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federal register

Tuesday
June 29, 1982

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Interstate Commerce Commission

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

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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 month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 284

[Amendment Number 203]

Food Stamp Program; Provision of Nutrition Assistance for the Commonwealth of the Northern Mariana Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On April 9, 1982, the department published a proposed rule at 47 FR 15346 concerning nutrition assistance for the Commonwealth of the Northern Mariana Islands (CNMI). The proposal allowed program specifics to be negotiated between the Department and the CNMI and set forth in a memorandum of understanding as required by Pub. L. 96–597. This final rule provides a nutrition assistance program for the CNMI and allows the memorandum of understanding which has been negotiated between the Department and the CNMI, to be signed.

EFFECTIVE DATE: The rule is effective June 29, 1982 to allow implementation of the CNMI's nutrition assistance program as close to July 1, 1982 as possible.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; phone (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291. Because of the limited amount of assistance to be provided to the CNMI, it has been determined that the rule will not have:

—An annual effect on the economy of $100 million or more; or

—A major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions; or

—A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, the rule has been classified as a non-major rule.

The rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96–354. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The provisions affect only the CNMI. Therefore, only one local government will be affected.

Background

The action taken in these regulations is generally taken pursuant to the Food Stamp Act of 1977, as amended, and to legislation enacted on March 24, 1976, approving and reiterating the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", Public Law 94–241 and Pub. L. 96–597. The CNMI and this Department are currently involved in litigation concerning family nutrition in the CNMI. *Commonwealth of the Northern Mariana Islands v. United States, et. al.*, U.S.D.C.D. Northern Mariana Islands, Civil Action No. 81–035. This action is intended to facilitate mutually acceptable disposition of this litigation.

On April 9, 1982, the Department published a proposed rule at 47 FR 15346 which permitted the CNMI to design a nutrition assistance program for needy persons tailored to the CNMI's unique circumstances. The April 9, 1982, proposal had a 45 day comment period during which six comments were received. Four of the comments were in support of the rule as written. One commenter updated for the record statements found in the background section to the rule and one commenter suggested changes in the rule based on the Federal Grant and Cooperative Agreement Act of 1977.

FNS provides broad guidelines in these final regulations which give the CNMI maximum program flexibility. Program specifics will be negotiated between FNS and the CNMI and will be set forth in a memorandum of understanding as required by Pub. L. 96–597. The memorandum of understanding will implement the particular terms of the nutrition assistance program and will also serve as the plan of operation for the CNMI's nutrition assistance program. Upon execution of the memorandum of understanding FNS will phase out the food distribution program for needy families currently in operation in the CNMI. The target date for implementation of CNMI's nutrition assistance program is July 1, 1982.

Except as discussed below, 7 CFR Part 284 remains unchanged from the proposed rule.

The proposed rule required that the memorandum of understanding contain an outline of specific reporting and recordkeeping requirements consistent with OMB Circular A–102. The final rule references instead the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, 46 FR 55636, which establishes Department-wide guidelines for administration of grants and cooperative agreements. These Uniform Federal Assistance Regulations primarily implement OMB Circulars A–102 and A–110 which standardize the administration of grants and cooperative agreements and specify the principles for determining allowable costs under USDA grants and cooperative agreements.

In response to comments from USDA's Office of Finance and Management the final rule has incorporated OMB guidelines by referencing the Uniform Federal Assistance Regulations, requiring that the head of the assisting agency, the Comptroller General, or any of their duly authorized representatives have access to any books, documents, papers and records of the recipient and their subgrantees which are pertinent to the transaction for the purpose of making audits, examinations, excerpts and transcripts.

Since issuing the proposal the Department has developed financial management guidelines for nutrition assistance programs and has added to the final rule provisions found in the

Commonwealth of Puerto Rico nutrition assistance program grant regulations covering offsets to funding, reviews, audits, year end financial reports and failure to comply.

List of Subjects in 7 CFR Part 284:

Administrative practice and procedure, Food assistance programs, Grant programs—Social programs, Health, Nutrition.

For the reasons set forth in the preamble, Part 284 is adopted as final and added to 7 CFR Chapter II to read as follows:

PART 284—PROVISION OF A NUTRITION ASSISTANCE PROGRAM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)

Sec.

284.1 General purpose and scope.
284.2 Authority.
284.3 Memorandum of understanding.
284.4 Failure to comply.
284.5 Technical assistance.

Authority: 90 Stat. 263–279 (48 U.S.C. 1681 note); 91 Stat. 958 (7 U.S.C. 2011–2027); 94 Stat. 3479–3480.

§ 284.1 General purpose and scope.

This part describes the general terms and conditions under which Food Stamp Program funds shall be provided by the Food and Nutrition Service (FNS) to the Commonwealth of Northern Mariana Islands (CNMI) for the purpose of providing a nutrition assistance program for needy persons. The CNMI's program for nutrition assistance shall be targeted to the most needy and shall assure more nutritious diets, provide work incentives, develop CNMI self-sufficiency, and stimulate economic development and local food production. Specific program requirements will be negotiated between FNS and the CNMI and documented in a memorandum of understanding.

§ 284.2 Authority.

(a) The Secretary shall, consistent with the memorandum of understanding required by § 284.3, make a nutrition assistance program available to the CNMI.

(b) FNS has the authority to approve or disapprove the memorandum of understanding or any amendments thereto. FNS approval of the memorandum of understanding or any amendments thereto shall be based, in part, on an assessment that the nutrition assistance program, as defined in the memorandum of understanding or amendment, is:

(1) Sufficiently detailed to permit analysis and review;

(2) Adequately targeted to those with the lowest incomes;

(3) Supported by the assessment of the people's food and nutrition needs;

(4) Effective in its impact on the diets of needy persons;

(5) Reasonable in terms of the budget requested; and

(6) Effective and efficient in the use of Federal funds.

(c) Unless the memorandum of understanding is approved by FNS, no nutrition assistance funds will be provided by FNS to the CNMI.

(d) FNS may recover from the CNMI through offsets to funding during any fiscal year, funds previously paid to the CNMI and later determined by the Secretary to have been overpayments. Funds which may be recovered include, but are not limited to:

(1) Costs not included in the approved memorandum of understanding;

(2) Unallowable costs discovered in audit or investigation findings; and

(3) Amounts owed to FNS which have been billed to the CNMI and which the CNMI has failed to pay without cause acceptable to FNS.

(e) Those provisions of the Food Stamp Program regulations with which the nutrition assistance program described in the memorandum of understanding approved by FNS does not comply are hereby waived.

§ 284.3 Memorandum of understanding.

(a) Nutrition assistance for any fiscal year in the CNMI shall be based upon the memorandum of understanding as approved by FNS. This memorandum of understanding shall be submitted for FNS approval prior to the time the program created by it is to be implemented. Amendments to the memorandum of understanding may be submitted by either party to the other for approval at any time during a fiscal year.

(b) The memorandum of understanding shall include the following:

(1) Designation of a single agency which shall be responsible for the administration, or supervision of the administration of the nutrition assistance program.

(2) A description of the needy persons residing in the CNMI and an assessment of the food and nutrition needs of these persons. The description and assessment shall demonstrate that the nutrition assistance program is directed toward the most needy persons in the CNMI.

(3) A description of the program for nutrition assistance including:

(i) A description of the eligibility standards and the nutrition assistance to be provided to needy persons, and any agencies designated to provide such assistance.

(ii) A description of how eligibility will be determined and the amount of benefits to be provided to individuals and if the benefits vary, the basis of such variations and how the variations will be determined;

(iii) A description of the certification process;

(iv) A description of plans for program monitoring and corrective action procedures;

(v) A description of program issuance and accounting procedures;

(vi) Agreement to comply with the provisions and requirements of Part 3015 of this title and other specific procedures, reporting and/or recordkeeping requirements as FNS may require.

(4) A budget and an estimate of the amount of expenditures necessary for the provision of the nutrition assistance and related administrative expenses;

(5) Other information as FNS may require;

(6) CNMI's agreement to provide an audit of expenditures in compliance with the requirements in Part 3015 of this title at least once every two years. The findings of such audit shall be reported to FNS no later than 120 days from the end of the fiscal year in which the audit is made; and

(7) CNMI's agreement to provide FNS, within 120 days of the end of each fiscal year, a statement of:

(i) whether the grant funds received for that fiscal year exceeded the valid obligations made that year for which payment is authorized, and if so, by how much, and

(ii) such additional related information as FNS may require.

§ 284.4. Failure to comply.

Funds may be withheld in whole or in part, or denied, if there is a substantial failure by the CNMI to comply with the requirements of these regulations or to comply with program requirements detailed in the memorandum of understanding. FNS shall notify the CNMI that further payments shall not be made until FNS is satisfied that there will no longer be any such failure to comply.

§ 284.5 Techincal Assistance.

FNS may extend technical assistance to the CNMI to assist in the development of the memorandum of understanding and in the operation of

the program detailed in the memorandum of understanding.

(90 Stat. 263–279 (48 U.S.C. 1681 note); 91 Stat. 958 (7 U.S.C. 2011–2027); 94 Stat. 3479–3480)

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps)

Date: June 24, 1982.

Samuel J. Cornelius,

Administrator.

[FR Doc. 82-17517 Filed 6-28-82: 8:45 am]

BILLING CODE 3410-30-N

Commodity Credit Corporation

7 CFR Part 1446

General Regulations Governing 1982 Through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim Rule.

SUMMARY: This interim rule provides the terms and conditions under which producers acting through area marketing associations may receive price support on eligible peanuts through warehouse storage loans for the 1982 through 1985 crops of peanuts. These regulations are necessary so that the price support program may be administered in accordance with the provisions of the Agricultural Adjustment Act of 1938, and the Agricultural Act of 1949, as amended by the Agriculture and Food Act of 1981, Pub. L. 97–98.

DATES: Interim rule effective June 29, 1982; comments must be received on or before August 30, 1982.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: David Kincannon (ASCS), 202–382–0154. The Final Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical 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 that this rule applies to are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance. This rule will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local governments are informed of this action.

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

James M. Davis, Director, Tobacco and Peanuts Division, ASCS, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period. Regulations presently in effect for the 1979 and subsequent crops of peanuts do not contain a number of changes required by the Agriculture and Food Act of 1981 and other related policy changes necessary to properly and effectively administer the peanut price support program. In addition, warehouse storage contracts must be entered into between the peanut associations and warehousemen so that adequate storage will be available on August 1, 1982, to store 1982 loan collateral peanuts.

Accordingly, it is determined that compliance with the public rulemaking requirements of Secretary's Memorandum No. 1512–1 and 5 U.S.C. 553 is impractical and contrary to the public interest. Comments are requested until August 30, 1982. This interim rule will be scheduled for review so that a final document discussing comments received and any amendment of this interim rule which may be required may be published in the Federal Register as soon as possible.

These regulations are basically the same as the regulations governing the 1981 and prior crop years, which are presently codified at 7 CFR 1446.1 through 1446.17. Therefore, the administration of warehouse storage loans and handler operations will change relatively little from the previous program. However, a number of modifications have been made in order to reflect changes required by the Agriculture and Food Act of 1981 and to improve the overall administration of the program.

The most significant changes in the general regulations governing warehouse storage loans and handler operations for the 1982 through 1985 crops of peanuts are as follows:

1. *Definitions.* (a) The term "additional peanuts" includes all peanuts marketed from a farm for which no poundage quota has been established.

(b) The definition of crushing now includes peanuts processed into flakes for any use except traditional domestic edible uses.

(c) Domestic edible use is defined to exclude seeds of peanuts which are unique strains that are not commercially available and which are used to produce green peanuts.

(d) Green peanuts are defined as peanuts used exclusively as boiled peanuts.

2. *Completion date for contracting additional peanuts for crushing or export.* The Agriculture and Food Act of 1981 mandates that contracts between handlers and producers be submitted for approval to county ASCS offices prior to April 15 of the year in which the crop is produced.

3. *Availability of warehouse storage loans.* The Agriculture and Food Act of 1981 requires the Secretary to make warehouse storage loans available in each of the three traditional producing areas through area marketing associations. Therefore, loans will be made available in the following areas through the following associations:

(1) GFA Peanut Association, Camilla, Georgia, in the Southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(2) The Southwestern Peanut Growers Association, Gorman, Texas, in the Southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas;

(3) The Peanut Growers Cooperative Marketing Association, Franklin, Virginia, in the Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers;

Warehouse storage loans will be available to producers of additional peanuts grown outside the traditional peanut producing areas. However, such peanuts must be delivered to warehouses within the areas described above. Warehouse storage loans for the following States will be available

through the marketing associations indicated:

(1) Alaska, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming will be included in the Southwest marketing area;

(2) Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin will be included in the Virginia-Carolina marketing area; and

(3) Puerto Rico will be included in the Southeast marketing area.

Regulations governing farm-stored loans for all areas of the country will be issued at a later date.

5. *Supervision of contract additional peanuts.* Nonphysical supervision of contract additional peanuts will no longer be available to handlers of such peanuts. Nonphysical supervision was permitted for the 1981 crop of peanuts by Amendment 2 to the General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations, 7 CFR 1446.10 (46 FR 45111). However, experience with this method of supervision has shown several serious flaws. First, handlers have realized shelled outturn that differs from the obligation for export or crushing as determined by a sample shelling of farmer stock peanuts at time of loadout. Particularly, more splits resulted from the commercial shelling process which allowed handlers to substitute different qualities of peanuts between the domestic and export markets. Second, the nonphysical supervision option allows handlers to designate shelled lots for export or crushing without regard to whether such lots were originally designated as quota or as contract additional peanuts. Thus, whenever lots, irrespective of their origin, fail quality standards or are lost or damaged, handlers have designated these lots as contract additional peanuts. Therefore, CCC can no longer verify that contract additional peanuts are not entering the domestic edible market through substitution of qualities.

It is proposed in this rule that all phases of handling and disposition of contract additional peanuts for the 1982 through 1985 crops of peanuts will be supervised by a representative of the association. This returns to the method of supervision that was in effect for the 1980 and prior crop years of peanuts.

6. *Immediate buyback of additional peanuts.* Regulations found at 7 CFR 1446.7, as amended by Amendment 3 to the general regulations (46 FR 47759), require that in order for additional peanuts to be purchased under the "immediate buyback" provision, the applicable Inspection Certificate and Sales Memorandum must be signed by the producer to indicate that the peanuts are available for immediate buyback. Experience has shown that it is often an inconvenience for the producer to sign the Inspection Certificate and Sales Memorandum for each "buyback" purchase. To expedite the delivery of additional peanuts which are available for "immediate buyback" purchase, eligibility for "immediate buyback" will be established by the farm operator when application is made for the marketing card (ASCS-1002). The stamp "eligible for buyback" shall be placed on the marketing card when issued only with the approval of the farm operator, or a properly authorized agent if a Power of Attorney (ASCS-211) is on file. Multiple marketing cards may be issued when producers wish only a portion of their additional peanuts to be available for "immediate buyback" purchase. Producers may also apply for supplemental cards if, after having been issued a marketing card, the producer decides to change the eligibility status of any remaining additional peanuts to be marketed.

8. *Procedures for the Assessment of Penalties Against Handlers.* The 1981 Act requires that penalties be assessed against handlers who fail to comply with the statutory or regulatory requirements for the handling and disposition of additional peanuts. The procedures for the assessment and collection of such penalties, as well as the appeal rights of handlers, have been clarified.

Interim Rule

PART 1446—PEANUTS

Accordingly, 7 CFR Part 1446 is amended as set forth below:

Subpart—General Regulations Governing 1979 Through 1981 Peanut Crop Warehouse Storage Loans and Handler Operations

1. a. The title "Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations" is revised to read "Subpart—General Regulations Governing 1979 through 1981 Crop Peanut Warehouse Storage Loans and Handler Operations".

b. The text of 7 CFR 1446.1(a), is revised to read as follows:

§ 1446.1 General statement.

a. *Scope.* This subpart sets forth conditions under which producers and handlers may trade in the 1979, 1980, and 1981 crops of peanuts. This subpart also sets forth the terms and conditions under which eligible producers acting collectively through specified marketing associations (referred to severally in this subpart as "the association") may obtain price support on their 1979, 1980, and 1981 crops of farmers stock peanuts. Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible for price support at the quota support rate. Farmers stock peanuts which are not quota peanuts shall be eligible for price support at the additional support rate. Additional peanuts may only be marketed through contracts with handlers or by being pledged to Commodity Credit Corporation (CCC) for loans. Annual supplements to this subpart will specify support prices, and other terms and conditions not contained in this subpart which are applicable to the warehouse storage loan program for peanuts of a particular crop.

* * * * *

c. Section 1446.3(w) is revised to read as follows:

§ 1446.3 Definitions.

* * * * *

(w) *Marketing quota regulations.* The Allotment and Marketing Quota Regulations, Part 729 of this title described in 7 CFR Part 729 (1981 ed.)

* * * * *

d. Section 1446.8(d)(1) is amended to read as follows:

§ 1446.8 Compliance by handlers of contract additional peanuts.

* * * * *

(d) *Penalty rate for unintentional marketing errors.*—(1) *Penalty rate.* The penalty rate for unintentional marketing errors for the 1978 through 1981 crops of peanuts shall be 40 percent of the basic quota support rate for the crop year in which the peanuts were produced. The penalty rate shall remain at 120 percent of the basic quota support rate in any case where the handler marketed a larger quantity or higher grades than could reasonably have been produced from the quantity of peanuts having the grade kernel content and quality of quota farmers stock peanuts purchased by the handler for domestic edible use during the applicable marketing year, whether or not additional peanuts were acquired by the handler.

* * * * *

2. A new subpart is added to 7 CFR Part 1446, as follows:

Subpart—General Regulations Governing 1982 through 1985 Crops Peanut Warehouse Loans and Handler Operations

General

Sec.

1446.50 General statement.
1446.51 Administration.
1446.52 Definitions.

Handler Operations

1446.53 Handler responsibilities.
1446.54 Contracts for additional peanuts for crushing and exportation.
1446.55 Commingling quota and additional peanuts.
1446.56 Use of additional peanuts as domestic edible peanuts.
1446.57 Compliance by handlers of contract additional peanuts.
1446.58 Supervision and handling of contract additional peanuts.
1446.59 Assessment of penalties.

Warehouse Storage Loans

1446.60 Availability of warehouse storage loans.
1446.61 Pooling and distribution of net gains.
1446.62 Producer indebtedness.
1446.63 Eligible producer.
1446.64 Eligible peanuts.
1446.65 Disposition of Segregation 3 peanuts and liquidated damages.
1446.66 Producer transfers of additional loan stocks to quota pools.

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

Subpart—General Regulations Governing 1982 through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations

General

§ 1446.50 General statement.

(a) *Scope.* This subpart sets forth the terms and conditions under which producers and handlers may trade in the 1982 through 1985 crops of peanuts. This subpart also sets forth the terms and conditions under which eligible producers acting collectively through specified marketing associations (referred to severally in this subpart as "the association") may obtain price support on their 1982 through 1985 crops of farmers stock peanuts. Eligible farmers stock peanuts produced by eligible producers which are quota peanuts shall be eligible for price support at the quota support rate. Farmers stock peanuts which are not quota peanuts are considered additional peanuts and shall be eligible for price support at the additional support rate. Additional peanuts may only be marketed through contracts with handlers or by being pledged as collateral for price support loans under the terms of this subpart. Annual Notices of Determination will specify support rates, and annual supplements to this subpart will specify other terms and conditions not contained in this subpart which are applicable to the warehouse storage loan program for peanuts of a particular crop.

(b) *Price support advances.* Producers may obtain price support at the rates specified in the applicable annual Notice of Determination through the applicable association. Each association will make appropriate price support loan advances on peanuts delivered to it by producers at warehouses operating under peanut receiving and warehouse contracts with the association. CCC will make a loan (referred to in this subpart as a "warehouse storage loan") to the association. Such loan will be secured by peanuts received by the association.

(c) *Farm storage loans and purchases from producers.* Regulations containing the terms and conditions under which CCC will make farm storage loans directly to producers and purchases directly from producers for any crop of farmers stock peanuts will be published separately in the **Federal Register.**

§ 1446.51 Administration.

(a) *Responsibility.* Under the general direction and supervision of the Executive Vice President, CCC, the Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), will administer this subpart.

(b) *Limitation of authority.* State and county committees or their employees and the associations have no authority to modify or waive any of the provisions of this subpart or any amendment or supplements thereto.

(c) *Supervisory authority.* No delegation of authority in this subpart shall preclude the Executive Vice President, CCC, or the Executive Vice President's designee, from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

§ 1446.52 Definitions.

As used in this subpart, and in instructions and documents in connection herewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Additional support rate.* The price support rate applicable to additional peanuts.

(c) *ASCS.* The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(d) *Association.* An area marketing association which is operated primarily for the purpose of conducting loan activities and which is selected and approved for such activities by the Secretary.

(e) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture.

(f) *Compliance regulations.* The regulations in Part 718 of this title, Determination of Acreage and Compliance, issued by the Administrator, ASCS, and effective for the applicable crop.

(g) *Contract additional peanuts.* Additional peanuts for crushing or exportation, or both, on which a contract has been entered into between a handler and producer in accordance with § 1446.54.

(h) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation (ASC) county and community committees in Part 7 of subtitle A of this title, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the county committee.

(i) *County office.* The office of the county ASC committee where records for the farm are kept.

(j) *Crushing.* The processing of peanuts: (1) To extract oil for food uses and meal for feed uses; or (2) into flakes for domestic food uses other than peanut butter, candy, confections or other traditional domestic edible uses.

(k) *Domestic edible use.* Domestic edible use means, for the purpose of regulations found in this part: (1) Use for milling to produce domestic food products (including the processing of peanuts into flakes for traditional domestic edible uses); (2) use of peanuts for seed, excluding unique strains which are not commercially available and which are used for the production of green peanuts; and (3) use of peanuts on a farm.

(l) *Edible export standard for contract additional peanuts.* Raw shelled or inshell peanuts of any crop exported for human consumption meeting such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop in the Marketing Agreement for Peanuts No. 146: *Provided,* that peanuts shown by the applicable Federal-State Inspection Certificate to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the association that such deviations are acceptable (i) to the export buyer and (ii) under the Marketing Agreement.

(m) *Effective farm poundage quota.* The effective farm poundage quota for the applicable crop of peanuts as defined in the poundage quota regulations, Part 729 of this title.

(n) *Eligible country.* Any destination outside the United States, except that neither Canada nor Mexico shall be considered an eligible country for the exportation of peanut products other than treated seed peanuts.

(o) *Export and exportation.* A shipment of peanuts or peanut products from the United States directed to a destination outside the United States and upon which a consignee receipt or other similar document was obtained and made available to the association or CCC.

(p) *Extra large kernels.* Shelled Virginia type peanuts which are "whole" and free from "minor defects" and "damage" as such terms are defined in the U.S. Standards for shelled Virginia type peanuts effective on the date of inspection and which will not pass through a screen having 21.5/64 by 1 inch openings.

(q) *Farm.* A farm, as defined in Part 719 of this title, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage.

(r) *Farmers stock peanuts.* Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels removed by producers from farmers stock peanuts.

(s) *Flaked peanuts.* Raw contract additional peanuts which are colloid milled (finely ground), stabilized to prevent rancidity, and drum dried into flake form. Flaked peanuts may only be used in approved products. Products approved for use include, but are not limited to, bases for meat and cheese flavored sandwich spreads, meat analogs, extenders for certain types of luncheon meats, extenders for scrambled eggs, and other products as approved by CCC or the association.

(t) *Form ASCS–1007 and Form FV–95.*—(1) *Form ASCS–1007.* Inspection Certificate and Sales Memorandum for farmers stock peanuts.

(2) *Form FV–95.* Federal-State Inspection Service, Peanut Inspection Note Sheet.

(u) *Fragmented peanuts.* Peanuts not more than 20 percent of which are whole kernels which will not pass through the following openings, by type: Spanish $^{13}/_{64}$ x $^{3}/_{4}$ inch slot; Runner $^{13}/_{64}$ x $^{3}/_{4}$ inch slot, and Virginia $^{13}/_{64}$ x 1 inch slot.

(v) *Green peanuts.* Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

(w) *Handler.* Any person or firm registered with ASCS for the purpose of acquiring peanuts for domestic consumption, exportation, or crushing through a business of buying and selling peanuts.

(x) *Inspector.* A Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture.

(y) *Loan value.* The amount of the price support loan advance which may be obtained by a producer from the association under this subpart on a lot of eligible farmers stock peanuts, computed for quota or additional peanuts, as applicable, on the basis of weight, quality, and the support values announced for such type.

(z) *Lot.* That quantity of farmers stock peanuts for which one ASCS–1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the association for a price support loan advance, a lot shall consist of not more than the contents of one vehicle, or two or more vehicles containing approximately 24,000 pounds.

(aa) *Marketing card.* Form ASCS–1002 issued each year in accordance with Part 729 of this title by ASCS county offices to producers for use in marketing peanuts of the applicable crop. Each Form ASCS–1002 shall indicate: (1) The farm operator's eligibility for quota price support; (2) the pounds that may be marketed as quota peanuts; (3) the pounds of additional peanuts contracted and the handler number of the contracting handlers; and (4) the eligibility of additional peanuts for immediate buyback.

(bb) *Marketing penalties.* The penalties prescribed in the marketing regulations, Part 729 of this title, which shall be computed and collected in accordance with those regulations.

(cc) *Marketing regulations.* The Poundage Quota Regulations for Peanuts, Part 729 of this title.

(dd) *Marketing year.* The period beginning on August 1 of the year in which the peanuts of the applicable crop are planted and ending on July 31 of the following year.

(ee) *Net weight.* That weight of farmers stock peanuts obtained by deducting from the gross scale weight of the peanuts: (1) Foreign material; and (2) moisture in excess of seven percent in the Southwestern and Southeastern areas, and eight percent in the Virginia-Carolina area and all other areas.

(ff) *Peanut meal.* Any meal, cake pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

(gg) *Peanut products.* Any products manufactured or derived from peanuts such as, but not limited to, peanut candy, peanut butter, and peanut granules.

(hh) *Peanut receiving and warehouse contract.* Form CCC–1028, Identity Preserved, Form CCC–1028–A, Commingled Storage, or any other form approved by CCC for the purpose of receiving and warehousing peanuts.

(ii) *Peanut segregations*—(1) *Segregation 1.* Farmers stock peanuts which: (i) Have at least 99 percent peanuts of one type; (ii) have not more than two percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, nor more than 0.5 percent freeze damage; (iii) are free from any offensive odor; and (iv) are free from visible Aspergillus flavus mold.

