products for a Stage 2 ban allows for the continued development of substitutes. Delaying the ban on these gaskets until Stage 3 or not banning the use of asbestos in these products could hurt the efforts of the large numbers of firms that have already made significant progress in developing substitutes because some substitutes are more expensive than asbestos-containing gaskets.

Specialty industrial gaskets are excluded from this rule's bans. These applications are not banned because of the high costs of a ban, due to the lack of suitable substitutes for a number of specialized industrial uses, the relatively small benefits derived from a ban, and a number of other factors described in Unit V.F.1.x.

h. *A/C pipe.* This category will be banned in Stage 3. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on this product category are as follows: 3.17 cases if benefits are discounted at 3 percent and 4.38 cases if benefits are not discounted.

A/C pipe is a product composed of cement and asbestos fibers and used primarily to convey potable water in water mains, sewage in force main sewers, and various materials in

industrial process lines (pressure pipe applications), as well as storm drain pipes and sewer pipes (non-pressure pipe applications). Thousands of miles of A/C pipe are installed in the U.S. annually. A/C pipe comes in a wide variety of diameters, formulations, and weights designed for different applications.

Primary routes of exposure to asbestos from these products occur during manufacture and installation. A total of 286 workers is estimated to be exposed to asbestos during the primary manufacture of A/C pipe and as many as 14,944 workers may be exposed during the installation and removal of A/C pipe. Individual lifetime risks posed by these products from occupational exposure are estimated to range from 6.11×10^{-4} for installation and removal (a lower bound that assumes workers install and remove A/C pipe 16 percent of their working hours) to an average of 3×10^{-3} for primary manufacture. Individual risk from non-occupational lifetime exposure to asbestos released during manufacturing is estimated at 1×10^{-4} for approximately 30,000 people and at over 1×10^{-6} for approximately 2 million people. However, EPA believes that the exposures quantified for this category are underestimated. Worker exposures that occur due to the cutting, drilling, or machining of pipe in possible violation of OSHA requirements or general population exposure because of possible erosion of A/C pipe are not accounted for. U.S. production of A/C pipe has decreased significantly in recent years with the declines in sewer system construction and other market factors, including the growing use of non-asbestos substitute products.

Some commenters have stated that A/C pipe possesses a number of unique attributes, including lower energy requirements and friction loss, and greater durability in certain environments than the substitutes identified in the RIA, and that therefore A/C pipe should not be banned in the near term. Available evidence suggests that products are currently available as substitutes. The primary substitutes for A/C pipe are polyvinylchloride (PVC) and ductile iron pipe. There are a variety of asbestos-free concrete products, including prestressed and reinforced concrete pipes that may also be used as substitutes. All primary U.S. producers of A/C pipe also produce direct substitutes made out of non-asbestos materials. A commenter indicated that a cement/substitute-fiber composition is under development and that the substitute fiber may replace asbestos in A/C pipe, thus permitting the continued use of capital equipment currently used to produce A/C pipe. This would substantially reduce the costs and societal impact of banning A/C pipe.

Some commenters have argued that if A/C pipe is banned, pressure may be brought to replace or discontinue use of existing A/C pipe. EPA does not believe that installed A/C pipe should be replaced or that its use should be discontinued. EPA's evaluation of the risk posed by A/C pipe, and by all products subject to this rule, is of absolute risk posed over the entire life cycle of products to be produced in the future, not just risk posed by existing products during product use. EPA's primary concern, for purposes of this rule, is the risk posed by exposures during the life cycle stages of A/C pipe from manufacture through installation. Expected risks later in the product life cycle, for example those risks engendered from exposures due to eroding pipe, have not been quantified. Therefore, actions to remove or discontinue use of existing A/C pipe in response to this rule are not justified.

Other commenters argued that if A/C pipe is banned in the U.S., other countries, including those where viable substitutes for A/C pipe are not readily available, would be pressured to ban the product. EPA's unreasonable risk analysis for this rule for A/C pipe is based not only on the risk posed during the life cycle of the product in the U.S., but also on the availability of viable substitutes in the U.S. and other factors. Therefore, the fact that EPA finds in this rule that future A/C pipe production and use in the U.S. poses an unreasonable risk does not imply that a similar finding could be made outside of the U.S.

A commenter argued that PVC and ductile iron pipe as primary substitutes for A/C pipe pose greater health risks than those posed during the life cycle of A/C pipe. EPA acknowledges that the individual lifetime cancer risk associated with the production of PVC may be equivalent to that associated with the production of A/C pipe. EPA could not calculate individual lifetime cancer risk for the production of ductile iron pipe. Instead EAP could only compute population cancer risk for ductile iron pipe production because of the manner in which available risk data were presented. The population cancer risk for the production of ductile iron pipe could be comparable to the population cancer risk for production of A/C pipe. While available information permitted EPA to quantify the risks associated with the installation of A/C pipe, cancer risks from installation of ductile iron pipe or to PVC dust from installation of PVC pipe have not been identified. While individual lifetime risks have been quantified for vinyl chloride (VC) leachate in drinking water, individual lifetime risks associated with asbestos in drinking water have not been specifically quantified. While the supporting data are limited, based on a consideration of life cycle risks, EPA believes that the available evidence suggests that substitution of A/C pipe with PVC and ductile iron pipe will present lower population cancer risks.

1. *Polyvinylchloride pipe.* For the proposed rule, EPA concluded that PVC pipe does not appear to present a health hazard comparable to asbestos, although VC, the monomer used to produce PVC, is a carcinogen. EPA also concluded that while VC is a human carcinogen, it does not appear to present a greater hazard than asbestos in the workplace or ambient environment. The PVC product itself presents little risk and workplace exposures are apparently adequately controlled (Ref. 39).

EPA based this determination, for the proposed rule, on several factors including the individual lifetime cancer risk of 10^{-4} for occupational exposure due to inhalation of VC in the manufacture of PVC pipe (Ref. 39). In response to the proposal, a commenter stated that workers exposed via inhalation to VC at the OSHA s PEL of 1 ppm would have a potential individual lifetime cancer risk of 4×10^{-3} The commenter noted that this individual lifetime cancer risk is based on EPA's Carcinogen Assessment Group's (CAG) published unit cancer risk of 2×10^{-2} $(mg/kg/day)^{-1}$ for VC based on animal inhalation data. The commenter questioned the discrepancy between the individual lifetime cancer risk estimation for VC of 4×10^{-3} and the lifetime cancer risk of 10^{-4} cited in EPA's support document for the proposed rule.

The commenter is correct that CAG has published a unit risk number for inhalation exposure to VC. This unit risk number was derived from animal inhalation data. The individual lifetime cancer risk number, 10^{-4} cited in the support document for the proposal, was derived from epidemiological data analyzed and reported by Nicholson et al. 1982 (Ref. 39). In summary, EPA believes that the expected individual lifetime cancer risk associated with the manufacture of PVC pipe may be equivalent to the individual lifetime cancer risk posed by manufacture of A/C pipe. However, as noted in

testimony presented by a consultant for the Asbestos Institute at the 1986 legislative hearing, production of A/C pipe is significantly more labor intensive than production of PVC pipe. Even if one assumes that the lifetime cancer risk for production of A/C pipe and inhalation of VC in the manufacture of PVC pipe are comparable, the number of expected cancer cases (population risk) from production of PVC pipe will most likely be lower than the expected number of cancer cases associated with the production of an equivalent amount of A/C pipe.

EPA recognizes that VC inhalation exposure in the workplace, is the most significant exposure. Other potential exposures that could be present but are difficult to evaluate include: (1) VC leachate in drinking water, (2) VC emissions from PVC plants, and (3) inhalation of PVC dust. A commenter noted that "exposure to VC by ingestion in drinking water (via leaching from the PVC water pipe or as a contaminant in the water supply from disposal of VC/PVC waste products) also occurs. Additionally, the commenter noted that EPA should update its unit cancer risk value for ingestion given a more recent calculation by EPA's Office of Drinking Water.

EPA acknowledges the presence of detectable levels of VC in drinking water; however, the amount of VC expected to leach into drinking water from PVC pipe is considered to be minimal (Ref. 43). It is estimated that nearly all individuals (99 percent) using public water supplies are exposed to <1.0 $\mu g/l$ of VC from all sources. At 1.0 $\mu g/l$, the excess lifetime cancer risk is about 6×10^{-5} (Ref. 44). Since leaching of VC from PVC drinking water pipe is estimated to be minimal, the risks associated with any increase in the amount of VC leachate in drinking water as a result of a ban of A/C pipe is also expected to be minimal.

Exposure to respirable PVC dusts and fumes may occasionally be encountered in the production of PVC or in the manufacture of PVC pipe. Exposure to PVC dust is associated with fibrotic lung changes and nonfatal lung conditions, such as bronchitis and pneumococcosis (Ref. 45).

Analogous to its analytical approach to asbestos and fibrous substitutes, EPA limited its PVC assessment to health effects directly associated with VC or PVC. Effects from exposure to other chemicals (such as solvents, byproducts, intermediates, and adhesives) involved in the manufacture, installation, use or disposal of PVC pipe were not considered. For the proposal, EPA evaluated hazard and exposure data on some other chemicals associated with pipe production and use. However, as noted by a commenter, the hazard and/or exposure data for these other chemicals are too limited to assess risk.

On the basis of available evidence, on balance, EPA believes that the population risk associated with A/C pipe life cycle exposures are likely to exceed the population risks associated with life cycle exposures to PVC pipe. A/C pipe presents risks throughout its product life cycle during manufacture, installation and repair, use and disposal because of the especially hazardous properties inherent in asbestos, the environmental persistence of asbestos fibers, and the larger populations exposed. In contrast, PVC pipe presents risks largely during the manufacturing phase of PVC pipe.

ii. *Ductile iron pipe.* For the proposed rule, EPA concluded that ductile iron pipe, as a substitute for A/C pipe, would not present a health hazard comparable to that of asbestos (Ref. 39). Based on EPA's revised analysis of lifetime exposure associated with A/C pipe, one could argue that the number of excess cancer deaths associated with the production of ductile iron pipe and A/C pipe may be similar (Ref. 42). However, the excess cancer deaths that may be attributed to ductile iron pipe may be overestimated (Ref. 42). The estimate of excess cancers was derived from epidemiological data gathered on steel and iron foundry workers who may have had more diverse and higher exposures to toxic agents. Nevertheless, even if the cancer risk associated with ductile iron foundries is similar to steel foundries, the estimate of cancer risk for ductile iron pipe is most likely an overestimate for current exposure since historical exposures upon which the risks were based were probably much greater. In contrast, ductile iron pipe is manufactured from scrap metal which is not expected to result in exposures similar in magnitude to those found in the steel and iron foundries. Given that the number of workers exposed to particular agents in particular job categories cannot be determined, a precise occupational cancer risk comparison cannot be made. In addition, available evidence suggests that risks during non-manufacturing stages of the product life cycle are greater for A/C pipe than for ductile iron pipe. Thus, EPA believes that fewer cancer cases would be expected from the substitution of ductile iron pipe for A/C pipe than from the continued manufacture, processing, and use of A/C pipe.

iii. *Regulatory approach.* The total costs of the actions taken in this rule for this product category is $128.03 million. This cost is likely an overestimate of actual cost in that it does not quantify the effect of the development of substitute fibers in cement pipe production. Use of a substitute fiber is expected to substantially reduce the costs and societal impact of banning this product.

EPA has concluded that a Stage 3 ban is appropriate for this product category for the following reasons: (1) relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for release of asbestos fibers during a number of life cycle stages; (3) workers and surrounding populations are potentially subject to uncontrolled exposures, especially during installation; (4) while this category was proposed for a Stage 1 ban, EPA has concluded that it is appropriate to delay the ban until Stage 3 to allow more time for further substitute development; (5) the cost of taking these actions is reasonable because performance and price suitable substitutes exist. Prior to the effective date of the Stage 3 ban, EPA will undertake a technical review to determine the availability of non-asbestos substitutes for A/C pipe. EPA believes that this is the best approach in light of the significant risk posed by asbestos; the possible risks posed by the current major substitutes, PVC and ductile iron pipe; and the development of further substitutes for A/C pipe.

i. *Coatings.* This grouping includes the roof coatings and cements and non-roofing adhesives, sealants, and coatings product categories. These products will be banned in Stage 3. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule on these product categories are set forth in the following Table XXI:

TABLE XXI—CANCER-CASES-AVOIDED FOR COATINGS

Product	Discount rate	
	3 percent	0 percent
Roof coatings	1.08	1.49
Non-roof coatings	1.33	1.84

These products are used for a wide variety of functions. Roof coatings uses include waterproofing, sealing, and repair of roofs. Non-roof coatings uses include adhesives, sealants, and coatings used in the building

construction, automotive, and aerospace industries.

Primary routes of exposure to asbestos from these products occur during manufacture, installation or application, and repair. A total of 582 workers is estimated to be exposed to asbestos during primary manufacture of asbestos roof coatings, and 553 workers are exposed during the primary manufacture of asbestos non-roof coatings. Quantifiable risk posed by these products is estimated to range from 1.22×10^{-3} for the removal of roof coatings in built-up roofing (a lower bound that assumes less than full-time exposure) to an average of 3.52×10^{-3} for the primary manufacture of non-roof coatings. Quantifiable risk from non-occupational, lifetime exposures to asbestos released during the manufacture of roof coatings is estimated at 6.27×10^{-5} for approximately 1,000 people and at greater than 1×10^{-6} for approximately 450,000 people.

However, EPA has concluded that the exposure quantified for this grouping are underestimated. EPA did not quantify exposures that occur during application, maintenance, and repair, including activities like spray application of coatings and sanding or removal of existing coatings or caulking. EPA also did not quantify releases to the ambient air due to the weathering of products used in outdoor, sometimes harsh environments. Many products in this category that are used in outdoor environments eventually wear off or chip or flake, resulting in difficult to monitor ambient releases. If, as a means of representing the possible effect of underestimated exposure during installation and removal, it were assumed that as little as one-tenth of 1 percent of asbestos consumed for these uses were released over the life cycle of the products and exposure were assumed based on analogous product operations, the estimate of benefits would more than double for roof coatings (benefits would be 3.57 cases at 0 percent and 2.59 cases at 3 percent) and would increase for non-roof coatings (benefits would be 2.07 cases at 0 percent and 1.50 cases at 3 percent).

According to comments, non-asbestos substitutes possess growing shares of both coatings markets. Available evidence suggests that suitable substitutes should be available for most applications by Stage 3. One commenter, a major producer of roof coatings, indicated that it had replaced asbestos in all of its formulations. Trends toward the greater use of non-asbestos substitutes and probable decreases in the cost of substitutes are not fully taken into account in the analysis of the benefits of banning these categories because of the unavailability of substitute use information at the time the analysis was performed. Therefore, EPA believes that the actual cost of the actions taken on these categories is less than that indicated below.

Both coatings categories were proposed for either a Stage 3 ban or a ban via operation of a permit system. EPA has received comments indicating that progress has been made in the development of suitable substitutes.

The total costs of the actions taken in this rule for these product categories are set forth in the following Table XXII:

TABLE XXII—COST OF THE RULE FOR COATINGS

Product	Total cost in $ million, discounted at 3 percent
Roof coatings	45.48
Non-roof coatings	0.81

EPA has concluded that a Stage 3 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages, including ambient releases due to weathering during outdoor use; (3) homeowners and workers are potentially subject to uncontrolled exposures during product application, maintenance, and removal; (4) the cost of taking these actions is reasonable because suitable substitutes are expected to exist for all of these products by the time of the ban; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely both to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

j. *Paper products.* This grouping includes the commercial paper, corrugated paper, millboard, rollboard, and specialty paper product categories. These products will be banned in Stage 3. The benefits (in terms of cancer-cases-avoided) of the actions taken in this rule of these product categories are set forth in the following Table XXIII:

TABLE XXIII—CANCER-CASES-AVOIDED FOR ASBESTOS PAPER PRODUCTS

Product	Discount rate	
	3 percent	0 percent
Millboard	0.42	0.58
Specialty paper	0.10	0.14

Commercial and corrugated paper and rollboard are no longer commercially imported or produced in the U.S.

The products in these categories are used for a wide variety of functions. They are frequently very similar in form, but differ primarily by specific end use. Product uses include thermal insulation, fireproofing, and fill for a variety of applications, such as beverage and other filters. Asbestos paper products are also used as a component of other products, such as gaskets (discussed above).

Primary routes of exposure to asbestos from these products occur during manufacture, installation, repair, removal, and disposal. A total of 668 workers is estimated to be exposed to asbestos during primary and secondary manufacturing of asbestos paper products. Quantifiable risk posed by these products is estimated to range from an average of 7.35×10^{-4} for the secondary manufacturing of all paper products to an average of 1.87×10^{-3} for the primary manufacturing of millboard. There is potential for episodic, peak exposure during manufacturing activities. Respirators and strict workplace and cleaning practices must be observed to meet the existing OSHA PEL for these products. Quantifiable risk from non-occupational, lifetime exposure to asbestos released during the manufacture of millboard is estimated at 1×10^{-4} for approximately 2,256 people and at greater than 1×10^{-6} for approximately 840,000 people. EPA has concluded that the overall exposures quantified for this grouping are underestimated. EPA did not quantify exposures that occur during installation, repair, and removal, including activities like cutting, drilling, and tearing performed by hand during installation, maintenance, removal, and disposal of existing products. EPA determined that accurately quantifying these exposures and the resultant risks would be difficult and that sufficient other exposure and risk information is available regarding these products to make a finding of unreasonable risk.

According to EPA's analysis and comments, three of the five paper products in this grouping, commercial and corrugated paper and rollboard, are no longer commercially imported or

produced in the U.S. In addition, low-cost substitutes exist for products in the millboard and the specialty paper categories. Therefore, available evidence suggests that suitable substitutes should be available for most applications by the effective date of the Stage 3 ban. The total costs of the actions taken in this rule for these product categories are set forth in the following Table XXIV·

TABLE XXIV·—COST OF THE RULE FOR ASBESTOS PAPER PRODUCTS

Product	Total cost in $ million, discounted at 3 percent)
Millboard	3.73
Specialty paper	0

The paper product categories were proposed for either a Stage 3 ban or a ban via the operation of a permit system. Many of these products are no longer used in the U.S. and suitable substitutes are rapidly being developed, although the development of reasonably-priced substitutes for some specialty uses might take a number of years. EPA is also concerned that consumers may be subject to uncontrolled exposures during installation, maintenance, repair, and removal of products such as millboard. In addition, many of these paper products are very similar in form and bans would be difficult to enforce were the products in this grouping banned at different times.