(2) *Segregation 2.* Farmers stock peanuts which are free from visible Aspergillus flavus mold and which either: (i) Have less than 99 percent peanuts of one type; or (ii) have more than two percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay, or more than 0.5 percent freeze damage; or (iii) have an offensive odor: *Provided however,* If such peanuts are placed under additional loan and purchased under the immediate buyback procedure, as provided in § 1446.56 of these regulations, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(3) *Segregation 3.* Farmers stock peanuts which have visible Aspergillus flavus mold: *Provided however,* If such peanuts are placed under additional loan and purchased under the

immediate buyback procedure as provided in § 1446.56, such peanuts shall be considered Segregation 1 additional peanuts for loan pool accounting purposes.

(jj) *Pools.* Accounting pools established by the association and on which complete and accurate records are maintained by area, by type, and by segregation for quota peanuts and additional peanuts not under contract.

(kk) *Quota peanuts.* For purposes of the regulations found in this subpart, peanuts which are: (1) Eligible for domestic edible uses; and (2) marketed or considered marketed from a farm as quota peanuts, but not in excess of the farm poundage quota.

(ll) *Quota support rate.* The price support rate applicable to quota peanuts.

(mm) *Raw peanuts.* Inshell peanuts, shell peanuts, or blanched peanuts which have not passed through any other processing operations.

(nn) *Sound mature kernels.* Kernels which are free from "damage" and "minor defects" as defined in the U.S. Standards for the applicable type of peanuts effective on the date of the inspection, and which will not pass through screens with the following openings:

Runner type: 16/64 x 3/4 inch slot;
Spanish type: 15/64 x 3/4 inch slot;
Virginia type: 13/64 x 1 inch slot.

(oo) *Type.* The generally known types of peanuts (i.e. Runner, Spanish, Valencia, and Virginia), as defined in the poundage quota regulations, Part 729 of this title.

(pp) *United States.* The 50 States of the United States, Puerto Rico, the territories and possessions of the United States, and the District of Columbia.

(qq) *United States government agency.* Any corporation wholly owned by the Federal Government, and any department, bureau, administration, or other agency of the Federal Government.

(rr) *Valencia type peanuts produced in the Southwest suitable for cleaning and roasting.* Valencia type peanuts produced in the Southwest containing not more than 25 percent shells damaged by: (1) Discoloration; (2) cracks or broken ends; or (3) both.

Handler Operations

§ 1446.53 Handler responsibilities.

(a) *Examination of producers' marketing cards.* All handlers shall examine producers' marketing cards and record each purchase or delivery of peanuts as required in Part 729 of this title and in accordance with procedures established by ASCS. Any peanuts delivered by producers under an additional peanut contract (Form CCC–1005) in excess of the provisions of such contract shall be considered as having been marketed as quota peanuts. No peanuts shall be handled from any producer who does not present a marketing card and farm identification card at the time of delivery.

(b) *Purchase records*—(1) *Purchases of quota peanuts on which an ASCS–1007 is prepared.* Each handler shall maintain records of the peanuts purchased and sold. The records shall contain, at a minimum, the following information: (i) the State and county code; (ii) the farm number of the farm on which the peanuts were produced or the registration number of the seller if the seller is a handler; (iii) the quantity and type of peanuts; (iv) the date of purchase; and (v) the applicable ASCS–1007 serial number. The handler shall imprint forms ASCS–1007 and FV–95 with the farm identification card, the peanut buyers card, and the buying point card.

(2) *Purchases of quota peanuts from producers on which an ASCS–1007 is not prepared.* The handler shall immediately transmit a record of such purchase to CCC. Such record shall show the name and address of the producer, State and county code, farm number, the handler's name, address and registration number, buying point, any marketing penalty collected, the type and quantity of peanuts purchased, and the date of purchase.

(c) *Sales and disposal records.* Each handler shall maintain records of all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, to whom sold, whether sold as edible peanuts or for crushing, and any other information required by this subpart.

(d) *Method of keeping records.* Handler records shall be maintained by a handler in such a manner that will enable representatives of the Secretary to readily reconcile the quantities, grades, and qualities of all peanuts acquired and disposed of by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in such a manner that representatives of the Secretary can readily determine compliance with the provisions of this subpart.

(e) *Retention of records.* All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

§ 1446.54 Contracts for additional peanuts for crushing and export.

(a) *Contracts between handlers and producers.* Handlers who have a U.S. address may contract with producers on Form CCC–1005 to buy additional peanuts from producers for crushing or exportation, or both. All such contracts shall be completed and submitted to the county office for approval prior to April 15 of the year in which the crop is produced. Such contracts cannot be sold or traded, except under the terms and conditions specified in paragraph (b) of this section. Contracts shall include at least the following provisions.

(1) Name and address of the farm operator, State and county code of the farm, and the farm serial number of the farm.

(2) Name, and address of the handler, and registration number.

(3) Amount of Segregation 1 peanuts in pounds by type.

(4) Contract price shown as a percentage of quota peanut support rate.

(5) Requirement for disclosure by the producer of any liens on the peanuts on date of delivery.

(6) A provision that the producer shall not be liable for failure to deliver against such contract an amount of peanuts in excess of the actual production of such type and quality on the farm: *Provided,* That in the case of harvested peanuts that are lost or damaged, such loss or damage resulted solely from an external source such as drought, fire, lighting, inherent explosion, windstorm, tornado, flood or other acts of God, or any other condition beyond the control of the producer.

(7) Signature of the farm operator.

(8) Signature of the producer if different from the farm operator.

(9) Signature of the handler or authorized agent of the handler.

(10) The following agreement by the handler:

> I agree that I will either export, crush, or transfer to another registered domestic handler for exportation or crushing, the peanuts delivered under this contract as provided in 7 CFR Part 1446, Subpart—General Regulations Governing 1982 through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations.

(b) *Contract transfers and delivery of contracted peanuts to other handlers.* If a handler is unable to perform under contracts with producers for the purchase of additional peanuts because of conditions beyond the handler's control, including but not limited to insolvency, bankruptcy, death, or destruction of warehouse facilities, the handler and the producer may agree to the delivery of the peanuts to other

handlers under the terms of the original contract or under modified terms. Such transfers shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such transfer will not impair the effective operation of the peanut program.

(c) *Contract transfers and transfer of delivery obligations to other producers.* If a producer is unable to perform under a contract with a handler for the purchase of additional peanuts because of farm reconstitutions (combinations and divisions), the handler and the new producer may agree to the delivery of the additional peanuts under the terms of the original contract. In such case, the farm number and the operator may change as a result of the reconstitution. Such transfer of contract obligations shall not be valid without the prior written approval of the Deputy Administrator, State and County Operations, ASCS. A transfer shall be approved by the Deputy Administrator only if it is determined by the Deputy Administrator that such transfer will not impair the effective operation of the peanut program.

(d) *Deliveries under optional provisions of the contract.* Contracts may also include provisions under which a specified quantity of Segregation 1 peanuts in excess of the quantity specified in accordance with paragraph (a) of this section may be delivered under the contract. However, such provisions shall not be effective unless the quantity of Segregation 1 peanuts specified in accordance with paragraph (a) of this section has been delivered and the producer, if otherwise eligible, retains the right to market the Segregation 1 peanuts as quota peanuts to the extent that the producer's farm poundage quota has not been filled. Contracts may also provide for delivery of a specified quantity of Segregations 2 and 3 peanuts.

(e) *Contracts between handlers.* Handlers may contract with other handlers to transfer liability for exporting or crushing contract additional peanuts. Such contracts must contain the agreement specified in paragraph (a)(10) of this section and an agreement that such agreement will be included in all subsequent contracts covering resale of such peanuts.

(f) *Inspection of contract additional peanuts.* The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by an inspector when such peanuts are delivered by a producer.

(g) *Contracts for 1982 crop additional peanuts.* Contracts between producers and handlers for 1982 crop additional peanuts entered into prior to April 15, 1982, and meeting the requirements of the regulations then in effect (Subpart—General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations, 7 CFR 1446), shall be considered as having met the requirements for such contracts which are set forth in this subpart. However, such contracts and the peanuts which are the subject of such contracts shall be governed by the terms and conditions set forth in this subpart. All references contained in such contracts to the General Regulations Governing 1979 and Subsequent Crops Peanut Warehouse Storage Loans and Handler Operations, or portions thereof, shall be deemed to be references to this subpart.

§ 1446.55 Commingling of quota and additional peanuts.

Quota and additional farmers stock peanuts of like type and segregation may be commingled and exchanged on a dollar value basis to facilitate handling and marketing. The dollar value basis shall be determined on the basis of the quota support rate. The handler shall receive, store, and deliver all such peanuts in accordance with good commercial practices and instructions provided by CCC. For each lot of quota and/or additional peanuts stored commingled, the records of the handler shall show at all times the date and place received, name and address of the producer, the type, segregation, pounds, and dollar-value-in. The handler shall keep such other accounts and records and furnish such information and reports relating to the dollar-value-out and disposition of such peanuts as may be prescribed by the association or CCC.

§ 1446.56 Use of additional peanuts as domestic edible peanuts.

(a) *"Immediate Buyback" purchase.* During harvest season, a handler shall have the right to purchase additional peanuts from the association for domestic edible use at buying points owned or controlled by such handler at prices equal to 100 percent of the quota loan value of such peanuts plus handling charges. The purchase (i.e., the "immediate buyback" purchase) may be made only from the association and only on the date such peanuts were delivered by the producer as collateral for a price support loan. The "immediate buyback" purchase shall be valid and accepted by the association only if the marketing card (ASCS–1002) is stamped "eligible for buyback". The handler shall: (1) As an agent for the association, advance to the producer price support for the peanuts at the additional loan rate; (2) pay to the producer any agreed premiums for the delivery of such peanuts by the producer to the handler; and (3) forward to the association a check payable to CCC for the peanuts in an amount equal to the quota loan value of the peanuts, as well as any handling charges. The check and applicable ASCS–1007 will identify the peanuts as additional peanuts that may be used for domestic edible use and must be transmitted to the association (as evidenced by a postmark) not later than the third workday (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected. Such receipts will be credited to the additional loan pool for such peanuts.

(b) *Purchases Subsequent to Delivery.* Handlers may also purchase additional peanuts from the loan pool for domestic edible use after delivery by producers to the association, under terms and conditions established by the association and CCC. The minimum price for such purchases shall be the applicable carrying charges plus: (1) Not less than 105 percent of the quota loan value of the peanuts if paid for not later than December 31 of the marketing year; or (2) not less than 107 percent of the quota loan value if paid for after December 31 of the marketing year.

§ 1446.57 Compliance requirements for handlers of contract additional peanuts.

(a) *Records.* All contract additional peanuts acquired by a handler shall be disposed of by domestic crushing or exportation to an eligible country in accordance with the conditions set forth in this subpart. All handler's records shall be subject to a review by CCC or other representatives of the Secretary of Agriculture (Secretary) to determine compliance with the provisions of this subpart. Refusal to make such handler's records available to the Secretary or the failure of such records to establish such disposition by the handler shall constitute prima facie evidence of noncompliance with this subpart for which a penalty may be assessed against the handler in accordance with § 1446.59 of this subpart. Reviews shall be made by the association in accordance with guidelines established by CCC.

(b) *Excess marketings of quota peanuts.* A handler will be subject to a penalty for noncompliance if it is determined by CCC that he marketed

from any crop, for domestic edible use, a larger quantity, or higher grades or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of quota farmers stock peanuts purchased by the handler during the applicable marketing year and of those purchased under § 1446.56, regardless of whether additional peanuts were acquired by the handler. In such case, the handler will be obligated to pay a penalty equal to 120 percent of the basic quota support rate on that quantity of farmers stock peanuts determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts sold. Such penalty shall be assessed in accordance with the provisions of § 1446.59 of this subpart.

(c) *Storage requirements for contract additional peanuts prior to processing.*—(1) *Commingled storage.* Handlers may commingle quota loan, quota commercial, additional loan, and contract additional peanuts. In such case, quota loan and additional loan peanuts must be inspected as farmers stock peanuts and settled on a dollar value basis less adjustments for shrinkage, except when such peanuts are purchased from the association for domestic edible use on an in-grade, in-weight basis. Contract additional peanuts must be inspected on a farmers stock basis and accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop equal to 4.0 percent of the dollar value for Virginia-type peanuts and 3.5 percent for all other types, except that if the additional contract peanuts are graded out and accounted for prior to February 1, the adjustment of the dollar value shall be 3.5 percent for Virginia-type and 3.0 percent for all other peanuts.

(2) *Identity preserved storage.* Contract additional peanuts stored identity preserved shall be inspected as farmers stock peanuts at time of grade out and settled on a dollar value basis. The handler shall receive, store, and otherwise handle such peanuts in accordance with good commercial practices and instructions provided by CCC.

(3) *Penalties.* Failure to store and account for peanuts in accordance with the requirements of this paragraph shall constitute noncompliance with this subpart for which a penalty may be assessed in accordance with § 1446.59 of this subpart.

(d) *Disposition of contract additional peanuts.*—(1) *Disposition.* Handlers shall dispose of all contract additional peanuts, either by exportation, crushing, or substitution, in accordance with the requirements and procedures of § 1446.58 of this subpart.

(2) *Final disposition date.* Handlers shall dispose of all contract additional peanuts by August 31 of the year following the calendar year in which the crop was grown.

(3) *Etension of final disposition date.* The final disposition date shall be extended to November 30 of the year following the calendar year in which the crop was grown if the handler, by August 31:

(i) Furnishes information to the association showing that the contract additional peanuts have been milled and positive lot identified;

(ii) Furnishes the association the name and location of the contract additional peanuts; and

(iii) Provides a written statement of agreement to the association to pay any supervision costs incurred on the contract additional peanuts after August 31.

The identical contract additional peanuts with respect to which a request for extension of the final disposition date has been granted must be disposed of by exportation or crushing in conformity with the requirements of § 1446.58 of this subpart. Such contract additional peanuts may not be disposed of through the substitution procedures set forth in § 1446.58(d) of this subpart.

(4) *Penalties.* The failure of a handler to dispose of contract additional peanuts by the final date for disposition in accordance with the requirements of this subpart shall constitute noncompliance with the provisions of this subpart for which a penalty may be assessed against the handler in accordance with the provisions of § 1446.59.

§ 1446.58 Supervision and handling of contract additional peanuts.

The association will conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, milling, blanching, weighing, and shipping.

(a) *Access to facilities.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that authorized representative(s) of CCC and the association:

(1) May enter and remain upon any of the premises of the handler when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, milled, blanched, crushed, packaged, shipped, sized, processed into flaked peanuts or other products, or otherwise handled;

(2) May inspect such peanuts and the oil, meal, and other products thereof; and

(3) May inspect the premises, facilities, operations, books, and records of the handler to the extent necessary to determine that such peanuts have been handled in accordance with this subpart.

(b) *Notifying the association.* Before moving or processing any contract additional peanuts, the handler (or cleaner, sheller, or processor under contract with the handler) shall notify the association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days advance notice to the association so that supervision can be arranged.

(c) *Processing.* The contract additional peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, exportation, processing into peanut flakes, or processing into peanut products to be exported. Except as otherwise authorized by the association, such peanuts will be considered as having been crushed or exported only if positive lot identity has been maintained in the following manner.

(1) *Transportation.* The peanuts shall be transported from the storage location in a covered vehicle, such as a truck or railroad car. The vehicle shall be sealed unless the association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* The peanuts shall be stored in separate building(s) or bin(s) which can be sealed or which the association determines will satisfactorily maintain lot identity.

(d) *Substitution of quota and additional peanuts.*—(1) *Substitution of quota peanuts which have been exported or crushed.*

(i) *Farmers stock peanuts.* The identical contract additional farmers stock peanuts shall be handled in accordance with this section, except that with prior notification and approval of the association, farmers stock quota peanuts of the same crop, type, quality, and area may be exported or crushed in place of such additional peanuts.

(ii) *Milled peanuts.* The identical contract additional milled peanuts shelled under supervision of the association shall be disposed of in accordance with this section, except that with prior notification and approval

of the association, such peanuts may be used to replace, in domestic edible use, quota peanuts of the same crop, type, area, and screen size, which have been previously crushed or exported. The quota peanuts crushed or exported, for which substitution is requested, must have been positive lot identified and otherwise handled as additional peanuts.

(2) *Use of additional peanuts for domestic edible uses prior to substitution.* Additional peanuts may be used for domestic edible use with prior notification and approval of the association and upon presentation to the association of an irrevocable letter of credit in an amount not less than 120 percent of the quota support rate for any portion of the lot for which substitution has not been approved in accordance with paragraph (d)(1) of this section. Such letter of credit shall be issued in a form and by a bank acceptable to CCC. The handler shall subsequently deliver to the association satisfactory evidence that a like amount of quota peanuts of appropriate screen sizes have been handled as contract additional peanuts and exported in accordance with these regulations. Such evidence must be submitted no later than 30 days after August 31 of the year following the calendar year in which the peanuts were grown. If satisfactory evidence is not presented by such date, CCC may authorize the association to draw against the letter of credit the full amount of the penalty which would otherwise be due for failure to dispose of contract additional peanuts in accordance with this subpart.

(3) *Time limitations.* Substitution may not be requested or approved with respect to contract additional peanuts for which the final disposition date has been extended in accordance with § 1446.57(c) of this subpart.

(e) *Expense charged to handlers.* All supervision costs shall be borne by handlers.

(f) *Domestic sale or transfer of contract additional peanuts.*

(1) *Farmers stock peanuts.* The handler must submit contracts (CCC–1006) covering any domestic sale, transfer, or other disposition of farmers stock contract additional peanuts to the association for written approval. Such approval must be granted prior to any physical movement of the peanuts by the handler from the buying point. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees in writing to handle and crush (includes processing into flakes) or export the contract additional peanuts as raw peanuts or peanut products in accordance with the terms and conditions of this subpart. Approval of such contracts may be made before or after delivery of the peanuts by the producer.

(2) *Milled peanuts.* The handler must submit contracts (CCC–1006) covering any domestic sale, transfer, or other disposition of milled contract additional peanuts to the association for written approval. Approval must be obtained prior to any physical movement of the peanuts by the handler. Approval of any domestic sale, transfer, or other disposition may be made only if the person to whom the peanuts are sold, transferred, or disposed of agrees, in writing, to handle and crush (includes processing into flakes) or export the contract additional peanuts in accordance with the terms and conditions of this subpart.

(g) *Disposal of contract additional peanuts.* Contract additional peanuts may be disposed of by domestic crushing or by exportation to an eligible country as follows:

(1) All kernels may be crushed domestically; or

(2) All kernels may be exported for crushing, if fragmented; or

(3) All kernels that are graded to meet the edible export standards may be exported and the remaining kernels: (i) Crushed domestically, or (ii) exported for crushing, if fragmented; or

(4) all of the peanuts may be exported as farmers stock peanuts; or

(5) the peanuts may be exported as peanut products if such peanuts meet edible export standards; or

(6) the peanuts may be processed into peanut flakes for approved domestic uses if such peanuts meet domestic edible quality standards and have been approved by the association for such use; or

(7) the peanuts may be exported as milled or inshell peanuts.

(h) *Disposal of meal contaminated by aflatoxin.* All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for nonfeed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion thereon of the following statement:

> This shipment consists of lots of meal which contains aflatoxin ranging from —— to —— PPB and averaging —— PPB.

(i) *Final dates for scheduling supervision.* Contract additional farmers stock peanuts shall be scheduled for supervision by the Association during the normal marketing period but not later than July 31 of the calendar year following the calendar year in which the crop was grown, unless prior approval of a later date has been made by the association.

(j) *Exportation provisions.*—(1) *Exportation to a U.S. Government agency.* Except for the exportation of raw peanuts to the military exchange services for processing outside the United States, the exportation of peanuts in any form by or to a United States Government agency shall not be considered exportation to an eligible country. However, sales to a foreign government which are financed with funds made available by a United States agency such as the Agency for International Development are not considered sales to a United States Government agency, if the peanuts are not purchased by the foreign buyer for transfer to a United States agency.

(2) *Exportation of contract additional peanuts.* All contract additional peanuts which are not crushed domestically (including processing into flakes) and which are eligible for exportation shall be exported in accordance with the provisions of this subpart to an eligible country as peanuts or peanut products.

(3) *Reentry transshipment and liquidated damages.*—(i) *Reentry transshipment.* Peanuts and peanut products which have been exported shall not be reentered by anyone into the United States in any form or product and shall not be caused by the handler to be diverted or transshipped to other than an eligible country in any form or product. If such peanuts or peanut products are reentered, the handler shall be subject to liquidated damages as specified in paragraph (j)(3)(ii) of this section.

(ii) *Liquidated damages.* The handler, by entering into contracts to receive contract additional peanuts, shall be deemed to have agreed that CCC may incur serious and substantial damages to its program to support the price of quota peanuts if additional contract peanuts are exported and later are reentered into the United States or diverted or transshipped to other than an eligible country in any form or product; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the handler shall, with respect to any peanuts or peanut products reentered into the United States or diverted or transshipped to other than an eligible country, pay to CCC, as liquidated damages and not as a penalty, the amount by which the national quota support rate exceeds the

national additional support rate, on a per pound basis for each pound of peanuts or peanut products reentered. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such reentry, diversion, or transshipment.

(iii) *Waiver or reduction of liquidated damages.* The liquidated damages specified in paragraph (j)(3)(ii) of this section may be reduced or waived if the Deputy Administrator, State and County Operations, ASCS, determines that such waiver or reduction will not impair the effective operation of the peanut price support program. Such reduction or waiver may contain such terms and conditions as the Deputy Administrator determines to be appropriate and necessary for effectuating the purposes of the peanut price support program.

(4) *Evidence of exportation.* The handler shall furnish the association with the following documentary evidence of exportation of peanuts or peanut products not later than 30 days after the final disposition date provided in 1446.57(d).

(i) *Exportation by water.* A nonnegotiable copy of an onboard ocean bill of lading, signed on behalf of the carrier, showing the date and place of loading onboard vessel, the weight of the peanuts, peanut meal, or products exported, the name of the vessel, the name and address of the exporter, and the country of destination. Peanut meal which is unsuitable for use as feed because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(ii) *Exportation by rail or truck.* A copy of the bill of lading (showing the weight of the peanuts or peanut meal or products exported), supplemented by a copy of the Shipper's Export Declaration or other documentation acceptable to the association. Peanut meal which is unsuitable for feed use because of contamination by aflatoxin shall be identified on the bill of lading in accordance with this section.

(iii) *Exportation by air.* A copy of the Airway Bill (showing the weight of the peanuts, peanut meal, or peanut products exported, consignee and shipper) and other documentation acceptable to the association.

(iv) *Certified statement.* A statement signed by the handler specifying the name and address of the consignee.

(k) *Penalties.* Failure to obtain required supervision from the association, or failure to handle and dispose of contract additional peanuts in accordance with the provisions of this section, shall constitute noncompliance with the provisions of this subpart for which a penalty may be assessed in accordance with § 1446.59 of this subpart.

§ 1446.59 Assessment of penalties and liquidated damages against handlers.

(a) *Penalty liability.* A handler shall be subject to the penalty provisions of this subpart for any or all of the following violations:

(1) Failure to keep or make available records in accordance with § 1446.57(a);

(2) Excess marketings of quota peanuts, as set forth in § 1446.57(b);

(3) Failure to store and account for contract additional peanuts in accordance with the requirements of § 1446.57(c);

(4) Failure to dispose of contract additional peanuts in accordance with this subpart by the final disposition date in accordance with § 1446.57(d);

(5) Failure to obtain supervision of or to handle contract additional peanuts as required by § 1446.58.

(b) *Liquidated damages.* The liability for, and the amount of liquidated damages, shall be determined in accordance with § 1446.58(j)(3) of this subpart.

(c) *Penalty rate and amount.* The penalty rate shall be equal to 120 percent of the basic quota support rate expressed in pounds for the type of peanuts involved in the violation for which the penalty is being assessed. The amount of the penalty shall be equal to the penalty rate times the quantity of peanuts: (1) For which records have not been properly kept or made available; (2) marketed as excess quota marketings; (3) not properly stored; (4) not properly disposed of; or (5) not properly supervised or handled.

(d) *Notice of assessment.* A handler shall be notified in writing of the assessment of a penalty or liquidated damages by the Director, Tobacco and Peanuts Division, ASCS. Such notice shall state the basis for the assessment of the penalty or liquidated damages, and shall advise the handler of the handler's appeal rights under this subpart.

(e) *Appeals.* A handler may appeal the assessment of a penalty or liquidated damages by submitting a written notice of appeal to the Deputy Administrator, State and County Operations, within 45 days of the issuance of a notice of assessment by the Director, Tobacco and Peanuts Division. Except as otherwise provided herein, such appeal shall be conducted in accordance with the appeal regulations set forth in Part 780 of this title.

(f) *Request for reductions of penalties or liquidated damages.*—(1) *Form of request.* A handler may request that the amount of the penalties or liquidated damages that have been assessed be reduced. Such a request shall be treated as an appeal under paragraph (e) of this section, and must comply with the requirements of that section. The handler may simultaneously contest liability for the penalty or liquidated damages and, in the alternative, request that the penalty or liquidated damages be reduced.

(2) *Reduction criteria.* (i) *Liquidated damages.* The criteria for reducing liquidated damages shall be those which are set forth in § 1446.58(j)(3)(iii).

(ii) *Penalties.* A penalty may be reduced if the Deputy Administrator, State and County Operations, ASCS, determines that the violation for whch the penalty was assessed was done unintentionally or unknowingly by the handler and that a reduction in the amount of the penalty would not impair the effective operation of the price support program for peanuts. The provisions of this paragraph shall be applicable only to handlers who made a good faith effort to comply fully with the terms and conditions of the program.

(3) *Limitations.* The amount of a penalty may not be reduced to less than an amount equal to 40 percent of the basic quota support rate times the quantity of peanuts involved in the violation. There shall be no limitation on the amount by which an assessment of liquidated damages may be reduced.

Warehouse Storage Loans

§ 1446.60 Availability of warehouse storage loans.

(a) *Loans to associations.* CCC will make warehouse storage loans to the associations specified in paragraph (b) of this section which contract with CCC to arrange for the storing and handling of farmers stock peanuts, make price support advances to producers on such peanuts, and use such peanuts as collateral for loans to be obtained from CCC. Loans on quota peanuts shall be made on the basis of the quota support rate, and loans on additional peanuts shall be made on the basis of the additional support rate. Such loans will mature on demand.