EPA has concluded that a Stage 3 ban is appropriate for these product categories for the following reasons: (1) Relatively high quantifiable exposure and individual risk levels exist for these products; (2) these products pose a high potential for ambient release during a number of life cycle stages; (3) consumers and workers are potentially subject to uncontrolled exposures, especially during installation, maintenance, repair, and removal of these products; (4) the cost of taking these actions is reasonable because several of these products are no longer produced or imported in the U.S. and because suitable substitutes are expected to exist for all of these products by the time of the ban; and (5) while the quantified benefits of banning these products are relatively small, compared to other product categories banned by this rule, these products are likely both to lead to a number of serious exposures that could not be readily quantified for this rule and to contribute significantly to environmental loading.

One asbestos paper product category, high-grade electrical paper, is not included within the rule's bans (see Unit V.F.1.v). This product is not included for a number of uses of the product, thereby making the cost of a ban very high relative to other products analyzed for this rule. In addition, high-grade electrical paper is reasonably discernable from other paper products.

k. *New commercial asbestos products.* This grouping covers all new asbestos-containing products whose commercial manufacture, importation, or processing commences after the effective date of this rule. All such new uses will be banned from manufacture, importation, processing, and distribution in commerce as of Stage 1, unless EPA grants an exemption application for the product or use. In view of the following factors, EPA finds that the use of asbestos in new products whose commercial manufacture, importation, or processing is initiated after the effective date of this rule's bans poses an unreasonable risk of injury to human health: (1) The development of substitute fibers, (2) the potential for high lifetime risks related to exposure to asbestos due to the manufacture, importation, processing, and use of new asbestos products, (3) the likely escalation of environmental loading of asbestos if the manufacture, importation, processing, or distribution in commerce of new asbestos products were allowed, (4) the speculative benefits of new uses of asbestos, and (5) the absence of cost related to modification of existing capital equipment. Therefore, EPA finds that the benefits of banning new commercial asbestos products outweighs the costs of such a ban. Should a new use of asbestos be developed which meets the criteria applied to exemptions for existing asbestos products, set out in Unit III.E of this preamble and § 763.173, an exemption should be applied for and may be granted.

1. *Categories and activities not subject to this rule's ban.* This grouping includes acetylene cylinders, arc chutes, asbestos diaphragms, battery separators, high-grade electrical paper, missile liners, packings, reinforced plastic, sealant tape, specialty industrial gaskets, and textiles. These products were generally proposed for a third stage ban or a ban via the operation of a permit system. These products are exempted from the final rule's bans because, based on currently-available information, EPA has not found that they pose an unreasonable risk of injury to human health under the criteria of TSCA section 6. EPA will reconsider its decision whether to include these products within the ban if more information about them becomes available.

The following paragraphs discuss EPA s findings for the various products in this grouping.

i. *Acetylene cylinder filler* These products are used as filler in steel cylinders used to store acetone in oxyacetylene torches. Benefits derived by banning this product would total less than one-tenth of a cancer-case-avoided. Exposures during primary manufacture are low due to the enclosed nature of the product's production process. Exposures in stages of the product's life cycle beyond primary manufacture are likely to be limited, relative to other product categories, because the product is enclosed and there is little exposure during product repair or disposal compared to other products analyzed for this rule.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Current substitutes are more expensive than asbestos products and little information is available on the relative performance characteristics of substitutes; therefore, reasonable cost, suitable substitutes may not be available for all applications of these products; (2) this product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 584 tons in 1985); and (3) a ban on this product category would result in only minimal benefits because asbestos exposure is limited in most life cycles stages, relative to other products analyzed for this rule.

ii. *Arc chutes.* These products are used to guide electric arcs in products including motor starter units in electric generating plants. The benefits derived from a ban on this product would total only a small fraction of a cancer-case-avoided. Although EPA has no data on exposure for products in this category, exposures in product life cycle stages beyond primary manufacture are likely to be limited, relative to other product categories, because the asbestos is bound in ceramic in the end use product.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Insufficient information was available regarding exposure to determine the benefits of banning this product; (2) this product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 13.5 tons in 1985).

iii. *Asbestos diaphragms.* These products are used primarily in the chlor-alkali industry in the production of chlorine, caustic soda, and other

products. Benefits derived by banning this product would total approximately three-tenths of a cancer-case-avoided. Exposure to asbestos during the life cycle of this product is limited because the product is generally fabricated on site, used saturated with solution, and disposed of while wet. Asbestos is not prone to be released into the ambient air during stages after product fabrication. Further, insufficient information exists regarding the availability of substitute products for diaphragms in existing chlorine production plants to justify a ban. The cost of modifying existing plants to accept new membrane cell technology in response to a ban on asbestos use in this product may be very high. Based on available information, the total cost of banning this product is estimated to total more than $2 billion. However, suitable substitutes now exist for asbestos diaphragms for use in more recently constructed chlorine product plants. Therefore, EPA specifically recommends that users of asbestos diaphragms use non-asbestos diaphragm cells in facilities that will accept them and in the design of new facilities.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Insufficient information was available to determine whether suitable product substitutes will soon be available for use in existing chlorine production facilities; (2) the cost of banning this product category would be very high; (3) this product category accounts for only a minuscule portion of U.S. asbestos consumption (less than 1,000 tons in 1985); and (4) a ban on this product category would result in only minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

iv. *Battery separators.* These products are used to insulate or separate the polar terminals in batteries or fuel cells, primarily in highly-specialized military and aerospace applications. The benefits derived from a ban on this product would total only a small fraction of a cancer-case-avoided. Although EPA has no date on exposure to products in this category, exposures in stages of the product's life cycle beyond primary manufacture are likely to be limited, relative to other product categories, because asbestos is enclosed during use and disposal. In addition, because most uses are highly specialized and built to government specifications, it is doubtful that substitutes will be developed or costs of a prospective ban will decrease substantially in the near future.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) Insufficient information was available regarding product substitutes to determine the costs of banning this product, although available information indicates that the costs of a ban would be high; (2) this product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 1 ton in 1985); and (3) a ban on this product category would result in only minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

v. *High-grade electrical paper.* These products are used as electrical paper insulation, primarily for high-temperature, low-voltage applications such as motors, generators, transformers, and other heavy electrical apparatuses. The benefits derived from a ban on this product would total approximately 0.4 of a cancer-case-avoided. The cost of banning this product would be high because reasonably priced suitable substitutes do not exist for all applications and a number of existing substitutes are very expensive. The total cost of banning this product is estimated to total over $51 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 744 tons in 1985); (2) the costs of banning this product would be very high, due to the absence of reasonably priced substitutes; and (3) a ban on this product category would result in minimal benefits.

vi. *Missile Liners.* These products are used to coat the interiors of rocket chambers, primarily in highly-specialized military and aerospace applications. Benefits derived by banning this product would total approximately four tenths of a cancer-case-avoided. EPA has no information indicating that suitable substitutes are available. The total cost of banning this product is estimated at almost $2 billion. Because most uses are highly specialized military uses, it is doubtful that substitutes will be developed and be certified for these uses or that costs of a prospective ban will decrease substantially in the near future.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 700 tons in 1985); (2) the costs of banning this product would be very high, because most uses are highly specialized military uses; and (3) a ban on this product category would result in minimal benefits.

vii. *Packings.* Packings are used to seal fluids in devices where motion is necessary. Benefits derived from banning this product category would total less than one tenth of a cancer-case-avoided. Exposures in the product life cycle stages beyond primary and secondary manufacture are likely to be limited, relative to other product categories, because asbestos in packings is generally saturated with lubricant during packing formation and with fluid during use and removal. In addition, there are many specialized uses of asbestos packings, including advanced technology and military applications. The cost of banning this product would be relatively high on a per unit basis because suitable substitutes do not exist and are unlikely to soon be developed for a significant number of packings applications and a number of existing substitutes are very expensive. The total cost of banning this product is estimated at $0.55 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) this product category accounts for only a small portion of U.S. asbestos consumption (approximately 125 tons in 1985); (2) the costs per unit of banning this product would be relatively high for the amount of benefits derived, due to the absence of substitutes of similar cost or performance characteristics for a number of applications; and (3) a ban on this product category would result in minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

viii. *Reinforced plastic.* These products are used primarily for electro-magnetic parts in the automotive and appliance industries and high-performance specialty plastics. Benefits derived by banning this product category would total approximately four tenths of a cancer-case-avoided. Exposures in product life cycle stages beyond primary manufacture are likely to be limited, relative to other product categories, because asbestos is encased in plastic in the end use products. In addition, the cost of banning this product would be high because suitable substitutes do not exist for a significant number of plastics applications and a number of existing substitutes are very expensive. The total cost of banning this product is estimated at almost $35 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 812 tons in 1985); (2) the costs of banning this product would be high, due to the absence for a number of applications of substitutes of similar cost or performance characteristics; and (3) a ban on this product category would result in minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

ix. *Sealant tape.* These products are used primarily to seal windows and automotive windshields, in aerospace applications, and in the manufacture of insulated glass. Benefits derived by banning this product would total less than one tenth of a cancer-case-avoided. Exposures in the product's life cycle stages beyond primary manufacture are likely to be limited, relative to other product categories, because asbestos is contained in rubber in the end use products. In addition, the cost of banning this product would be high because suitable substitutes do not exist for a number of non-automotive applications. A number of existing substitutes are very expensive and others do not perform as well as asbestos-containing products. The total cost of banning this product is estimated at almost $35 million.

EPA does not believe that a ban is appropriate for this product category for the following reasons: (1) This product category accounts for only a minuscule portion of U.S. asbestos consumption (approximately 700 tons in 1985); (2) the total cost of banning this product would be significant because of the absence of suitable substitutes for some uses; and (3) a ban on this product category would result in minimal benefits because asbestos exposure is limited in most life cycle stages, relative to other products analyzed for this rule.

Specialty industrial gaskets. The production of most asbestos-containing gaskets is banned in Stage 2 (see Unit V.F.g). Excluded from the rule's bans are gaskets that are manufactured, imported, processed, or distributed in commerce for specialty industrial uses. This exclusion is limited to asbestos-containing gaskets that are designed for industrial uses in either (a) environments where temperatures are 750 degrees Fahrenheit or greater, or (b) corrosive environments. An industrial gasket is one designed for use in an article which is not a "consumer product" within the meaning of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052 or for use in a "motor vehicle" or "motor vehicle equipment" within the meaning of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381. A corrosive environmental is one in which the gasket is exposed to concentrated (pH less than 2), highly oxidizing mineral acids (e.g., sulfuric, nitric, or chromic acid) at temperatures above ambient. For example, gaskets used in automobiles or consumer products would not be excluded from the rule's bans, even if a particular application was designed for use in a corrosive environment or an environment of greater than 750 degrees Fahrenheit. On the other hand, gaskets used in industrial machinery would be excluded from the rule's bans if the gasket application were designed for use in a corrosive environment or in one of greater than 750 degrees Fahrenheit.

Gaskets are used to seal one compartment of a device from another in static applications. This portion of the beater-add and sheet gasket product categories is not being banned because: (1) According to commenters and the RIA, industrial applications above 750 degrees Fahrenheit and industrial uses in corrosive environments contain many specialized uses of asbestos gaskets, including advanced technology and military applications, and available information indicates that substitutes for these industrial applications are less likely to be available than for lower temperature, non-corrosive, or consumer (e.g., automotive) applications, (2) due to the nature of their applications, the potential hazards created by failure of specialty industrial gaskets might be greater than for other categories, (3) these applications account for only a small portion of the gasket product categories and a very small portion of U.S. asbestos consumption, (4) industrial applications have relatively lower overall exposure levels and smaller exposed populations than do uses with potential consumer exposures, (5) the benefits resulting from a ban of these applications (approximately 6.6 cancer cases) would be small relative to the benefits derived from including the rest of the gasket categories in the ban. The cost of banning these portions of the gasket categories would be high because available evidence indicates that suitable substitutes do not exist and are unlikely to soon be developed for a significant number of applications and a number of existing substitutes are very expensive. The total cost of banning these applications is estimated at approximately $95 million.

xi. *Textile products.* These products are primarily intermediate textile products used in end products covered by other categories banned by this rule, including friction products and gaskets. Because exposures related to the production of these products are largely eliminated by other actions taken in this rule, EPA has determined that separate action on this category to be unnecessary.

VI. Other EPA Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds that it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce to a sufficient extent the risks posed by asbestos exposure and that it is in the public interest to use TSCA.

Several EPA statutes have been used to limit asbestos exposure. On April 16, 1973, EPA used the authority of the Clean Air Act (CAA) to list asbestos as a hazardous air pollutant, establish a "no visible emission" standard for manufacturers, and ban the use of spray-applied, asbestos-containing material as insulation in buildings. EPA amended this regulation to ban asbestos-containing pipe lagging, by a rule published in the **Federal Register** of October 12, 1975 (40 FR 48292); and in 1978, extended the ban to all uses of sprayed-on asbestos by a rule published in the **Federal Register** of June 19, 1978 (43 FR 26372). The CAA rule, which was last amended on April 5, 1984 (49 FR 13658), also regulates the removal of asbestos from buildings and the disposal of wastes generated by removal. EPA proposed amendments to the rule in the **Federal Register** of January 10, 1989 (54 FR 912) to enhance and promote compliance with the current standard.

However, the CAA has limitations. The CAA does not apply directly to indoor air in the workplace or home. Consequently, some additional uses of that statute may leave many workplace or home exposures inadequately controlled.

Another EPA statute that could be used to reduce asbestos exposure is the Safe Drinking Water Act (SDWA). Under the 1986 SDWA Amendments, EPA is required to set a National Primary Drinking Water Regulation for asbestos. In the **Federal Register** of May 22, 1989, EPA proposed an SDWA

maximum contaminant level goal and National Primary Drinking Water Regulation maximum contaminant level for asbestos in drinking water of 7 million asbestos fibers exceeding 10 microns in length. This regulation shortly. However, this regulation would necessarily ignore the inhalation risk posed by asbestos from sources other than drinking water and would therefore affect only a small portion of overall exposure.

An additional EPA statute that could be used to limit asbestos exposure is the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA could list asbestos as a hazardous waste and subject disposal of asbestos to general RCRA requirements designed to reduce exposure. However, such action under RCRA would only reduce exposure during the disposal of asbestos and asbestos products.

VII. Analysis Under Section 9(a) of TSCA

Under section 9(a)(1) of TSCA, EPA is required to submit a report to another Federal agency when two determinations are made. The first determination is that EPA has a reasonable basis to conclude that a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment. The second determination is that the unreasonable risk may be prevented or reduced to a sufficient extent by action taken by another Federal agency under a Federal law not administered by EPA. Secitn 9(a)(1) provides that when the Administrator makes these two determinations, EPA must provide an opportunity to the other Federal agency to assess the risk described in the report, to interpret its own statutory authorities, and to initiate an action under the Federal laws that it administers. Section 9(a) of TSCA thus requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or sufficiently reduce the unreasonable risk. The following Unit summarizes past and contemplated actions by other agencies and then discusses why those agencies are not able to prevent or sufficiently reduce the unreasonable risk presented by asbestos.

A. Other Authorities Affecting Asbestos

Under the authority of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051), the Consumer Product Safety Commission (CPSC) has issued rules banning consumer patching compounds (16 CFR Part 1304) and artificial emberizing materials (16 CFR Part 1305) containing respirable asbestos. The CPSC took these actions based on findings that the use of those products in the household would result in an increased risk of cancer. Earlier, the Food and Drug Administration under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261) banned "general-use garments containing asbestos other than garments having a bona fide application for personal protection against thermal injury and so constructed that the asbestos fibers will not become airborne under reasonably foreseeable conditions of use" (16 CFR 1500.17). The FHSA is now administered by the CPSC.

In 1980, CPSC issued a general order requiring persons to submit information on the use of asbestos in certain consumer product categories. CPSC has also measured potential consumer exposure to asbestos from such products as asbestos millboard, asbestos paper products, and stove door gaskets. CPSC submitted those data to EPA as part of this rulemaking. On September 24, 1986 (51 FR 33911), CPSC issued labeling requirements for "household products containing intentionally added asbestos that, under any reasonable foreseeable conditions of handling and use are likely to release asbestos fibers. In 1986, in light of the EPA propose rule to ban certain asbestos products immediately and phase out others over 10 years, CPSC decided not to ban any additional consumer products containing asbestos under statutes that it administers.

OSHA began to regulate asbestos in the workplace in 1971 under the Occupational Safety and Health Act (29 U.S.C. 51, OSHAct). Since the first workplace standard setting a limit of 12 f/cc was promulgated in May 1971, the workplace standard has been periodically lowered, to 5 f/cc in 1972 and to 2 f/cc in 1976. An Emergency Temporary Standard (ETS) establishing a PEL of 0.5 f/cc was published in the **Federal Register** of November 4, 1983 (48 FR 51086), but the ETS was found invalid by a court. OSHA proposed a revised standard in the **Federal Register** of April 10, 1984 (49 FR 14116). OSHA issued a final rule on June 20, 1986 (51 FR 22612), lowering the PEL to 0.2 f/cc and establishing new work practice requirements for both general industry and the construction sector. Both asbestos industry groups and unions challenged various provisions of the new OSHA rule. On February 2, 1988, the United States Court of Appeals for the District of Columbia Circuit issued its decision in the consolidated appeals. The court upheld OSHA s finding that asbestos exposure poses a significant risk and the feasibility of the new PEL and specifically rejected the asbestos industry groups' challenges to OSHA's risk assessment. However, the court found that there was not substantial evidence supporting OSHA's: (1) Ban on the spraying of asbestos-containing products, (2) rejection of a lower PEL for certain major subgroups of industry, (3) rejection of a short-term exposure limit (STEL), and (4) rejection of certain specific provisions recommended by participants in the rulemaking (e.g. smoking control provisions, bilingual labels, and more stringent respiratory protection requirements). The court ordered OSHA to establish a STEL, to consider a lower PEL for certain industry sectors where it may be feasible, and to consider several other specific changes suggested by rulemaking participants. In response to this court decision, OSHA amended its Asbestos Standard to incorporate an Excursion Limit (EL). This amendment, which was published in the **Federal Register** of September 14, 1988 (53 FR 35610), limits short-term exposures to 1 f/cc over a half-hour period. OSHA has not either finalized or proposed any other changes in its Asbestos Standards.

The Mine Safety and Health Administration (MSHA), acting under the Mine Safety and Health Act, has adopted workplace standards designed to protect workers engaged in pit and underground mining and milling (30 CFR 71.202). The MSHA standard was last amended in 1976 and calls for a PEL of 2 f/cc.