(b) *Associations and areas.* Price support advances will be available through:

(1) GFA Peanut Association, Camilla, Georgia, in the Southeastern area consisting of Puerto Rico, the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(2) The Southwestern Peanut Growers Association, Gorman, Texas, in the

Southwestern area consisting of the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming;

(3) The Peanut Growers Cooperative Marketing Association, Franklin, Virginia, in the Virginia-Carolina area consisting of the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Where available.* Price support advances will be available to eligible producers at warehouses which have entered into peanut receiving and warehouse contracts with the association. Such contracts will require the warehouseman to inform producers that price support advances are available and to make advances to producers on eligible peanuts tendered for price support as provided in paragraph (g) of this section. The contracts will require warehousemen to: (1) Examine the producers' marketing cards to determine price support eligibility; (2) make entries on the marketing card as required by Part 729 of this title; and (3) record each delivery as to quota or additional peanuts and date of delivery. If quota peanuts or contract additional peanuts are delivered, the balance of the quota or contract additional peanuts must be shown on the marketing card after each delivery. The names and locations of such warehouses may be obtained from the office of the appropriate association or from a State or county ASCS office.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of harvest through the following January 31 or such later date as may be established by the Executive Vice President, CCC. If the final date of availability falls on a nonworkday for the association, the applicable final date shall be the next workday.

(e) *Inspection.* The type and quality of each lot of farmers stock peanuts delivered to an association for a price support advance shall be determined by an inspector when such peanuts are received at a warehouse under contract with an association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall, in writing, authorize the association to pledge the peanuts delivered to the association by the producer to CCC as collateral for a warehouse storage loan and relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to the producer.* For each lot of peanuts delivered, the association will make a price support advance to the producer in an amount equal to the support value of such peanuts, in accordance with procedures established by CCC. However, in addition to marketing quota penalties and the deductions specified in § 1446.62, any assessments or excise taxes imposed by State law will be deducted from such advances and paid over to the proper State authorities. In addition, the Southwestern Peanut Growers Association may, upon the prior agreement of the producer, deduct from such advance an amount approved by CCC, not to exceed $1 per net weight ton of peanuts upon which such advance was made, to be used in financing its peanut related activities outside the price support program.

(h) *Fraud by the producer.* The making of any fraudulent representation by a producer in the loan documents or in obtaining a price support loan advance shall render him subject to criminal prosecution under Federal law. The producer shall be personally liable to CCC, aside from any additional liability under criminal or civil fraud statutes, for the amount of such advance and for all costs which CCC would not have incurred but for the producer's fraudulent representation, together with interest upon such amounts at the rate per annum equal to the rate of interest which was charged CCC by the Treasurer of the United States on the date the price support loan advance was made: *Provided,* That the producer shall be given credit for the proceeds received by CCC upon sale of the peanuts upon which such advance was made.

(i) *Ineligible peanuts.* Any person who causes ineligible peanuts, as defined in § 1446.64, to be placed in the loan program, shall pay to CCC, as liquidated damages, the amount by which the average quota or additional loan rate (whichever is applicable) for that type of peanuts exceeds the market price for such type for crushing, as determined by CCC. Such person shall pay such amount to CCC promptly upon demand. Liquidated damages may be reduced by the Executive Vice President, CCC, or his designee based upon a consideration of the following factors: (1) Whether the person causing ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged for loan; (2) the degree of damage or potential damage to the price support program; (3) the nature and circumstances of the violation; (4) the extent of the violation; and (5) any other pertinent information.

§ 1446.61 Pooling and distribution of net gains.

The association shall establish separate pools by area, type, and segregation or quality of peanuts and maintain separate, complete and accurate records for quota peanuts under loan and for additional peanuts under loan. Net gains on peanuts in each pool shall be distributed to each producer in proportion to the value of peanuts placed in the pool by the producer, except that any distribution of net gains on additional pools of any type to a producer shall be reduced to the extent of any loss incurred by CCC on quota peanuts of a different type placed under loan by the same producer. In addition, the proceeds due to any producer from any pool shall be reduced by the amount of any losses to CCC on peanuts transferred from an additional loan pool to a quota loan pool under the provisions of this subpart.

(a) *Quota pool.* Net gains from peanuts in the quota pool consists of:

(1) The net gains over and above the loan indebtedness on quota peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a producer, plus

(2) An amount from the net gains on additional peanuts sold into domestic food and related uses equal to the losses incurred on disposing of an equal quantity of quota peanuts of the same type and segregation in the same production area, considering sales of quota peanuts for export first and then as necessary, sales for crushing.

(b) *Additional pool.* Net gains for peanuts in the additional pool consists of:

(1) The net gains over and above the loan indebtedness on additional peanuts and other costs or losses incurred by CCC on such peanuts placed in the pool by a grower, less

(2) An amount of the net gains from the additional pool allocated to the quota pool to offset any loss on that pool attributed to additional peanuts being used in domestic edible use.

§ 1446.62 Producer indebtedness.

(a) *Facility and drying equipment loans.* If an installment or installments on any loan made by CCC on farm storage facilities or drying equipment are payable under the provisions of the note evidencing such loan and the

amount due is recorded on the producer's marketing card, any amount due the producer under this subpart, after deduction of payments due prior lienholders, shall be applied to such installment(s).

(b) *Producers listed on county debt record.* If the producer is indebted to CCC, Farmers Home Adminstration, or to any other agency of the United States, and such indebtedness is listed on the county debt record and recorded on the producer's marketing card, amounts due the producer under this subpart, after deduction of amount due prior lienholders and on farm storage facilities or drying equipment, shall be applied to such indebtedness as provided in the Secretary's Setoff Regulations, Part 13 of this title.

§ 1446.63 Eligible producer.

(a) *Requirements.* An eligible producer is an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State, political subdivision of a State, or any agency thereof, producing peanuts as a landowner, landlord, tenant, or sharecropper on a farm. No producer on a farm for which the farm operator fails timely to file a report of crop or land use acreage as required by Part 718 of this title shall be eligible for price support at the quota loan rate unless the late-filed report was accepted by the county ASC committee. In addition, no producer shall be eligible for price support at the quota loan rate if the producer has filed an erroneous report of crop or land use acreage unless: (1) The determined acreage does not differ from the reported acreage by more than the tolerance established by Part 718 of this title; or (2) the county ASC committee determines that the producer acted in good faith in reporting the crop or land use acreage.

(b) *Estates and trusts.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or of a ward or of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian or trustees shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements: (1) The right of majority has been conferred on such minor by court proceedings or by statute; (2) a guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or (3) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had such minor been an adult.

§ 1446.64 Eligible peanuts.

Eligible peanuts shall be farmers stock peanuts of the applicable crop which were produced in the United States by an eligible producer.

(a) *Quota support.* Peanuts eligible for quota support are peanuts which meet the following requirements. The peanuts:

(1) Must be Segregation 1 peanuts;

(2) Must contain not more than 10 percent moisture and which, if mechanically dried, contain at least 6 percent moisture;

(3) Must contain no more than 10 percent foreign material;

(4) Must be free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained;

(5) If delivered to the Association in bags in the Southwestern area, must be in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, are free from holes and are finished at the top with either the selvage edge of the material, binding, or a hem, and which are of uniform size with approximately 2 bushel capacity;

(6) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession;

(7) Must have been inspected as farmers stock peanuts and have an official grade determined by an inspector.

In addition to the above requirements, the beneficial interest in the peanuts must be in the producer who delivers them to the association and must always have been in such producer or a former producer whom such producer succeeded before the peanuts were harvested. In order to meet the requirements of succession, the rights, responsibilities, and interest of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether his interest in the peanut complies with the requirements of this section should, before applying for price support, make available to the appropriate county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC.

(b) *Additional support.* Peanuts eligible for additional support are peanuts which meet the following requirements. The peanuts:

(1) Must contain not more than 10 percent moisture;

(2) Must contain not more than 10 percent foreign material, except that such peanuts may contain more than 10 percent foreign material if the handler agrees to purchase such peanuts for domestic edible use as provided in § 1446.56(a) of this part;

(3) If graded Segregation 2 or 3 and contain more than 10 percent moisture and/or foreign material, must meet the following ciriteria: (i) The level of moisture does not exceed a level determined to be appropriate by the association; (ii) short term temporary storage is available in the area, as determined by the association; (iii) the local crushing market for peanuts can crush the peanuts within a reasonable time, as determined by the association; and (iv) the producer has made a bona fide effort, as determined by the association, to clean and dry such peanuts prior to offering such peanuts for loan;

(4) Must be free and clear of all liens and encumbrances, including landlord's lien, or if liens or encumbrances exist on the peanuts, acceptable waivers are obtained;

(5) If delivered to the Association in bags in the Southwestern area, must be in new or thoroughly cleaned used bags which are made of material other than mesh or net, weighing not less than 7½ ounces nor more than 10 ounces per square yard and containing no sisal fibers, which are free from holes, which are finished at the top with either the selvage edge of the material, binding, or a hem, and which are uniform in size with approximately 2 bushel capacity;

(6) Must not have been produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; and

(7) Must have been inspected as farmers stock peanuts and have an official grade determined by an inspector.

In addition to the above requirements, the beneficial interst in the peanuts must

be in the producer who delivers them to the association and must always have been in such producer or a former producer whom such producer succeeded before the peanuts were harvested. In order to meet the requirements of succession, the rights, responsibilities, and interests of the former producer with respect to the farm on which the peanuts were produced shall have been substantially assumed by the person claiming succession. Mere purchase of a crop prior to harvest, without acquisition of any additional interest in the farm on which the peanuts were produced, shall not constitute succession. Any producer in doubt as to whether his interest in the peanuts complies with the requirements of this section should, before applying for price support, make available to the appropriate county ASC committee all pertinent information which will permit a determination with respect to succession to be made by CCC.

§ 1446.65 Disposition of Segregation 3 peanuts and liquidated damages.

(a) *Disposition of Segregation 3 peanuts.* Any producer who has a lot of farmers stock peanuts classified by the inspector as Segregation 3 peanuts shall:

(1) Deliver the peanuts to the association for loan at the additional loan rate;

(2) Deliver such lot as contract additional peanuts under the provisions of § 1446.54;

(3) Sell such peanuts as quota peanuts to a handler who is a signer of the peanut marketing agreement: *Provided however,* seed peanuts produced under the auspices of a State agency may be sold to a handler who is not a signer of the peanut marketing agreement, but only if such handler has signed a supervision supplement to the warehousing contract with the area marketing association; or

(4) Retain the lot for seed. If the producer does not dispose of or market such peanuts as provided above on the date of inspection, such producer shall be ineligible for continued quota price support for the rest of the marketing year on all peanuts at the close of business on the day of the inspection. If the producer elects to retain a lot for seed, he shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that the peanuts are being retained for seed. The producer shall be given a copy of the ASCS–1007 as a record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. The producer shall notify CCC when such peanuts are used and otherwise account for the disposition of such peanuts. Should it later be determined that such peanuts are unfit for seed use, the producer may, after receiving prior approval from the county office, sell such peanuts for crushing as quota peanuts without benefit of price support.

(b) *Liquidated damages.* The producer, by participating in the loan program, shall be deemed to have agreed that CCC will incur serious and substantial damage to its program to support the price of peanuts if Segregation 3 peanuts are disposed of other than in the manner prescribed by CCC; that the amount of such damages will be difficult, if not impossible, to ascertain exactly; and that the producer shall, with respect to any lot of peanuts ineligible for quota support which are placed under quota loan, or any lot of peanuts which are placed under quota loan by a producer after he has disposed of any lot of Segregation 3 peanuts in any manner other than in the manner prescribed in paragraph (a) of this section, pay to CCC as liquidated damages and not as a penalty, the difference between the quota loan rate and the additional loan rate (on a per pound basis) per net pound of such peanuts. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. The provisions of § 1446.60(i) relating to the producer's liability (aside from liability under criminal and civil frauds statutes) shall not be applicable to such peanuts.

§ 1446.66 Producer transfers of additional loan stocks to quota pools.

Producers may transfer Segregation 2 and Segregation 3 additional loan peanuts to the quota loan pool after the producer has completed marketing and returned his marketing card to the county office. Such transfer may not exceed the smaller of the effective farm poundage quota minus the production of Segregation 1 peanuts on the farm, or the undermarketing of quota peanuts shown on the farm marketing card: *Provided:* That the pool proceeds due such producer from peanuts in any other pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred. The support values for any Segregation 2 peanuts so transferred shall be the support value for quota peanuts minus the damage discount published in the quota support schedule and the support value for Segregation 3 peanuts shall be the support value for quota peanuts minus the applicable discount published in the quota support schedule. Producers eligible to transfer additional loan peanuts to the quota loan pool in accordance with this section may apply for such transfers with the county office. The county office shall determine the quantity of undermarketings of quota peanuts and the quantity of additional peanuts which are eligible for transfer. The producer may indicate to the county office the net weight and applicable Form ASCS–1007 numbers for the peanuts to be transferred. Such pounds shall be considered as marketing of quota peanuts, the applicable ASCS–1007 recomputed at the quota loan level, and the producer advanced the difference between the additional and quota support rates.

Signed at Washington, D.C., on June 24, 1982.

John R. Block,

Secretary.

[FR Doc. 82–17508 Filed 6–28–82; 8:45 am]

BILLING CODE 3410–05–M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final Rule.

SUMMARY: REA hereby amends Appendix A—REA Bulletins by adding an Attachment C to REA Bulletin 20–14, Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act. Attachment C amends this bulletin and all bulletins inconsistent herewith to provide that, except as otherwise determined by the Administrator, distribution and subtransmission purposes including warehousing and equipment service facilities will be given priority in the making of loans under sections 4 and 305 of the Rural Electrification Act. Generation and bulk transmission facilities will be eligible for financing through REA guaranteed loans. Other types of headquarters facilities, acquisitions and general plant equipment will be financed by the borrower from general funds or loans from supplemental lenders, subject to approval requirements set forth in REA Bulletin 103–2, Use and Approval of General Funds for Additions to Plant. Attachment C also sets forth a procedure for determining the supplemental proportions for concurrent loans to power supply borrowers.

Attachment C ensures that all distribution and power supply borrowers are treated consistently in the financing of subtransmission facilities and enables REA to make optimal use of available REA loan funds.

EFFECTIVE DATE: REA loan applications received after January 26, 1982.

FOR FURTHER INFORMATION CONTACT: Milton E. Wright, Chief, Borrowers Management Branch, Electric Loans and Management Division, Room 3338, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–1936.

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). 7 CFR Part 1701, Appendix A—REA Bulletins, is hereby amended to provide for the addition of Attachment C of REA Bulletin 20–14, Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act.

The final action has been issued in conformance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore has been determined to be "not major". This action is not subject to the Regulatory Flexibility Act or to OMB Circular A–95 review requirements. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

The primary objective of this rule is to distribute available insured loans to ensure that all borrowers are treated consistently for financing of facilities most closely related to electric distribution.

Among the various options which REA considered was revising Bulletin 20–14 to specify that REA loans would be limited to distribution *facilities* only. REA also considered apportioning available loans to distribution *borrowers* only. These options would not ensure that all borrowers would be treated consistently for financing of facilities most closely related to electric distribution. In addition, the option selected makes optimal use of available REA loan funds for electric distribution and subtransmission facilities.

A notice of Proposed Rulemaking was published in the **Federal Register** on January 26, 1982, Volume 47, Number 15, page 3555.

Public comment responses were received from a number of REA borrowers, rural electric statewide associations, The National Rural Electric Cooperative Association, The National Rural Utilities Cooperative Finance Corporation (CFC) and one member of Congress.

The substance of the majority of comments regarding the proposed action concerned the limiting of available REA insured loan funds to distribution and subtransmission purposes. Of the letters received, approximately one-half concerned the availability of REA insured loans for such electric facilities as generation, transmission, headquarters, warehouse and other purposes necessary to operate an electric system. Some borrowers and their statewide associations indicated their concern by pointing out that generation and/or transmission facilities comprise a substantial portion of their total system because of their remote location (Alaska) or the lack of other power suppliers overlaying the service areas in parts of certain states (Nebraska).

After a review of the respondents' discussions of individual problems claimed as a result of the implementation of the proposed policy, consideration was given to developing further guidelines and parameters to accommodate special circumstances. An analysis of possible options in this regard led to the judgment that no reasonable guideline could be developed that could equitably apply to each of the widely differing regional and individual circumstances. For most borrowers, available REA funds will be allocated to finance facilities most directly related to the distribution of electric power. In cases where this may require generation of other facilities, the Administrator may so determine on a case-by-case basis.

Several respondents were particularly concerned about proposed headquarters buildings which would no longer be eligible for insured loans. In response to borrowers' comments REA has modified the original proposed rule regarding the financing of headquarters buildings so that warehousing and equipment service-type facilities for distribution and subtransmission purposes will be considered for REA insured loans. Except as otherwise determined by the Administrator general funds or loans from supplemental lenders should be used to finance other types of headquarters facilities, acquisitions and general plant equipment.

Another particular concern was that pending loan applications were currently being delayed and that the effective date of the policy would generally preclude REA insured financing of headquarters buildings or such other facilities already planned. As mentioned above appropriate warehousing and equipment service-type buildings will be considered for REA insured financing. In recognition of the validity of the factors upon which some respondents' concerns were based, particularly those involving headquarters buildings and certain transmission facilities, REA has responded by amending the effective date of this rule so that it will apply to applications received subsequent to January 26, 1982, when the proposed rule was made known to borrowers.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Electric utilities, Loan programs—energy.

The text of Attachment C is as follows:

Attachment C—Financing for Electric Facilities

I. *REA Loans:* Effective with applications received after January 26, 1982, except where the Administrator shall determine there are extenuating circumstances, priority will be given to applications for REA insured loans for the following purposes:

A. Distribution facilities.

B. Subtransmission facilities—those between (1) the high side voltage level of transformation to the applicable primary distribution voltage and (2) the low side of the next higher voltage transformation.

Loan guarantees will be available to borrowers for bulk transmission and generation facilities in accordance with REA Bulletin 20–22, Guarantee of Loans for Bulk Power Supply Facilities.

Warehousing and equipment service-type facilities for distribution or subtransmission related purposes will be considered for insured loans. Except as otherwise determined by the Administrator, borrowers should use general funds or loans from supplemental lenders for other types of headquarters facilities, acquisitions and general plant equipment. REA will consider accommodating the lien of its mortgage to facilitate financing from other lenders for such purposes.

II. *Supplemental Loan Proportions:*

A. *Distribution Borrowers:* Supplemental loan proportions for distribution borrowers are specified in Attachment A (or revisions thereof) of this bulletin.

B. *Power Supply Borrowers:* When a power supply borrower requests an REA insured loan, it will be required, unless otherwise

determined by the Administrator, to obtain a supplemental loan. The supplemental loan proportion for a power supply system will be the arithmetic mean of the supplemental loan proportions for which its distribution system members would qualify.

Example—A power supply borrower with four members with supplemental loan proportions as follows would have a supplemental loan proportion of 22.5%:

	REA proportion (percent)	Supplemental proportion (percent)
Member A	70	30
Member B	70	30
Member C	80	20
Member D	90	10
Total	90÷4=22.5	

Dated: June 16, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-17545 Filed 6-28-82; 8:45 am]

BILLING CODE 3410-15-M

Farmers Home Administration

7 CFR Parts 1924 and 1944

Guidelines for Seasonal Farm Labor Housing

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding construction of farm labor housing to provide construction guidelines and minimum standards for farmworker housing that is occupied on a seasonal basis (up to 6 months per year). The intended effect of this action is to: (1) Provide decent, safe and sanitary housing for seasonal farmworkers; (2) amend regulations which restrict short term occupancy construction to comply with standards required for more permanent design and construction; and (3) furnish guidelines intended to be helpful to applicants in the design and construction of short term seasonal farmworker housing. This action is taken to comply with legislation.

EFFECTIVE DATE: June 29, 1982.

FOR FURTHER INFORMATION CONTACT: Richard H. Slater, Architect, Multi-Family Housing Processing Division, 202-382-9622, Farmers Home Administration, U.S. Department of Agriculture, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291, and has been determined to be non-major. This action requires no increase in costs to the Government or public. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action. The Exhibit is intended to provide guidance to developers of seasonal farm labor housing. The FmHA programs and projects which are affected by this Subpart are subject to State and local clearinghouse review in the manner delineated in Part 1901, Subpart H of this Chapter. The affected program is CFDA No. 10.405, Farm Labor Housing Loans and Grants. Charles W. Shuman, Administrator, Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because of the relatively small scope of the program and the short term of occupancy of the housing by migrant farmworkers.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." 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. Law 91-190, an Environmental Impact Statement is not required.

Two major actions were considered: (1) Make no changes; and (2) amend FmHA Instructions to permit the financing of rental housing for farmworkers which would be occupied on a seasonal basis. Present regulations call for design and construction standards of farmworker housing on a par with rental housing for year-round occupancy. As such it requires costly features unnecessary for dwelling units which would be vacated approximately six months of the year. This regulation has served to inhibit the production of seasonal farm labor housing, thus depriving the seasonal farmworker of decent, safe and sanitary housing, and has been a deterrent to the grower in the recruitment of labor to harvest its crops. The Agency has decided to adopt option (2). It is believed that this selection is the most practical and cost effective, and benefits the farm laborer and the grower.

FmHA hereby amends Subpart A of Part 1924, and Subpart D of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations. The change adds an Exhibit to the existing regulations that provides guidance for the construction of housing for seasonal or migrant farmworkers.

Seasonal labor housing is not intended for year-round occupancy but rather for use by families and individuals while employed away from their permanent homes. Since the housing will not be used as a permanent residence, it is not necessary to apply the same standards called for in the Department of Housing and Urban Development Minimum Property Standards (MPS) in constructing seasonal labor housing.

The guidelines have been made flexible to meet the differing housing needs in the nation. The guidelines are to be used in conjunction with applicable State and local building codes and health standards.

This Exhibit is needed so that construction of labor housing, while not required to meet the same standards as the MPS, will result in a project that is decent, safe, and sanitary to meet the special needs of the seasonal or migrant farmworker. The Exhibit, therefore, has a positive impact on the seasonal worker by providing the guidelines *for* decent, safe, and sanitary housing.

It also has a beneficial impact on the applicant. After initial review of the Exhibit with the FmHA staff, an applicant can use the Exhibit as a guide from the beginning to plan and construct the type of facility designed to meet the needs of the seasonal farmworker. This will reduce costs to the applicant by providing the minimum requirements, without the need for lengthy interpretation. Also, since the guidelines are flexible and do not require the same standards as the MPS in most cases, the applicant will be able to construct the housing at less cost than could be done if all of the MPS standards were required.

FmHA has developed these guidelines and minimum standards after receiving considerable input from farmworker housing organizations and other federal agencies. Shortly after passage of Public Law 96-153, FmHA began a series of meetings to develop the standards. Organizations involved included Housing Assistance Council, Inc., InterAmerica Research Associates, Migrant Legal Action Program, Inc., National Association of Farmworker Organizations, National Council of LaRaza, National Hispanic Housing Coalition, National Housing Law Project, National Rural Housing Coalition, Rural America, Inc., Community Services Administration, Department of Health and Human Services, Department of Housing and Urban Development and Department of

Labor. Subsequent to the development of general findings by representatives of the above groups, FmHA employed a task force of architects from FmHA State Offices to complete the guidelines.

A proposed rule was published in the Federal Register on December 2, 1981. That rule provided for a 60-day comment period through February 2, 1982. A total of 16 interested parties responded to the proposed rule within the allowed comment period.

The final rule contains revisions to the proposed rule which reflect FmHA's consideration of the comments received. The following is a discussion of the comments received:

§ 1924.5(d)(1). Six comments were received concerning the need to provide farm labor housing guidelines for those areas where the seasonal demand for farm labor extends from 6 to 9 months. FmHA believes there is merit in continuing its policy of requiring that projects to be occupied more than six months be in substantial conformance with Housing and Urban Development (HUD) Minimum Property Standards (MPS) for Multifamily Housing No. 4910.1 and be constructed to facilitate easy conversion to the MPS. This would provide some limited flexibility to FmHA to meet specific local farm labor housing needs where the seasonal standards are not sufficient or where building to the MPS is too costly. § 1924.5(d)(1)(iv) is revised to reflect that, where less than year round occupancy is anticipated, projects may be built in substantial conformance to the MPS and easily convertible to the MPS.

§ 1944.163. One comment received suggested rewording this section to emphasize that year-round labor housing be given funding priority to avoid building seasonal housing in areas where the need is for longer than seasonal occupancy. The intent of this section is to provide seasonal housing in areas of seasonal need. FmHA does not advocate funding seasonal housing in areas where the need is for year-round housing and feels that the emphasis is clear. No change will be made.

Exhibit I

Section 100. Four comments received suggested that the guidelines should be applicable to rehabilitation projects as well as new construction. This paragraph is reworded to include rehabilitation. Such rehabilitation projects will be in substantial conformance with the seasonal construction guidelines to allow the flexibility needed to avoid ineligibility of projects for only minor nonconformance.

Section 200. Three comments received requested that specific responsibilities for enforcing compliance with National, State, and local construction codes be added to this section. FmHA currently reviews for compliance at the architectural design stage of application processing. FmHA believes that it is inappropriate to incorporate enforcement guidelines into the seasonal construction guidelines. No change will be made.

Section 300–3. Five comments received suggested changing the requirement that 5 percent of the individual family units be designed to accommodate wheelchair occupants to be more responsive to actual needs. The rule has been changed to require construction or rehabilitation of at least 5 percent of the units in the project or one unit, whichever is greater, to be accessible to or adaptable for physically handicapped persons. This requirement may be modified if a recipient/borrower shows through a market survey acceptable by FmHA, that a different percentage of accessible or adaptable units is more appropriate for a particular project and its service area.

Section 301. One comment suggested that references to the MPS by section number be accompanied by a brief nontechnical explanation of the content of that section. FmHA believes that such an explanation would discourage the use of the MPS and may even preclude its use. These rules are not intended as a substitute for the MPS. No change will be made.

Section 301–4. Four comments received suggested that the meaning of the phrase "adequate electrical supply" be clarified. "Supply" is changed to "service" to indicate physical electrical components.
Standards for electrical services will be in accordance with Section 308–8 of these rules.

Section 301–8.1. Two comments received suggested that the requirement for handling garbage and refuse should be more flexible by allowing the recipient/borrower more discretion. FmHA believes that rules concerned with garbage and refuse storage should be specific and definitive for the safety and health of the occupants. No change will be made.

Section 302–1.1(a). Four comments received suggested that relating a minimum square footage requirement to the number of occupants is stringent and undesirable. FmHA agrees and the wording is changed to allow more flexibility so the minimum total net living unit size will be 400 square feet. This size assumes occupancy of four persons. This change has been made.

Section 302–1.1(c). Two comments received suggested that "cooking facilities" may encourage undesirable facilities. FmHA agrees and has changed the wording to "cooking range."

Section 302–1.1(e). Three comments received suggested raising the minimum bedroom size from 50 square feet to 60 or 70 square feet. FmHA believes that 50 square feet is adequate for the purpose and duration of seasonal occupancy. This suggestion will not be implemented. Also, one comment suggested requiring clothes hanging rods and shelf space. FmHA agrees and this requirement has been added.

Section 302–1.2(a). One comment suggested removing "if required" concerning provision of additional area for a second bathroom. Another comment suggested raising the minimum square footage. The wording has been changed to delete "if required" and include "when occupancy exceeds eight persons or if occupied by persons of both sexes". Also, FmHA agrees that a 590 square foot minimum is limiting and the wording is changed to "minimum total net unit area shall be 620 square feet".

Section 302–1.2(b). Two comments received expressed concern that guidelines are needed to prevent overcrowded use of kitchen facilities. FmHA agrees and the wording is changed to require adequate facilities, the size of which will be commensurate with the needs of the group living unit.

Section 302–1.3(a). Two comments received suggested the minimum sleeping area per occupant be reduced to 50 square feet. Another comment suggested increasing it to 100 square feet. FmHA believes that 72 square feet per occupant is adequate and meets the objectives of the program as this amount exceeds OSHA's standards. No change will be made.

Section 302–1.3(c). Three comments received suggested that the words "and a" be inserted after "water closet" to clarify that both a water closet and a bathtub or shower must be provided. As suggested these words are added to clarify the meaning. Another comment suggested that the ratios of fixtures per person were excessive. Specifically, one lavatory per ten persons was suggested. FmHA agrees that one lavatory per six is excessive but believes a ratio of one to eight is more appropriate. Fixtures per occupants was changed to a set of fixtures for every 12 occupants. It was also suggested that one urinal (for male occupants) be required for every three fixtures. FmHA believes this is excessive, however, the wording is changed to allow substitution of up to

one third of the water closets with urinals.

Section 302–1.3(d). One comment suggested eliminating the maximum distance allowed between sleeping quarters and kitchen/dining facilities. FmHA agrees that walks in excess of 200 feet may be tolerable in temperate areas of the country. However, it is necessary that a national guideline be responsive to the various seasonal and geographical differences that exist. No change will be made.

Section 302–2.2. Two comments received suggested that if adequate laundry facilities are available nearby they should not be required as part of the project. FmHA believes that facilities other than onsite facilities are unreliable and the wording is changed to require that laundry facilities shall be required on site.

Another comment suggested that the minimum ratio of washers to occupants should be 1 to 10 and dryers 1 to 20. FmHA believes that 1 washer per 20 occupants will meet the hygiene objectives of this program as this minimum exceeds OSHA standards. FmHA does agree, however, that the ratio of 1 dryer for every two washers is more appropriate than as 1 to 1 ratio. This change is implemented.

Section 302–2.3. Two comments received suggested that the manager's dwelling unit should meet the same standards as the project living units and not be required to meet MPS. FmHA agrees and the phrase "the Minimum Property Standards" is deleted from this Section.

Section 302–2.4. One comment suggested that this section be changed to allow FmHA funding for child care centers regardless of whether or not FmHA funds are used to build farm labor housing units. Unless constructed as part of a housing project to meet the occupant's needs, FmHA considers child care centers to be community facilities and ineligible for separate funding under the multiple family housing authorities of this agency. No change will be made.

Section 303–1. One comment suggested removing the requirement that exceptions to the MPS must be approved by the State Director since such discretion at the State level would result in wide disparities in the application of the MPS. FmHA agrees and the wording is changed to require National Office approval of any exceptions.

Section 303–7. Two comments suggested that the wording be changed to ensure that decisions on insulation requirements will be based on degree days. This section requires compliance with FmHA Instruction 1924–A, Exhibit D IV C 3 which is based on degree days and a change would be unnecessary and redundant.

Other comments suggested that this section be changed to require insulation where climatic conditions dictate a need for insulation even though heating and/or cooling are not installed. FmHA agrees and the change is implemented.

Section 303–8. Five comments received suggested changing "will" to "may" provide for separately metered utilities to allow more flexibility and discretion to the project owners. FmHA agrees and the change is implemented.

Other General Comments

(1) One comment suggested incorporating a section on seasonal housing tenant rights into these rules. No addition will be made for two reasons: (a) such an addition would be redundant as the Tenant Grievance and Appeals Procedures outlined in 7 CFR Part 1944, Subpart L specifies tenant rights and is applicable to farm labor housing, (b) such an addition to construction guidelines would be incongruous.

(2) One comment suggested the rules be changed to include specific project site location requirements and criteria which would support a policy of encouraging development of labor housing in, as part of, or adjacent to, established communities or rural growth centers. FmHA believes that specific site location requirements that limit development of farm labor housing to established communities or rural growth centers would eliminate or greatly reduce the flexibility needed to stimulate an increase in the supply of seasonal labor housing. Allowing this flexibility does not advocate or accept (a) the conversion of important farmlands and/or forestlands, or (b) urban/rural sprawl including low or high density residential development in open country. FmHA will allow such development only when there are no practical alternatives.

(3) Two comments suggested the addition of guidelines to these rules specifying FmHA enforcement procedures to insure that occupancy standards are met. FmHA recognizes the necessity for enforcement procedures but do not believe it appropriate to include such procedures in the seasonal construction guidelines. These suggestions will be carefully considered when changes in the appropriate FmHA regulation are enacted.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

Therefore, Subpart A of Part 1924, and Subpart D of Part 1944, Chapter XVIII, Title 7, Code of Federal Regulations are amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

1. § 1924.5, paragraph (d)(1)(iv) is revised to read as follows:

§ 1924.5 Planning development work.

* * * * *

(d) *Construction.*

(1) * * *

(iv) Farm labor housing design and construction will meet or exceed the requirements of the following standards or guidelines.

(A) Family projects where the length of occupancy will be:

(*1*) Year-round will meet or exceed the MPS for Multifamily Housing No. 4910.1.

(*2*) Less than twelve months but more than six months must be in substantial conformance with the MPS for Multifamily Housing No. 4910.1 and be constructed to facilitate conversion to year-round occupancy standards.

(*3*) Six months or less may be less than the MPS for Multifamily Housing No. 4910.1 These projects will be constructed in accordance with Exhibit I of this Subpart, "Guidelines for Seasonal Farm Labor Housing."

(B) Dormitory and other non-family type projects where the length of occupancy will be:

(*1*) More than six months will be in substantial conformance with the MPS for Multifamily Housing No. 4910.1, and must be developed for use that meets or exceeds the requirements of the Department of Labor, Bureau of Employment Security.

(*2*) Six months or less will comply with § 1924.5(d)(1)(iv)(A)(*3*).

* * * * *

2. Exhibit I is added and reads as follows:

Exhibit I—Guidelines for Seasonal Farm Labor Housing

Section 100

General—This Exhibit sets forth the guidelines and minimum standards for planning and construction of new Labor Housing (LH) that will be occupied on a seasonal basis. Rehabilitation LH projects will be in substantial conformance with these guidelines and standards. A "seasonal basis" is defined as six months or less per year. Seasonal housing for the farm worker need not be convertible to year-round occupancy. However, the living units shall be designed for the intended type of tenant, the time of occupancy, the location, the specific site, and the planned method of operation. It is important that the design of the labor housing site and buildings will help to create a pleasing lifestyle which will promote human dignity and pride among its tenants.

Section 200

Codes and Regulations—Compliance is required with National, State and local codes or regulations affecting design, construction, mechanical, electrical, fire prevention, sanitation, and site improvement.

Section 300

Planning

300–1 Complete architectural/engineering services in accordance with this subpart will be required if a LH grant is involved or the LH loan will involve more than four individual family units, or any number of group living units, or dormitory units accommodating 20 or more persons.

300–2 Building and site design shall provide for a safe, secure, economical, healthful, and attractive living facility and environment suited to the needs of the domestic farm laborer and his/her family.

300–3 At least 5 percent of the individual family units in a project, or one unit, whichever is greater, and all common use facilities will be accessible to or adaptable for physically handicapped persons. This requirement may be modified if a recipient/borrower shows, through a market survey acceptable to FmHA, that a different percentage of accessible or adaptable units is more appropriate for a particular project and its service area.

Site design

301.1 General—The site design shall be arranged to utilize and preserve the favorable features and characteristics of the property and to avoid or minimize the potential harmful effect of unfavorable features. Particular attention is directed to Section 1944.164(k), (1) and (m) of Subpart D of Part 1944 of this Chapter with reference to compliance with Subpart G of Part 1901 of this Chapter. Some of the features which must be considered are the topography, drainage, access, building orientation to sun and breezes; and advantageous features, such as vegetation, trees, good views, etc., or disadvantageous features, such as offensive odors, noxious plants, noise, dust, health hazards, etc.

301.2 Drainage—Surface and subsurface drainage systems shall be provided in accordance with Section 311 of the MPS 4910.1 and Subpart D of Part 1804 of this Chapter (FmHA Instruction 424.5).

301–3 Water and Sewage Disposal—Water supply and sewage disposal installations shall comply with Subpart D of Part 1804 of this Chapter (FmHA Instruction 424.5), the Minimum Property Standards, 4910.1, and all governing State and local department of health requirements. Where environmentally and economically feasible, the labor housing facility shall connect to public water and waste disposal systems.

301–4 Electrical—Adequate electrical service shall be provided for exterior and interior lighting and for the operation of equipment.

301–5 Vehicular Access and Parking:

301–5.1 Safe and convenient all weather roads shall be provided to connect the site and its improvements to the off-site public road.

301–5.2 All weather drives and parking shall be provided for tenants, and for trucks and buses as needed within the site. Driveways, parking areas and walkway locations shall be in substantial conformance with the Minimum Property Standards.

301–6 Walks:

301–6.1 Walks shall be provided for safe convenient access to all dwellings and for safe pedestrian circulation throughout the development between locations and facilities where major need for pedestrian access can be anticipated, such as, laundry, parking to dwelling units, common dining rooms and other.

301–6.2 Walkways shall be hard surface such as concrete, asphalt or stabilized gravel and shall be adequately drained.

301–7 Building Location:

301–7.1 Side and rear, and distances between buildings shall conform to Sections 304–2 and 304–4 of the Minimum Property Standards, 4910.1.

301–8 Garbage and Refuse:

301–8.1 Garbage and refuse containers for individual units are required and shall be stored on durable functional racks or shall be located in a central screened area with easily cleaned surfaces. Single containers for multiple units shall be screened and in locations designed to accommodate collection vehicle functions.

301–9 Fencing:

301–9.1 Fencing used in the site design for project privacy or building security shall be harmonious in appearance with other fences and surrounding facilities which fall within the same view.

301–10 Outdoor Lighting:

301–10.1 All public areas where pedestrian use can be anticipated after sunset shall be adequately lighted for security purposes, such as walkways to common use facilities—laundry, dining halls, building entrances, parking areas, and the like.

301–11 Planting and Landscaping:

301–11.1 Planting and lawns or ground covers shall be provided as required to protect the site from erosion, control dust, for active and passive recreation areas, and provide a pleasant environment.

Building design

302–1 Living Units Design:

302–1.1 *Individual Family Unit*—One family or extended family to a unit which shall contain adequate space for living, dining, kitchen, bath and bedrooms. Multifamily type units are required whenever possible for economy of site and building construction.

a. The minimum total net living unit size shall be 400 square feet. This size assumes occupancy of four persons. Units planned for additional occupants shall include an additional 60 square feet of living area per person.

b. A living/dining area shall be provided to accommodate a table and chairs with adequate dining and circulation space for the intended number of occupants. The living/dining area should be combined with the kitchen area.

c. The kitchen shall contain a sink, cooking range and refrigerator. A minimum free countertop area of six square feet is required. A minimum of 40 square feet of shelf area is required.

d. Each bathroom shall contain adequate space and circulation for a bathtub and/or shower, water closet and lavatory. Access to the bathroom shall not be through another bedroom in dwelling units containing more than one bedroom.

e. Bedroom areas separate from living areas are required. The design of the unit shall provide for a minimum of 50 square feet of sleeping area per intended occupant including storage. Housing for families with children shall have a separate bedroom or sleeping area for the adult couples. A two foot by two foot shelf with a two foot long clothes hanging rod is required for each occupant.

302–1.2 *Group Living Unit*—A living unit designed for the occupancy of more than one family or for separate occupancy of male and/or female groups. Common bath spaces shall be contained in the same building. Group living units for families shall have separate bedrooms for each adult couple.

a. The design of the unit shall provide for a minimum of 620 square feet of total net living area for eight persons and an additional 60 square feet for each additional occupant. Additional area shall be planned for a second bathroom when anticipated occupancy will exceed eight persons, or if it will be occupied by persons of both sexes.

b. The kitchen shall contain an adequate sink, cooking range, refrigerator, and space the size of which is commensurate with the needs of the group living unit. A minimum of free countertop area of eight square feet is required. A minimum of 50 square feet of shelf area is required.

c. Refer to paragraph 302–1.1 b for living/dining requirements.

d. Each bathroom shall contain adequate space and circulation for comfortable access to, and use of, fixtures which will include a bathtub and/or shower, water closet and lavatory. In no case shall minimum fixtures be less than that required per paragraph 302–1.3 c below.

e. Refer to paragraph 302–1.1 e for bedroom requirements.

302–1.3 *Dormitory Living Unit*—A building which provides common sleeping quarters for persons of the same sex and may or may not contain kitchen and/or dining facilities in the same building as the sleeping quarters.

a. The design of areas for sleeping purposes, using single beds, shall provide for not less than 72 square feet per occupant including storage.

b. The design of areas for sleeping purposes, using double bunk beds, shall provide for not less than 40 square feet per occupant. Triple bunk beds will not be allowed.

c. The design of each dormitory building must include a water closet, and a bathtub or shower for each 12 occupants, and a lavatory for each 8 persons. Urinals may be substituted for men's water closets on the basis of one urinal for one water closet, up to maximum of one-third of the required water closets.

d. Adequate kitchen and dining facilities must be provided which may be in the dormitory building or detached at a distance of not more than 200 feet from the sleeping quarters. In either case, the space must contain adequate cooking ranges, refrigerators, sinks, countertop, food storage shelves, tables and chairs, and circulation space. These facilities will comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965).

302–2 Other Facilities:

302–2.1 *General*—Other facilities authorized by Part 1944, Subpart D needed by farm workers may be provided in several ways: part of a living unit, located in the project, or, with the exception of laundry facilities, available nearby.

302–2.2 *Laundry Facilities*—Laundry facilities shall be required on-site. Drying yards shall be provided if dryer units are not provided. The design of washing facilities shall plan for a minimum rate of one washer for each 20 occupants. One drying unit may be provided for every two washers, if automatic dryers are customarily provided for rental housing in the community. Laundry facilities shall have adequate space for loading the units, circulation, and clothes folding.

302–2.3 *Office and Maintenance*—An office and maintenance space shall be provided or available, commensurate with the number of living units served, and shall meet the requirements of the Manual of Acceptable Practices. If necessary, the maintenance space shall have sufficient area to accommodate furniture storage.

302–2.4 *Child Care Center*—Where feasible, a child care center may be included to provide supervised activity and safety for children while the parents work. Supervisors and workers for such centers are sometimes enlisted on a volunteer basis and the cost borne by nonprofit associations or community organizations. Grants are sometimes available through Federal or State programs. Consequently, the design of the child care center should meet the requirements of those sources providing operational personnel and/or financing.

302–2.5 *Manager's Dwelling*—If a manager's dwelling unit is to be provided as a part of the FmHA loan or grant, it will meet these guidelines. However, if it is necessary to provide a year-round caretaker/manager dwelling unit with FmHA loan or grant funds, it will meet the requirements of MPS 4900.1.

302–2.6 *Recreation*—Outdoor recreation space is required and shall be commensurate with the needs of the occupants. Active and passive recreation areas will be provided, which may consist of outdoor sitting areas, playfields, tot lots and play equipment.

General requirements

303–1 Materials and Construction—All materials and their installation in a labor housing facility shall meet the MPS requirements. Any exceptions to these requirements for materials and their installation must be obtained with the approval of the FmHA National Office. Material should be selected that are durable and easily cleaned and maintained.

303–2 Fire Protection—Fire protection and egress shall be provided to comply with the requirements of the Minimum Property Standards, 4910.1, Section 405–4, and 405–6 except that lessor standards may be used if the state in which the facility is to be located is enforcing a nationally recognized building code.

303–3 Light, Ventilation, Screening—Natural light and ventilation requirements as specified in MPS 4900.1 or MPS 4910.1 shall be followed. Screening of all exterior openings is required.

303–4 Ceiling Heights—Ceiling heights of habitable rooms shall be a minimum of seven feet six inches clear, and seven feet in halls or baths in dwelling units. Public rooms shall have a minimum of eight feet clear ceiling height. Sloping ceilings shall have at least seven feet six inches for ½ the room with no portion less than five feet in height.

303–5 Heating and Cooling—Heating and cooling and/or air circulation equipment shall be installed as needed for the comfort of the tenants, considering the climate and time of year the facility will be in operation. Maximum feasible use of passive solar heating and cooling techniques shall be required. All equipment installed will be in accordance with MPS requirements to protect the health and safety of the occupants.

303–6 Plumbing—Plumbing materials and their installation shall meet MPS requirements. Hot water will be required to all living units, baths, kitchens and laundry facilities.

303–7 Insulation, Thermal Standards, Winterization—Insulation will be required where either heating or cooling is provided as per paragraph 303–5 above or when climatic conditions dictate a need for insulation. Insulation Standards will comply with FmHA Instruction 1924–A, Exhibit D, IV, C 3, or the State insulation standards, whichever is the more stringent.

303–8 Electrical—Electrical design, equipment and installation shall comply with the requirements of the latest edition of the National Electrical Code, and the MPS for materials and their installation. Individual family units may be separately metered; other types of dwelling units may be separately metered as required.

303–9 Security and Winterization—Adequate management and physical measures shall be provided as necessary to protect the facility during off-season periods, including adequate heating and insulation as required.

PART 1944—HOUSING

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

3. § 1944.163(e) is revised to read as follows:

§ 1944.163 Conditions under which an LH grant may be made.

* * * * *

(e) The housing must be durable and suitable for year-round use unless the need for such housing is seasonal and year-round occupancy is not practical and will not be needed. Construction of seasonal farm labor housing will be permitted upon a finding of persistent need for migrant farmworker housing in the area and such housing will be used solely by migrant farmworkers while they are away from their residence. Seasonal farm labor housing that will be occupied for six months or less per year by migrant farmworkers while they are away from their residence, will be constructed in accordance with Exhibit I to Subpart A of Part 1924. Farm labor housing that is to be occupied less than year-round but more than six months will be in substantial conformance with the MPS and be easily convertible to the MPS. Such projects that are to be occupied less than year-round but more than six months may be approved after review of the savings in construction costs, the plan for conversion to full MPS and the long term need for such housing.

* * * * *

4. Exhibit A–3, paragraphs II a 2 and II b 2 are revised and paragraph II b 3 is added.

Exhibit A–3—Labor Housing Construction Guidelines

* * * * *

II. *Types of housing and appropriate standards:*

a. * * *

2. All planning and construction other than for seasonal farm labor housing and housing

to be occupied less than year-round but more than six months shall be in conformance with the Minimum Property Standards (MPS) and applicable State and local codes.

b. * * *

2. Housing for seasonal occupancy (less than six months) shall be designed and constructed in accordance with Exhibit I to Subpart A of Part 1924 of this Chapter.

3. Housing to be occupied more than six months but less than year-round will be designed and constructed in substantial conformance with the MPS and easily convertible to the MPS requirements for year-round housing.

* * * * *

5. Exhibit B, paragraph 9 is revised to read as follows:

Exhibit B—Management Plans

* * * * *

9. *Maintenance and repairs.*

A schedule for preventive maintenance and the procedure for handling service requests from individual tenants, including procedures for the handling of emergency repairs on a 24 hour basis, should be outlined. Management plans for projects constructed for seasonal occupancy will include provisions for off-season maintenance and security.

* * * * *

(42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: May 21, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82-17546 Filed 6-28-82; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Group Licensing for Certain Medical Uses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add a new reagent kit, used to prepare the radiopharmaceutical technetium-99m labeled succimer, to its list of authorized radioactive drugs and reagent kits. NRC is taking this action because the Food and Drug Administration (FDA) recently approved a "New Drug Application" for this reagent kit.

EFFECTIVE DATE: June 29, 1982.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Rodenbeck, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone 301-427-4580).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the amendment of the Nuclear Regulatory Commission's regulation, "Human Uses of Byproduct Material," 10 CFR Part 35.

Section 35.100 of 10 CFR Part 35 lists groups of medical uses of byproduct material that have similar requirements for user training and experience, facilities and equipment, and radiation safety procedures. The purpose of this grouping is to reduce administrative costs by eliminating the need for licensees to seek an amendment to their license each time they wish to use an additional radiopharmaceutical in a group for which they are licensed. As new radiopharmaceuticals, sources, devices, and uses are developed and approved by FDA, they are added to the appropriate group in § 35.100. The FDA has recently approved a "New Drug Application" for a reagent kit that is used to prepare the renal imaging radiopharmaceutical, technetium-99m labeled succimer (also known as DMSA), and the use of this reagent kit is hereby added to Group III.

As described in NRC's medical policy statement that was published in the **Federal Register** on February 9, 1979 (44 FR 8242), the NRC relies on FDA for approval of safety and effectiveness of radioactive drugs. The Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon, because it would be contrary to the public interest to delay the use of this FDA-approved product by group medical licensees. Since the amendment relieves licensees from restrictions under regulations currently in effect, it may become effective without the customary 30-day notice.

List of Subjects in 10 CFR Part 35

Byproduct material, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, the following amendments to Title 10 Chapter I, Code of Federal Regulations, Part 35 are published as a document subject to codification.

PART 35—HUMAN USES OF BYPRODUCT MATERIAL

1. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.2, 35.14 (b), (e) and (f), 35.21(a), 35.22(a), 35.24, and 35.31 (b) and (c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14(b)(5) (ii), (iii) and (v) and (f)(2), 35.25 and 35.31(d) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C.2201(o)).

2. Section 35.100 is amended by removing the word "and" following paragraph (c)(4)(xii), and adding a new paragraph (c)(4)(xiii) to read as follows:

§ 35.100 Schedule A—Groups of medical uses of byproduct material.

* * * * *

(c) * * *

(4) * * *

(xiii) Succimer; and

* * * * *

Dated at Bethesda, MD, this 11th day of June 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc 82-17504 Filed 6-28-82; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Amendment Relating to Restrictions on Nondeposit Obligations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends footnote 17a to Part 329 of FDIC regulations by extending from August 1, 1982 to March 31, 1986 the grandfather provision of paragraph 329.10(b)(2). The intended effect of this action is to permit insured State nonmember banks to continue to offer repurchase agreements in denominations of less than $100,000 with maturities of 90 days or more as long as the aggregate amount does not exceed that of such obligations outstanding on August 1, 1979.

EFFECTIVE DATE: July 29, 1982.

FOR FURTHER INFORMATION CONTACT: Carol Galbraith, Attorney, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202-389-4171).

SUPPLEMENTARY INFORMATION: On July 30, 1979, FDIC adopted a final rule, § 329.10(b)(2) (12 CFR 329.10(b)(2)), that narrowed the preexisting exemption from the interest rate ceilings for obligations that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that

are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase, by requiring that such repurchase agreements be either (a) in denominations of $100,000 or more or (b) in denominations of less than $100,000, mature in less than 90 days and not be automatically renewed or extended (44 FR 46264, August 7, 1979). By a grandfather provision in footnote 17a of Part 329, this rule on repurchase agreements was made inapplicable to any bank having such obligations in denominations of less than $100,000 with maturities of 90 days or more until August 1, 1982, provided that the aggregate amount of such obligations not exceed the bank's total of such obligations outstanding on August 1, 1979.

At the time of the August 1979 amendment, certain repurchase agreement programs were viewed as substitutes for time deposits that avoided interest rate ceilings. Numerous pertinent changes have occurred in the financial environment since August 1979. In March 1980, the Depository Institutions Deregulation Act was enacted, mandating the extinction of interest rate ceilings by March 31, 1986. Thus, supervisory concerns shifted from the curtailing of programs created to avoid interest-rate ceilings to greater emphasis upon promoting competition and eliminating those ceilings. During 1981, a greatly increasing number of banks began marketing repurchase agreements in denominations of less than $100,000. Federal and State supervisory agencies began issuing specific guidance on the issuance of these retail repurchase agreements ("retail repos"). The FDIC adopted a statement of policy on retail repurchase agreements on September 28, 1981 (46 FR 49197, October 6, 1981). Given these changes, extending the grandfather period to March 31, 1986 reduces the hardship to banks which established retail repo programs before the 1979 amendment. The competitive effects of this amendment should be minor and positive because few banks are affected, affected banks will not have to terminate existing established programs and develop new programs, and affected banks are limited to their August 1, 1979 aggregate levels for such offerings.

Alternatives to this amendment that were considered are (1) creating an exception to the rule for individual banks on a case by case basis, (2) completely revising § 329.10(b)(2) to its pre-1979 status, and (3) taking no amendatory action. The adopted action is preferable to the first alternative because it treats a previously-recognized class of banks uniformly. The second alternative is impracticable in that it goes beyond the immediate issue, which requires timely action. The third alternative would result in undue hardship to affected banks and their customers.

This rule relieves a restriction and does not entail additional expense to any affected bank. To subject final issuance of this rule to a 60-day or even a 30-day comment period would preclude timely issuance of a final rule with unnecessary disruption to the offering of financial services by affected banks to bank customers. Therefore, FDIC for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Because this amendment is issued as a final rule rather than as a proposed rule, the Regulatory Flexibility Act (5 U.S.C. §§ 601 *et seq.*) is not applicable. This rule does not entail any reporting or recordkeeping requirements; thus, the Paperwork Reduction Act of 1980 (44 U.S.C. §§ 3501 *et seq.*) is not applicable.

List of Subjects in 12 CFR Part 329

Banks, banking.

For the reasons set forth in the preamble, 12 CFR Part 329 is amended by revising footnote 17a, which refers to section 329.10(b)(2), to read as follows:

PART 329—INTEREST ON DEPOSITS

1. The authority citation for Part 329 reads as follows:

Authority: Secs. 9 and 18, Pub. L. 797, 64 Stat. 881, 891 (12 U.S.C. 1819 and 1828); sec. 303, Pub. L. 96-221, 94 Stat. 146 (12 U.S.C. 1832).