State and local public employees are generally excluded from coverage under the OSHAct. However, under section 19 of the OSHAct, OSHA has approved State plans for 23 States and 2 territories, thus effectively extending OSHA protections to State and local public employees in these jurisdictions. EPA has promulgated a rule to establish requirements similar to those of the OSHA Asbestos Construction Standard for State and local public employees not covered under a State plan who conduct asbestos abatement work. However, other public employees, such as fire fighters, are not covered by that rule.

B. EPA's Determination Under Section 9(a) of TSCA

EPA is not required under section 9(a) to submit a report to other agencies on the asbestos risks described in this document since EPA has determined that such risks cannot be prevented or reduced to a sufficient extent taken under a Federal; law not administered by EPA. Certain activities involving asbestos present risks that fall under the

jurisdiction of a number of different Federal laws such as the OSHAct, the CPSA, and the CAA, but no one statute, other than TSCA, can adequately address all the risks posed throughout the life cycle of asbestos. Referral would result in fragmented assessment and control of risks and potentially duplicative regulatory efforts. Furthermore, even if EPA were to refer asbestos exposure risks to other agencies, taken by those other agencies would still leave a substantial residual risk, resulting in an adverse effect on public health. Only EPA under TSCA can stop the build up of asbestos in the environment. EPA's reasons for reaching these conclusion are set forth below.

1. *Interpretation of section 9(a) of TSCA.* The comprehensive nature of TSCA has long been recognized. TSCA allows regulation of a chemical substance based on all of its risks and, thereby, allows the Government to remedy the deficiencies in other statutes that can deal only with parts of the risk. (Statement of the President on signing S. 3149 Into Law, October 12, 1976, Weekly Compilation of Presidential Documents, vol. 12, No. 42, Oct. 18, 1976, at 1489; S. Rep. No. 94–698, 94th Cong. 2d Sess. at 2). The need for a total exposure, multi-media approach to chemical regulation and the dangers of a fragmented regulatory approach were recognized even during the early Congressional hearings on TSCA. See, for example, the 1973 Senate Hearings at 212–214 and the 1972 House Hearings at 65–67 No other single law provides authority to deal comprehensively with multi-media hazards.

In particular, Congress designed TSCA to deal with chemical substances for which the most appopriate remedy would be a total ban on their manufacture, importation, processing, and distribution in commerce. In this regard, Congress focused on the risk of asbestos and the dangers of fragmented regulation of asbestos during the legislative hearings. See the 1971 Senate Hearings and 1973 Hearings. Asbestos risks were described in the workplace and in over 3,000 uses that could present risks to the general population (H.R. Rep. No. 94–1341, 94th Cong., 2d Sess., at 5 (1976). Members of Congress believed it intolerable that no agency could deal comprehensively with chemical risks, including the risk from asbestos. See 1973 Senate Hearings at 319–320 (Letter from Senator Tunney to Dow Chemical Company); 1975 Senate Hearings at 131–133 (Remarks of Senator Tunney).

2. *Capability of other Federal authorities to deal with the combination of asbestos activities.* EPA's analysis of the jurisdiction over the risks presented by asbestos among a number of agencies and statutory authorities is set out below. OSHA has authority under the OSHAct to control risk presented to private sector manufacturing, construction, and service employees from workplace exposures, and may approve State plans covering State and local public employees. CPSC has authority under the CPSA and FHSA to control risk presented to consumers from consumer products. The Mine Safety and Health Administration has authority under the Mine Safety and Health Act concerning risk presented during the mining and milling of asbestos. State and local public employees in about half the States (such as fire fighters who may wear asbestos clothing) are not covered by either OSHA regulations or OSHA-approved State plans.

EPA has concluded that asbestos is appropriate for TSCA action rather than referral to other agencies. It is a substance for which there is broad exposure to populations in numerous situations—in the workplace, through long- and short-term ambient concentrations, and from consumers products. With the exception of TSCA, there is no single authority to deal with all of these multiple exposures. No one of the other potential Federal regulatory authorities, in looking at its specific part of the overall exposures, can either evaluate or deal with the totality of the risk presented. OSHA may set exposure limits for workers, but there may be venting of asbestos from the workplace into the atmosphere. EPA, under the CAA, may regulate ambient emissions, but not workplace or consumer exposures. In each case, only a fraction of the risk is controlled. Only EPA under TSCA can look across the range of asbestos use to evaluate whether exposure presents an unreasonable risk. There is no other Act that affords such authority. Further, only action under TSCA can stop the build up of asbestos in the environment.

3. *Residual risks.* Even if other Federal agencies took additional action to reduce the risk associated with asbestos during the various stages of the life cycle of asbestos products, a substantial and unreasonable residual risk would still remain.

Large populations outside of OSHA jurisdiction are at risk from exposure to asbestos. State and local public employees, such as fire fighters, are not protected by OSHA regulations in about half of the States. The general population is exposed to asbestos into the ambient air as a result of release during the manufacture, processing, use, repair, and disposal of asbestos products. As discussed more fully in Unit V.A.3 of this preamble, asbestos released into the ambient air can build up in the environment. EPA is concerned about this environmental loading.

Further, even if OSHA achieves strict compliance with its PEL of 0.2 f/cc and its new EL of 1 f/cc, a substantial and unreasonable residual risk would remain. OSHA recognized that a substantial risk remained with a PEL of 0.2 f/cc. OSHA estimated that persons exposed to this level over a working lifetime of 45 years would face a risk of 7 in 1,000 of developing cancer. However, OSHA concluded that this was the lowest exposure level that was technologically feasible in asbestos workplaces. As stated above, OSHA has been ordered to consider a lower PEL for certain general industry sectors where it may be feasible. However, technical limitations on asbestos exposure monitoring seem to limit OSHA from establishing a PEL lower than 0.1 f/cc. Indeed, the union groups that asked the court to order OSHA to adopt a lower PEL only requested a PEL of 0.1 f/cc. Workers exposed to a level of 0.1 f/cc still face a substantial risk. OSHA calculates that such workers face a risk of 3 in 1,000 of developing cancer when exposed over a 45-year working lifetime.

In addition, it is likely that the OSHA PEL of 0.2 f/cc and EL of 1 f/cc will be exceeded in many cases since it is particularly difficult to apply the PEL in the construction and service sectors. Many of the workplace exposures to asbestos occur downstream in the construction and service sectors rather than the manufacturing sector. Over 80 percent of workers exposed to asbestos are in the construction and service sectors. Employees in those sectors often do not know when they are exposed to asbestos because they do not know that they are working with asbestos products (Ref. 34). Attempts at compliance and OHSA's compliance inspections are also difficult in the construction and service sections since employees frequently do not have a fixed work site. Between July 1, 1986 and June 30, 1987 OSHA cited 534 alleged violations of the asbestos rule for general industry and 427 alleged violations of the rule for the construction sector. OSHA inspection data show that 91 of the 655 asbestos monitoring samples taken by OSHA from July 1, 1986 through April 30, 1988, had exposure values above the OSHA PEL of 0.2 f/cc. While respirators were in use in many of the establishments

with air concentrations higher than the PEL, 20 percent of these establishments were cited for violations of respiratory protection guidelines or for violations of the PEL (Ref. 49). As stated earlier, OSHA amended its Asbestos Standards to incorporate an EL on September 14, 1988. EPA does not believe that the EL will have a significant effect on the significant risk posed by asbestos in the workplace. A more detailed discussion of this may be found in Unit V.A.3 of this preamble. Finally, many asbestos control measures, in particular, the use of respirators or increased workplace ventilation, only shift the asbestos exposure to another population for which no exposure controls exist. For example, if ventilation is used, substantial quantities of asbestos would be released to the ambient environment where it would continue to present a risk both to other workers and the general population.

Similarly, CPSC cannot evaluate or deal with the totality of the risk presented by asbestos. CPSC may ban or require safety standards for asbestos-containing consumer products based exclusively on risk to consumers. CPSC is unable to consider risk to other groups from releases of asbestos during the life cycle of those products. In addition, CPSC has indicated that it does not plan to enact further bans on asbestos-containing products.

After carefully analyzing other Federal authorities, EPA concludes that action under TSCA is appropriate to reduce the unreasonable risk to human health posed by asbestos. Use of other Federal authorities cannot reduce risk to a reasonable level because: (1) Even together, they cannot reduce the total volume of asbestos or asbestos products in commerce or limit the ongoing buildup of asbestos in the environment, (2) Even together, they cannot protect all of the many population groups at risk, and (3) They all have jurisdictional gaps, both individually and collectively.

VIII. Enforcement

Section 15 makes it unlawful to fail or refuse to comply with any provisions of a rule promulgated under section 6 of TSCA. Therefore, any failure to comply with this rule would be a violation of section 15. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) Fail or refuse to permit access to or copying of records, as required by TSCA; (3) Fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment of up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule and seizing any chemical substance or mixture manufactured or imported in violation of this rule.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

IX. Confidentiality

Section 14(a) of TSCA allows a person who submits information to EPA to assert a claim of confidentiality if release of the information would reveal trade secrets or confidential commercial or financial information. Under this rule, claims of confidentiality can be asserted only at the time information is submitted in an exemption application and only in the manner specified in § 763.179. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR Part 2, Subpart B.

Any person who claims information contained in an exemption application as confidential is required to provide two copies of its application: a complete copy of the application including all information claimed as confidential and a "sanitized" copy from which all confidential information has been deleted. EPA will place the applicant's sanitized copy in the public file. EPA will also issue a notice in the **Federal Register** requesting comments on the exemption request.

Persons claiming information as confidential should do so by circling, bracketing, or underlining it and marking it "CONFIDENTIAL. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR Part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

In addition, persons claiming information as confidential in exemption applications must respond in detail to the substantiation questions in § 763.179(d) at the time the application is submitted to EPA. If a claim is unaccompanied by the required substantiation at the time it is submitted to EPA, the company will be notified that the unsanitized copy of the application will be placed in the public file.

EPA is committed to the public disclosure of as much nonconfidential information submitted in exemption applications as possible. Requiring up-front substantiation of confidentiality claims and continued close scrutiny of such claims through the established claim review process will ensure that as much information as possible is released. Public interest in the information in exemption applications and the need for public participation in the review of applications justifies this approach. Up-front substantiation obviates the need for follow-up substantiation by submitters resulting from EPA review or Freedom of Information Act requests and thereby facilitates public participation in the process of reviewing exemption applications.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-62036). A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Room NE-G004, 401 M Street, SW Washington, DC.

This record contains information considered by EPA in developing this rule. The record includes: (1) All **Federal Register** notices, (2) relevant support documents, (3) reports, (4) memoranda and letters, and (5) hearing transcripts, responses to comments, and other documents related to this rulemaking.

XI. References

(1) USEPA, ORD, OHEA. 1986. *Airborne Asbestos Health Assessment Update.* (June 1986): 215 pp. U.S. Environmental Agency, Washington, DC.. EPA/600/8-84/003F

(2) USCPSC. 1983. *Chronic Hazard Advisory Panel on Asbestos.* (July 1983): 160pp. U.S. Consumer Product Safety Commission, Washington, D.C.

(3) NAS, NRC. 1984. *Asbestiform Fibers: Non-occupational Health risks.* (1984): 353pp. National Academy of Sciences, National Research Council, Washington, D.C.. National Academy Press.

(4) Seidman, H., Selikoff, I.J., Hammond, E.C. 1979. "Short-term asbestos work exposure and long-term observation. *Annals of the New York Academy of Sciences.* 330:61–89.

(5) Morgan, A., Evans, R.J., Hounam, R.F Holmes, A., Doyle, S.G. 1975. "Studies on the deposition of inhaled fibrous material in the respiratory tract of the rat and its subsequent clearance using radioactive tracer techniques. II. Deposition of the UICC standard reference samples of asbestos. *Environmental Research.* 10:196–207

(6) USDHHS, NTP 1985. *Toxicology and Carcinogenesis Studies of Chrysotile Asbestos in F344/N Rats—(Feed Studies).* Technical Report Series No. 295, NIH Pub No. 86–2551. (November 1985): 392pp. U.S. Department of Health and Human Services, National Toxicology Program. Research Triangle Park, North Carolina.

(7) Selikoff, I.J., Hammond, E.C., Seidman, H. 1979. "Mortality experience of insulation workers in the United States and Canada, 1943–1976. *Annals of the New York Academy of Sciences.* 330:91–116.

(8) Puntoni, R., Vercelli, M., Merlo, F Valerio, F., and Santi, L. 1979. "Mortality among shipyard workers in Genoa, Italy. *Annals of the New York Academy of Sciences.* 330:353–377.

(9) Newhouse, M.L., Berry, G., Wagner, J.C., Turok, M.E. 1972. "A study of the mortality of female asbestos workers. *British Journal of Industrial Medicine.* 29:134–141.

(10) Wignall, B.K., Fox, A.J. 1982. "Mortality of female gas mask assemblers. *British Journal of Industrial Medicine* 39:34–38.

(11) Acheson, E.D., Gardner M.J., Pippard E.C., Grime L.P 1982. "The mortality of two groups of women who manufactured gas masks from chrysotile and crocidolite asbestos: a 40-year follow-up. *British Journal of Industrial Medicine.* 39:344–348.

(12) Berry, G., Newhouse, M.L. 1983. "Mortality of workers manufacturing friction materials using asbestos. *British Journal of Industrial Medicine.* 40:1–7

(13) McDonald, A.D., Fry, J.S., Woolley, A.J., McDonald, J.C. 1984. "Dust exposure and mortality in an American chrysotile asbestos friction products plant. *British Journal of Industrial Medicine.* 41:151–157.

(14) Dement, J.M., Harris, R.L., Symoms, M.J., Shy, C.M. 1983. "Exposures and mortality among chrysotile asbestos workers. Part II: mortality. *American Journal of Industrial Medicine.* 4:421–433.

(15) McDonald, A.D., Fry, J.S., Woolley, A.J., McDonald, J.C. 1983. "Dust exposure and mortality in an American chrysotile textile plant. *British Journal of Industrial Medicine.* 40:361–367

(16) USDOL, OSHA. 1986. Occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rules. June 20, 1986. 51 FR 22612–22790. U.S. Department of Labor, Occupational Safety and Health Administration.

(17) Davis, J.M.G., Addison, J., Bolton, R., Donaldson, K., Jones, A., Smith, T. 1986. "The pathogenicity of long versus short fibre samples of amosite asbestos administered to rats by inhalation and intraperitoneal injection. *British Journal of Experimental Pathology.* 67:415–430.

(18) Davis, J.M.G., Jones A.D., Smith T. 1987 *Comparisons of the pathogenicity of long and short fibers of chrysotile asbestos in rats.* (June 1987). 60pp. Institute of Occupational Medicine, Edinburgh, U.K.

(19) USEPA. 1986. Asbestos; proposed mining and import restrictions and proposed manufacturing, importation, and processing prohibitions. January 29, 1986. 51 FR 3738–3759.

(20) Platek, S.F Groth, D.H., Ulrich, C., Stettler, L., Finnell, M., Stoll, M. 1985. "Chronic inhalation of short asbestos fibers. *Fundamentals of Applied Toxicology.* 5:327–340.

(21) USEPA, OPTS, ETD. 1989. *Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. Final Report. Volumes I—IV.* January 19, 1989. *Addendum.* June 26, 1989.

(22) Doll, R., Peto, R. 1985. *Asbestos: Effects on the Health of Exposure to Asbestos.* (1985):63pp. London, UK. Health and Safety Commission.

(23) Doll, R. 1987. "The quantitative significance of asbestos fibres in the ambient air. In: *Advances in Aerobiology.* Birkhauser Verlag. Basel pp. 213–219.

(24) Hughes, J.M., Weill, H., Hammad, Y.Y. 1987 "Mortality of workers employed in two asbestos cement manufacturing plants. *British Journal of Industrial Medicine.* 44:161–174.

(25) Weill, H., Hughes, J., Waggenspack, C. 1979. "Influence of dose and fiber type on respiratory malignancy risk in asbestos cement manufacturing. *American Review of Respiratory Diseases.* 120:345–354.

(26) Thomas, H.F Benjamin, I.T., Elmwood, P.C., Sweetnam, P.M. 1982. "Further follow-up study of workers from an asbestos cement factory. *British Journal of Industrial Medicine.* 39:273–276.

(27) OSTP 1985. Chemical carcinogens: review of the science and its associated principles. 50 FR 10372–10442. Office of Science and Technology Policy, Executive Office of the President.

(28) USDOT, NHTS. 1988. Letter from Barry Felrice to John W. Melone, Director, CCD, OTS, USEPA, November 30, 1988. U.S. Department of Transportation, National Highway Traffic Safety Administration.

(29) USEPA, OPTS, ETD. 1988. *Asbestos Exposure Assessment. Revised Report.* (March 21, 1988):281pp

(30) USEPA, OPTS, EED. 1988. *Asbestos Modeling Study. Final Report.* (March 18, 1988):78pp.

(31) USEPA, OPTS, EED. 1988. *Non-occupational Asbestos Exposure. Revised Draft Report.* (September 25, 1988):66pp

(32) Item. *Occupational Health and Safety Reporter.* 1987. (September 16, 1987):622 pp.

(33) USEPA, OPTS, EED. 1988. Memorandum from Dr. Kin Wong to John Rigby, CCD, OPTS, USEPA, entitled "OSHA Compliance Data for Asbestos. August 1, 1988.

(34) USDOL, OSHA. 1988. Occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rules; amendment. September 14, 1988. 53 FR 35610.

(35) USEPA, OPTS, EED. 1988. *Review of Recent Epidemiological Investigations on Populations Exposed to Selected Non-asbestos Fibers. Final Report.* (March 21, 1988):66pp.

(36) USEPA, OPTS, ETD. 1986. *Durable Fiber Exposure Assessment. Final Report.* (September 9, 1986):466pp

(37) USEPA, OPTS, ETD. 1986. *Durable Fiber Industry Profile and Market Outlook.* (August 27, 1986):310pp

(38) USEPA, OPTS, HERD. 1988. *Health Hazard Assessment of Non-asbestos Fibers.* (March 21, 1988):260pp

(39) USEPA, OPTS, ECAD. 1985. *Asbestos Substitutes and Related Materials.* (April 24, 1985):246pp

(40) USEPA, OPTS, ETD. 1987. *Analysis of the Feasibility of Replacing Asbestos in Automobile and Truck Brakes. Final Report.* April 15, 1987. Prepared under contract by the American Society of Mechanical Engineers.

(41) USEPA, OPTS, CCD. 1989. *Response to Public Comments Document for the Rulemaking Process Concerning Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce, Prohibitions.* (June 1989).

(42) USEPA, OPTS, ECAD. Memorandum from Francine TenEyck to Lynda Priddy, CCD, OTS, USEPA, entitled "Potential lung cancer risk for ductile iron manufacture as a substitute for asbestos/cement pipe. (December 15, 1988):2pp.

(43) USEPA, ORD, WERL. 1985. *Plumbing materials and drinking water quality; Proceedings of a Seminar. Cincinnati, Ohio, May 16–17, 1984.* (February 1985):100pp. Office of Research and Development, Water Engineering Research Laboratory. EPA 600/9–85–007.

(44) USEPA, ODW, CSD. 1985. *Drinking water criteria document on vinyl chloride. Final Draft.* (January, 1985):140pp.

(45) WHO, IARC. 1979. "Vinyl chloride, polyvinyl chloride and vinyl chloride-vinyl acetate copolymers. *IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Humans, Vol. 19.* (February 1979):402–412. International Agency for Research on Cancer, World Health Organization.

(46) USEPA, OAQPS, ESED. 1987. *National Emission Standards for Asbestos—Background Information for Proposed Standards. Draft.* (March 5, 1987):311pp.

(47) ARAP Lewellen, W.S., Sykes, R.I., Cerasoli, C.P Parker, S.F. 1986. *Comparison of the 1982 Seadex dispersion data with results from a number of different models.* (February 1986):133pp. Princeton, NJ: Aeronautical Research Association of Princeton. Prepared for Oak Ridge National Laboratory under contract 19X89611V. ARAP report no. 575.

(48) USEPA, OPTS, EED. 1984. *Exposure Assessment for Asbestos. Draft Final Report.* (January 9, 1984):262pp.

(49) USEPA, OPTS, ETD. 1988. Memorandum from Dr. Kin Wong to Debbie Ottinger, CCD, OTS, USEPA, entitled "Additional Analysis of OSHA Compliance Data. (November 2, 1988):4pp.

(50) USEPA, OPTS, CCD. 1988. Memorandum from John Rigby to the Record entitled "Meeting with Events Analysis, Inc., on Work Practices during Brake Repair. (January 22, 1988):13pp.

(51) USEPA, ORD. Millette, J.R., Boone, R., Rosenthal, M. 1980. *Asbestos in Cistern Water.* (February 1980):4pp.
(52) USEPA, OPTS, ETD. 1988. Memorandum from Cathy Fehrenbacker to Lynda Priddy, CCD, OPTS, USEPA, entitled "Monitoring Data Available on Occupational Exposure to Aramid Fibers. (October 7 1988):2pp.
(53) USEPA, OPTS, ETD. 1988. Memorandum from Cathy Fehrenbacker to Lynda Priddy, CCD, OPTS, USEPA, entitled "Review of the Recent Data Submitted by Dupont on Aramid Fibers. (dated March 15, 1988). (December 9, 1988):2pp.
(54) USEPA, OPTS, ETD. 1988. *Durable Fiber Exposure Assessment: Addendum.* (October 11, 1988):14pp.
(55) USEPA, OPTS, ETD. 1988. *Durable Fiber Exposure Assessment: Attachment to Addendum.* [Post] (October 11, 1988):2pp.
(56) USEPA, OPTS, EED. 1988. Memorandum from Karen Milne and Gary Grindstaff to Dr. Barbara Mandula, ECAD, OPTS, USEPA, entitled "Risk Assessment of Aramid Fibers. (June 16, 1988):2pp.
(57) ICF Inc. 1988. Memorandum from Nora Zirps and Maravene Edelstein to Dr. Kin Wong, ETD, OPTS, USEPA, entitled "Numeric Data for Summary of Asbestos Exposure Information. (May 20, 1988):12pp.
(58) USDHHS, NIOSH. 1987c. In-depth survey report: control technology for drum brake service operations at Ohio Department of Transportation maintenance facility, Lebanon, OH. (February 1987):35pp. National Institute for Occupational Safety and Health Cincinnati, OH: NIOSH. Report No. ECTB 152-18b.
(59) USEPA, Asbestos Action Program. 1986. *Guidance for Preventing Asbestos Disease Among Auto Mechanics.* (June 1986):14pp.
(60) USEPA, OPTS, CCD. 1989. Memorandum from Deborah Ottinger to the Record entitled "Upper bound population and lower bound risk estimates—revisions. (May 31, 1989):11pp.
(61) USEPA, OPTS, CCD. 1987 Memorandum from John Rigby to the Record entitled "July 23, 1987 Meeting Between NHTSA and EPA. (September 15, 1987):3pp.
(62) USEPA, OPTS, CCD. 1988. Memorandum from John Rigby to the Record entitled "January 12, 1988 Meeting Between EPA and NHTSA. (September 9, 1988):2pp.
(63) USEPA, OPTS, CCD. 1988. Memorandum from John Rigby to the Record entitled "July 12, 1988 Meeting Between EPA and NHTSA. (September 8, 1988):3pp.
(64) USEPA, ODW. 1986. *Estimated National Occurrence and Exposure to Asbestos in Public Drinking Water Supplies.* (December 23, 1986):72pp. plus appendices.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has determined that this rule is a "Major Rule" and has prepared an RIA. The RIA estimates that this rule will cost approximately $458.89 million, or $806.51 million if a 1 percent annual decrease in the price of substitutes is not assumed. The RIA also estimates that the rule will, over the 13-year period analyzed, avoid at least 202 cancer cases, if benefits are not discounted, and 148 cancer cases, if benefits are discounted at 3 percent. If analogous exposures are not assumed, the estimates of cancer-cases-avoided are 164 cases, if benefits are not discounted, and 120 cases, if benefits are discounted at 3 percent. As is stated in Unit V.D. of this preamble, EPA believes that these costs are reasonable and that the rule is the least burdensome way of reducing the unreasonable risk posed by exposure to asbestos from the manufacture, importation, processing, use, and disposal of asbestos-containing products.

This rule was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

EPA has analyzed the economic impact of this final rule on small businesses. A summary of this analysis appears in the RIA and Unit V.D of this preamble. Based on the discussion in that Unit, EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The reporting and recordkeeping provisions of this final rule have been submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

Public reporting burden for this collection of information is estimated to average less than 2 hours annually per firm over the 3-year period reviewed for the analysis of regulatory burden. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate of annual burden is a relatively low figure because of the small number of firms affected by the regulatory actions taken during the period reviewed for the analysis of regulatory burden.

Send any comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street., SW Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for EPA.

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances.

Dated July 6, 1989.

William K. Reilly,

Administrator.

Therefore, 40 CFR Part 763 is amended as follows.

PART 763—[AMENDED]

1. The authority citation for Part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By reserving Subpart H and adding new Subpart I to read as follows:

Subpart I—Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products; Labeling Requirements

Sec.

763.160 Scope.
763.163 Definitions.
763.165 Manufacture and importation prohibitions.
763.167 Processing prohibitions.
763.169 Distribution in commerce prohibitions.
763.171 Labeling requirements.
763.173 General exemptions.
763.175 Enforcement.
763.176 Inspections.
763.178 Recordkeeping.
763.179 Confidential business information claims.

Subpart I—Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products; Labeling Requirements

§ 763.160 Scope.

This subpart prohibits the manufacture, importation, processing, and distribution in commerce of the asbestos-containing products identified and at the dates indicated in §§ 763.165, 763.167 and 763.169. This subpart requires that products subject to this rule's bans, but not yet subject to a ban on distribution in commerce, be labeled. This subpart also includes general exemptions and procedures for

requesting exemptions from the provisions of this subpart.

§ 763.163 Definitions.

For purposes of this subpart:

Acetylene cylinder filler" means an asbestos-containing product which is intended for use as a filler for acetylene cylinders.

Act" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Aftermarket part" means any part offered for sale for installation in or on a motor vehicle after such vehicle has left the manufacturer's production line.

Agency" means the United States Environmental Protection Agency.

Arc chute" means an asbestos-containing product that acts as a chute or guidance device and is intended to guide electric arcs in applications such as motor starter units in electric generating plants.

Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite; and actinolite.

Asbestos-cement (A/C) corrugated sheet" means an asbestos-containing product made of cement and in the form of a corrugated sheet used as a non-flat-surfaced reinforcing or insulating material. Major applications of this product include: building siding or roofing; linings for waterways; and components in cooling towers.

Asbestos-cement (A/C) flat sheet" means an asbestos-containing product made of cement and in the form of a flat sheet used primarily as a flat-surfaced reinforcing or insulating material. Major applications of this product include: wall linings; partitions; soffit material; electrical barrier boards; bus bar run separators; reactance coil partitions; laboratory work surfaces; and components of vaults, ovens, safes, and broilers.

Asbestos-cement (A/C) pipe and fittings" means an asbestos-containing product made of cement and intended for use as pipe or fittings for joining pipe. Major applications of this product include: pipe used for transmitting water or sewage; conduit pipe for protection of utility or telephone cable; and pipes used for air ducts.

Asbestos-cement (A/C) shingle" means an asbestos-containing product made of cement and intended for use as a siding, roofing, or construction shingle serving the purpose of covering and insulating the surface of building walls and roofs.

"Asbestos clothing" means an asbestos-containing product designed to be worn by persons.

Asbestos-containing product" means any product to which asbestos is deliberately added in any concentration or which contains more than 1.0 percent asbestos by weight or area.

Asbestos diaphragm" means an asbestos-containing product that is made of paper and intended for use as a filter in the production of chlorine and other chemicals, and which acts as a mechanical barrier between the cathodic and anodic chambers of an electrolytic cell.

Automated transmission component" means an asbestos-containing product used as a friction material in vehicular automatic transmissions.

"Battery separator" means an asbestos-containing product used as an insulator or separator between the negative and positive terminals in batteries and fuel cells.

"Beater-add gasket" means an asbestos-containing product that is made of paper intended for use as a gasket, and designed to prevent leakage of liquids, solids, or gases and to seal the space between two sections of a component in circumstances not involving rotary, reciprocating, and helical motions. Major applications of beater-add gaskets include: gaskets for internal combustion engines; carburetors; exhaust manifolds; compressors; reactors; distillation columns; and other apparatus.

"Brake block" means an asbestos-containing product intended for use as a friction material in drum brake systems for vehicles rated at 26,001 pounds gross vehicle weight rating (GVWR) or more.

"Chemical substance," has the same meaning as in section 3 of the Act.

"Clutch facing" means an asbestos-containing product intended for use as a friction material or lining in the clutch mechanisms or manual transmission vehicles.

"Commerce" has the same meaning as in section 3 of the Act.

"Commercial and industrial friction product" means an asbestos-containing product, which is either molded or woven, intended for use as a friction material in braking and gear changing components in industrial and commercial machinery and consumer appliances. Major applications of this product include: hand brakes; segments; blocks; and other components used as brake linings, rings and clutches in industrial and commercial machinery and consumer appliances.

"Commercial paper" means an asbestos-containing product which is made of paper intended for use as general insulation paper or muffler paper. Major applications of commercial papers are insulation against fire, heat transfer, and corrosion in circumstances that require a thin, but durable, barrier.

"Corrugated paper" means an asbestos-containing product made of corrugated paper, which is often cemented to a flat backing, may be laminated with foils or other materials, and has a corrugated surface. Major applications of asbestos corrugated paper include: thermal insulation for pipe coverings; block insulation; panel insulation in elevators; insulation in appliances; and insulation in low-pressure steam, hot water, and process lines.

"Customs territory of the United States" means the 50 States, Puerto Rico, and the District of Columbia.

"Disc brake pad for heavy-weight vehicles" means an asbestos-containing product intended for use as a friction material in disc brake systems for vehicles rated at 26,001 pounds gross vehicle weight rating (GVWR) or more.

"Disc brake pad for light- and medium-weight vehicles" means an asbestos-containing product intended for use as a friction material in disc brake systems for vehicles rated at less than 26,001 pounds gross vehicle weight rating (GVWR).

"Distribute in commerce" has the same meaning as in section 3 of the Act, but the term does not include actions taken with respect to an asbestos-containing product (to sell, resale, deliver, or hold) in connection with the end use of the product by persons who are users (persons who use the product for its intended purpose after it is manufactured or processed). The term also does not include distribution by manufacturers, importers, and processors, and other persons solely for purposes of disposal of an asbestos-containing product.

"Drum brake lining" means any asbestos-containing product intended for use as a friction material in drum brake systems for vehicles rated at less than 26,001 pounds gross vehicle weight rating (GVWR).

"Flooring felt" means an asbestos-containing product which is made of paper felt intended for use as an underlayer for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"High-grade electrical paper" means an asbestos-containing product that is made of paper and consisting of asbestos fibers and high-temperature resistant organic binders and used in or with electrical devices for purposes of

insulation or protection. Major applications of this product include insulation for high-temperature, low voltage applications such as in motors, generators, transformers, switch gears, and other heavy electrical apparatus.

"Import" means to bring into the customs territory of the United States, except for: (1) Shipment through the customs territory of the United States for export without any use, processing, or disposal within the customs territory of the United States; or (2) entering the customs territory of the United States as a component of a product during normal personal or business activities involving use of the product.

"Importer" means anyone who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term includes as appropriate:

(1) The consignee.

(2) The importer of record.

(3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(4) The transferee, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144.

"Manufacture" means to produce or manufacture in the United States.

"Manufacturer" means a person who produces or manufactures in the United States.

"Millboard" means an asbestos-containing product made of paper and similar in consistency to cardboard produced in sections rather than as a continuous sheet. Major applications of this product include: thermal protection for large circuit breakers; barriers from flame or heat; linings in floors, partitions, and fire doors; linings for stoves and heaters; gaskets; table pads; trough liners; covers for operations involving molten metal; and stove mats.

"Missile liner" means an asbestos-containing product used as a liner for coating the interior surfaces of rocket motors.

"Model year" means the manufacturer's annual production period which includes January 1 of such calendar year, provided that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

"New uses of asbestos" means commercial uses of asbestos not identified in § 763.165 the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989. The following products are also not new uses of asbestos: acetylene cylinders, arc chutes, asbestos diaphragms, battery separators, high grade electrical paper, missile liner, reinforced plastic, sealant tape, and textiles.

"Non-roof coating" means an asbestos-containing product intended for use as a coating, cement, adhesive, or sealant and not intended for use on roofs. Major applications of this product include: liquid sealants; semi-liquid glazing, caulking and patching compounds; asphalt-based compounds; epoxy adhesives; butyl rubber sealants; vehicle undercoatings; vinyl sealants; and compounds containing asbestos fibers that are used for bonding, weather proofing, sound deadening, sealing, coating; and other such applications.

"Original equipment market part" means any part installed in or on a motor vehicle in the manufacturer's production line.

"Packing" means an asbestos-containing product intended for use as a mechanical seal in circumstances involving rotary, reciprocating, and helical motions, and which are intended to restrict fluid or gas leakage between moving and stationary surfaces. Major applications of this product include: seals in pumps; seals in valves; seals in compressors; seals in mixers; seals in swing joints; and seals in hydraulic cylinders.

"Person" means any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof, or any municipality; any interstate body and any department, agency, or instrumentality of the Federal Government.

"Pipeline wrap" means an asbestos-containing product made of paper felt intended for use in wrapping or coating pipes for insulation purposes.

"Process" has the same meaning as in section 3 of the Act.

"Processor" has the same meaning as in section 3 of the Act.

"Reinforced plastic" means an asbestos-containing product made of plastic. Major applications of this product include: electro-mechanical parts in the automotive and appliance industries; components of printing plates; and as high-performance plastics in the aerospace industry.

"Rollboard" means an asbestos-containing product made of paper that is produced in a continuous sheet, is flexible, and is rolled to achieve a desired thickness. Asbestos rollboard consists of two sheets of asbestos paper laminated together. Major applications of this product include: office partitioning; garage paneling; linings for stoves and electric switch boxes; and fire-proofing agent for security boxes, safes, and files.

"Roof coating" means an asbestos-containing product intended for use as a coating, cement, adhesive, or sealant on roofs. Major applications of this product include: waterproofing; weather resistance; sealing; repair; and surface rejuvenation.

"Roofing felt" means an asbestos-containing product that is made of paper felt intended for use on building roofs as a covering or underlayer for other roof coverings.

"Sealant tape" means an asbestos-containing product which is initially a semi-liquid mixture of butyl rubber and asbestos, but which solidifies when exposed to air, and which is intended for use as a sealing agent. Major applications of this product include: sealants for building and automotive windows, sealants for aerospace equipment components, and sealants for insulated glass.

"Sheet gasket" means either (1) an asbestos-containing product consisting of asbestos and elastomeric or other binders rolled in homogeneous sheets at some point in its manufacture and intended for use as a gasket, or (2) any asbestos-containing product made from braided or twisted rope, slit or woven tape, yarn, or other textile products intended for use as a gasket. Sheet gaskets are used to seal the space between two sections of a component and thereby prevent leakage in such applications as: exhaust, cylinder head, and intake manifolds; pipe flanges; autoclaves; vulcanizers; pressure vessels; cooling towers; turbochargers; and gear cases. This category includes flange, spiralwound, tadpole, manhole, handhole, door, and other gaskets or seals.

"Specialty industrial gaskets" means sheet or beater-add gaskets designed for industrial uses in either (1) environments where temperatures are 750 degrees Fahrenheit or greater, or (2) corrosive environments. An industrial gasket is one designed for use in an article which is not a "consumer product" within the meaning of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052, or for use in a "motor vehicle" or "motor vehicle equipment" within the meaning of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1381. A corrosive environment is one in which the gasket is exposed to concentrated

(pH less than 2), highly oxidizing mineral acids (e.g., sulfuric, nitric, or chromic acid) at temperatures above ambient.

"Specialty paper" means an asbestos-containing product that is made of paper intended for use as filters for beverages or other fluids or as paper fill for cooling towers. Cooling tower fill consists of asbestos paper that is used as a cooling agent for liquids from industrial processes and air conditioning systems.

"State" has the same meaning as in section 3 of the Act.

"Stock-on-hand" means the products which are in the possession, direction, or control of a person and are intended for distribution in commerce.

"Textiles" means an asbestos-containing product such as: yarn; thread; wick; cord; braided and twisted rope; braided and woven tubing; mat; roving; cloth; slit and woven tape; lap; felt; and other bonded or non-woven fabrics.

"United States" has the same meaning as in section 3 of the Act.

"Vinyl-asbestos floor tile" means an asbestos-containing product composed of vinyl resins and used as floor tile.