§ 329.10 [Amended]

2. In Part 329, footnote 17a to paragraph 329.10(b)(2) is revised to read as follows:

[17a] A bank with obligations in denominations of less than $100,000 with maturities of 90 days or more that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by the United States or any agency thereof that the bank is obligated to repurchase, may continue to issue such obligations until March 31, 1986, without regard to this subsection so long as the aggregate amount does not exceed its total of such obligations outstanding on August 1, 1979. Such obligations are subject to the FDIC's Statement of Policy on Retail Repurchase Agreements (BL-71-81, October 2, 1981).

By Order of the Board of Directors, June 21, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Acting Executive Secretary.

[FR Doc. 82-17476 Filed 6-28-82; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 614

Organization, Loan Policies and Operations

Correction

In FR Doc. 82-16973 appearing at page 27060 in the issue of Wednesday, June 23, 1982, the Farm Credit Administration adopted "regulations authorizing the incorporation of service organizations to perform services for or on behalf of Farm Credit system banks, and clarifying the delegations of supervisory and loanmaking authority by System banks." These regulations amended 12 CFR Parts 611 and 614. As submitted to the Office of the Federal Register, the document stated an effective date of July 22, 1982. That effective date was inadvertently omitted from the published text.

Therefore FR Doc. 82-16973 is corrected by inserting the following date immediately following the "Summary" paragraph on page 27060:

"EFFECTIVE DATE: July 22, 1982."

BILLING CODE 1505-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 385

[Reg. OR-198; Amdt. No. 125]

Delegations and Review of Action Under Delegation; Nonhearing Matters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is changing its delegations of authority to eliminate a reference to another rule that has been removed. The Chief, Data Systems Management Division, Office of the Comptroller, has delegated authority to release confidential commuter origin and destination data. Since those data are no longer confidential, the delegation is removed.

DATES: Effective: June 29, 1982. Adopted: June 23, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: In the Board's rules delegating authority to its staff, in 14 CFR 385.28(c), the Chief, Data Systems Management Division, Office of the Comptroller, has authority to release confidential commuter origin and destination data filed on Schedule T–1 of CAB Form 298–C. By ER–1148 (44 FR 51797, September 5, 1979), the Board eliminated the limited period of confidential treatment that had been given to commuter origin and destination data under 14 CFR 298.62. The Board stated that public policy favors disclosure of those data filed with the Board, and that since the same data are released for certificated carriers, confidential treatment could lead to an unfair competitive advantage.

Because those data are no longer kept confidential, there is no longer a need for delegated authority to the staff to release them. Section 385.28(c) is therefore removed.

Because this rule is about agency organization and procedure, removing a delegation of authority no longer needed, and failure to do so could cause public confusion, the Board finds for good cause that notice and public procedure are not necessary and that the rule may become effective less than 30 days after publication in the **Federal Register.**

List of Subjects in 14 CFR Part 385

Administrative practice and procedure, Authority delegation.

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters,* as follows:

1. The authority for Part 385 is:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85–726, as amended, 72 Stat. 740, 743, 754, 757, 758, 766, 771, 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Reorganization Plan No. 3 of 1961, 26 FR 5989.

§ 385.28 [Amended]

2. Paragraph (c) of § 385.28 is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–17542 Filed 6–28–82; 8:45 am]

BILLING CODE 6320–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

Correction

In FR Doc. 82–16781, appearing at page 26810 in the issue for Tuesday, June 22, 1982, please make the following corrections.

The footnotes appearing on pages 26815 through 26817 are incorrectly numbered:

(1) On page 26815, in the middle column, the text and reference to footnote 20 should be numbered 11.

(2) On page 26816, in the second and third columns the text and references to footnotes 21, 22, 23, 24, 25, and 26 should be renumbered 18, 19, 20, 21, 22, and 23 respectively.

(3) On page 26817, in the first column, the text and references to footnotes 27 and 28 should be renumbered 24 and 25.

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 76G–0117]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Esterase-Lipase Enzyme Derived From Mucor Miehei

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of esterase-lipase enzyme derived from nonpathogenic strains of *Mucor miehei* var. *Cooney et Emerson* as an aid in curing and developing flavor in the following foods: Cheese substitutes, imitation cheeses, edible oils (including shortening and margarine), natural cheeses, and milk products, provided that any relevant standards of identities permit such use. This action is in response to a petition filed by Travenol Laboratories, Inc. GB Fermentation Industries has subsequently assumed sponsorship of the petition.

DATES: Effective June 29, 1982; objections by July 29, 1982.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Bureau of Foods (HFF–355), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the procedures established in § 170.35 (21 CFR 170.35), Travenol Laboratories, Inc., Deerfield, IL 60015, submitted a petition (GRASP 6G0067) requesting affirmation that esterase-lipase enzyme derived from nonpathogenic strains of *Mucor miehei* var. *Cooney et Emerson* is generally recognized as safe for use as an aid in curing and developing flavor in the following foods: natural cheese, cheese substitutes, imitation cheeses, edible oils (including shortening and margarine), and milk products. FDA published a notice of filing in the **Federal Register** of May 7, 1976 (41 FR 18898), and offered interested persons an opportunity to review the petition and to submit comments to the Dockets Management Branch (address above). Subsequently, GB Fermentation Industries, Des Plaines, IL 60016, assumed sponsorship of the petition.

Esterase-lipase enzyme preparations are derived from nonpathogenic strains of *Mucor miehei* var. *Cooney et Emerson.* The enzyme is produced simultaneously with the milk-clotting enzyme used in the production of cheeses by a submerged pure culture fermentation. However, the milk-clotting enzyme is derived from the culture supernatant, whereas the esterase-lipase is derived from the microbial cells. The esterase-lipase is isolated by washing the cells with alkaline buffer (pH 10.5–11), concentrating the eluted enzyme and spray drying the product in the presence of a carrier (maltodextrin or sweet whey). The enzyme enhances the flavor of certain foods by catalyzing limited hydrolysis of the triglycerides in the product.

After Travenol Laboratories, Inc., submitted its GRAS affirmation petition, FDA placed it on file at the Dockets Management Branch as required under § 170.35 (21 CFR 170.35). The agency received one comment in response to the notice of filing.

The comment disagreed with a statement in the petition indicating that microbial rennet, derived from *Mucor miehei* and approved as a food additive under 21 CFR 173.150(a)(4), contains the esterase-lipase enzyme. According to the comment, microbial rennet contains

no esterase-lipase enzyme in any form. Thus, the comment contended that FDA should not use previous safety studies on microbial rennet to evaluate the safety of esterase-lipase enzyme, because the studies are not relevant. The comment contended that esterase-lipase enzyme, derived from *Mucor miehei*, is a new food additive whose safety must be demonstrated by toxicological studies on that enzyme system.

FDA has reviewed the petition, the data submitted in support of that petition, and the comment. The data demonstrate that the microbial rennet preparation does not contain active esterase-lipase enzyme, but does contain some inactive enzyme. Because the enzyme is inactive, studies that demonstrate the safety of microbial rennet do not adequately establish the safety of active esterase-lipase enzyme. Subsequently, after the petition was filed, the petitioner submitted two 90-day animal feeding studies and a reproductive study on active esterase-lipase enzyme. FDA concludes that these studies adequately demonstrate the safety of esterase-lipase enzyme.

After evaluating the information contained in the petition, FDA concludes that esterase-lipase enzyme cannot be considered GRAS based upon its common use in food before January 1, 1958. The agency also concludes that there are inadequate published studies or other information available to the scientific community to document that it is generally recognized as safe based on scientific procedures.

Thus, in accordance with §§ 170.35(b)(4) (21 CFR 170.35(b)(4)) and 170.38 (21 CFR 170.38), the agency has determined that the requested use of esterase-lipase enzyme cannot be considered GRAS based upon either common use in food or scientific procedures and the enzyme is a food additive subject to section 409 of the act (21 U.S.C. 348). FDA notified the petitioner of this conclusion and the firm agreed that esterase-lipase enzyme be evaluated as a food additive rather than as a GRAS ingredient.

FDA has evaluated data in the petition and other relevant material regarding the use of esterase-lipase as an aid in curing and developing flavor in the listed products and concludes that the food additive produces the intended technical effects and is safe under the proposed conditions of use. The agency is therefore amending the food additive regulations to provide for the requested uses, subject to restrictions imposed by relevant standards of identity.

Federal standards of identity for certain cheese and cheese products do not currently list microbial enzymes for use in curing and developing flavor in cheeses (21 CFR Part 133), or for use as a flavor modifier in dry whole milk (21 CFR 131.147) and margarine (21 CFR Part 166).

Note.—FDA proposed in the Federal Register of September 19, 1978 (43 FR 42127) to amend certain cheese standards to permit the use of microbial enzymes for clotting milk or for developing flavor, but to date the agency has not published final regulations. Unless and until these standards are amended by formal final action, microbial enzymes may not be used in curing such standardized cheeses as an aid in developing their flavor. The standards of identity for dry whole milk (§ 131.147) and margarine (Part 166) would also have to be amended to permit esterase-lipase use in these products.

There are no standards of identity for edible oils, shortening, imitation cheeses, and cheese substitutes. Consequently, this regulation will provide for this use with no limitation other than current good manufacturing practice. In addition, esterse-lipase is a safe and suitable enzyme for the production of enzyme modified cheese. The standards of identity for certain pasteurized processed cheese permit such a use (21 CFR Part 133).

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's findings of no significant impact and the evidence supporting this finding, contained in a statement of exemption under 21 CFR 25.1(f)(1)(iv), may be seen in the Dockets Management Branch.

List of Subject Terms in 21 CFR Part 173

Food additives, Food processing aids.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 173 is amended in Subpart B by adding new § 173.140, to read as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

§173.140 Esterase-lipase derived from Mucor miehei.

Esterase-lipase enzyme, consisting of enzyme derived from *Mucor miehei* var. *Cooney et Emerson* by a pure culture fermentation process, with sweet whey as a carrier, may be safely used in food in accordance with the following conditions:

(a) *Mucor miehei* var. *Cooney et Emerson* is classified as follows: Class, Phycomycetes; subclass, Zygomycetes; order, Mucorales; family, Mucoraceae; genus, *Mucor;* species, *miehei;* variety *Cooney et Emerson.*

(b) The strain of *Mucor miehei* var. *Cooney et Emerson* is nonpathogenic and nontoxic in man or other animals.

(c) The enzyme is produced by a process which completely removes the organism *Mucor miehei* var. *Cooney et Emerson* from the esterase-lipase.

(d) The enzyme is used as a flavor enhancer as defined in § 170.3(o)(12).

(e) The enzyme is used at levels not to exceed current good manufacturing practice in the following food categories: cheeses as defined in § 170.3(n)(5) of this chapter; fat and oils as defined in § 170.(3)(n)(12) of this chapter; and milk products as defined in § 170.(3)(n)(31) of this chapter. Use of this food ingredient is limited to nonstandarized foods and those foods for which the relevant standards of identity permit such use.

(f) The enzyme is used in the minimum amount required to produce its limited technical effect.

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 29, 1982, submit to the Dockets Management Branch, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 29, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: June 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-17501 Filed 6-28-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 3280, 3282 and 3283

[Docket No. R82-927]

Manufactured Home Construction and Safety Standards; Manufactured Home Procedural and Enforcement Regulations; and Manufactured Home Consumer Manual Requirements

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

ACTION: Final rule.

SUMMARY: This final rule makes changes necessitated by the 1980 amendments to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* The amendments changed the definition of mobile home and changed references in the Act from "mobile home" to "manufactured home."

EFFECTIVE DATE: August 11, 1982.

FOR FURTHER INFORMATION CONTACT: James C. McCollom, Acting Director, Manufactured Housing Standards Division, Room 3244, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. (202) 755-5210. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 7, 1981, the Department published in the **Federal Register** a proposed revision of 24 CFR Parts 3280, 3282 and 3283 (46 FR 40498). That proposed revision reflected changes made in the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), 42 U.S.C. 5401 *et seq.*, by section 308 of the Housing and Community Development Act of 1980, Pub. L. 96-399. Approximately 20 comments were received. All comments were given careful consideration, and some were adopted in whole or in part as reflected in this publication.

Generally, portions of the proposed rule which were not commented on are not discussed.

Changes made in the proposed rule which are reflected in this final rule:

1. A number of commenters urged that bay windows not be included in measuring the length of a manufactured home to determine whether it is covered by the Act. In the final rule, bay windows are excluded from the measurements used to determine whether a structure is a "manufactured home."

2. The Department received numerous comments which were critical of the proposal to do away with the "recreational vehicle" exemption contained in the present regulations at § 3282.8(g). In the 1980 amendments to the Act, Congress altered the size dimensions contained in the definition of manufactured home so as to include units of 320 or more square feet. However, the conference report on the 1980 amendments directed the Secretary to consider differing, more flexible standards for smaller manufactured homes (such as park models) whose square footage is between 320 and 400 square feet and are designed to be frequently transported. In commenting on the proposed rule, several manufacturers of smaller units (those between 320 and 400 square feet) outlined the problems that they would face to bring their products in compliance with the Federal Manufactured Home and Construction Safety Standards. A trade association representing park model manufacturers specifically identified eighteen different standards that would be either difficult or impossible to meet.

The evident intent of Congress as expressed in the Conference Report, plus the comments received from manufacturers of small units, indicate that the entire body of the existing Standards should not be applied to park models or other units of less than 400 square feet. That, however, would be the result of an immediate elimination of the recreational vehicle exemption. The Secretary has concluded, therefore, that it is necessary to continue the exemption for recreational vehicles of more than 320 but less than 400 square feet until Standards specifically applicable to these units can be prescribed. The Department notes, in this connection, that a comprehensive revision of the existing Standards is now in progress and a proposed rule expected to be published this year. The Department intends to address the question of Standards appropriate for application to smaller units, including park models in the near future, possibly as part of the foregoing general revision.

In continuing the recreational vehicle exemption, certain changes have been made. The principal substantive changes are to limit the availability of the exemption to units of 400 square feet or less and to eliminate the requirement that in order for the unit to qualify for the exemption, the plumbing, heating, and electrical systems contained therein may be operated without connection to outside utilities. As revised, § 3282.8(g) will exempt structures from the requirements of the Act if they are (1) Built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. Under this definition virtually all park models will continue to be exempt from the requirements of the Act, pending development of standards specifically applicable to such units.

Comments Which Were Rejected

1. Comment: In calculating the length or width of a manufactured home, the thickness of the exterior walls should not be considered.

Response: Before Congress amended the Act, all measurements to determine a unit's length and width were based on exterior dimensions. Nothing in the legislative history evidences a Congressional desire to alter this method of measuring. In fact a provision in the Senate version of the amendments, which specified that interior dimensions were to be used, was deleted from the final version. This indicates that Congress intended for the Department to continue to use exterior dimensions when calculating length and width of manufactured homes.

2. Comment: The definition of "manufactured home" should not include air conditioning within the systems to be connected to outside utilities.

Response: Air conditioning is included in the statutory definition of "manufactured home" and the Department does not have the power to change it. The commenter was apparently concerned that all manufactured homes would be required to have air conditioning. The definition of "manufactured home" does not require units to contain on-board air conditioning systems which may be connected to outside utilities. The definition merely defines any air conditioning, whether self-contained or not, as part of the manufactured home. As a result, HUD may set standards for the air-conditioning as well as for the plumbing, heating and electrical systems

which are the other systems named in the definition.

3. Comment: Fifth-wheel travel trailers should be excluded from the definition of "manufactured home," or living space in the upper compartment of fifth-wheel trailers should be excluded when calculating the length of a "manufactured home."

Response: The Secretary finds no statutory basis upon which to exempt fifth-wheel trailers which otherwise meet the definition of "manufactured home." However, most fifth-wheel trailers do not meet the statutory definition of "manufactured home" and those that do are likely to be exempt under the revised recreational vehicle exemption.

4. Comment: The definitions of length and width of a manufactured home will cause higher costs to the consumer because of the additional man-hours and paperwork needed to make calculations for each model a manufacturer makes.

Response: HUD believes that only minimal work need be done to determine whether a unit is a "manufactured home." A unit's dimensions must be calculated when drafting floor plans or blueprints. Once these calculations are done, no additional work would be needed to determine whether a particular unit or model is a "manufactured home." As a matter of fact, the definition of length and width were selected, in part, because of their ease of application and clarity.

5. Comment: The last sentence in the definition of "manufactured home" should be deleted. This sentence states that manufactured homes are not necessarily eligible for HUD financing under 12 U.S.C. 1709(b). The commenter objects because, in California, manufactured homes are eligible for financing under this provision.

Response: The new definition of "manufactured home" does not preclude HUD from financing these units under 12 U.S.C. 1709(b). The definition merely states that there is no automatic entitlement to this benefit. Eligibility for this financing is determined by other factors.

6. Comment: The rule is a "major" one as defined in Executive Order 12291 since it will have an annual effect on the economy of $100 million or more, will cause a major increase in costs and prices for the consumer and will have a significant adverse impact on employment, investment and productivity.

Response: In response to this comment, the Department has made significant changes from the proposed rule to lessen the impact upon small businessmen, particularly park model manufacturers. As described above, this rule will exempt practically all park models. Since the rule will not change any standards for structures subject to the Act and will not require any additional structures to meet the standards, the rule has no significant economic impact.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

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

This rule was listed as item C)1. NVACP–1–81 under the Office of Neighborhoods, Voluntary Associations and Consumer Protection in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Pursuant to the provisions at 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

(The catalog of Federal Domestic Assistance program number is 14.804 Manufactured Housing)

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Mobile homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Mobile homes.

24 CFR Part 3283

Mobile homes, Consumer protection, Warranties.

PART 3280—MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

PART 3282—MOBILE HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

PART 3283—MOBILE HOME CONSUMER MANUAL REQUIREMENTS

§§ 3282.2, 3282.3, and 3282.4 [Amended]

Accordingly, 24 CFR Parts 3280, 3282 and 3283 are revised as follows:

1. By changing the title "National Mobile Home Construction and Safety Standards Act of 1974", wherever it appears in Parts 3280, 3282 and 3283, to read "National Manufactured Housing Construction and Safety Standards Act of 1974."

2. By changing the title "Assistant Secretary for Neighborhood, Voluntary Associations and Consumer Protection", wherever it appears in §§ 3282.2, 3282.3, and 3282.4, to read "Assistant Secretary for Housing-Federal Housing Commissioner."

3. By changing the title "Office of Mobile Home Standards", wherever it appears in Parts 3280, 3282, and 3283, to read "Manufactured Housing Standards Division."

4. By revising § 3282.5 to read as follows:

§ 3282.5 Principal branches.

The following branches have been established within the Manufactured Housing Standards Division:

(a) Standards Branch.

(b) Enforcement Branch.

(c) State and Consumer Liaison Branch.

5. By changing the terms "Mobile Home(s)" and "mobile home(s)", wherever they appear in Parts 3280, 3282 and 3283 to read "Manufactured Home(s)" and "manufactured home(s)", respectively.

6. By revising § 3280.2(a)(13), (16) and (22) to read as follows:

§ 3280.2 Definitions.

(a) * * *

(13) "Length of a Manufactured Home" means its largest overall length in the traveling mode, including cabinets, and other projections which contain interior space. Length does not include bay windows, roof projections, overhangs, or eaves under which there

is no interior space, nor does it include drawbars, couplings or hitches.

* * * * *

(16) "Manufactured Home" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. This term includes all structures which meet the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 and complies with the standards set forth in Part 3280. Nothing in this subsection should be interpreted to mean that a "manufactured home" necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

* * * * *

(22) "Width of a Manufactured Home" means its largest overall width in the traveling mode, including cabinets and other projections which contain interior space. Width does not include bay windows, roof projections, overhangs, or eaves under which there is no interior space.

* * * * *

7. By redesignating § 3282.7 (t) through (mm) as § 3282.7 (u) through (nn) and adding a new § 3282.7(t) to read as follows:

§ 3282.7 Definitions.

* * * * *

(t) [Same as § 3282.2(a)(13).]

* * * * *

8. By revising § 3282.7(v) to read as follows:

§ 3282.7 Definitions.

* * * * *

(v) [Same as § 3280.2(a)(16).]

* * * * *

9. By adding a new § 3282.7(oo) to read as follows:

§ 3282.7 Definitions.

* * * * *

(oo) [Same as § 3282.2(a)(22).]

10. By revising § 3283.2(k) to read as follows:

§ 3283.2 Definitions.

* * * * *

(k) [Same as § 3280.2(a)(16).]

* * * * *

11. By revising § 3282.8(g) to read as follows:

§ 3282.8 Applicability.

* * * * *

(g) Recreational vehicles. Recreational vehicles are not subject to this Part, Part 3280, or Part 3283. A recreational vehicle is a vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

§ 3280.902 [Amended]

12. By removing § 3280.902(h).

13. By adding a new § 3282.13, to read as follows:

§ 3282.13 Voluntary certification.

(a) The purpose of this section is to provide a procedure for voluntary certification of non-conforming manufactured homes as required by 42 U.S.C. 5402(6) as amended by Section 308(d)(B) of the Housing and Community Development Act of 1980.

(b) Structures which meet all of the requirements of a "manufactured home" as set out in § 3282.7(u), except the size requirements, shall be "manufactured homes" if the manufacturer files with the Secretary a certification in the following form:

[Name of manufacturer and address where structures are to be manufactured] certifies that it intends to manufacture structures that meet all of the requirements of manufactured homes set forth at 42 U.S.C. 5402(6) except the size requirements. Such structures are to be treated as manufactured homes for the purposes of the National Manufactured Housing Construction and Safety Standards Act of 1974 and the regulations promulgated pursuant thereto. Such structures will be built in conformance with the Standards. [Name of manufacturer] further certifies that if, at any time it manufactures structures which are not manufactured homes, it will identify each such structure by a permanent serial number placed on the structure during the first stage of production and that the series of serial numbers for such structures shall be distinguishable on the structures and in its records from the series of serial numbers used for manufactured homes.

(c) Whenever a manufacturer which has filed a certification pursuant to 3282.13(b) produces structures which are not manufactured homes, it must identify each such structure by placing a permanent serial number on the structure during the first stage of production. The series of serial numbers placed on these structures shall be distinguishable on the structure and in the manufacturer's records from the series of serial numbers used for manufactured homes.

(d) A manufacturer may certify a structure as a manufactured home after having applied a serial number identifying it as a structure which is not a manufactured home. To do so, the manufacturer must secure the written consent of the IPIA. This consent may only be given after a DAPIA has approved the manufacturer's design and quality assistance manual in accordance with § 3282.361, and after the IPIA has thoroughly inspected the structure in at least one stage of production and after such removal of equipment, components or materials as the IPIA may require to assure that the structure conforms to the standards. After certification as a manufactured home has been approved, the manufacturer shall remove the original serial number and add the serial number required by § 3280.6.

(e) Once a manufacturer has certified under § 3282.13(b) that it intends to build structures which are manufactured homes in all respects except size, the manufacturer must then, with respect to those structures, comply with all of the requirements of the Act and its regulations. The structures may not thereafter be exempted under any other section of these regulations.

(Sec. 625 of the National Housing Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5424; section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(o))

Dated: June 22, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-17477 Filed 6-28-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 6a

[T. D. 7821]

Temporary Regulations Under Title II of the Omnibus Reconciliation Act of 1980; Modification of Regulations Relating to Mortgage Subsidy Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to the tax-exempt status of interest on mortgage subsidy bonds. These regulations affect all purchasers and governmental issuers of tax-exempt housing bonds. The changes made by these regulations are necessary to modify certain provisions contained in the present temporary regulations.

The regulations under § 6a.103A-2(i)(2)(ii)(E) are amended by deleting the rule which requires that prepayments of principal be treated as received on the last day of the month in which the issuer reasonably expects to receive such prepayments. The amendment provides that prepayments are treated in the same manner as regular monthly payments.

DATE: These temporary regulations are effective for governmental obligations issued after April 24, 1979.

FOR FURTHER INFORMATION CONTACT: Harold T. Flanagan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3294).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the temporary regulations relating to mortgage subsidy bonds under section 103A of the Internal Revenue Code of 1954. These amendments modify Treasury Decision 7780, published in the Federal Register for July 1, 1981 (46 FR 34311), which provided regulations under section 103A of the Code. Section 103A was enacted by the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499, 94 Stat. 2660). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Explanation of Provisions

Section 103A of the Internal Revenue Code of 1954 provides that a mortgage subsidy bond shall be treated as an obligation not described in section 103(a) (1) or (2). As such, the interest on a mortgage subsidy bond is not excludable from gross income. However, under section 103A(b)(2) a qualified mortgage bond and a qualified veterans' mortgage bond shall not be treated as a mortgage subsidy bond, and the interest thereon is excludable from gross income.

The regulations under § 6a.103A-2(i)(2)(ii)(E) are amended by deleting the rule which requires that prepayments of principal be treated as received on the last day of the month in which the issuer reasonably expects to receive such prepayments. The amendment provides that prepayments are treated in the same manner as regular monthly payments.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Non-Application of Executive Order 12291

The Treasury Department has determined that this temporary regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Drafting Information

The principal author of these temporary regulations is Harold T. Flanagan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans.

Adoption of Amendments to the Regulations

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILLIATION ACT OF 1980

Accordingly, 26 CFR Part 6a is amended as follows:

Section 6a.103A-2 is amended by revising paragraph (i)(2)(ii)(E) to read as follows:

§ 6a.103A-2 Qualified mortgage bond.

* * * * *

(i) *Arbitrage and investment gain.* * * *

(2) *Effective rate of mortgage interest not to exceed bond yield by more than 1 percentage point.* * * *

(ii) *Effective rate of interest.* * * *

(E) The effective rate of interest on any mortgage shall be determined in a manner consistent with actuarial methods and shall take into account the discounted value of all amounts from the time received to an amount equal to the "purchase price" of the mortgage. Such discount rate is the effective rate of interest on the mortgages. The "purchase price" of a mortgage means the net amount loaned to the mortgagor. For example, if a mortgage loan is in the amount of $30,000 and the mortgagor is charged one point ($300) as an origination fee which amount is deducted from loan proceeds available to the mortgagor, the purchase price is $29,700. If interest on an issue is paid semiannually, all regular monthly mortgage payments and prepayments of principal may be treated as being received at the end of each semiannual debt service period. * * *

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved:

John E. Chapeton,
Assistant Secretary of the Treasury.

June 23, 1982.

[FR Doc. 82-17526 Filed 6-24-82; 4:31 pm]
BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 570

Display of Office of Management and Budget Control Numbers for Recordkeeping Requirements; Correction

AGENCY: Office of the Secretary, Labor.

ACTION: Technical amendments; correction.