§ 763.165 Manufacture and importation prohibitions.

(a) After August 27 1990, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: A/C corrugated sheet, A/C flat sheet, asbestos clothing, flooring felt, pipeline wrap, roofing felt, vinyl/asbestos floor tile, and new uses of asbestos.

(b) After August 25, 1993, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: automatic transmission components, clutch facings, commercial and industrial asbestos friction products, and sheet and beater-add gaskets (except specialty industrial gaskets).

(c) After August 25, 1993, no person shall manufacture or import, including as part of a motor vehicle, asbestos-containing disc brake pads for light-medium- and heavy-weight vehicles, and drum brake linings for the following uses in the United States or for export:

(1) As original equipment in 1994 or later model year motor vehicles, or

(2) As aftermarket replacement parts in brake systems designed for use with non-asbestos replacement parts.

(d) After August 26, 1996, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: disc brake pads for use in light-medium- and heavy-weight vehicles and drum brake linings manufactured, imported, or marketed for use as aftermarket replacement parts in brake systems designed for use with asbestos-containing friction products; A/C pipe, A/C shingle, brake blocks, commercial paper, corrugated paper, millboard, non-roofing coatings, rollboard, roof coatings, and specialty paper.

(e) The import prohibitions of this subpart do not prohibit:

(1) The import into the customs territory of the United States of products imported solely for shipment outside the customs territory of the United States, unless further repackaging or processing of the product is performed in the United States; or

(2) Activities involving purchases or acquisitions of small quantities of products made outside the customs territory of the United States for personal use in the United States.

§ 763.167 Processing prohibitions.

(a) After August 27, 1990, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1993, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165 (b) and (c).

(c) After August 26, 1996, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(d).

§ 763.169 Distribution in commerce prohibitions.

(a) After August 25, 1992, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1994, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165 (b) and (c).

(c) After August 25, 1997 no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(d).

(d) A manufacturer, importer, processor, or any other person who is subject to a ban on distribution in commerce in paragraph (a), (b), or (c) of this section must, within 6 months of the effective date of the ban of a specific asbestos-containing product from distribution in commerce, dispose of all their remaining stock-on-hand of that product, by means that are in compliance with applicable local, State, and Federal restrictions which are current at that time.

§ 763.171 Labeling requirements.

(a) After August 27 1990, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(a) shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers' importers' and processors stock-on-hand as of August 27, 1990.

(b) After August 25, 1992, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(b) and (c), and disc brake pads for use in light- medium- and heavy-weight vehicles and drum brake linings manufactured, imported, or marketed for use as aftermarket replacement parts in brake systems designed for use with asbestos-containing friction products shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers' importers' and processors' stock-on-hand as of August 25, 1992.

(c) After August 25, 1995, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(d), except disc brake pads for use in light- medium- and heavy-weight vehicles and drum brake linings manufactured, imported, or marketed for use as aftermarket replacement parts in brake systems designed for use with asbestos-containing friction products, shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers' importers' and processors' stock-on-hand as of August 25, 1995.

(d) The label shall be placed directly on the visible exterior of the wrappings and packaging in which the product is placed for sale, shipment, or storage. If the product has more than one layer of external wrapping or packaging, the label must be attached to the innermost layer adjacent to the product. If the innermost layer of product wrapping or packaging does not have a visible exterior surface larger than 5 square inches, either a tag meeting the requirements of paragraph (e) of this section must be securely attached to the product's innermost layer of product wrapping or packaging, or a label must be attached to the next outer layer of product packaging or wrapping. Any products that are distributed in

commerce to someone other than the end user, shipped, or stored without packaging or wrapping must be labeled or tagged directly on a visible exterior surface of the product as described in paragraph (e) of this section.

(e)(1) Labels must be either printed directly on product packaging or in the form of a sticker or tag made of plastic, paper, metal, or other durable substances. Labels must be attached in such a manner that they cannot be removed without defacing or destroying them. Product labels shall appear as in paragraph (e)(2) of this section and consist of block letters and numerals of color that contrasts with the background of the label or tag. Labels shall be sufficiently durable to equal or exceed the life, including storage and disposal, of the product packaging or wrapping. The size of the label or tag must be at least 15.25 cm (6 inches) on each side. If the product packaging is too small to accommodate a label of this size, the label may be reduced in size proportionately to the size of the product packaging or wrapping down to a minimum 2.5 cm (1 inch) on each side if the product wrapping or packaging has a visible exterior surface larger than 5 square inches.

(2) Products subject to this subpart shall be labeled in English as follows:

NOTICE

This product contains *ASBESTOS*. The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are *violations of Federal law*.

(f) No one may intentionally remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, except when the product is used or disposed of.

§ 763.173 General exemptions.

(a) Persons who are subject to the prohibitions imposed by §§ 763.165, 763.167 or 763.169 may file an application for an exemption. Persons whose exemption applications are approved by the Agency may manufacture, import, process, or distribute in commerce the banned product as specified in the Agency's approval of the application. No applicant for an exemption may continue the banned activity that is the subject of an exemption application after the effective date of the ban unless the Agency has granted the exemption or the applicant receives an extension under paragraph (b)(8) or (9) of this section.

(b) Application filing dates. (1) Applications for products affected by the prohibitions under §§763.165(a) and 763.167(a) may be submitted after August 25, 1989. Complete applications received after that date, but before November 27 1989, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after November 27 1989, will be either granted or denied by EPA as soon as is feasible.

(2) Applications for products affected by the ban under § 763.169(a) may not be submitted prior to February 26, 1990. Complete applications received after that date, but before August 26, 1991, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1991, will be either granted or denied by EPA as soon as is feasible.

(3) Applications for products affected by the ban under §§ 763.165(b) or (c) and 763.167(b) or (c) may not be submitted prior to February 26, 1992. Complete applications received after that date, but before August 25, 1992, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1992, will be either granted or denied by EPA as soon as is feasible.

(4) Applications for products affected by the ban under § 763.169(b) or (c) may not be submitted prior to February 26, 1993. Complete applications received after that date, but before August 25, 1993, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1993, will be either granted or denied by EPA as soon as is feasible.

(5) Applications for products affected by the ban under §§ 763.165(d) and 763.167(d) may not be submitted prior to February 27 1995. Complete applications received after that date, but before August 25, 1995, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1995, will be either granted or denied by EPA as soon as is feasible.

(6) Applications for products affected by the ban under § 763.169(d) may not be submitted prior to February 26, 1996. Complete applications received after that date, but before August 26, 1996, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1996, will be either granted or denied by EPA as soon as is feasible.

(7) The agency will consider an application for an exemption from a ban under § 763.169 for a product at the same time the applicant submits an application for an exemption from a ban under § 763.165 or § 763.167 for that product. EPA will grant an exemption at that time from a ban under § 763.169 if the Agency determines it appropriate to do so.

(8) If the agency denies an application less than 30 days before the effective date of a ban for a product, the applicant can continue the activity for 30 days after receipt of the denial from the Agency.

(9) If the Agency fails to meet the deadlines stated in paragraphs (b)(1) through (6) of this section for granting or denying a complete application in instances in which the deadline is before the effective date of the ban to which the application applies, the applicant will be granted an extension of 1 year from the Agency's deadline date. During this extension period the applicant may continue the activity that is the subject of the exemption application. The Agency will either grant or deny the application during the extension period. The extension period will terminate either on the date the Agency grants the application or 30 days after the applicant receives the Agency's denial of the application. However, no extension will be granted if the Agency is scheduled to grant or deny an application at some date after the effective date of the ban, pursuant to the deadlines stated in paragraphs (b)(1) through (6) of this section.

(c) Where to file. All applications must be submitted to the following location: TSCA Document Processing Center (TS-790), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW Washington, D.C. 20460, ATTENTION: Asbestos Exemption.

(d) Content of application and criteria for decisionmaking.

(1) Content of application. Each application must contain the following:

(i) Name, address, and telephone number of the applicant.

(ii) Description of the manufacturing, import, processing, and/or distribution in commerce activity for which an exemption is requested, including a description of the asbestos-containing product to be manufactured, imported, processed, or distributed in commerce.

(iii) Identification of locations at which the exempted activity would take place.

(iv) Length of time requested for exemption (maximum length of an exemption is 4 years).

(v) Estimated amount of asbestos to be used in the activity that is the subject of the exemption application.

(vi) Data demonstrating the exposure level over the life cycle of the product that is the subject of the application.

(vii) Data concerning:

(A) The extent to which non-asbestos substitutes for the product that is the subject of the application fall significantly short in performance under necessary product standards or requirements, including laws or ordinances mandating product safety standards.

(B) The costs of non-asbestos substitutes relative to the costs of the asbestos-containing product and, in the case in which the product is a component of another product, the effect on the cost of the end use product of using the substitute component.

(C) The extent to which the product or use serves a high-valued use.

(viii) Evidence of demonstrable good faith attempts by the applicant to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use that is the subject to the application.

(ix) Evidence, in addition to that provided in the other information required with the application, showing that the continued manufacture, importation, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

(2) Criteria for decision (existing products). After considering all the information provided by an applicant under paragraphs (d)(1) and (e) of this section, and any other information available to EPA, EPA will grant an exemption from the prohibitions in §§ 763.165, 763.167 or 763.169 for an applicant's asbestos-containing product only if EPA determines both of the following:

(i) The applicant has made good faith attempts to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use, and those attempts have failed to produce a substitute or a substitute that results in a product that can be economically produced.

(ii) Continued manufacturing, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

(3) Criteria for decision (new products). Requests to develop and use an asbestos substance or product will be treated as a petition pursuant to Section 21 of TSCA.

(e) The Agency reserves the right to request further information from an exemption applicant if necessary to complete the Agency's evaluation of an application.

(f) Upon receipt of a complete application, the Agency will issue a notice in the **Federal Register** announcing its receipt and invite public comments on the merits of the application.

(g) If the application does not include all of the information required in paragraph (d) of this section, the Agency will return it to the applicant as incomplete and any resubmission of the application will be considered a new application for purposes of the availability of any extension period. If the application is substantially inadequate to allow the Agency to make a reasoned judgment on any of the information required in paragraph (d) of this section and the Agency chooses to request additional information from the applicant, the Agency may also determine that an extension period provided for in paragraph (b)(7) of this section is unavailable to the applicant.

(h) When denying an application, the Agency will notify the applicant by registered mail of its decision and rationale. Whenever possible, the Agency will send this letter prior to the appropriate ban. This letter will be considered a final Agency action for purposes of judicial review. A notice announcing the Agency's denial of the application will be published in the **Federal Register**.

(i) If the Agency proposes to approve an exemption, it will issue a notice in the **Federal Register** announcing this intent and invite public comments. If, after considering any timely comments received, the Agency approves an exemption, its decision will be published in the **Federal Register**. This notice will be considered a final Agency action for purposes of judicial review.

(j) The length of an exemption period will be specified by the agency when it approves the exemption. To extend an exemption period beyond the period stipulated by EPA, applicants must submit a new application to the Agency, following the application procedures described in this section. Applications may not be submitted prior to 15 months before the expiration of the exemption period, unless stated otherwise in the notice granting the exemption. Applications received between 15 months and 1 year before the end of the exemption period will be either granted or denied by the Agency before the end of the exemption period. Applications received after the date 1 year prior to the end of the exemption period will be either granted or denied by the Agency as soon as is feasible. Applicants may not continue the activity that is the subject of the renewal application after the date of the end of the exemption period.

§ 763.175 Enforcement.

(a) Failure to comply with any provision of this subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records, or to permit access to or copying of records as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) The Agency may seek to enjoin the manufacture, import, processing, or distribution in commerce of asbestos-containing products in violation of this subpart, or act to seize any asbestos-containing products manufactured, imported, processed, or distributed in commerce in violation of this subpart, or take any other actions under the authority of section 7 or 17 of the act (15 U.S.C. 2606 or 2616) that are appropriate.

§ 763.176 Inspections.

The Agency will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 763.178 Recordkeeping.

(a) *Inventory.* (1) Each person who is subject to the prohibitions imposed by §§ 763.165 and 763.167 must perform an inventory of the stock-on-hand of each banned product as of the effective date of the ban for that product for the applicable activity.

(2) The inventory shall be in writing and shall include the type of product, the number of product units currently in the stock-on-hand of the person performing the inventory, and the location of the stock.

(3) Results of the inventory for a banned product must be maintained by the person for 3 years after the effective date of the § 763.165 or § 763.167 ban on the product.

(b) *Records.* (1) Each person whose activities are subject to the bans imposed by §§ 763.165, 763.167 and 763.169 for a product must, between the effective date of the § 763.165 or § 763.167 ban on the product and the § 763.169 ban on the product, keep records of all commercial transactions regarding the product, including the dates of purchases and sales and the quantities purchased or sold. These records must be maintained for 3 years after the effective date of the § 763.169 ban for the product.

(2) Each person who is subject to the requirements of § 763.171 must, for each product required to be labeled, maintain a copy of the label used in compliance with § 763.171. These records must be maintained for 3 years after the effective date of the ban on distribution in commerce for the product for which the § 763.171 requirements apply.

§ 763.179 Confidential business information claims.

(a) Applicants for exemptions under § 763.173 may assert a Confidential Business Information (CBI) claim for information in an exemption application or supplement submitted to the Agency under this subpart only if the claim is asserted in accordance with this section, and release of the information would reveal trade secrets or confidential commercial or financial information, as provided in section 14(a) of the Act. Information covered by a CBI claim will be treated in accordance with the procedures set forth in 40 CFR Part 2, Subpart B. The Agency will place all information not claimed as CBI in the manner described in this section in a public file without further notice to the applicant.

(b) Applicants may assert CBI claims only at the time they submit a completed exemption application and only in the specified manner. If no such claim accompanies the information when it is received by the Agency, the information may be made available to the public without further notice to the applicant. Submitters that claim information as business confidential must do so by writing the word "Confidential" at the top of the page on which the information appears and by underlining, circling, or placing brackets ([ ]) around the information claimed CBI.

(c) Applicants who assert a CBI claim for submitted information must provide the Agency with two copies of their exemption application. The first copy must be complete and contain all information being claimed as CBI. The second copy must contain only information not claimed as CBI. The Agency will place the second copy of the submission in a public file. Failure to furnish a second copy of the submission when information is claimed as CBI in the first copy will be considered a presumptive waiver of the claim of confidentiality. The Agency will notify the applicant by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The applicant has 30 days from the date of receipt of notification to submit the required second copy. Failure to submit the second copy will cause the Agency to place the first copy in a public file.

(d) Applicants must substantiate all claims of CBI at the time the applicant asserts the claim, i.e., when the exemption application or supplement is submitted, by responding to the questions in paragraph (e) of this section. Failure to provide substantiation of a claim at the time the applicant submits the application will result in a waiver of the CBI claim, and the information may be disclosed to the public without further notice to the applicant.

(e) Applicants who assert any CBI claims must substantiate all claims by providing detailed responses to the following:

(1) Is this information subject to a patent or patent application in the United States or elsewhere? If so, why is confidentiality necessary?

(2) For what period do you assert a claim of confidentiality? If the claim is to extend until a certain event or point in time, please indicate that event or time period. Explain why such information should remain confidential until such point.

(3) Has the information that you are claiming as confidential been disclosed to persons outside of your company? Will it be disclosed to such persons in the future? If so, what restrictions, if any, apply to use or further disclosure of the information?

(4) Briefly describe measures taken by your company to guard against undesired disclosure of the information you are claiming as confidential to others.

(5) Does the information claimed as confidential appear or is it referred to in advertising or promotional materials for the product or the resulting end product, safety data sheets or other similar materials for the product or the resulting end product, professional or trade publications, or any other media available to the public or to your competitors? If you answered yes, indicate where the information appears.

(6) If the Agency disclosed the information you are claiming as confidential to the public, how difficult would it be for the competitor to enter the market for your product? Consider in your answer such constraints as capital and marketing cost, specialized technical expertise, or unusual processes.

(7) Has the Agency, another Federal agency, or a Federal court made any confidentiality determination regarding this information? If so, provide copies of such determinations.

(8) How would your company's competitive position be harmed if the Agency disclosed this information? Why should such harm be considered substantial? Describe the causal relationship between the disclosure and harm.

(9) In light of section 14(b) of TSCA, if you have claimed information from a health and safety study as confidential, do you assert that disclosure of this information would disclose a process used in the manufacturing or processing of a product or information unrelated to the effects of asbestos on human health and the environment? If your answer is yes, explain.

[FR Doc. 89-16262 Filed 7-7-89; 9:44 am]
BILLING CODE 6560-50-M

federal register

Wednesday
July 12, 1989

Part IV

Environmental Protection Agency

40 CFR Parts 22 and 142

Safe Drinking Water Act Administrative Enforcement Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 142

[FR-3494-8]

Safe Drinking Water Act Administrative Enforcement Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the procedures the Environmental Protection Agency will follow to implement section 1414(g) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g-3(g). This section, among other things, provides the Administrator with authority to issue compliance orders to violators of Part B (applicable to public water suppliers) or section 1445 of the SDWA (applicable to public water suppliers and underground injectors), 42 U.S.C. 300g and 300j-4, and to administratively enforce such orders. Section 1414(g) compliance orders may not take effect until after "notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order." 42 U.S.C. 300g-3(g)(2).

DATES: EPA will accept public comments on the proposed regulations until September 11, 1989, either in writing or at an informal public hearing to be held in Washington, DC on August 15, 1989. Requests to present oral testimony at the public hearing must be received on or before August 11, 1989.

ADDRESSES: Interested persons may participate in this proposed rulemaking by submitting written comments to the Comment Clerk, State Programs Division (WH-550E), Office of Drinking Water, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All comments should be typed or printed. The public hearing will be held on August 15, 1989 beginning at 9 a.m. in Conference Room No. 13 of the Washington Information Center, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, State Programs Division, Underground Injection Control Branch (WH-550E), Office of Drinking Water, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5558.