SUMMARY: This document corrects a legal citation contained in technical

amendments to various regulations administered by the Department of Labor which were made to comply with the Paper work Reduction Act of 1980 (Pub. L. 96–511). The incorrect citation appeared in the notice published on January 5, 1982 (47 FR 145).

FOR FURTHER INFORMATION CONTACT: Paul Larson, Director, Office of Management Reports and Analysis, Directorate of Management and Policy Systems, Room S–5526, Francis Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone 202–523–6331.

SUPPLEMENTARY INFORMATION:

Text of Correction

The following correction should be made in table appearing on page 145 of the **Federal Register** of January 5, 1982

Under ESA, the citation reading "29 CFR 570.35(b)(3)(vi) . . . 1215–0121" should read "29 CFR 570.35a(b)(3)(vi) . . . 1215–0121."

(Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212)

Signed at Washington, D.C. this 21st day of June 1982.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 82–17543 Filed 6–28–82; 8:45 am]

BILLING CODE 4510–23–M

Mine Safety and Health Administration

30 CFR Parts 11, 33, 46, 48, 49, 57, 70, 71, 74, 75, and 77

Nonsubstantive Organizational Amendments and Nomenclature Changes; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; correction and nomenclature changes.

SUMMARY: This notice corrects the Mine Safety and Health Administration's organizational amendments related to the Agency's education and training functions which were published in the **Federal Register** on May 28, 1982 (47 FR 23640). In addition, it makes nomenclature changes to update regulations to reflect proper titles.

EFFECTIVE DATE: June 29, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Ballston Tower No. 3, 4015 Wilson Blvd., Arlington, VA 22203; phone (703) 235–1910.

Dated: June 25, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

1. The following corrections are made in FR Doc. 82–14656, in the issue of May 28, 1982; page 23640:

On page 23640 lines 34 and 35 of Supplementary Information, strike the words "Office of Education and Policy Development" and insert the words "Office of Educational Policy and Development".

§§ 48.3, 48.23, and 49.8 [Amended]

On Page 23640, in the amendments set forth for § 48.3(h)(1) and on page 23641 in the amendments set forth for §§ 48.23(h)(1), 49.8(a) and 49.8(b)(4), strike the words "Office of Education and Policy Development" where they appear in the column designated *new wording* and insert the words "Office of Educational Policy and Development".

2. In addition, the Agency makes the following nomenclature changes to Chapter 1, Title 30, Code of Federal Regulations, Parts 11, 33, 46, 70, 71, 74, 75 and 77, as set forth below.

§ 11.3 [Amended]

30 CFR Part 11.3(h) is amended by removing the words "Atomic Energy Commission" and inserting, in their place, the words "Nuclear Regulatory Commission."

30 CFR Part 11.3(ee) is amended by removing the first occurrence of the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services".

§§ 11.3 and 11.33 [Amended]

30 CFR Part 11 is further amended by removing the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services" in the following places:

(a) 30 CFR 11.3(w)
(b) 30 CFR 11 33(b)

§ 11.90 [Amended]

The Note following 30 CFR Part 11.90(c) is amended by removing the abbreviation "DHEW" and inserting, in its place, the abbreviation "DHHS".

§ 33.6 [Amended]

30 CFR Part 33.6(a) is amended by removing the words "Mining Enforcement and Safety Administration" and inserting, in their place, the words "Mine Safety and Health Administration".

§ 46.3 [Amended]

30 CFR Part 46.3(a) is amended by removing the words "Health Education, and Welfare" and inserting, in their place, the words "Health and Human Services".

§ 70.2 [Amended]

30 CFR Part 70.2(n) is amended by removing the first occurrence of the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services".

§ 70.510 [Amended]

30 CFR Part 70.510(b)(3) is amended by removing the word "Assistant".

§§ 70.201, 70.204, 70.205, 70.300, 70.305, 70.504–2, 70.507, 70.508, 70.509, and 70.510 [Amended]

30 CFR Part 70 is further amended by removing the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services" in the following places:

(a) 30 CFR 70.201(a)
(b) 30 CFR 70.204 (b) and (c)
(c) 30 CFR 70.205(a)
(d) 30 CFR 70.300(a)
(e) 30 CFR 70.305
(f) 30 CFR 70.504–2
(g) 30 CFR 70.507(b)
(h) 30 CFR 70.508(a)
(i) 30 CFR 70.509(c)
(j) 30 CFR 70.510(b)(2)

§ 70.508 [Amended]

30 CFR Part 70.508(a) is amended by removing the words "Mining Enforcement and Safety Administration" and inserting, in their place, the words "Mine Safety and Health Administration".

§§ 71.802, 71.803, 71.804, and 71.805 [Amended]

30 CFR Part 71 is amended by removing the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services" in the following places:

(a) 30 CFR 71.802(b)
(b) 30 CFR 71.803(a)
(c) 30 CFR 71.804(c)
(d) 30 CFR 71.805(b)(2)

§§ 74.4, 74.6 and 74.9 [Amended]

30 CFR Part 74 is amended by removing the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services" in the following places:

(a) 30 CFR 74.4(a)
(b) 30 CFR 74.6(a)
(c) 30 CFR 74.9(b)

§ 75.2 [Amended]

30 CFR 75.2(k) is amended by removing the first occurrence of the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services".

§§ 75.523–1 and 75.1710–1 [Amended]

30 CFR Part 75 is amended by removing the words "Assistant Administrator—" and inserting in their place the words "Director of" wherever they occur in the following places:

(a) 30 CFR 75.523–1(c)

(b) 30 CFR 75.1710–1(f)

§ 75.1713 [Amended]

30 CFR Part 75.1713 is amended by removing the words "Health, Education, and Welfare" and inserting, in their place, the words "Health and Human Services".

§ 75.1719–1 [Amended]

30 CFR 75.1719–1(f) is amended by removing the word "Assistant".

§§ 77.1108–1 and 77.1900 [Amended]

30 CFR Part 77 is amended by removing the words "Mining Enforcement and Safety Administration" and inserting, in their place, the words "Mine Safety and Health Administration" in the following places:

(a) 30 CFR 77.1108–1(b)(4)

(b) 30 CFR 77.1900(a)(1)

[FR Doc. 82–17604 Filed 6–28–82; 8:45 am]

BILLING CODE 4510–43–M

VETERANS ADMINISTRATION

38 CFR Part 3

Veterans Benefits; Evidence of Marriage and Birth

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration has amended its adjudication regulations governing evidence of marriage and birth. These amendments require a claimant to submit documentary evidence of marriage and birth without exception. The need for this change results from our obligation to preserve the integrity of Veterans Administration benefit programs.

EFFECTIVE DATE: June 14, 1982.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle, Jr. (202–389–3005).

SUPPLEMENTARY INFORMATION: On pages 12362 and 12363 of the Federal Register of March 23, 1982, the Veterans Administration published proposed amendments of 38 CFR 3.205, 3.209. Interested persons were given until April 22, 1982, to submit comments, suggestions, or objections to the proposed amendments.

We received no comments, suggestions, or objections to the proposed amendment of §§ 3.205 and 3.209. The amendments are adopted as proposed.

The Administrator hereby certifies that these regulation amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these regulations deal with the type of evidence which must be submitted by individuals applying for Veterans Administration benefits. Any impact upon small entities would be incidental and slight. Pursuant to 5 U.S.C. 605(b), these regulation amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that these regulation changes are nonmajor for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health Care, Pensions, Veterans.

(Catalog of Federal Domestic Assistance Program numbers are 64.104, 64.105, 64.109 and 64.110)

Approved: June 14, 1982.

Robert P. Nimmo,

Administrator.

PART 3—ADJUDICATION

1. Section 3.205 is amended as follows:

(a) By inserting the legal citation "(38 U.S.C. 210(c))" following paragraph (c).

(b) By revising the introductory portion of paragraph (a) preceding subparagraph (1) as set forth below:

§ 3.205 Marriage.

(a) *Proof of marriage.* Marriage is established by one of the following types of evidence:

* * * * *

2. Section 3.209 is amended as follows:

(a) By inserting the words "or she" following the word "he" in paragraph (e) and inserting the legal citation "(38 U.S.C. 210(c))" following paragraph (g).

(b) By revising the introductory portion preceding paragraph (a) as set forth below:

§ 3.209 Birth.

Age or relationship is established by one of the following types of evidence. If the evidence submitted for proof of age or relationship indicates a difference in the name of the person as shown by other records, the discrepancy is to be reconciled by an affidavit or certified statement identifying the person having the changed name as the person whose name appears in the evidence of age or relationship.

* * * * *

§ 3.210 [Amended]

3. Section 3.210 is amended by removing the words "his widow" and inserting the words "the veteran's surviving spouse" in paragraph (c)(1(i).

[FR Doc. 82–17570 Filed 6–28–82; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL 2139–4]

Approval and Promulgation of Implementation Plans; Florida: Revision of Sulfur Dioxide Rule for Tampa Electric Company's Gannon Station

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of a state implementation plan (SIP) revision submitted and adopted by Florida to allow the Tampa Electric Company (TECO) Gannon Station to revert to coal firing in four of its six boilers. There will be no increase in actual emissions of sulfur dioxide from the plant as a result of the conversion. The conversion of oil-fired units back to coal is consistent with our nation's plan to reduce our reliance upon oil for generating electricity while preventing violations of the ambient air quality standards. EPA has reviewed and determined that the requested coal sampling and analytical testing procedures submitted by the Department of Environmental Regulation (DER) are acceptable and will ensure compliance with the emission limiting cap imposed on the plant. EPA proposed this action on September 8, 1981 (46 FR 44785), and received no comments.

EFFECTIVE DATE: This rule is effective July 29, 1982.

FOR FURTHER INFORMATION CONTACT: Archie Lee, Air Programs Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On December 3, 1980, DER submitted to EPA a SIP revision for the TECO Gannon Station which allows Units 1-4 to revert from burning fuel oil in the boiler to coal while a bubbled sulfur dioxide (SO_2) emission cap would be averaged weekly across the six units. Also, on February 16, 1982, DER submitted the coal sampling and analytical testing procedures needed to ensure continuous compliance with the applicable SO_2 emission limiting regulation through the use of coal analysis. EPA proposed approval of this revision on September 8, 1981 (46 FR 44785). No comments were received on the proposal.

Since the area is measuring ambient concentrations of sulfur dioxide close to the Florida Ambient Air Quality Standard (FAAQS) for sulfur dioxide (Note: The FAAQS is 260 $\mu g/m^3$, or approximately 71% of the National Ambient Air Quality Standard), no increase in actual emissions of sulfur dioxide was allowed as part of the conversion to coal. The requirements imposed on the plant include a SO_2 emission cap of 10.6 tons per hour (TPH) on a weekly average bubbled across the six units at the plant which is equivalent to current emissions, and a maximum unit limit of 2.4 lbs sulfur dioxide (SO_2) per million BTU (MBTU) heat input on a weekly average.

As the units were capable of burning coal prior to August 17, 1971, these units are not subject to the new source performance standard (NSPS) requirements nor are the units subject to the prevention of significant deterioration (PSD) requirements.

In the control strategy documentation submitted with the plan revision, compliance with the 24-hour ambient standard proved to be the most restrictive case. The modeling analysis performed indicated that the Florida 24-hour ambient SO_2 standard of 260 $\mu g/m^3$ could be exceeded in the vicinity of the plant at operating rates of 10,500 MBTU/hour or greater with all units operating at the SO_2 emission rate of 2.4 lbs/MBTU. Therefore, the compliance plan will incorporate into the operating permit for each unit at the plant a pre-daily fuel analysis and load shifting when peak loads are projected to exceed 10,500 MBTU/hour. This load projection and fuel analysis are designed to prevent violations of the Florida 24-hour standard when threatened by high operating rates. The SO_2 weekly emission average of 2.4 lbs/MBTU will prevail otherwise. To enforce the 2.4 lbs/MBTU limit, the operator will collect and store daily fuel samples. If the weekly average emission rate is in excess of 2.4 lbs/MBTU, the operator may be required to analyze the daily fuel samples stored to produce rolling 7-day average emission rates in excess of 2.4 lbs/MBTU, and, thus, determine the number of days of violation. Although Florida has adopted the plan revision to meet ambient standards more restrictive than the NAAQS, EPA's review only addressed its adequacy to meet the NAAQS.

The State has submitted a control strategy which demonstrates that the regulation, in its present form, will protect the 24-hour and 3-hour SO_2 NAAQS under worst case conditions. Given the margin of safety between the State's 24-hour standard of 260 $\mu g/m^3$ and the Federal standard of 365 $\mu g/m^3$, it is EPA's judgement that no violations of the short-term SO_2 NAAQS will occur.

After a 30-day comment period, in which no comments were received, and review of Florida's coal sampling scheme to ensure compliance by fuel analysis, EPA is approving the proposed SIP revision with no changes. The effective date of the State regulation is January 8, 1981.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from today]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: June 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart K—Florida

In § 52.520 is amended by adding paragraph (c)(44) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(44) Revised SO_2 limits for the Gannon Station of Tampa Electric Company, submitted on December 3, 1980, and associated methods of coal sampling and analysis, submitted on February 16, 1982, by the Florida Department of Environmental Regulation.

[FR Doc. 82-17535 Filed 6-28-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2140-7]

Ohio; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rulemaking.

SUMMARY: The EPA announces final rulemaking approving revisions to the Ohio State Implementation Plan (SIP) for ozone. The revision pertains to the State's strategy to control volatile organic compound (VOC) emissions from stationary industrial sources of VOC emissions addressed in EPA's Group I and II Control Technique Guidelines (CTGs). EPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

EFFECTIVE DATE: This final rulemaking becomes effective on July 29, 1982.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses:

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460
Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:
Sharon Reinders, (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), pursuant to the requirements of Section 107 of the Act, the EPA designated certain areas in Ohio as not attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Part D of the Act requires each State to revise its SIP for areas that have not attained the NAAQS. These SIP revisions must demonstrate attainment of the primary NAAQS by December 31, 1982, or in certain cases, by December 31, 1987. The Part D requirements for an approvable SIP are described in the April 4, 1979, Federal Register (44 FR 20372) as supplemented at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979) and 44 FR 67182 (November 23, 1979).

An adequate SIP for ozone is one which provides for sufficient control of VOC from stationary and mobile sources to provide for attainment of the standard. For stationary sources, the plan must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) requirements for sources of VOC emissions for which EPA has published a CTG by January of the preceding year. In general, where the State regulations are not supported by the information in the CTG, the State must provide an adequate demonstration that the regulations represent RACT or amend the regulations to be consistent with the information in the CTG's.

Adoption and submittal of RACT regulations for sources addressed in a CTG published by January 1978 (Group I CTGs) were due July 1, 1979. Adoption and submittal of additional RACT regulations for sources covered by a CTG published between January 1978 and January 1979 (Group II CTGs) were due July 1, 1980 (44 FR 50371, August 28, 1979). The EPA revised the July 1, 1980 deadline to January 1, 1981 (45 FR 78121; November 25, 1980).

Summary of Ohio's Actions

The State of Ohio has amended the Ohio Administrative Code pertaining to control of emissions of organic compounds from existing stationary sources. In response to the requirements of Part D of the Act, the State submitted the amendents to the EPA as a SIP revision on February 12, 1981, and submitted supporting technical data, requested by the EPA on January 8, 1982. The revision consists of modifications to the State's existing VOC RACT regulations for refinery wastewater separators, Rule 3745-21-09(M), and vinyl coating lines Rule 3745-21-09(H), (Group I CTG source categories) and newly adopted RACT requirements for Group II CTG source categories: petroleum refinery fugitive emissions (leaks), pharmaceutical manufacture, rubber tire manufacture, surface coating of miscellaneous metal parts and products, graphic arts (printing), dry cleaning (perchloroethylene), gasoline tank trucks (leak prevention and vapor collections systems) and petroleum liquid storage (floating roof tanks). The regulations are embodied in Ohio Administrative Code as follows: Definitions Rule 3745-21-01, Attainment Dates and Compliance Time Schedule Rule 3745-21-04, Control of Emission of Organic Compounds From Stationary Sources Rule 3745-21-09, incorrectly printed as Rule 3474-21-09 in EPA's notice of proposed rulemaking (47 FR 15812), and Compliance Test Methods and Procedures Rule 3745-21-10.

On April 13, 1982, EPA proposed for public comment rulemaking approving Ohio's submittal (47 FR 15812). The reader is referred to the notice of proposed rulemaking for details.

EPA received one comment from industry on the proposal. The commenter submitted technical information pertaining to rule number 3745-21-09 (AA), perchloroethylene dry cleaning facilities. The commenter claims that requiring carbon adsorption is technically unachievable and economically unreasonable and believes that EPA should disapprove the State regulation.

Response

The States are free to choose the mix of controls, including emission limitations that represent reasonably available control technology, necessary to attain and maintain the standards, *Train* v. *NRDC, Inc.* 421 US 60 (1975). In doing so, States may consider technological and economic feasibility. Once the State chooses its mix of controls, EPA cannot disapprove that mix for reasons of economic and technological feasibility, *Union Electric* v. *USEPA*, 96 S. Ct. 2518 (1976). Carbon adsorption is a common method for control of emissions from perchloroethylene dry cleaning facilities. Any source that believes that economic and technical conditions preclude compliance with the Ohio rule may request a variance from the rule under Ohio provision 3745-35-03.

After reviewing the submitted comment, the EPA has determined that the proposed approval of rule number 3745-21-09 (AA) is appropriate. Therefore, EPA approves the Ohio rules controlling VOC emissions, as described at 47 FR 15812, and incorporates the rules into the Ohio SIP. Furthermore, final approval of Rule 3745-21-09(M) satisfies the EPA conditional approval published on October 31, 1980 (45 FR 72138) affecting refinery wastewater separators. Today's action does not address the other conditions of approval published as 45 FR 72138 pertaining to the Ohio SIP to control ozone.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1981.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: June 22, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Subpart KK—Ohio

1. Section 52.1870 is amended by adding paragraph (c)(43) as follows:

§ 52.1870 [Amended]

* * * * *

(c) Identification of plan.

* * * * *

(43) On February 12, 1981, the State of Ohio submitted adopted amended Ohio Administrative Code (OAC) Rules 3745-

21–01, 04, 09 and 10, Emission Standards and Technology Requirements for Certain Sources of Volatile Organic Compounds Emissions. The following portions of these rules were withdrawn by the State of Ohio on March 27, 1981; OAC Rule 3745–21–04(C)(19)(a) and 3745–21–09(R)(3)(a). On January 8, 1982, the State of Ohio submitted additional materials pertaining to OAC Rules 3745–21–09 (H), (U) and (X).

§ 52.1873 [Amended]

2. 40 CFR 52.1873 is amended as follows:

40 CFR 52.1873 is amended by removing the date "July 1, 1980" and inserting, in its place, the date "January 1, 1981".

§ 52.1885 [Amended]

3. 40 CFR 52.1885 is amended as follows:

Paragraph (b)(1) is removed and reserved.

[FR Doc. 82–17595 Filed 6–28–82; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 62

[A–9–FRL–2141–4]

California; Plans for the Control of Designated Pollutants from Existing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On July 2 and 23, 1980, EPA published notices of proposed rulemaking concerning California's plans for controlling fluoride emissions from existing phosphate fertilizer plants, and for controlling sulfuric acid mist emissions from existing sulfuric acid production units. Today's notice takes final action under Section 111(d) of the Clean Air Act to approve the California plans.

EFFECTIVE DATE: This action is effective July 29, 1982.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Acting Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Douglas Grano (415) 974–8058.

ADDRESS: A copy of the California State plans is located at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

SUPPLEMENTARY INFORMATION:

Background

On February 26 and July 16, 1979 and April 7, 1980, the State of California submitted portions of plans for controlling fluoride emissions from existing phosphate fertilizer plants and for controlling sulfuric acid mist emissions from existing sulfuric acid production units. These submittals were intended to meet certain requirements of Section 111(d) of the Clean Air Act. These plans consist of six local regulations, three covering each designated pollutant, and a citation of the State's legal authority to carry out these rules. On July 2 and 23, 1980 (40 FR 44970 and 49115), EPA published notices proposing to approve these portions of the plans as well as identifying portions of the plans which had not yet been submitted, but are required under Section 111(d). These notices should be used as references in reviewing today's notice.

EPA proposed approval of these plans except for the following:

- An emission inventory of designated facilities
- A list of witnesses who appeared at each public hearing
- Provisions requiring sources to maintain records on the nature and amount of emissions
- Provisions for sources to periodically report emission information to the State
- Provisions for correlating any compliance information obtained by the State applicable emission standards and making this data available to the public
- The Fresno County fluoride standard is less stringent than EPA's recommended standard
- Fresno and San Joaquin County have adopted rules for only one of the six source categories contained in the guideline documents; certification that no other sources exist is needed
- South Coast Air Quality Management District's rule definition for sulfuric acid mist needs clarification
- Bay Area Air Quality Management District's Regulation 2 lacks clarification on their emission limitation for sulfuric acid mist

Plan Supplements

On September 23 and October 31, 1980, and February 5, May 5, and July 6, 1981, the State submitted amendments to the sulfuric acid mist and fluoride emissions plans. The plans have been amended by providing information correcting all deficiencies noted by EPA.

In addition, EPA received District endorsed letters and technical reports from the Occidental Chemical Co. and Valley Nitrogen Producers Inc., dated September 9 and October 8, 1980 respectively, requesting that EPA review and approve a relaxation of rule 424, *Fluorides Phosphoric Acid Plants*. The State submitted letters to EPA on February 5 and July 6, 1981 supporting the Districts' proposal. The proposed rule amendment would change the flouride emission limit from .02 pounds per ton (lb/ton) to .10 per ton.

EPA reviewed the Occidental and Valley Nitrogen reports and, based on the technical and economic arguments presented, EPA has determined that the less stringent fluoride emission rate of 0.10 lb/ton is justified. This is because the facilities within the Districts differ significantly from the EPA model plant, which served as the basis for the standard. Since adequate justification has been provided, EPA is today approving amended Rule 424 for Fresno and San Joaquin Counties.

EPA's detailed evaluation of this supplemental material is available for public inspection at the Region 9 Office and EPA Library in Washington, D.C.

EPA Actions

EPA is taking final action under Section 111(d) of the Clean Air Act to approve the California plans to control sulfuric acid mist emissions from existing sulfuric acid production units, and to control fluoride emissions from existing phosphate fertilizer plants as proposed in the **Federal Register** notices and as amended by subsequent revisions. No comments were received on the proposal notices.

EPA finds that "good cause" exists to approve the above supplements to the California § 111(d) plan without prior proposal because the revisions are not controversial and merely correct deficiencies previously noted (see Administrative Procedure Act).

Regulatory Process

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

Under the Clean Air Act any petitions for judicial review of this notice must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

(Section 111 of the Clean Air Act, as amended (142 U.S.C. 74111))

List of Subjects in 40 CFR Part 62

Air pollution control aluminum, flouride, sulfur, administrative practice and procedure, intergovernmental relations, reporting requirements.

Dated: June 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Accordingly Subpart F is added to read as follows:

Subpart F—Plan for the Control of Designated Pollutants From Existing Facilities (§ 111(d) Plan)

Sec.

62.1100 Identification of plan.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

62.1101 Identification of sources.

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Units

62.1102 Identification of sources.

Fluoride Emissions From Primary Aluminum Reduction Plants

62.1103 Identification of plan—negative declaration.

62.1104–62.1123 [Reserved]

Authority: Section 111 of the Clean Air Act, as amended (42 U.S.C. 74111).

§ 62.1100 Identification of plan.

(a) State of California Designated Facility Plan (§ 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Control of fluoride emissions from existing facilities at phosphate fertilizer plants, submitted on February 26 and July 16, 1979 and April 7, 1980 having been adopted by the Districts on December 1 and 6, 1979 and January 9, 1979. A letter clarifying the plan was submitted on March 27, 1979. Revisions to the plan were submitted on September 23, 1980 and February 5 and July 6, 1981.

(2) Control of sulfuric acid mist from existing facilities at sulfuric acid production units, submitted on February 26, July 16, and September 7, 1979 and April 7, 1980, having been adopted by the Districts on December 1 and 6, 1978 and January 9, 1979. Revisions to the plan were submitted on October 31, 1980, February 18, and May 1, 1981.

(c) Designated facilities: The plans apply to existing facilities in the following categories of sources:

(1) Existing phosphate fertilizer plants

(2) Existing sulfuric acid production units

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.1101 Identification of sources.

The plan applies to existing facilities at the following phosphate fertilizer plants:

(a) Occidental Chemical Company in San Joaquin County

(b) Simplot Company in Kings County

(c) Valley Nitrogen Products, Inc., in Fresno County

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Units

§ 62.1102 Identification of sources.

The plan applies to existing facilities at the following sulfuric acid production units:

(a) Allied Chemical Corporation in Alameda County

(b) Monsanto Company in Alameda County

(c) Occidental Chemical Company in Fresno County

(d) Stauffer Chemical Company in Alameda County

(e) Valley Nitrogen Products, Inc. in Kern County

Fluoride Emissions From Primary Aluminum Reduction Plants

§ 62.1103 Identification of plan—negative declaration

§§ 62.1104–1123 [Reserved]

[FR Doc. 82-17596 Filed 6-28-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-9-FRL 2141-5]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On November 12, 1981, EPA invited comments on California's attainment status designations and proposed action on six California Air Resources Board (ARB) redesignation requests. This is the first in a series of final actions that respond to the comments EPA received concerning the November 12 proposal.

In this notice, EPA confirms certain designations in California initially made on March 3, 1978, reduces the size of the carbon monoxide (CO) nonattainment area in Sacramento County, and finalizes action on the six ARB redesignation requests.

DATE: This action is effective July 29, 1982.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Air Programs Branch (A–2–3), Air Management Division, EPA Region 9, 215 Fremont Street, San Francisco, CA 94105, Tele: (415) 974–8061.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, under Paragraph 107(d)(2) of the Clean Air Act, as amended, EPA promulgated attainment status designations for all states (43 FR 8962). The Western Oil and Gas Association (WOGA) and others challenged EPA's designations for California in the Ninth Circuit Court of Appeals. The suit alleged that EPA had violated the notice and comment requirements of the Administrative Procedure Act by failing to provide an opportunity to comment prior to taking final action on the designations. The Court ruled that the present designations would be allowed to stand temporarily but ordered EPA to reconsider its original designations for California, after first providing public notice and opportunity for comments.

On November 12, 1981, EPA published a notice of proposed rulemaking inviting comments on all of California's designations and proposed action on six ARB redesignation requests. Because of strong public interest, EPA extended the public comment period to March 17, 1982 (extended to May 17, 1982 for the Monterey District). During this time EPA received a total of 41 comments from industry, environmental groups, local air pollution control districts, and the ARB. These comments included general policy issues, recommended boundary changes, and discussion of the six proposed actions.