SUPPLEMENTARY INFORMATION: A copy of all public comments will be available for inspection and copying at Room 1143 East Tower, 401 M Street SW Washington, DC 20460. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

I. Background

The Safe Drinking Water Act was enacted in 1974. At that time, with one exception, it contained no provisions for EPA to enforce its terms administratively. Later amendments to the SDWA did not provide such authority until June 19, 1986, when Congress added a new provision, section 1414(g).[1]

On January 20, 1987 EPA issued "PWS [Public Water Supply] and UIC Administrative Orders Issuance Guidance." This material included delegations of authority, guidance, procedures, and model formats for the benefit of EPA regional personnel charged with implementing the 1986 SDWA Amendments. Specifically, the material included Administrative Order Issuance Procedure Guidance," governing notice and hearing procedures for compliance order issuance under sections 1414(g) (1) and (2) of the SDWA, 42 U.S.C. 300g-3(g) (1) and (2), and procedures governing penalty orders issued under section 1414(g)(3) of the SDWA, 42 U.S.C. 300g-3(g)(3), which were "set out in the form of a regulation with the expectation that in the near future EPA will notice [these procedures] in a proposed rulemaking." EPA issued this procedural guidance as "binding" and "to be used by all Regions without change. The section 1414(g)(3) guidance required use of the Agency's Consolidated Rules of Practice found at 40 CFR Part 22. EPA has used this guidance since January 20, 1987 Today, with only minor or technical changes, the Agency is proposing this guidance as a rule as authorized by section 1450 of the SDWA, 42 U.S.C. 300j-9.

II. Section-by-Section Analysis

A. Overview of Proposed Regulations

Section 1414(g)(1) of the SDWA, 42 U.S.C. 300g-3(g)(1), authorizes the EPA Administrator to issue a compliance order in any case in which the Administrator may bring a civil action under section 1414 or section 1445 of the SDWA, 42 U.S.C. 300g-3(g) or 300j-4. Section 1414(g)(2), 42 U.S.C. 300g-3(g)(2), further provides:

> An order issued under this subsection shall not take effect until after notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order. A copy of any order proposed to be issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

EPA today proposes rules establishing procedures under which it will exercise the authority conferred by section 1414(g). EPA also is proposing conforming amendments to 40 CFR Part 22 (Consolidated Rules of Practice) to implement section 1414(g)(3) of the SDWA, 42 U.S.C. 300g-3(g)(3). That provision of the law, referring to administrative penalties for violation of an administrative compliance order issued under section 1414(g), states that:

> Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5 of the United States Code.

EPA's Consolidated Rules of Practice, 40 CFR Part 22, establish procedures for the administrative assessment of civil penalties that conform to the requirements of section 554 of title 5 of the United States Code, the Administrative Procedure Act.

In interpreting the SDWA, the Agency has taken note of the legislative history of section 1414(g), which states:

> The Administrative order authority provides for more efficient enforcement against less significant violations and is expected to enable EPA to develop a more aggressive enforcement program The purpose of adding administrative order authority is not to replace judicial enforcement, but to add a complementary enforcement mechanism.

S. Rep. No. 99-56, 99th Cong., 1st Sess. (1985) (Accompanying S. 124). The proposed rule is intended to implement the legislative intent favoring efficient and aggressive enforcement through use of section 1414(g) orders. The proposed procedures are not intended to confer

---

[1] The June 19, 1986 amendments also gave EPA administrative enforcement authority to address violations of the Underground Injection Control (UIC) program established under Part C of the SDWA. See section 1423(c), 42 U.S.C. 300h-2(c). Except for UIC violations of section 1445 of the Act, which are governed by section 1414(g)(2), EPA will establish regulatory procedures governing those UIC administrative enforcement authorities in a separate action.

any rights to persons affected by an order beyond those required by statute.

The procedures proposed for section 1414(g)(2) compliance orders provide an opportunity for informal, information-gathering, nonadjudicatory hearings prior to issuance of the orders. The orders will state the nature of the violation under section 1414(g)(1) and may specify a reasonable time for compliance. They will require compliance with existing duties under the SDWA, but will not alter those existing duties or obligations or create new obligations. The hearing and resulting compliance order will not be determinative of the underlying statutory rights and responsibilities, and therefore are not subject to pre-enforcement judicial review. Moreover, as is explained in more detail below, penalties for violation of the order and of the SDWA may be assessed only after a duly noticed adjudicatory hearing. The existence of administrative order violations and imposition of penalties will be issues to be adjudicated at the penalty hearing, which will be conducted in accordance with section 554 of the Administrative Procedure Act. EPA believes that these proposed rules are fully consistent with applicable due process requirements. See *Asbestec Construction Services Inc.* v. *EPA*, No. 87-4120 (2d Cir. June 15, 1988); 18 ELR 21029.

EPA's use of information-gathering, informal hearings for administrative compliance orders under section 1414(g)(2) is consistent with both the language and intent of the 1986 SDWA amendments. The Senate Report's explanation, later adopted by the Conference Committee, provides a strong indication that EPA should adopt informal, efficient administrative proceedings to implement its compliance order authority. The interpretation also is consistent with the opportunities for public participation and State consultation created by the statute; both requirements serve to inform the Administrator of relevant information before a compliance order becomes effective.

In contrast, section 1414(g)(3) expressly requires the Administrator to use procedures in accordance with 5 U.S.C. 554 (the section of the Administrative Procedure Act labelled Adjudications") in assessing an administrative penalty of up to $5,000 for persons violating a section 1414(g) compliance order. Penalties in excess of $5,000 must be assessed by a civil action brought in U.S. District Court. By statute, hearings conducted by the Agency under section 1414(g)(3) will be adjudicatory in nature and afford the more formal procedures prescribed by the APA. As noted above, by this rulemaking the Agency proposes that EPA will use its already-promulgated Consolidated Rules of Practice (with some supplemental rules specific to penalty orders issued under section 1414(g)(3) of the SDWA) in pursuing administrative penalties under section 1414(g)(3).

B. Procedures for PWS Administrative Compliance Orders

1. Section 142.201: Purpose

This subsection explains the purpose of the procedures set forth in Subpart K.

2. Section 142.202: Definitions

This subsection provides only two definitions. Other terms used throughout this proposed subpart are used according to the statute or as part of common usage.

3. Section 142.203: Proposed Administrative Compliance Orders

Section 1414(g)(2) of the SDWA requires EPA to propose compliance orders and further provides that an order shall not take effect until an opportunity for a hearing and, in primacy States, opportunity for the State to confer with EPA. Under these proposed regulations the Administrator, upon finding a person or supplier of water in violation of relevant parts of Part B of the SDWA or of section 1445 of the SDWA, has the discretion to propose an administrative compliance order. The proposed rule tracks the statutory requirement that the order "state with reasonable specificity the nature of the violation, and also makes explicit the implicit authority of the Administrator to establish a reasonable compliance schedule in the order. In some cases, such as overdue reporting or failure to monitor, no schedule may be necessary. In those cases, compliance should be required at once. In a number of circumstances, however, immediate compliance will not be physically possible. In such cases, the Administrator will have the discretion to establish a reasonable time for compliance, and necessary interim steps, such as periodic reports to EPA, to allow the Agency to oversee the respondent's efforts to achieve it.

4. Section 142.204: Notice of Proposed Administrative Compliance Order

This subsection implements the SDWA's requirement to provide notice of a proposed order. The subsection requires EPA to provide notice to the alleged violator, the public and, if applicable, the PWS primacy State. These notifications are necessary to inform the public water supplier and the public of their opportunity for a hearing, and the primacy State of its right to a conference with EPA and opportunity to request a hearing.

(a) *Section 142.204(a): The Party.* This subsection requires a notice to the party by certified mail, return receipt requested. The additional procedure for corporate parties follows the statutory requirements of Section 1414(g)(2). If a party refuses service or does not claim the certified mail notice, the Agency shall provide notice by another appropriate means.

(b) *Section 142.204(b): The Public.* This subsection requires notice to the public. Because the size and type (e.g., urban or rural) of the potentially affected public vary widely, the appropriate means of providing this notice is left to the discretion of EPA. In the circumstances of each case, however, the public notification shall be reasonably calculated to provide notice to the affected public.

(c) *Section 142.204(c): The State (where applicable).* If a party is located within a PWS primacy State, the proposed regulations require EPA to provide notice to the appropriate State agency by certified mail, return receipt requested.

5. Section 142.205: Opportunity for Public Hearings; Opportunity for State Conferences

The SDWA requires "opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, an opportunity to confer with the Administrator regarding the proposed order. section 1414(g)(2). The PWS primacy State's opportunity to confer with EPA extends only to proposed orders against public water suppliers, not UIC violators of Section 1445 of the Act.

(a) *Section 142.205(a).* This subsection provides that a public hearing shall be held upon a timely request by the party or a primacy State. The provision of these proposed rules that affords parties and primacy States a public hearing upon request reflects their direct interest in the order. All requests for hearings will be honored if they are related to the purposes specified in § 142.206(a).

In addition, the Administrator must hold a public hearing if he determines that the public has expressed "a significant interest in the convening of a public hearing within fourteen days of the date of the notice. This provision is patterned after 40 CFR 124.12, regarding

public hearings on draft National Pollutant Discharge Elimination System (NPDES) permits. That provision states, in part, "The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest *" 40 CFR 124.12(a)(1).

The Agency believes it is appropriate to hold public hearings without request by a party or a primacy State only if there is a significant public interest. First, the public has an interest in quick and efficient administrative enforcement, see S. Rep. 99-56 supra. These expedited procedures and the provisions of this section in particular advance that interest. Second, the requirement that a public hearing be convened without a request by a party or a primacy state only if the public has expressed a significant interest ensures that the Agency will expend its resources to conduct such hearings only when there is some assurance of public attendance and participation at such hearings. The fourteen day deadline is the minimum time EPA deemed reasonable to receive such requests.

Finally, the Administrator may also convene a public hearing on his own initiative.

(b) *Section 142.205(b).* Under this provision, the primacy State has ten days from the date of notice as described in § 141.205(c) to request a conference with EPA concerning the proposed order. The response period is shorter than that provided for a request for a public hearing because it is the Agency's intent that State conferences concerning proposed orders should typically precede any public hearing convened on a proposed order. The person alleged to be in violation therefore would have an opportunity to comment at the hearing on any information presented by a primacy State.

(c) *Section 142.205(c).* This provision provides a three-day mailing and constructive notice rule for purposes of determining how long the party, the public, or the primacy State has to respond to request a public hearing under § 141.205(a) and, in the case of a primacy State, how long the State has to respond to request a conference under § 141.205(b). In curcumstances where written notice is immediately provided in person or otherwise to the affected public, this rule will not apply.

6. Section 142.206: Conduct of Public Hearings

The Safe Drinking Water Act does not provide criteria for the conduct of public hearings under section 1414(g)(2). As noted above in the Overview of Proposed Regulations, these proposed rules provide for informal, fact-finding hearings which are by their nature nonadjudicative. The Agency is proposing streamlined procedures that focus the hearings on those elements of the findings and proposed order that materially affect the public water supplier.

(a) *Section 142.206(a).* The Administrator, or his delegatee, shall convene a public hearing pursuant to § 141.205(a), or may convene a public hearing upon his own initiative. The subjects of the hearing will be limited to the accuracy of the findings of fact in the proposed order and, if applicable, the reasonableness of the time for a party to comply with the order.

(b) *Section 142.206(b).* This section sets forth the role of the Hearing Officer, who presides over any public hearing held under section 1414(g)(2) of the Act. The Administrator or his delegatee shall appoint a Hearing Officer prior to convening a public hearing. See § 142.202(a). Because of the informal, information-gathering nature of a public hearing held under this subpart, see Overview discussion above, the Hearing Officer has broad discretion in establishing the "forms and procedures" of the hearing. Because the primary purpose of the hearing is to improve the administrator's informational basis for decision, the Hearing Officer must also "maintain a complete and accurate record of the proceedings" and maintain the record in a permanent form. Any information received by the Hearing Officer becomes part of the administrative record, which provides the factual basis for the order and the time provided for compliance. Because of this use of information gathered in the hearing, the Hearing Officer must provide the record of the hearing to the Administrator or his delegatee to serve as the basis for a compliance order.

(c) *Section 142.206(c).* This section describes what matters are relevant at a hearing under this subpart and in what manner and by whom the information may be conveyed to the Agency. There are no restrictions on who may present information at or before a hearing. Because of the potential expense and inconvenience to the public of attending a hearing, as well as for purposes of adminisitrative convenience, the Agency is proposing that relevant written testimony submitted before the date set for a public hearing will be considered by EPA as part of the administrative record. Written testimony may substitute for or supplement oral testimony. Relevant matters at a public hearing or in written testimony under this subpart are limited to the facts of the party's alleged violations of those parts of the SDWA referenced in proposed § 141.202(b) and, where applicable, the reasonableness of the time provided for compliance in a proposed section 1414(g)(2) order.

7 Section 142.207· Issuance, Amendment or Withdrawal of Administrative Compliance Order

This section provides that the Administrator, based on the administrative record, shall issue, amend or withdraw the proposed order.

(a) *Section 142.207(a).* The Administrator or his delegatee shall make his decision on the order based on relevant information in the administrative record. The administrative record includes the relevant information initially considered by EPA in preparing the proposed order and also includes all relevant information that EPA receives under proposed §§ 141.205(b) and 141.206(c), or that is otherwise received by EPA. In addition, EPA retains discretion to withdraw a proposed compliance order without the necessity for a State conference or a public hearing if there are sufficient independent grounds for withdrawal, such as new information that clearly demonstrates a lack of violation or lack of jurisdiction.

(b) *Section 142.207(b).* This section requires the Agency official issuing the compliance order to establish a date for compliance that is reasonable and is premised on the administrative record.

(c) *Section 142.207(c).* The Administrator is to withdraw, amend and issue as an order or issue as an order without material change, each proposed order "in writing and within a reasonable time. After issuance, each compliance order is to be provided to the party, the primacy State (if in a primacy State), and members of the public who participated under proposed § 141.206(c). Notification of appropriate persons under this section should occur simultaneously and immediately upon issuance of the compliance order.

8. Section 142.208 Administrative Assessment of Civil Penalty for Violation of Administrative Compliance Order

This section references 40 CFR Part 22, the Consolidated Rules of Practice, for procedures to impose an administrative penalty assessed pursuant to section 1414(g)(3)(B) of the Act for violation of a compliance order issued under section 1414(g) (1) and (2) of the Act.

C. Section 1414(g)(3) Regulations: 40 CFR 22.01 and 22.42

1. *Section 22.01(a)(9).* This provision expands the scope of the generally applicable Part 22 rules to include administrative penalty assessments conducted under section 1414(g)(3)(B) of the SDWA.

2. *Section 22.42: Supplemental Rule of Practice Governing the Administrative Assessment of Civil Penalties for Violation of Compliance Orders Issued Under Section 1414(g)(3)(B) of the Safe Drinking Water Act.* This section adds rules of practice of Part 22 that specifically govern procedures to assess civil penalties under section 1414(g)(3)(B) of the SDWA.

(a) *Section 22.42(b): Person.* The term "person" is to include "any officer, employee or agent of any corporation, company or association, in accordance with section 1401 of the SDWA, 42 U.S.C. 300f.

(b) *Section 22.42(c): Complaint Issuance.* This section enables the appropriate Agency official to issue a Complaint under the SDWA and the Consolidated Rules of Practice.

(c) *Section 22.42(d): Content of Complaint.* The content of the complaint under section 1414(g)(3) requires the recitation of the violation of the section 1414(g)(1) administrative compliance order and the recitation of the underlying violations of the SDWA.

(d) *Section 22.42(e): Scope of Hearing.* The scope of hearing clarifies that Agency actions which could have been subject to review under section 1448 of the Act, 42 U.S.C. 300j-7 may not be challenged in a section 1414(g)(3)(B) administrative forum.

III. Economic and Regulatory Impact

A. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish a general notice of any proposed rule, unless the head of the agency certifies that the rule, if promulgated, will not have a significant impact on a substantial number of small entities. These proposed regulations require no additional reporting or other burdens by the regulated community. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

B. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the proposed regulations are major and therefore subject to the requirement of a Regulatory Impact Analysis. As described above, these proposed rules do not impose additional burdens beyond those already prescribed by the SDWA Amendments of 1986. They do not have an annual effect on the economy of $100 million or more, nor do they satisfy any of the other criteria listed in section 1(b) of the Executive Order. Therefore, these proposed regulations do not constitute a major rulemaking. This proposal has been submitted to OMB for review as required by Executive Order 12291.

List of Subjects

40 CFR Part 22

Administrative practices and procedures, Appeals and administrative review.

40 CFR Part 142

Administrative practice and procedures, Monitoring, reporting and recordkeeping requirements, Water supply.

June 26, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 continues to read as follows:

Authority: Safe Drinking Water Act (42 U.S.C. 300f *et seq.*, as amended, unless otherwise noted).

2. Subpart J is reserved and a new Subpart K is added to Part 142 to read as follows:

Subpart K—Procedures for PWS Administrative Compliance Orders

Sec.
142.201 Purpose.
142.202 Definitions.
142.203 Proposed administrative compliance orders.
142.204 Notice of proposed administrative compliance orders.
142.205 Opportunity for public hearings; opportunity for State conferences.
142.206 Conduct of public hearings.
142.207 Issuance, amendment or withdrawal of administrative compliance order.
142.208 Administrative assessment of civil penalty for violation of administrative compliance order.

Subpart J—[Reserved]

Subpart K—Procedures for PWS Administrative Compliance Orders

§ 142.201 Purpose.

This part prescribes procedures for notice and opportunity for public hearings, conferences with primacy States and issuance of administrative compliance orders under section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g).

§ 142.202 Definitions.

(a) The term "Hearing Officer" means an Environvental Protection Agency employee who has been delegated by the Administrator the authority to preside over a public hearing held pursuant to section 1414(g)(2) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(2).

(b) The term "party means any "person" or "supplier of water" as defined in section 1401 of the SDWA, 42 U.S.C. 300f, alleged to have violated any regulation implementing section 1412 of the SDWA, 42 U.S.C. 300g-1, any schedule or other requirement imposed pursuant to section 1415 or section 1416 of the SDWA, 42 U.S.C. 300g-4 and 300g-5, or section 1445 of the SDWA, 42 U.S.C. 300j-4, or any regulation implementing section 1445.

§ 142.203 Proposed administrative compliance orders.

If the Administrator finds that a party has violated a regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b), the Administrator may prepare a proposed administrative compliance order that would require the party to comply with the regulation, schedule, or other requirement that is alleged to have been violated. Any such proposed administrative order shall state with reasonable specificity the nature of the violation, and may specify a reasonable time for compliance.

§ 142.204 Notice of proposed administrative compliance orders.

The Administrator simultaneously shall provide a copy of any proposed administrative compliance order to:

(a) *The party.* In any case in which the party is a corporation, the Administrator shall provide a copy of a proposed administrative compliance order to an appropriate corporate officer. The Administrator shall provide notice under this subsection by sending such a copy by certified mail, return receipt requested. If certified mail is refused or unclaimed, the Administrator shall

provide notice by another appropriate means.