To properly address such a diverse and complex set of comments, EPA has elected to issue a series of three rulemaking actions. Each action will focus on related subject areas and issues. This first notice establishes those areas where EPA has received no comments, takes final action on the six ARB redesignation requests, and in response to a comment, reduces the CO nonattainment area in Sacramento County. In the second notice, EPA plans to reaffirm those designations that it believes are correct, despite challenges from the comments. The third notice will revise those designations that EPA deems appropriate based on all available evidence.

Areas That Received No Comments

The list shown below identifies those areas and their respective designations that received no comments during the public response period. EPA is retaining the existing designations for these areas at this time.

Area	Pollutant(s)
North Coast Air Basin:	
Del Norte County	All.[1]
Humboldt County	All.
Mendocino County	CO, NO_2, SO_2, O_3.
Sonoma County (North Coast Air Basin Portion).	All.
Trinity County	All.
Lake County Air Basin	All.
San Francisco Bay Area Air Basin	NO_2, SO_2, TSP.
North Central Coast Air Basin	CO, NO_2, SO_2, TSP.
South Central Coast Air Basin	NO_2, SO_2.
South Coast Air Basin	All.
San Diego Air Basin	All.
San Joaquin Valley Air Basin:	
Fresno County	NO_2, SO_2.
Kern County (San Joaquin Valley Air Basin Portion).	NO_2, SO_2.
Kings County	NO_2, SO_2.
Madera County	All.
Merced County	All.
San Joaquin County	NO_2, O_3, SO_2.
Stanislaus County	NO_2, O_3, SO_2, TSP.
Tulare County	All.
Sacramento Valley Air Basin:	
Sacramento County	NO_2, SO_2, TSP.
Solano County (Sacramento Valley Air Basin Portion).	NO_2, SO_2, TSP.
Yolo County	NO_2, SO_2, TSP.
Butte County	NO_2, SO_2, TSP.
Colusa County	All.
Glenn County	All.
Shasta County (Sacramento Valley Air Basin Portion).	All.
Sutter County	NO_2, SO_2, TSP.
Tehama County	All.
Yuba County	NO_2, SO_2, TSP.
Great Basin Valleys Air Basin	All.
Northeast Plateau Air Basin	All.
Mountain Counties Air Basin	All.
Southeast Desert Air Basin:	
Kern County (Southeast Desert Air Basin Portion).	All.
Imperial County	All.
Los Angeles County (Southeast Desert Air Basin Portion).	CO, NO_2, SO_2, O_3.
Riverside County (Southeast Desert Air Quality Maintenance Area Portion).	CO, NO_2, SO_2, O_3.
San Bernardino County (Southeast Desert Air Quality Maintenance Area Portion).	CO[2], NO_2, SO_2, O_3.
Riverside County (non-AQMA Portion).	All.
San Bernardino County (non-AQMA Portion).	All.
Lake Tahoe Air Basin	All.

[1] All=Carbon Monoxide (CO), Nitrogen Dioxide (NO_2), Sulfur Oxides (SO_x), Total Suspended Particulate (TSP), and Ozone (O_3).

[2] Through public comment EPA learned that the designation listing for CO in the proposed notice and its technical support document was incorrect. San Bernardino County is attainment for CO.

Final Actions on Redesignation Requests

In the November 12 notice, EPA proposed action on six ARB redesignation requests. During the extended public comment period, EPA received comments on all of the proposed actions. These comments were considered along with all other pertinent evidence by EPA. Please refer to the Comment Technical Support Document (available at the Region 9 Office and EPA Headquarters in Washington, D.C.) for details on the evaluations.

In certain instances, the proposed actions were altered in response to the new information: Mendocino County, the Southeast Desert Air Quality Maintenance Area (SEDAQMA) portion of San Bernardino County, and the Southeast Desert Air Basin (SEDAB) portion of Los Angeles County. Based on revised evaluations, EPA is finalizing action on the six redesignation requests as follows:

(1) Revise the designation status of the SEDAQMA portion of Riverside County from nonattainment to unclassifiable for TSP.

(2) Reduce the nonattainment area for TSP from the entire SEDAQMA portion of San Bernardino County to a smaller area surrounding Victorville.

(3) Reduce the nonattainment area for TSP from the entire SEDAB portion of Los Angeles County to a smaller area including the City of Lancaster and the community of Quartz Hill.

(4) Revise the designation status of Mendocino County from nonattainment to attainment for TSP.

(5) Revise the designation status of northern Ventura County from unclassifiable to attainment for TSP.

(6) Revise the designation status of northern Ventura County from nonattainment for oxidant to attainment for ozone.

Sacramento County Carbon Monoxide Redesignation

On March 3, 1978, EPA designated Sacramento County nonattainment for CO because of measured violations of the 8-hour standard. As a result of the November 12 notice, EPA received comments recommending that the nonattainment area be reduced from the entire county to a smaller area. The comments included a modeling study that described the area where violations of the CO standards could be expected. The study entitled, "Technical Support Document for Revision of Carbon Monoxide Nonattainment Area for Sacramento County, California," was prepared by Environmental Research & Technology, Incorporated. EPA evaluated the study and found it to be accurate, complete and consistent with EPA policy. Based on the study and the comments, EPA is shrinking the nonattainment area to include only those portions of the City of Sacramento and adjacent suburbs where CO violations have been measured or modeled. The remainder of the County, outside this area, is redesignated to attainment.

Administration

As a result of the actions described above, the requirements contained in Title I, Part D (Plan Requirements for Nonattainment Areas) of the Clean Air Act, as amended, no longer apply to the areas redesignated to attainment or unclassified for their respective pollutants.

Under the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate district by August 30, 1982. This action may not be challenged later in proceedings to enforce its requirements.

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

(Secs. 107(d) and 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7407(d) and 7601(a)))

List of Subjects in 40 CFR Part 81

Environmental Protection Agency, Air Pollution Control, National Parks, Wilderness Areas.

Dated: June 22, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C of Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designation

1. In § 81.305 California, the attainment status designation tables are amended as follows:

A. The California—TSP table is amended as follows:

(1) In the North Coast Air Basin, the designation of Mendocino County is amended.

(2) In the South Central Coast Air Basin, the entries for Ventura County are amended.

(3) In the Southeast Desert Air Basin, entries for Los Angeles County (S.E. Desert Air Basin portion), Riverside County (S.E. Desert AQMA portion), and San Bernardino County (S.E. Desert AQMA portion) are amended.

B. The California—Ozone table is amended as follows:

(1) In the South Central Coast Air Basin, entries for Ventura County are amended.

C. The California—CO table is amended as follows:

(1) In the Sacramento Valley Air Basin, the entry for Sacramento County is amended.

The amended portions of the tables for § 81.305 California read as set forth below:

§ 81.305 California.

CALIFORNIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
North Coast Air Basin:				
Mendocino County				X.
* * * * * * *				
South Central Coast Air Basin:				
Ventura County:				
North of Los Padres National Forest southern boundary				X.
South of Los Padres National Forest southern boundary	X			
* * * * * * *				
Southeast Desert Air Basin:				
Los Angeles County (Southeast Desert Air Basin portion):				
Lancaster Quartz Hill Area	X			
Non-Lancaster Quartz Hill Area			X	
Riverside County (S.E. Desert AQMA portion)			X	
San Bernardino County (S.E. Desert AQMA portion):				
Victorville Area	X			
Non-Victorville Area			X	
* * * * * * *				

CALIFORNIA—OZONE

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * *		
South Central Coast Air Basin:		
Ventura County:		
North of Los Padres National Forest southern boundary.		X.
South of Los Padres National Forest southern boundary.	X	
* * * * *		

CALIFORNIA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
Sacramento Valley Air Basin (SVAB):		
* * * * *		
Sacramento County:		
Sacramento Area	X	
Non-Sacramento Area		X.
* * * * *		

* * * * * * *

[FR Doc 82-17533 Filed 6-28-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 82-273]

Commission Organization; Amendment of the Commission's Rules To Reflect a Reorganization of the Private Radio Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules to incorporate the reorganization of the Private Radio Bureau. This action is necessary to remove excess levels of supervision. It consolidates three existing divisions within the Private Radio Bureau into two divisions.

EFFECTIVE DATE: June 8, 1982.

ADDRESS: 1919 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Annie O'Donoghue, Office of Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Adopted: April 5, 1982.
Released: June 15, 1982.

In the matter of Amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Private Radio Bureau; order.

1. The Commission has before it for consideration proposed changes in the organization of the Private Radio Bureau. Implementation of the proposed changes would require amendments to § 0.132 of the Commission's Rules and Regulations.

2. To promote operational efficiency, the Commission is hereby approving the consolidation of three existing divisions within the Private Radio Bureau into two divisions, to be known as the Land Mobile and Microwave Division and the Special Services Division. The Licensing Division will remain the same. The Nation-wide Land Mobile Task Force and the Associate Bureau Chief positions will be abolished. The new structure will improve the operating efficiency of the Bureau by removing excess levels of supervision and eliminating conflicts between existing divisions. The reorganization will also be reflective of the tremendous growth in the land mobile communication industry in comparison to the aviation, marine, personal and other services handled by the Bureau. Part 0 of the Rules and Regulations is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, IT IS ORDERED, effective June 8, 1982 that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317, 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—COMMISSION ORGANIZATION

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as indicated below.

1. Section 0.132 is amended to read:

§ 0.132 Units in the Office.

The Private Radio Bureau is comprised of the following units:

(a) Office of the Bureau Chief;

(b) Administration and Management Staff;

(c) Planning Staff;

(d) Land Mobile and Microwave Division;
(e) Licensing Division; and
(f) Special Services Division.

[FR Doc. 82-17571 Filed 6-28-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 0

[FCC 82-272]

Commission Organization; Amendment of the Commission's Rules To Reflect a Reorganization of the Office of Science and Technology

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules to incorporate the reorganization of the Office of Science and Technology. The reorganization was necessary to add some refinements to the organizational structure and functions that resulted from the 1980 reorganization, based on two years of operating experience and advancements in technology. This reorganization will more accurately reflect the work of some units.

EFFECTIVE DATE: June 8, 1982.

ADDRESS: 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Annie O'Donoghue, Office of Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Adopted: April 5, 1982.

Released: June 15, 1982.

In the matter of Amendment of Part O of the Commission's Rules to reflect a reorganization of the Office of Science and Technology; order.

1. The Commission has before it for consideration proposed changes in the organization of the Office of Science and Technology. Implementation of the proposed changes would require amendments to § 0.32 of the Commission's Rules and Regulations.

2. To more accurately reflect the work of some OST units, the Commission is hereby approving the name change of the Research and Analysis Division to the Technical Analysis Division (TAD). The TAD will have two new branches; the Mathematical Modeling Branch (formerly the Spectrum Analysis Branch of the Spectrum Management Division) and the Technical Planning Branch (formerly the Technical Planning Staff of the immediate Office of Chief Scientist). To reflect their functions more accurately, the names of two of the three existing branches in the TAD will be changed. The Research Branch will become the Experimental Engineering Branch and the Propagation Analysis Branch will become the Propagation and Terrestrial Systems Branch. In this reorganization no material changes have been made to the Satellite Systems Branch of the TAD, the Spectrum Management Division (other than the transfer of the Spectrum Analysis Branch), the Authorization and Standards Division or the International Staff. The Deputy Chief positions for Policy and for Technology have been replaced with one Deputy Chief Scientist position. These changes add some refinements to the organizational structure and functions that resulted from the 1980 reorganization, based on two years of operating experience and advancements in technology. Part O of the Rules and Regulations is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedure Act are, therefore, inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, IT IS ORDERED, effective June 8, 1982 that Part O of the Rules and Regulations is amended as set forth in the Appendix hereto.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317, 48 Stat., as amended, 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART O—COMMISSION ORGANIZATION

Part O of Chapter I of title 47 of the Code of Federal Regulations is hereby amended as indicated below.

1. Section 0.32 is amended to read:

§ 0.32 Units in the Office.

The Office of Science and Technology is comprised of the following units:

(a) Immediate Office of the Chief Scientist;
(b) International Staff;
(c) Policy and Management Staff;
(d) Authorization and Standards Division;
(e) Spectrum Management Division; and
(f) Technical Analysis Division.

[FR Doc. 82-17572 Filed 6-28-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 81-697; FCC 82-259]

Amateur Radio Service; Amendment of the Commission's Rules Regarding the ERP Limitations for Amateur Radio Stations in Repeater Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: The Commission is relaxing effective radiated power (ERP) restrictions for amateur radio stations in repeater operation on frequencies between 52 and 54 MHz. A study indicates that the range of operations in this band (particularly mobile operations) is curtailed due to ambient electrical noise. The revised rules will increase ERP limits and thus provide greater range. The ERP limitations will also be extended to repeater operations on frequencies between 29.5 and 29.7 MHz to help prevent co-channel interference between stations engaging in such operation.

DATES: Effective July 29, 1982.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Lett, Private Radio Bureau, Special Services Division, 202 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio:

Adopted: June 10, 1982.

Released: June 22, 1982.

In the matter of amending the ERP Limitations for Amateur Radio Stations in Repeater Operation; PR Docket No. 81-697, RM-2419; report and order (proceeding terminated).

1. On September 30, 1981 the Commission adopted a Notice of Proposed Rule Making in the above-captioned matter proposing to relax effective radiated power (ERP) limitations for amateur radio stations in repeater operation on frequencies between 52 and 54 MHz (in the 6 meter band).[1] That Notice was in response to a

[1] 46 FR 50991, October 16, 1981.

petition for rule making, RM–2419, submitted by Gordon Schlesinger, which requests that such operation be limited to a range of 250 to 1000 watts ERP, as a function of antenna height. Currently, such operations are limited to a range of 25 to 100 watts, depending on antenna height. In the same Notice the Commission also proposed, on its own initiative, to extend the ERP limitations to repeater operations on the frequencies between 29.5 and 29.7 MHz (in the 10 meter band).

2. In its Notice of Proposed Rule Making, the Commission specifically proposed to amend the ERP limitations so that all repeater operations on frequencies between 29.5 and 420 MHz would be limited to an ERP of between 100 and 800 watts. It also proposed to delete from the table in the subject paragraph [2] the 50 foot height specification and to convert the remaining height specifications to metric units. With regard to relaxation of the ERP limits between 52 and 54 MHz the Commission in its Notice stated, "* * * we find that some adjustment is necessary in the ERP limitations in order to provide a reasonable community coverage area during mobile station operations." With regard to including the frequencies between 29.5 and 29.7 MHz in the ERP limitations the Commission stated that "* * * the increasing popularity of 10 meter repeaters has created the potential for serious co-channel interference problems * * *" and that "* * * present ERP limitations have apparently been instrumental in avoiding such interference among other repeater operations * * *." Other alterations in the table were proposed "* * * for the sake of avoiding unnecessary confusion and complexity."

3. Six comments were filed regarding the Commission's Notice.[3] One filing, the comments of Richard Golden, contends that there should be no ERP limits for repeater operations in the 6 and 10 meter bands because such rules limit experimentation. That comment also suggests that the Commission's decision to incorporate ERP limitations in the rules for repeater operations is based on speculative conclusions. The Commission, however, finds that comment unpersuasive on both points. No evidence is offered as to why repeater operations with higher ERP than that proposed are necessary to carry out the forms of experimentation cited by the comment. Furthermore, the desirability of the ERP limits has been proven by the marked reduction in co-channel interference complaints to the Commission since their inception.

4. Comments of the Southern California Repeater and Remote Base Association (SCRRBA) suggests that ERP limits for repeater operations in the 6 and 10 meter frequency bands should be somewhat higher than those for such operations in the 2 meter and 1¼ meter bands (on the frequencies 144.5–145.5 MHz, 146.0–148.0 MHz and 220.5–225.0 MHz). That comment contends that "* * * reception of similar signals from repeaters operating above 144.5 MHz is not affected by man-made noise to any substantial degree compared to 29 and 52 MHz reception." While the Commission agrees that this statement is true, it is precisely the fact that signals from a 29 or 52 MHz repeater will not be similar to those from a 144.5 MHz repeater at the same location that continues to demonstrate that equal ERP limits for repeater operations between 29.5 and 420 MHz are appropriate. The advantage gained by 144.5 MHz and higher frequency operations not encountering significant man-made noise is offset in many respects by the greater path losses, and consequent weaker signal strengths, that occur at those frequencies. The Commission accordingly concludes that the limits proposed by the Notice in this proceeding are reasonable in this respect.

5. The SCRRBA and one other commenter, the Los Angeles Repeater Association, also claim that the Appendix of the Commission's Notice setting forth the proposed rules contained an error in the transcription of certain figures. In the text of its Notice, the Commission indicated that ERP limits for repeater operations above 54 MHz would be unchanged except for the elimination of the 50 foot height specification and the conversion of the other height specifications to metric units. Accordingly, the ERP limitations table (§ 97.67(c)), as described in the Appendix of the Notice, contained an entry of "100 watts" as the limit on ERP for repeater operations on frequencies between 29.5 and 420 MHz with an antenna height above average terrain greater than 320 meters (1,050 feet). The two commenters claim that this entry should be "200 watts" in keeping with the Commission's action in Docket 21033.[4]

6. While it is true that the Appendix of the Report and Order in Docket 21033 specified 200 watts for the subject operations, it is clear from the text of that same document that the 200 watt specification resulted from a typographical error. The Commission stated in the text, "We are also not taking any action at this time on changing repeater ERP limits. Any action in this area will be done in a separate rulemaking proceeding." The typographical error in the ERP table was since corrected by a Commission Order editorially amending its action in Docket 21033,[5] and hence the specification in the Notice of this proceeding was correct.

7. The remaining comments accept the premises of the Commission's Notice and support its proposal. ERP limits should be relaxed for repeater operations between 52 and 54 MHz in order to correct for the high incidence of man-made noise encountered by mobile stations attempting to communicate with them. The comments indicated that amateur operators are sensitive to problems of television interference (TVI) which may occasionally arise because of this increase in maximum authorized power and concur with the Commission's statement that it can "* * * expect for amateur operators to continue to choose repeater operating frequencies judiciously and to cooperate in resolving TVI complaints." Additionally, ERP limits for repeater operations between 29.5 and 29.7 MHz will help alleviate the potential for serious detrimental co-channel interference among these operations. The comments also support the intended conversion of the ERP limitations table to metric units and the elimination of the 50 foot height specification. Consequently, the Commission is

[2] Rule § 97.67 (Maximum authorized power), paragraph (c), which sets forth limitations on maximum ERP for amateur radio stations in repeater operation. The various limits are set forth in tabular form.

[3] Comments were filed by the following: Richard A. Golden, Gary David Gray, the American Radio Relay League, the Southern California Repeater and Remote Base Association, The Middle Atlantic FM and Repeater Council, and the Los Angeles Repeater Association.

[4] Report and Order in Docket 21033, 42 FR 52418, September 30, 1977.

[5] 42 FR 57690, November 4, 1977.

adopting final rules in this proceeding identical to those set forth in the Notice of Proposed Rule Making.

8. Accordingly, it is ordered, that effective July 29, 1982 Part 97 of the Commission's Rules and Regulations, 47 CFR Part 97, is amended as set forth in the attached Appendix. It is further ordered that to the extent specified herein, RM-2419 is granted, and in all other respects it is denied. It is further ordered that this proceeding is terminated. This action is taken pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended. Further information on this matter may be obtained by contacting: Steve Lett, (202) 632-7597, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—AMATEUR RADIO SERVICE

Section 97.67, paragraph (c) of the Commission's Rules and Regulations, 47 CFR 97.67(c), is amended to read as follows:

§ 97.67 Maximum authorized power.

* * * * *

(c) Within the limitations of paragraphs (a) and (b) of this section, the effective radiated power of an amateur radio station in repeater operation shall not exceed the power specified for the antenna heights above average terrain given in the following table:

Antenna height above average terrain in meters	Maximum effective radiated power for frequency bands above—		
	29.5 MHz	420 MHz	1,215 MHz
Below 32 (105 feet).	800 watts.....	Paragraphs (a) and (b).	Paragraphs (a) and (b)
32 to 160 (105 to 525 feet).	400 watts.....	800 watts.....	Do.
160 to 320 (525 to 1,050 feet).	200 watts.....	800 watts.....	Do.
Above 320 (1,050 feet).	100 watts.....	400 watts.....	Do.

* * * * *

[FR Doc. 82-17573 Filed 6-28-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 2625-114]

50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of California, Oregon, and Washington

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency interim rule to implement the approved portion of the 1982 amendment to the fishery management plan for the ocean salmon fisheries in the fishery conservation zone off the coasts of Washington, Oregon, and California is in effect through June 27, 1982. NOAA extends this rule for an additional 45 days. The 1982 amendment and implementing regulations are intended to prevent overfishing, to apportion equitably the ocean harvest between commercial and recreational fisheries, to allow more salmon to survive the ocean fisheries and reach the various inside fisheries, to meet the U.S. obligations to treaty Indian fisheries, and to achieve spawning escapement requirements.

DATES: Interim rule is effective on June 28, 1982, and remains effective through August 11, 1982.

FOR FURTHER INFORMATION CONTACT: H.A. Larkins (Regional Director, Northwest Region, NMFS), 206-527-6150.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council amended the fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California in 1982 to improve management of the salmon fisheries. This FMP amendment as it applies to the commercial salmon fishery north of Cape Blanco, Oregon, and to the recreational fisheries coastwide was approved by the Assistant Administrator for Fisheries (Assistant Administrator), NOAA, on May 6, 1982. The portion of the Council's recommended FMP amendment pertaining to seasons, gear restrictions, and chinook quotas for the commercial fisheries south of Cape Blanco, Oregon, was disapproved by the Assistant Administrator and managment of the commercial fisheries south of Cape Blanco is addressed separately (see 47 FR 24134, June 3, 1982).

Interim emergency regulation were published at 47 FR 21256 (May 18, 1982), under provisions of section 305(e) of the Magnuson Fishery Conservation and Mangement Act, to implement the approved portion of the FMP amendment. A detailed discussion of the background, issues, and mangement measures which pertain to the approved portion of the FMP amendment and the classification of the rulemaking, is set forth in the preamble to the Interim emergency rule. These emergency rules were to be effective during the period May 14, 1982, through June 27, 1982, and the preamble stated that the emergency rule may be extended for a second 45-day period.

This action extends the interim emergency regulation for a second 45-day period, from June 28 through August 11, 1982, to continue mangement of the fisheries until final regulations can be promulgated.

The NOAA Administrator determined that the rulemaking to implement the approved portion of the amendment is not major and the resource emergency which justifies promulgation of emergency regulations under section 305(e) of the Magnuson Act also constitutes an emergency under section 8(a)(1) of E.O. 12291.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

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

Dated: June 25, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-17685 Filed 6-25-82; 4:54 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

Foreign Fishing and Groundfish of the Gulf of Alaska

Correction

In FR Doc. 82-14671, appearing at page 23936, in the issue of Wednesday, June 2, 1982, make the following change:

On page 23939, in the table the TALFF entry for Squid, now reading "3,580" should read "3,850".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 47, No. 125
Tuesday, June 29, 1982

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

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Meat Alternate Equivalencies

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would revise the minumum required equivalencies (portion sizes) of certain meat alternates (i.e. cooked dry beans or peas and eggs) in the National School Lunch Program to relieve problems encountered by schools and industry in meeting the larger equivalencies. This proposal would reduce costs and plate waste while maintaining the nutritional goal of one-third of the Recommended Dietary Allowances (RDA).

DATE: Date for comments: To be assured of consideration, comments must be postmarked on or before August 30, 1982.

ADDRESSES: Comments should be sent to Cynthia H. Ford, Branch Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public viewing in Room 608, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Ford at the address listed above, or call (703) 756–3556.

SUPPLEMENTARY INFORMATION:

Classification: This proposed action has been reviewed under Executive Order 12291 and has been classified *not major.* We anticipate that this proposal will not have an impact on the economy of more than $100 million. The proposal will decrease costs by providing School Food Authorities and institutions more flexibility in administering the National School Lunch Program. No major increase in costs or prices for program participants, individual industries, Federal agencies, or geographic regions is anticipated. This proposal is not expected to have significant adverse effect on competion, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

The proposed rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Moreover, this regulation does not contain reporting or recordkeeping requirements under the provisions of the Paperwork Reduction Act of 1980.

Background: As required by the National School Lunch Act, the Department has established minimum nutritional requirements for lunches served in the National School Lunch Program (NSLP). One of the four lunch components is the meat or meat alternate component. Schools may serve cooked dry beans or peas and eggs to satisfy this meat/meat alternate component.

Prior to May 1980, one-half cup of cooked dry beans or peas, one large egg, or two ounces (one-fourth cup) of cottage cheese was considered equal to a two ounce portion of cooked lean meat. On May 16, 1980, a final rule was published (45 FR 32502) which increased certain meat alternate equivalencies (portion sizes) to make them more comparable in protein content to meat and other meat alternates. As stated in the final rule, one-half cup of cooked dry beans or peas or one large egg was considered equivalent to one ounce of meat. Also in the final rule was an acknowledgement that in some areas of the country the increased equivalencies would be considered excessive. To address this concern the Department recommended that when a serving size of meat alternate was excessive, the local School Food Authority should reduce the quantity of the meat alternate served and supplement it with an additional meat or meat alternate.

In June 1980, the *Food Buying Guide for School Food Service,* PA–1257, was revised to incorporate the increased equivalencies as well as other regulatory changes, and to make two ounces of cottage cheese equivalent to one ounce of meat. The implementation date for the new meat alternate equivalencies was scheduled for July 1, 1980. However, because of anticipated administrative and operational hardships placed on schools using commercially prepared products, the Department permitted schools to apply for exemptions until their food supplier could alter manufacturing techniques. The exemptions were available until July 1, 1981. On July 17, 1981, the Department published a Notice (46 FR 37017) which extended the implementation date to July 1, 1982, to allow schools and manufacturers more time to reformulate recipes and products to meet the new equivalencies.

Program experience continues to highlight the difficulties in reformulating recipes and products. Furthermore, the recommendation to supplement meat alternates of excessive serving sizes with an additional meat or meat alternate is not always practical. This is especially true due to the increased number of schools implementing the offer-versus-serve provision. In these schools, the selection and service of meals is simplified when the entire meat/meat alternate component is contained in one menu item. Consequently, the Department is now reconsidering the issue of larger equivalencies for cooked dry beans or peas and eggs.