(b) *The public.* The Administrator shall make publicly available each proposed administrative compliance order at the time of its proposal; and

(c) *The State.* In the case of a State with primary enforcement responsibility for public water systems pursuant to section 1413(a) of the SDWA, 42 U.S.C. 300g-2(a), the Administrator shall provide notice under this subsection by sending a copy of each proposed administrative compliance order by certified mail, return receipt requested to the appropriate State agency of the State involved.

§ 142.205 Opportunity for public hearings; opportunity for State conferences.

(a) The Administrator shall provide the party, the public and the State an opportunity for a public hearing on any proposed administrative compliance order by stating in a letter accompanying each proposed administrative compliance order (or its copy) that a public hearing shall be convened if the party or the State sends written notice of such request to the Administrator within fourteen days of the date the proposed administrative compliance order is noticed under § 142.204, or if the Administrator determines that within fourteen days of the date of notice the public has expressed a significant interest in the convening of a public hearing. Hearings will be held only for the purposes specified in § 142.206(a). All requests for hearings shall identify which of the purposes specified in § 142.206(a) is the basis for the request. The Administrator may extend the time allowed for submitting requests for good cause.

(b) In the case of a State with primary enforcement responsibility under section 1413(a) of the SDWA, the Administrator shall provide the State with an opportunity to confer regarding any proposed administrative compliance order to a public water supplier by stating in a letter accompanying each mailing of the proposed administrative compliance order sent to the State that such a conference shall be held between the State and the Administrator, if the State requests such a conference within ten days of the date the proposed administrative compliance order is noticed under § 142.204.

(c) For purposes of this subsection, notice occurs three days after the date of mailing or other means of notification, excluding Saturdays, Sundays and federal holidays.

§ 142.206 Conduct of public hearings.

(a) The purpose of the public hearing shall be to determine whether a proposed administrative order:

(1) Has correctly determined the extent and nature of a party's violation of any regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b) and

(2) has provided, where appropriate, a reasonable time for the party to comply with applicable requirements of the SDWA and its implementing regulations.

(b) Prior to convening a public hearing under this subsection, the Administrator shall appoint a Hearing Officer. The Hearing Officer shall preside over any public hearing convened under this section. The Hearing Officer shall determine the form and procedures of the public hearing, and shall maintain a complete and accurate record of the proceedings in written or other permanent form. The Hearing Officer shall provide the Administrator with the record of any public hearing conducted under this subsection.

(c) The party, any member of the public, or the State may present information to the Hearing Officer at the public hearing (or to the Administrator in writing before the date set for the public hearing) relevant to whether:

(1) The party has violated the applicable regulation, schedule, or other requirement referenced in the proposed administrative compliance order;

(2) The party has violated any other applicable regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b); and

(3) The proposed order, where appropriate, provides a reasonable time for the party to comply with applicable requirements of the SWDA and its implementing regulations.

§ 142.207 Issuance, amendment or withdrawal of administrative compliance order.

(a) Based on the administrative record, the Administrator shall either issue the order as proposed, amend the proposed order or withdraw the proposed order.

(b) Any order issued shall require the party to comply with any applicable regulation, schedule, or other requirement of the SDWA referenced in § 142.202 and may establish a time or date for compliance which the Administrator determines is reasonable, based on the administrative record.

(c) The Administrator shall determine within a reasonable time whether to issue, amend or withdraw the proposed order and shall promptly notify in writing the party, all members of the public participating under § 142.206(c) and the State, in the case of a State with primary enforcement authority over public water systems pursuant to section 1413(a) of th SDWA, or in the case of a State participating under § 142.206(c).

§ 142.208 Administrative assessment of civil penalty for violation of administrative compliance order.

In the event the Administrator decides to seek a penalty under the authority provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. 300g-3(g)(3)(B), for violation of, or failure or refusal to comply with, an order, the procedures provided in 40 CFR Part 22 shall govern the assessment of such a penalty.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

3. The authority citation of Part 22 is revised to read as follows:

Authority: Secs. 16 and 207 of the Toxic Substances Control Act, 15 U.S.C. 2615 and 2647; and secs. 211 and 301 of the Clean Air Act, 42 U.S.C. 7545 and 7601; secs. 14 and 25 of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136i and 136m; secs. 105 and 108 of the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. 1415 and 1418; secs. 2002 and 3008 of the Solid Waste Disposal Act, 42 U.S.C. 6912 and 6928; sec. 501 of the Clean Water Act, 33 U.S.C. 1361; and, sec, 1414 of the Safe Drinking Water Act, 42 U.S.C. 300g-3.

4. The introductory text of § 22.01(a) is republished without change for the convenience of the reader and §§ 22.01(a)(9) and 22.42 are added to read as follows:

§ 22.01 Scope of these rules.

(a) These rules of practice govern all adjudicatory proceedings for:

(9) The assessment of any civil penalty conducted under Section 1414(g)(3)(B) of the Safe Drinking Water Act as amended (42 U.S.C. 300g-3(g)(3)(B)).

§ 22.42 Supplemental rules of practice governing the administrative assessment of civil penalties for violations of compliance orders issued under Part B of the Safe Drinking Water Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR Part 22), all proceedings to assess a civil penalty

under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g–3 (g)(3)(B). Where inconsistencies exist between these supplemental rules and the Consolidated Rules, these supplemental rules shall apply.

(b) *Definition of "person."* In addition to the terms set forth in 40 CFR 22.03(a) that define "person, for purposes of this section and proceedings under section 1414(g)(3)(B) of the Safe Drinking Water Act, the term "person" shall also include any officer, employee, or agent of any corporation, company or association.

(c) *Issuance of complaint.* If the Administrator determines that a person has violated any provision of a compliance order issued under section 1414(g)(1) of the Safe Drinking Water Act, 42 U.S.C 300g–3(g)(1), he may institute a proceeding for the assessment of a civil penalty by issuing a complaint under the Act and this Part.

(d) *Content of the complaint.* A complaint for the assessment of civil penalties under this Part shall include specific reference to:

(1) Each provision of the compliance order issued under section 1414(g)(1) of the Act, 42 U.S.C. 300g3(g)(1), which is alleged to have been violated; and

(2) Each violation of a Safe Drinking Water Act regulation, schedule, or other requirement which served as the basis for the compliance order which is alleged to have been violated.

(e) *Scope of hearing.* Action of the Administrator with respect to which judicial review could have been obtained under Section 1448 of the Safe Drinking Water Act, 42 U.S.C. 300j–7 shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 1414(g)(3)(B) of the SDWA and this Part.

[FR Doc. 89–15749 Filed 7–11–89; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
July 12, 1989

Part V

Environmental Protection Agency

40 CFR Part 707

Export Notification Requirement; Proposed Change to Reporting Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 707

[OPTS-120004; FRL-3614-6]

Export Notification Requirement; Proposed Change to Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the export notification rules at Subpart D of 40 CFR Part 707 that would change the current annual notification requirement for exporters of chemical substances and mixtures (chemicals) subject to test rules or consent orders (test rules) under section 4 of the Toxic Substances Control Act (TSCA) to a one-time export notification requirement for each exporter of such a chemical per each country of destination. EPA believes the proposed amendments would facilitate foreign governments' monitoring of chemicals by relieving the administrative burden imposed by the present annual notices received on chemicals subject to TSCA section 4 test rules and through encouraging the thoughtful review of notices regarding chemicals subject to more restrictive regulatory action. Additionally, the proposed amendments are necessary to reduce the notification burden on EPA and industry, and because under the current annual notice requirement the large volume of notices received has hampered EPA's ability to respond to requests from foreign governments for additional information on a particular chemical or export notice.

DATE: Written comments on this proposed rule must be submitted by September 11, 1989.

ADDRESS: Comments should bear the docket control number OPTS-120004 and should be submitted, in triplicate, to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street, SW., Washington, DC 20460.

All written comments on this proposed rule will be available for public inspection at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing amendments to the export notification rules which would change the current recurring annual requirement of export notification to EPA for section 4 test rule chemicals to a one-time export notification requirement for each exporter of such a chemical to each country. EPA is also proposing to provide a one-time notice to each importing country for a particular section 4 test rule chemical.

I. Authority

EPA is proposing this amendment pursuant to section 12(b) of TSCA, 15 U.S.C. 2611(b).

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 or 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or relief has been granted under section 5 or 7 to notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, section 12(b) of TSCA reqires EPA to furnish the government of the importing country with:

1. Notice of the availability of data received pursuant to action under section 4 or 5(b), or
2. Notice of such rule, order, action, or relief under section 5, 6, or 7

EPA maintains a public record of all notices received and sent under section 12(b), except for information that has been claimed as confidential business information under TSCA section 14.

II. Summary of This Proposed Rule

EPA is proposing to require persons who export or who intend to export to a specific country a chemical for which notification is required under section 12(b) of TSCA by virtue of section 4 test rules to submit a one-time notice to EPA of that export for each such chemical and country. EPA is not proposing a change in the current recurring annual export notification requirements triggered by a rule, order, action, or relief under sections 5, 6, and 7 of TSCA. EPA is neither proposing any change in the required contents of the notice (40 CFR 707.67) nor any revision with regard to the time deadline for submission of an export notice to EPA, that is, within 7 days of forming an intent to export or the date of export, whichever is earlier, 40 CFR 707.65(a)(3). However, EPA is proposing to require that each exporter provide only one notification, per chemical, for each country of export after the issuance of a section 4 test rule. Currently, exporters are required to notify EPA annually of exports of chemicals subject to section 4 test rules.

EPA is also proposing to modify the process for notifying foreign governments of export of section 4 test rule chemicals by providing only one notice per section 4 test rule chemical to each importing country. The content of the information sent in the proposed one-time notification for section 4 test rule chemicals would be identical to that provided under the current annual notification scheme. Importing countries would get the same information on section 4 test rule chemicals, but only once.

EPA requests comments on this proposed amendment, particularly with regard to whether the proposed changes would provide adequate information to foreign governments about chemicals imported from the United States which are subject to test rules, as well as whether the proposed changes would offer a burden reduction for the regulated industry. The role of Non-Governmental Organizations (NGOs) in implementing the proposed amendmeants is not addressed because the export notification information that such NGOs can obtain is limited by the provisions of section 14 of TSCA.

III. Reasons for Proposing This Rule

A. Background

In the **Federal Register** of December 16, 1980 (45 FR 82844), EPA promulgated rules implementing section 12(b) of TSCA. Persons subject to the implementing rules are currently required to submit a written notice to EPA for the first export or intended export to a particular country in a calendar year for chemicals subject to a rule, order, action, or relief under sections 4, 5, 6, and 7 of TSCA. Upon receipt of such notification from an exporter, the implementing rules require that EPA provide the importing country with a summary of the regulatory action taken or indicate the availability of data received pursuant to action under section 4 or 5(b), or notice of a rule, order, action, or relief under section 5, 6, or 7 of TSCA.

At the time EPA promulgated the section 12(b) rule at 40 CFR Part 707 EPA did not have the practical experience it now has in estimating the impact of certain regulatory actions. At that time EPA did not believe that the rule would impose an excessive burden upon foreign governments, industry, or

EPA resources. However, recent experience has demonstrated to EPA that an increasing number of section 12(b) notices are received by EPA each year.

In 1983, EPA received 438 section 12(b) notices on 15 chemical substances; of this number, none were in response to section 4 test rules. That number increased to 524 notices on 37 substances in 1984 (31 in response to section 4 actions), 819 notices on 115 substances in 1985 (263 in response to section 4 actions), 2,056 notices on 166 substances in 1986 (1,506 in response to section 4 actions), and 2,367 notices on 282 substances in 1987 (1,703 in response to section 4 actions). Approximately 4,300 notices were received in 1988 on substances (3,350 in response to section 4 actions). EPA projected totals for 1989 are for approximately 4,700 notices (3,752 in response to section 4 actions); for 1993, the number is expected to be greater than 8,200 (6,950 in section 4 actions).

The increase in section 12(b) notices received by EPA has led to a corresponding increase in the number of notices EPA has sent to foreign governments. In 1984, EPA sent 406 notices to foreign governments. This number increased to 533 in 1985, 869 in 1986, and 1,035 in 1987 Approximately 2,100 notices were sent in 1988. EPA projections for 1989 are for over 2,300 notices to be sent to foreign governments (770 to 1,014 in response to section 4 actions). This continually increasing volume of notification has created a situation in which the effectiveness of many foreign governments' import monitoring programs may be hampered by the processing of more and more notices.

At the present time, a fourth to a half of the section 12(b) notices received by EPA from a particular company are other than first-time notices (i.e., repeat notices for subsequent annual exports to the same country). EPA anticipates that the proportion of repeat notices will grow in relation to the total number of notices received because the regulatory actions that trigger section 12(b) reporting requirements either do not sunset (e.g., section 5 or 6 rules) or remain in place for relatively long periods of time (e.g., section 4 rules). The continuous increase in section 12(b) reporting is making import monitoring more difficult for many foreign countries, is placing an increasing burden on industry, and is placing an increasing administrative burden on EPA.

EPA believes that part of this difficulty is based on the fact that a large number of notices sent to foreign governments pertain to section 12(b) reporting for TSCA section 4 test rule chemicals. In most cases, test rules are issued because EPA does not have sufficient health and safety or environmental data on a particular chemical to make a fully informed decision regarding the appropriateness of regulatory control for that chemical. These test rules may be in effect for as long as 10 years before the end of the data reimbursement period when they cease to be in effect. EPA believes that continued annual reporting under section 12(b) for these chemicals would be of only limited value to foreign governments. In most cases, there exists insufficient health or environmental data on these chemicals, such that EPA has not proposed or taken action to ban or restrict their production or use, and foreign governments are likely to take no regulatory action either in the absence of data.

Because the regulatory actions which trigger section 12(b) reporting requirements are mandated by TSCA, it is not possible for EPA to change the triggering actions. EPA believes that the most practical means of maintaining the quality of notification, of improving the scrutiny importing countries give to notices, and of reducing burden on both industry and EPA is to amend the section 12(b) reporting rules under 40 CFR Part 707 to reduce the volume of notices. The amendment that EPA believes will retain the greatest utility to foreign governments while simultaneously resulting in a decreased burden on industry and EPA, would be rescinding the current annual notice requirement for section 4 test rule chemicals and allowing persons to submit a one-time notice to EPA for a particular country for each section 4 test rule chemical.

EPA believes these amendments would maintain, if not increase, the degree of protection to human health and the environment afforded by the current notification system while reducing the reporting burden on exporters and the administrative burden on EPA. Under the current annual notice requirement, a large increase in the volume of annual notices, due primarily to a significant increase in the number of section 4 test rules promulgated by EPA, has reduced EPA's ability to respond to requests for additional information on a particular chemical or export notice. At the same time, the increasing volume of notices makes it difficult for countries which receive a large number of notices to distinguish between chemicals for which EPA has taken action to restrict based on a determination of unreasonable risk to human health or the environment, and those chemicals for which EPA has requested data but not yet made a definitive risk determination. Although EPA provides a copy of the applicable rule, including a summary of the action taken by EPA, many importing country representatives have commented anecdotally that all section 12(b) notices are considered by importing countries, particularly developing countries, to be of equal concern.

EPA believes that the purpose of the export notification requirements of section 12(b) of TSCA is to ensure that foreign governments are alerted when EPA knows that such governments are importing chemicals about which EPA has expressed some degree of concern. EPA's responsibility is both to alert the importing country, and to make information and data available to the importing government so that government can assess the risks and benefits of importing and using that chemical. While some countries may use the notices to monitor trends in imports from the United States of chemicals subject to section 12(b), EPA believes the supply of data necessary to control chemicals within the importing country would be substantially unchanged by this proposed rule as there would be little, if any, net loss or supportive data potentially useful in carrying out this function.

By decreasing the volume of notices importing countries receive on section 4 test rule chemicals for which additional data are being gathered, the proposed rule may actually increase the relative effectiveness of the notification by allowing foreign governments to focus their efforts on notices for section 5, 6, or 7 chemicals for which restrictive regulatory action has been proposed or promulgated. Internationally, the movement is toward differentiation between banned or severely restricted chemicals and chemicals for which additional data gathering is still ongoing. This proposed rule is a step in that direction.

The differentiation is commonly referred to as a system of Prior Informed Consent (PIC). The United States Government is participating in negotiations with international organizations such as the United Nations Environment Programme (UNEP) on the development of a PIC scheme. This proposed rule is consistent with the international interest in developing a system of PIC. EPA believes that by reducing the ever increasing volume of notices received on section 4 test rule chemicals, importing countries can better differentiate

between chemicals for which EPA has taken restrictive action and chemicals for which additional toxicological testing has been required.

B. Alternatives

Before proposing this rule, EPA considered a variety of other alternative regulatory approaches to reducing the burden of section 12(b) export notification and increasing its effectiveness.

1. One alternative would be to establish a new "sunrise" date for reporting under section 12(b) triggered by a final section 4 test rule. One possible sunrise date considered by EPA would be the date on which the first test data are required to be submitted under the test rule. In this event, EPA would have actual test data available when foreign governments were notified. Persons subject to the rule would still be required to submit export notices to EPA annually thereafter, the EPA would notify such foreign governments on an annual basis. Thus, importing countries would still receive a large number of notifications resulting from section 4 test rules. This new sunrise date would provide some decrease in burden on industry and EPA, but the decrease in burden in this instance would not be significant because in many cases initial section 4 test data are required to be submitted to EPA within a 1-year time frame.

EPA also considered another possible sunrise date which would require submission of a TSCA section 12(b) notice upon the receipt of adverse test data under a section 4 test rule. In this instance, notices to foreign governments would be of maximum utility, because EPA would possess actual data regarding the adverse health or environmental effects of a substance. This new sunrise date could provide a modest decrease in reporting burden to industry. However, EPA would be required to make rapid, and potentially controversial case-by-case hazard determinations on test data. These determinations would then likely need to be made formal by **Federal Register** notices annnouncing EPA's conclusions. This approach would provide a modest reduction in burden on industy but result in a many-fold increase in burden on EPA. This approach also contradicts the statutory language of TSCA section 12(b) because export notification is triggered by a requirement for the submission of data under section 4, not just adverse data. Foreign countries may find knowledge of non-adverse data as useful as adverse data.

2. Another alternative would be to establish a new "sunset" date for reporting under section 12(b) triggered by a final TSCA section 4 test rule. One possible sunset date considered by EPA would be the date on which the final test data submission is required under the test rule. At the present time, persons are subject to test rules from the time of the effective date to the end of the data reimbursement period, which may be up to five years after the final test data are required. This approach could cut as many as 6 years of reporting by industry. This approach remains attractive to EPA because it does offer a decrease in burden. However, persons subject to section 12(b) would still be required to submit annual reports until the time of the last data submission, and the value of those additional reports may not be significant over and above the one-time report that would be required by the proposed approach.

3. EPA also considered establishing a "percentage" cutoff from section 12(b) reporting triggered by section 4 test rules. In this case, if the section 4 test rule chemical was present in an exported product at a low level (e.g., 1.0 percent or 0.1 percent), export notification would not be required. While this alternative may provide exporters of mixtures containing section 4 chemicals with a modest reduction in reporting burden, EPA believes that the one-time notification for section 4 chemicals will result in a far greater reduction in reporting burden to industry and in administration to EPA.

4. A final alternative considered by EPA would be to establish a one-time notification requirement for all actions which trigger section 12(b) notification. Thus, exporters would be required to submit one notice per country for each chemical subject to a rule, order, action, or relief under section 4, 5, 6, or 7 of TSCA. Under this alternative, EPA would provide each importing country with one notice per chemical subject to section 12(b) notification. This approach would alleviate burden associated with all activities that trigger section 12(b) export notification, and would also provide a reduction in reporting burden on industry and a reduction in the administrative burden on EPA. However, this approach would reduce for all section 12(b) triggering activities the total number of notices received by foreign governments. Such a reduction could potentially hamper the ability of foreign governments to monitor imports of chemicals for which EPA has proposed or taken regulatory action on the basis that they present unreasonable risks.

EPA requests comments on the alternatives discussed above. EPA also requests that commenters alert EPA to any reasonable alternatives not considered here. Before developing the final rule, EPA will consider all comments and alternatives received with regard to this proposed rule.

IV Economic Impact

EPA has evaluated the potential costs of this proposed amendment to persons subject to section 12(b) reporting requirements. The amendment would reduce the number of submissions sent to EPA from companies exporting chemicals subject to test rules under TSCA section 4, and would also reduce the number of notifications sent by EPA to foreign governments. These reductions would save both industry and EPA resources and will be referred to collectively as the "reduction in reporting burden.

The procedure used to estimate the reduction in 1989 reporting burden for industry is a several step process. First, an estimate of the reduction in industry submissions requires taking the estimated submissions which would still be required after promulgation of this proposed rule (2,319 to 2,906) and subtracting those values from the base line estimation of submissions under the current reporting scheme (4,667). This decrease is estimated at 1,761 to 2,348 submissions and based upon an estimated industry cost of $10 to $50 per submission, yields a 1989 industry savings of $18,000 to $117,000. The net present value of this industry savings from 1989 to 1993 is estimated at $114,000 to $759,000 using a 3 percent discount rate, and at $99,000 to $657,000 using a discount rate of 10 percent.

EPA resource savings from this proposed rule would occur because the EPA Office of Toxic Substances (OTS) would handle fewer submissions from industry and would send out fewer notifications to foreign governments. The estimated 1989 EPA savings in handling submissions would be the cost of handling a submission ($5) times the decrease in submissions (1,761 to 2,348), or $9,000 to $12,000. The estimated 1989 EPA savings for sending out fewer notices is the EPA cost per section 12(b) notification sent ($40) times the estimated decrease in notifications (770 to 1,014) or $31,000 to $41,000. Thus, by combining these estimates, the overall 1989 EPA savings that would be generated by this proposed rule are estimated at $40,000 ($9,000 + $31,000) to $53,000 ($12,000 + $41,000). The net present value of this overall EPA savings from 1989 to 1993 is estimated at $256,000 to $331,000 using a 3 percent

discount rate, and at $222,000 to $287,000 using a 10 percent discount rate.

By combining the 1989 resource savings to industry ($18,000 to $117,000) with the 1989 resource savings to EPA ($40,000 to $53,000), the total 1989 reduction in reporting burden generated by this proposed rule is estimated at $58,000 to $170,000. The net present value of this total reduction in reporting burden from 1989 to 1993 is estimated at $370,000 to $1,090,000 using a 3 percent discount rate, and at $321,000 to $944,000 using a 10 percent discount rate.

Persons are directed to the record for this rulemaking at the address listed in Unit V below for the assumptions and detailed calculations used in the economic analysis for this proposed rule. The analysis contained in the record also analyzes the economic impacts of alternatives 2 and 4 discussed in Unit III.B. of this preamble.

The 1989 industry savings is estimated at $17,000 to $85,000 for alternative 2, and $22,000 to $147,000 for alternative 4. The net present value of this industry savings from 1989 to 1993 is estimated at $174,000 to $870,000 (3 percent discount rate) and at $149,000 to $746,000 (10 percent discount rate) for alternative 2, and at $139,000 to $923,000 (3 percent discount rate) and at $121,000 to $801,000 (10 percent discount rate) for alternative 4. The 1989 EPA savings is estimated at $38,000 for alternative 2, and at $49,000 to $66,000 for alternative 4. The net present value of EPA savings from 1989 to 1993 is estimated at $384,000 (3 percent discount rate) and $328,000 (10 percent discount rate) for alternative 2, and at $309,000 to $407,000 (3 percent discount rate) and $268,000 to $354,000 (10 percent discount rate) for alternative 4.

By combining the 1989 resources savings to industry with the 1989 resource savings to EPA, the total 1989 reduction in reporting burden generated by alternative 2 is estimated at $55,000 to $123,000, and at $71,000 to $213,000 for alternative 4. The net present value of this total reduction in reporting burden from 1989 to 1993 is estimated at $558,000 to $1,254,000 (3 percent discount rate) and at $477,000 to $1,074,000 (10 percent discount rate) for alternative 2, and at $448,000 to $1,330,000 (3 percent discount rate) and $389,000 to $1,155,000 (10 percent discount rate) for alternative 4.

V Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-120004). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. Economic analysis of proposed amendments to 40 CFR Part 707

2. Chemical Imports and Exports; Notification of Export. **Federal Register**, December 16, 1980. (45 FR 82844).

3. International Guidelines: Decision 14/27 of the Governing Council of the United Nations Environment Programme, *London Guidelines for the Exchange of Information on Chemicals in International Trade,* June 17 1987· Food and Agriculture Organization of the United Nations, *International Code of Conduct on the Distribution and Use of Pesticides,* Rome, 1986; Recommendation of the Governing Council of the United Nations Environment Programme, *Concerning Information Exchange related to Export of Banned or Severely Restricted Chemicals,* April 4, 1984.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record is available in the TSCA Public Docket Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW Washington, DC.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a regulatory impact analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and would not have a significant effect on competition, costs, or prices.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. This rule would decrease the reporting burden upon small businesses subject to the reporting requirements of TSCA section 12(b). This proposed rule would not add any economic burden to small businesses.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2070-0030.

The proposed rule would reduce the number of notices required from the public by approximately 1700 to 2300 submissions. Public reporting burden for the collection of information under 40 CFR Part 717 is estimated to average .5 to 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total public reporting burden is expected to decrease as a result of this proposed rule by approximately 850 to 3,450 hours (1,700 submissions × .5 hours to 2,300 submissions × 1.5 hours).

Send comments regarding the burden estimate or any other aspect of this collection of information to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked Attention: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 707

Chemicals, Environmental protection, Exports, Hazardous substances, Imports, Recordkeeping and reporting requirements.

Dated: July 3, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 707 be amended as follows:

PART 707—[AMENDED]

a. The authority citation for Part 707 would continue to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

b. By revising § 707.65(a)(2) and (c) to read as follows:

§ 707.65 Submission to agency.

(a)

(2) (i) The notice when data are required under section 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or an action is pending or relief has been granted under section 5

or 7 must be for the first export or intended export to a particular country in a calendar year;

(ii) The notice when data are required under section 4 must be for the first export or intended export to a particular country;

(c) Notices shall be marked "Section 12(b) Notice" and sent to the TSCA Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460.

c. By revising § 707.70(a) and adding an OMB control number at the end of the section to read as follows:

§ 707.70 EPA notice to foreign governments.

(a) (1) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first annual notification for each regulated chemical when data are required under section 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or an action is pending or relief has been granted under section 5 or 7

(2) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first notification for each regulated chemical when data are required under section 4.

(Approved by the Office of Management and Budget under OMB control number 2070-0030)

[FR Doc. 89-16293 Filed 7-11-89; 8:45 am]

BILLING CODE 6560-50-M

Reader Aids

Federal Register

Vol. 54, No. 132

Wednesday, July 12, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

27855-28016.....3
28017-28408.....5
28409-28664.....6
28665-28794.....7
28795-28998.....10
28999-29316.....11
29317-29528.....12

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

302.....28964
305.....28964
310.....28964

3 CFR

Proclamations:
5995.....28409
5996.....28993
5997.....28999
5998.....29313
Executive Orders:
11958 (Amended by EO 12680).....28995
12163 (Amended by EO 12680).....28995
12171 (Amended by EO 12681).....28997
12680.....28995
12681.....28997
12682.....29315
Administrative Orders:
Presidential Determinations:
No. 89-16 of June 22, 1989.....28017

5 CFR

1201.....28632
1202.....28657
1203.....28658
1204.....28658
1205.....28662
1206.....28664
1209.....28654
Proposed Rules:
900.....28426

7 CFR

2.....28665
29.....27855
33.....29317
400.....28019, 28411
401.....28795
905.....29318
910.....28796
916.....27856
917.....27856, 29321
921.....29319
922.....29319
923.....29319
924.....29319
928.....29318
929.....29323
946.....27862
948.....29324
955.....29325
958.....29324
989.....29326
1040.....29327
1260.....28019
1822.....29329
1823.....29329
1910.....29329
1941.....28019, 29329
1942.....29329
1943.....28019, 29329
1944.....29329
1945.....29329
1951.....28019, 28020, 28411, 29329
1955.....29329
1965.....29329
1980.....28021
Proposed Rules:
29.....27883
401.....28019, 28428, 28820
449.....28429
911.....29338
927.....29340
947.....29341
987.....29342
989.....29343
1762.....27883

8 CFR

100.....29438
103.....29438, 29440
242.....29438
245.....29440
245A.....29434, 29442
264.....29438
299.....29438
Proposed Rules:
103.....29344
242.....29050

9 CFR

92.....29003
Proposed Rules:
75.....28070

10 CFR

2.....27864, 29008
7.....28554
26.....29139
51.....27864
60.....27864
Proposed Rules:
2.....28822

12 CFR

226.....28665
Proposed Rules:
5.....28072
561.....27885
563.....27885

14 CFR

39.....28022, 28023, 28025, 28026, 28028, 28554, 29008, 29009
71.....28029
91.....28769

97 ... 28029
107 ... 28765
108 ... 28985
Proposed Rules:
Ch. I ... 28074
1 ... 28978
39 ... 29050-29056
71 ... 28074, 29057-29059
91 ... 28978
108 ... 28982
121 ... 28978
125 ... 28978
129 ... 28978
135 ... 28978

15 CFR

50 ... 29010
771 ... 29011
774 ... 28665
786 ... 29011
Proposed Rules:
25 ... 28430

16 CFR

305 ... 28031

17 CFR

200 ... 28796
201 ... 28797
211 ... 29333
240 ... 28799
241 ... 28799

19 CFR

10 ... 28412
141 ... 28412
178 ... 28412

20 CFR

655 ... 28037

21 CFR

177 ... 29018
310 ... 28772, 28780
556 ... 28051
558 ... 28051, 28154, 29335
573 ... 29019
1308 ... 28414
Proposed Rules:
10 ... 28872
310 ... 28872
314 ... 28872
320 ... 28823, 28872
341 ... 28442

22 CFR

34 ... 28415

23 CFR

Proposed Rules:
658 ... 29060

24 CFR

203 ... 28053

26 CFR

1 ... 28576
602 ... 28576
Proposed Rules:
1 ... 28075, 28683, 29061

29 CFR

1910 ... 28054, 28154, 29142
1915 ... 29142
1917 ... 29142
1918 ... 29142
2610 ... 27872, 28944
2622 ... 27872
2644 ... 27872
2670 ... 29025
2675 ... 29025

30 CFR

Proposed Rules:
715 ... 28443

31 CFR

103 ... 28416
344 ... 28752

33 CFR

100 ... 28814
165 ... 28814
167 ... 28061
Proposed Rules:
100 ... 29348

35 CFR

103 ... 29335
117 ... 29335
135 ... 29335

37 CFR

201 ... 27873

38 CFR

3 ... 28445
17 ... 28667 28673
19 ... 28445
21 ... 28676
Proposed Rules:
36 ... 28683

39 CFR

111 ... 27879

40 CFR

52 ... 27880, 29310
82 ... 28062, 29336
131 ... 28662
228 ... 29034
271 ... 28677
761 ... 28418
763 ... 29460
Proposed Rules:
22 ... 29516
52 ... 28684, 28689, 29061, 29063, 29349
60 ... 28447 29352
81 ... 29349
82 ... 29353
142 ... 29516
302 ... 29306
355 ... 29306
707 ... 29524

42 CFR

57 ... 28065

43 CFR

Proposed Rules:
5450 ... 29357
5460 ... 29357

46 CFR

502 ... 29036

47 CFR

1 ... 29037
22 ... 28815, 28816
73 ... 28677 28678, 29038
74 ... 29039
80 ... 29040
90 ... 28678
Proposed Rules:
Ch. I ... 28789
2 ... 28823
15 ... 28690, 28691, 28693
73 ... 27904, 28077, 28695, 28696, 29067
87 ... 28823

48 CFR

1 ... 29278
4 ... 29278
7 ... 29278
8 ... 29278
14 ... 29278
15 ... 29278
17 ... 29278
19 ... 29278
22 ... 29278
25 ... 29278
36 ... 29278
37 ... 29278
38 ... 29278
47 ... 29278
51 ... 29278
52 ... 29278
53 ... 29278
204 ... 28419
705 ... 28068
706 ... 28068
715 ... 28068
752 ... 28068
Ch. 18 ... 28186
Proposed Rules:
15 ... 29296
43 ... 29296
52 ... 29296

49 CFR

89 ... 28680
171 ... 28750
172 ... 28750
173 ... 28750
176 ... 28750
178 ... 28750
192 ... 27881
193 ... 27881
195 ... 27881
390 ... 28818
391 ... 28818
393 ... 28818
571 ... 29041-29045
1011 ... 29337
Proposed Rules:
512 ... 28696
571 ... 29067-29071
572 ... 29071

50 CFR

661 ... 28818
672 ... 28422, 28681
674 ... 28423
Proposed Rules:
285 ... 29359

LIST OF PUBLIC LAWS

Last List July 11, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2119/Pub. L. 100-53

To authorize the exchange of certain Federal public land in Madison County, Illinois. (July 6, 1989; 103 Stat. 144; 2 pages) Price: $1.00

H.J. Res. 276/Pub. L. 100-54

Designating September 14, 1989, as "National D.A.R.E. Day. (July 7, 1989; 103 Stat. 146; 2 pages) Price: $1.00

H.J. Res. 298/Pub. L. 100-55

Designating July 14, 1989, as "National Day To Commemorate the Bastille Day Bicentennial. (July 7 1989; 103 Stat. 148; 1 page) Price: $1.00

Order Now!

The United States Government Manual 1988/89

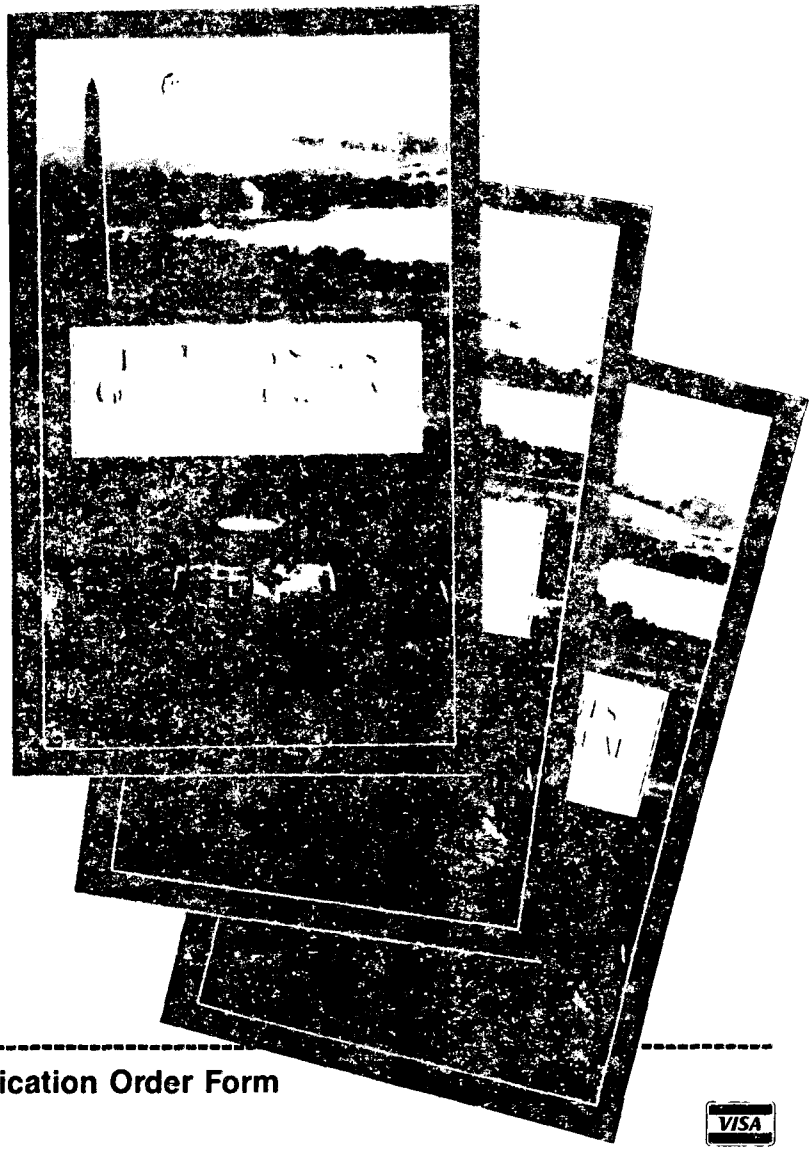
As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency s "Sources of Information section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$20.00 per copy



Publication Order Form

Order processing code: *6450

☐ **YES,** please send me the following indicated publications:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1988/89 at $20.00 per copy. S/N 069-000-00015-1.

1. The total cost of my order is $_____ International customers please add 25%. All prices include regular domestic postage and handling and are good through 3/89 After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

( )
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA, or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date)

Thank you for your order!

(Signature)

(Rev. 8-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325