Proposal: To reduce costs and plate waste while maintaining the nutritional goal of one-third of the Recommended Dietary Allowances (RDA), and to relieve the problems encountered by schools and industry in meeting the larger equivalencies, the Department is proposing to return to the pre-May 1980 equivalencies for cooked dry beans or peas and eggs. Because no difficulties were reported with the cottage cheese equivalency, the Department is proposing that it remain as stated in the *Food Buying Guide for School Food Service* (i.e., two ounces are equivalent to one ounce of cooked lean meat). No regulatory change is necessary for Part 226 Child Care Food Program regulations because the equivalencies for cooked dry beans or peas and eggs were never revised.

The effect on the overall contribution of meals with the proposed return to pre-May 1980 equivalencies for cooked dry beans or peas and eggs will be insignificant for three reasons. First, the protein level of lunches containing one-half cup cooked dry beans or peas or an egg far exceeds the Program goal of one-third of the RDA. For example, a lunch which contains one-half cup cooked dry beans or peas or an egg as the meat/meat alternate component in addition to 8-ounces of milk, ¾ cup fruit/vegetables and one slice of bread provides 53 percent of the RDA for protein for Group IV children (9–11 years of age).

Second, one-half cup of cooked dry beans or peas contains larger amounts of vitamin B_6, iron, and magnesium than 2 ounces of other meat/meat alternates. These vitamins and minerals were found to be in shortest supply in lunches of NSLP participants in the Department's 1977–78 Nationwide Food Consumption Survey (NFCS).

Third, cooked dry beans or peas and eggs are served infrequently. Again based on information from the NFCS, out of 4767 NSLP lunches studied, 6242 meat and meat alternate items were reported consumed. Of these items, approximately 5 percent were cooked dried beans or peas and 0.1 percent were eggs.

Delay Implementation: In a separate **Federal Register** document to be published shortly, the Department will further delay the implementation date announced in the Notice published July 17, 1981, until comments from this proposal are analyzed and this rulemaking process is completed.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs, Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 210 National School Lunch Program regulations are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. In § 210.10 the School Lunch Pattern table is proposed to be amended by revising the minimum and recommended quantities for a "large egg" and "cooked dry beans or peas" stated in the meat or meat alternative category as follows:

SCHOOL LUNCH PATTERN—APPROXIMATE PER LUNCH MINIMUMS

Components		Minimum quantities				Recommended quantities
		Group I, age 1–2 (preschool)	Group II, age 3–4 (preschool)	Group III, age 5–8 (K–3)	Group IV, age 9 and older (4–12)	Group V, 12 years and older (7–12)
Milk						
Meat or meat alternate (quantity of the edible portion as served).	large egg	½	¾	¾	1	1½
	cooked dry beans or peas	¼ cup	⅜ cup	⅜ cup	½ cup	¾ cup
Vegetable or fruit.						
Bread or bread alternate.						

* * * * * * *

(Sec. 9, Pub. L. 79–396, 60 Stat. 223 (42 U.S.C. 1758(A)))

Dated: June 24, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82–17638 Filed 6–28–82; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 477

[CAS–RM–80–513–A]

Emergency Energy Conservation

AGENCY: Office of the Secretary, DOE.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Energy is withdrawing a proposal regarding Federal financial assistance for certain State emergency energy conservation planning efforts. The funding is not required by any Federal statute. The Department has reviewed the proposal, including actions which have been taken since its publication, and has determined that the Federal role which it contemplated is neither necessary nor appropriate.

DATES: Subpart G—Grants, which was proposed to be included in Part 477 of Title 10 of the Code of Federal Regulations, 46 FR 8255 (January 26, 1981), is withdrawn, effective today, June 29, 1982.

FOR FURTHER INFORMATION CONTACT: W. Lorn Harvey, Office of Energy Contingency Planning (Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness), Department of Energy, 1000 Independence Avenue, SW., Room GH–060, Washington, D.C. 20585, telephone (202) 252–2924. Christopher T. Smith, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6B144, Washington, D.C. 20585, (202) 252–9510.

SUPPLEMENTARY INFORMATION: On January 19, 1981, 46 FR 8252 (January 26, 1981), the Department of Energy (the Department) proposed a Federal grant program which, subject to appropriations, would have assisted States to develop emergency energy conservation plans in accordance with the Emergency Energy Conservation Act of 1979 (42 U.S.C. 8501 *et seq.*) (EECA or the Act). If used in an emergency, the Act would require the President to implement a complex regulatory response involving centralized direction and possibly centralized control over State and individual activities. Over the last year, the Department has re-evaluated the need for such a grant program in view of a substantially revised Federal energy emergency preparedness policy and other relevant factors.

This emergency preparedness policy places primary reliance on market mechanisms coupled with self-help programs such as the development of adequate private and Government petroleum stockpiles. This policy is based upon the use of the free market in allocating and pricing energy resources. Energy resources are best developed in an atmosphere free of counterproductive constraints and excessive Federal involvement. This type of climate

promotes vigorous domestic production and efficient energy use and allocates resources in the most cost-effective manner. The free market, unfettered by counterproductive government controls, reduces the likelihood of a severe shortage of any particular energy source. It can also be expected to stimulate increased levels of private petroleum stocks. The Administration is convinced (and past experience demonstrates) that this policy best serves the welfare and interests of the American people.

Setting the cornerstone for such an energy program, the President removed all remaining Federal price and allocation controls on domestic crude oil and petroleum products on January 28, 1981, 46 FR 9909 (January 30, 1981). In a related action, the Department has reduced the scope of the standby Federal emergency energy conservation plan which EECA requires, 47 FR 5688 (February 5, 1982).

In response to the proposal to establish this grant program, the Department received 20 written comments, mostly from representatives of State interests. The comments generally supported the proposed funding. Many commenters also addressed the formula which would be used to distribute funds to the States. A hearing on the proposal was held on February 11, 1981, but no witnesses appeared.

In reaching its conclusion to withdraw the proposal, the Department carefully considered these comments along with other relevant factors. As discussed above, the Department's view of the proper Federal role in emergency preparedness was important to its determination. The Department also took into account, however, such factors as the great demands on the Federal budget and the design of the EECA itself.

(Title II of the Emergency Energy Conservation Act of 1979, 42 U.S.C. 8501 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

In consideration of the foregoing and effective upon publication of this notice, Subpart G—Grants, which was proposed to be included in Part 477 of Title 10 of the Code of Federal Regulations and was issued on January 19, 1981, 46 FR 8255 (January 26, 1981), is withdrawn.

Issued in Washington, D.C., June 22, 1982.

James B. Edwards,

Secretary, Department of Energy.

[FR Doc. 82-17532 Filed 6-28-82; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 308

Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control; Rules of Practice and Procedures

AGENCY Federal Deposit Insurance Corporation.

ACTION: Proposed regulation

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is proposing to amend its regulations to delegate authority to its Board of Review, the Director of Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision and, where confirmed in writing, to the appropriate regional director or regional counsel, or both, to act on certain section 8 enforcement matters. The delegation would necessitate certain corrective amendments to Part 308, FDIC's Rules of Practice and Procedures, to correctly reflect the delegation. Authority would also be delegated to the Executive Secretary to act on certain procedural motions. Certain minor corrective amendments to Part 308 are also being proposed at the same time.

DATE: Comments on the proposal must be received on or before August 30, 1982.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, or delivered to Room 6108 at the same address between 9:00 A.M. and 5:00 P.M., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Arthur L. Beamon, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550–17th Street, NW., Washington, D.C. 20429. (202) 389–4171.

SUPPLEMENTARY INFORMATION: Section 303.13(a) of FDIC's rules and regulations (12 CFR 303.13(a)) states that the Board of Directors does not delegate its authority except as provided in Part 303 of FDIC's rules and regulations, or in circumstances where prompt action is required to protect FDIC's interest or for operational flexibility and efficiency in litigation or liquidation matters or in payment of claims for deposit insurance. Thus, there is no alternative means of delegating general authority in the handling of enforcement proceedings.

The proposed amendments would not affect in any way the right of any bank to challenge charges brought under section 8 of the Federal Deposit Insurance Act in an administrative hearing.

The proposed amendments are rules of FDIC internal procedures and practice and do not impair procedural rights of parties or the availability of access to the Board of Directors for final decision of any enforcement matter. Although notice of proposed rulemaking and public comment are not required by the Administrative Procedure Act (5 U.S.C. 553), because of the importance of the functions being delegated FDIC felt the pubic should have the opportunity to comment. Therefore, FDIC is publishing the proposal for 60 days public comment in accordance with FDIC's statement of policy on "Development and Review of FDIC Rules and Regulations" 44 FR 31007 (1981).

The requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are inapplicable because the amendments do not impose recordkeeping or reporting requirements on any member of the public.

The FDIC certifies under 5 U.S.C. 605 *et seq.* that these amendments, if adopted will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. The proposed amendments do not affect any substantive legal right or duty of any small entity.

2. The proposed amendments impose no recordkeeping or reporting burden on any small entity.

3. The proposed amendments will streamline existing procedures and expedite processing of enforcement proceedings.

List of Subjects in 12 CFR

Part 303

Administrative practice and procedure; Banks, banking; Federal Deposit Insurance Corporation; Insurance; Authority delegations.

Part 308

Administrative practice and procedure; Federal Deposit Insurance Corporation; Penalties; Cease-and-desist orders; Directors, officers, employees; Termination of insurance.

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

Part 303 of chapter III of title 12 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. The authority citation for Part 303 reads as follows:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. No. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. No. 86–463, 74 Stat. 129; sec. 2, Pub. L. No. 87–827, 76 Stat. 953; Pub. L. No. 88–593, 78 Stat. 940; Pub. L. No. 89–79, 79 Stat. 244; sec. 1, Pub. L. No. 89–356, 80 Stat. 7; sec. 12(c), Pub. L. No. 89–485, 80 Stat. 242; sec. 3, Pub. L. No. 89–597, 80 Stat. 824; title II, secs. 201, 205, Pub. L. No. 89–695, 80 Stat. 1055; sec. 2(b), Pub. L. No. 90–505, 82 Stat. 856; secs. 6(c)(7), (12), (13), Pub. L. No. 95–369, 92 Stat. 616–620; title III, secs. 306, 309 and title VI, sec. 602, Pub. L. No. 95–630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth", 1828, 1829); title I, sec. 108, Pub. L. No. 90–321, 82 Stat. 150 as amended by title IV, sec. 403, Pub. L. No. 93–495, 88 Stat. 1517 and title VI, sec. 608, Pub. L. No. 96–221, 94 Stat. 171 (15 U.S.C. 1607).

2. By amending the Title to Part 303 to read as follows:

PART 303—APPLICATIONS, REQUEST, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

3. By adding a new paragraph (o) to § 303.13 of Part 303 as follows:

§ 303.13 Other delegations of authority.

* * * * *

(o) *Handling of section 8 enforcement proceedings.* The Board of Directors has delegated authority for the handling of actions brought pursuant to section 8 of the Federal Deposit Insurance Act (the "Act") (12 U.S.C. 1818) as follows:

(1) *Issuance of notices of charges and of hearing.* Authority for the issuance of notices of charges pursuant to section 8(b) of the Act is delegated to the Board of Review; however, any member of the Board of Review may refer a specific case to the Board of Directors for decision.

(2) *Issuance of findings of fact, conclusions of law and orders to cease and desist.* The issuance under section 8(b) of the Act of findings of fact, conclusions of law and orders to cease and desist pursuant to stipulation, is delegated as follows:

(i) *Stipulated without change.* Authority is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, and where confirmed in writing by the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, to the appropriate regional director or regional counsel, or both.

(ii) *Stipulated changes within permissible guidelines.* Authority is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, and where confirmed in writing by the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, to the appropriate regional director or regional counsel, or both; however, permissible changes from requirements set forth in proposed orders to cease and desist are limited to the following:

(A) Altering time limits by no more than the lesser of 50% or 90 days.

(B) Extending or reducing percentage and/or dollar requirements, excluding capital provisions, by no more than 10% of the figure specified;

(C) Eliminating typographical, grammatical or technical errors; and

(D) Adding or deleting names of bank directors in order to reflect changes in the composition of the bank's board of directors.

(iii) *Stipulated changes that exceed the limitations enumerated above.* Authority is delegated to the Board of Review; however, any member of the Board of Review may refer a specific case to the Board of Directors for decision.

(iv) *Issuance of section 8(b) orders resulting from section 8(c) proceedings.*

(A) *Stipulated without change from original section 8(c) order.* Authority is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, and where confirmed in writing by the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, to the appropriate regional director or regional counsel, or both;

(B) *Stipulated after negotiated changes made.* Authority is delegated to the Board of Review; however, any member of the Board of Review may refer a specific case to the Board of Directors for decision.

(3) *Termination and modification of section 8(b) orders.*—(i) *Full compliance with all provisions of the order.* Authority to terminate the order is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, and where confirmed in writing by the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, to the appropriate regional director or regional counsel, or both.

(ii) *Less than full compliance, but within guidelines set forth below.* Authority to terminate is delegated jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision, and where confirmed in writing by the Director of the Division of Bank Supervision and Deputy General Counsel for Open Bank Regulation and Supervision, to the appropriate regional director or regional counsel, or both.

(A) At least 75% of each dollar and/or percentage requirement has been attained;

(B) There is substantial compliance with the non-dollar provisions; and

(C) The bank currently has a composite rating of 1, 2 or 3 under the Uniform Interagency Bank Rating System and a determination is made that further administrative action is unnecessary.

(iii) *All other terminations.* Authority to terminate is delegated to the Board of Review.

(iv) *Modification of section 8(b) orders.* Authority to modify is delegated to the Board of Review except in contested or litigated cases, where all authority to modify outstanding orders is retained by the Board of Directors.

(4) *Civil money penalties proceedings.* Authority for the issuance of notices of assessment of civil money penalties is delegated to the Board of Review.

(5) *Issuance of final orders and decisions in contested or litigated proceedings.* All authority is retained by the Board of Directors.

(6) *Other actions.* This delegation does not affect actions pursuant to sections 8(a), 8(c), 8(g) and 8(e) of the Act.

(7) *Action under delegated authority not mandated.* The Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision and/or the Board of Review, may act on any matter on which the regional director and/or regional counsel may not wish to act under authority delegated pursuant to this subsection. At its discretion, the Board of Directors may review any action taken under authority of this subsection. Any member of the Board of Review may refer any case which is before the Board of Review to the Board of Directors for decision.

PART 308—RULES OF PRACTICE AND PROCEDURES

Part 308 of chapter III of title 12 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. The authority citation for Part 308 reads as follows:

Authority: Sec. 2(9), Pub. L. No. 797, 64 Stat. 881 (12 U.S.C. 1819); sec. 18, Pub. L. No. 94–29, 89 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. No. 95–630, 92 Stat. 3641 (12 U.S.C. 1972); sec.

203, Pub. L. No. 96-481, 94 Stat. 2325 (5 U.S.C. 504).

2. Section 308.01 is amended by deleting the period at the end of paragraph (b) and adding the words:

§ 308.01 Definitions.

* * * * *

(b) * * * or officers or officials of the FDIC acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR 303.11 and 303.13 or by specific resolution of the Board of Directors.

* * * * *

3. Section 308.07 is amended by revising paragraphs (b)(11), (e) and (i) to read as follows:

§ 308.07 Conduct of hearings.

* * * * *

(b) * * *

(11) * * * Where an administrative law judge has not been appointed, or is unavailable, the Executive Secretary shall have authority to exercise the powers provided to the administrative law judge by paragraphs (b) (1), (2), (3), (7), (8) and (9) of this paragraph.

* * * * *

(e) *Attendance at hearings* A hearing shall ordinarily be private and shall be attended only by the parties, their representatives or counsel witnesses while testifying, and other persons having an official interest in the proceedings. To the extent authorized by law, the administrative law judge, the Executive Secretary or the Board of Directors may permit other persons to attend on written request by a party or on the Board's own motion or the Board may order a public hearing.

* * * * *

(i) *Changes of time, chance of hearing location; continuance.* Except as otherwise expressly provided by law, the Board of Directors may provide time limits different from those specified in this subpart or in a notice of hearing, upon its own initiative or for good cause shown and the Board may change the time and place for a hearing to commence. The administrative law judge or the Executive Secretary may continue or adjourn a hearing in accordance with § 308.07(b)(8).

* * * * *

§ 308.13 [Amended]

4. In § 308.13, paragraph (b) is amended by deleting the word "Board" and inserting the words "Executive Secretary" in the sentence that begins "For good cause, the * * * *"

§ 308.35 [Amended]

5. Section 308.35 is amended by deleting the words "by the Board of Directors in its discretion."

§ 308.42 [Amended]

6. Section 308.42 is amended by deleting the words "by the Board of Directors."

§ 308.61 [Amended]

7. Section 308.61, paragraph (a) is amended by changing "§ 303.10(e)" to "§ 303.10(d)."

§ 308.69 [Amended]

8. In § 308.69, paragraph (b) is amended by deleting the last sentence.

9. In § 308.76, paragraph (a) is revised to read as follows:

§ 308.76 Exceptions.

(a) *Filing.* The Board of Directors, the Executive Secretary or the administrative law judge may direct the party requesting a hearing pursuant to § 308.75(b), or the party may elect, to file exceptions to the statement of the basis for disapproval contained in the notice of disapproval. Exceptions shall be filed with the Executive Secretary or the administrative law judge within 20 days after receipt of the notice by the party, a different filing period of not less than 10 days after receipt of the notice is specified. For good cause shown, the Executive Secretary or the administrative law judge may permit filing of exceptions after expiration of the filing period.

* * * * *

§ 308.79 [Amended]

10. In § 308.79 paragraph (b) is amended by removing the last sentence.

§ 308.88 [Amended]

11. Section 308.88 is amended by deleting the words "by the Board of Directors."

§ 308.109 [Amended]

12. In § 308.109, paragraph (a) is amended by removing the number "15" and inserting the number "20".

By order of the Board of Directors.

Dated: June 21, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Acting Executive Secretary.

[FR Doc. 82-17478 Filed 6-28-82; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 82-431]

Service Corporation Activities

Dated: June 23, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule concerning the range of activities in which service corporations of federal savings and loan associations may engage without prior approval, as published on March 8, 1982 (47 FR 9855). This action is necessary to correct the inadvertent omission of the Initial Regulatory Flexibility Analysis from the proposed rule. The Board's solicitation of public comment is limited soley to the Initial Regulatory Flexibility Analysis.

DATE: Comments must be received by August 9, 1982.

ADDRESS: Send comments to Director, Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Peter M. Barnett, Associate General Counsel, Office of General Counsel, (202) 377-6445, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On February 25, 1982, the Board proposed expanding the investment authorization and preapproved activities for service corporations of federal associations. Board Resolution No. 82-136; 47 FR 9855 (March 8, 1982). Pursuant to the provisions of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the published proposal should have included an Initial Regulatory Flexibility Analysis. The analysis was omitted inadvertently from the proposed rule. Thus, the Board is correcting the proposed rule, No. 82-136, to include the required analysis. The Board is now seeking comment solely on the Initial Regulatory Flexibility Analysis of the previously proposed amendments.

Accordingly, the Federal Home Loan Bank Board is correcting its proposed rule amending 12 CFR 545.9-1, which was published at 47 FR 9855, by including the following Initial Regulatory Flexibility Analysis set forth below.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements were incorporated into the supplementary information regarding the proposal that was published with the proposal at 47 FR 9855 (March 8, 1982).

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply equally to all associations chartered by the Board.

3. *Impact of the proposed rule on small associations.* The proposal would permit the service corporations of federally chartered associations to engage in an increased number of activities without regard to the size of the association. To the degree that service corporations of small associations become involved in a greater range of activities, the operations of those associations could benefit financially. These potential benefits have been discussed in the previously published supplementary information regarding the proposal. There would be no disproportionate effect on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that may duplicate, overlap or conflict with the proposal.

5. *Alternatives to the proposed rule.* The proposal would allow service corporations to engage in a variety of new activities, thereby enhancing the range of financial services provided by the parent associations. There is no disproportionate impact on small associations, and there is no alternative regulatory action that would accomplish the purposes of the rule.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-17575 Filed 6-28-82; 8:45 am]

BILLING CODE 6720-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 323

[Procedural Regulations Docket 40757; PDR-78]

Terminations, Suspensions, and Reductions of Service

Correction

In FR Doc. 82-17000, appearing at page 27081, in the issue of Wednesday, June 23, 1982, make the following change:

On page 27081, in the first column, under the heading **DATES:**, after "Requests to be put on the Service List:", add the date July 8, 1982.

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 10

International Express Mail Rates to Mexico

AGENCY: Postal Service.

ACTION: Proposed international express mail rates to Mexico.

SUMMARY: Pursuant to an agreement with the postal administration of Mexico, the Postal Service proposes to begin International Express Mail Service with Mexico effective on August 16, 1982. The proposed rate schedule is published below for comment.

DATE: Comments must be received on or before July 29, 1982.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 8620, 475 L'Enfant Plaza, West, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT: J. Duane Redic, (202) 245-4414.

SUPPLEMENTARY INFORMATION: The International Mail Manual is incorporated by reference in the **Federal Register**, 39 CFR 10.1. Additions to the manual needed to introduce the new service are reproduced below. Accordingly, although 39 U.S.C 407 does not require advance notice and opportunity for submission of comments on international rates and the provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 533) do not apply (39 U.S.C. 410(a)), the Postal Service invites interested persons to submit written data, views, or arguments concerning the proposed rates of postage for International Express Mail to Mexico as shown below.

List of Subjects in 39 CFR Part 10

Postal Service, International relations

Table 7-1. International Express Mail Service—Summary Conditions Service Offerings

In paragraph 1, Custom Designed Service, add "Mexico," after "Kuwait".

In paragraph 2, On Demand Service, change "Germany and Japan" to "Germany, Japan, and Mexico."

Weight Limits

Revise line 2 to read as follows:

2. Canada, Mexico, and South Africa, 44 pounds.

Table 7.2. International Express Mail Service Standards (From International Exchange Office)

In Table 7.2, add before the line for Netherlands a new line which reads "Mexico" in the "Country of Destination" column, "Second Day" in the "Custom Designed" column, and "Not Available" in the "On Demand" column.

Individual Country Listing

Add after the entry entitled "Parcel Post Mexico" the following new entry:

International Express Mail—Mexico

Conditions for Mailing

Definition of Express Mail Service

See Table 7-1 and 494 for detailed characteristics.

Services Available

Custom Designed

Acceptable Items and Customs Declarations

Contents restricted to the following:

Items Containing

1. Business documents, letters, commercial papers, plans, invoices, checks and computer printouts.
2. Brochures, catalogs, magnetic tapes, microfiche, cassettes, video-cassettes and computer discs.
3. Samples without commercial value.

Customs Declaration Required

1. *None.* Endorse items clearly next to address label, "BUSINESS PAPERS."
2. *None.* Endorse item clearly next to address label identifying contents briefly, but completely.
3. *None.* Endorse item clearly next to address label, "Sample of (identify) No Commercial Value."

Merchandise and other items of value are not permitted.

Areas Served

Available to Mexico City only.

Size limit

Minimum: 3½" x 5½".
Maximum greatest length 36 inches.
Greatest length and girth combined: 78 inches.

Weight Limit

44 lbs. (20 kg.)

Service Standard From International Exchange Office

See Table 7–2.

POSTAGE RATES

[Custom Designed Service [1]]

Weight not over (pounds)	Rate
1	$26.00
2	27.30
3	28.60
4	29.90
5	31.20
6	32.50
7	33.80
8	35.10
9	36.40
10	37.70
11	39.00
12	40.30
13	41.60
14	42.90
15	44.20
16	45.50
17	46.80
18	48.10
19	49.40
20	50.70
21	52.00
22	53.30
23	54.60
24	55.90
25	57.20
26	58.50
27	59.80
28	61.10
29	62.40
30	63.70
31	65.00
32	66.30
33	67.60
34	68.90
35	70.20
36	71.50
37	72.80
38	74.10
39	75.40
40	76.70
41	78.00
42	79.30
43	80.60
44	81.90

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.

(39 U.S.C. 401, 404, 407)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-17479 Filed 6-28-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2115-8]

Approval and Promulgation of Implementation Plan: Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 6, 1980, (45 FR 29790) and on May 22, 1981 (46 FR 27923), EPA conditionally approved Michigan's total suspended particulate (TSP) State Implementation Plan (SIP), on the condition that the State adopt and submit final industrial fugitive dust regulations representing reasonable available control technology (RACT).

On March 6, 1981, the State of Michigan submitted the general rules for fugitive dust control as a revision to the Michigan SIP. On January 25, 1982, and May 3, 1982, the State of Michigan submitted additional information outlining the general criteria for selection of the sources required to implement a fugitive dust control program. This submittal, along with the additional information, satisfies the State's commitment to submit industrial fugitive dust regulations that represent RACT for industrial fugitive dust sources. The purpose of today's action is to propose rulemaking action and to solicit public comment on this revision.

ADDRESSES: Copies of this SIP revision are available for review at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

Written comments on this action should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On May 6, 1980, (45 FR 29793) EPA conditionally approved Michigan's particulate plan for those primary and secondary nonattainment areas which did not include iron and steel sources. One of the conditions upon which this plan was approved was the condition that the State would adopt final industrial fugitive dust regulations that represent RACT for traditional sources and submit the finally effective regulations to EPA. In addition, on May 22, 1981, (46 FR 27923) EPA approved Michigan Part D plan for those primary and secondary nonattainment areas which did not include iron and steel sources.

In the September 4, 1980, **Federal Register** (45 FR 58527) EPA announced approval of Michigan's schedule of deadlines for remedying identified deficiencies. That notice, indicated the commitment by the State to a schedule for the adoption of industrial fugitive dust regulations that represent RACT for traditional sources. The schedule called for the State to submit the regulations to EPA by January 1981.

On March 6, 1981, the State of Michigan submitted as a SIP revision general rules for fugitive dust control. These rules were approved by the Michigan Air Pollution Control Commission (Commission) on January 20, 1981, and became effective at the State level on February 17, 1981. The following elements are contained in the fugitive dust control rules under: Part 1—General Provisions, which include the definitions of fugitive dust, numbered R336.1106; and Part 3—Emission limitations and Prohibitions—Particulate Matter, numbered R336.1370, R336.1371, and R336.1372, which includes collected air contaminants, fugitive dust control programs, required activities and typical control methods. These rules are structured such that the Commission has the authority to request a fugitive dust control program from a company located in a nonattainment area, provided that sufficient reasons are specified in the program request. Generally, these rules are applicable to non-stack sources located in nonattainment areas and also to non-stack sources which contribute to excessive ambient TSP levels or cause substantive complaints.

Fugitive dust control programs are generally required from fugitive dust sources within 6 months after notification by the Commission. These fugitive dust control programs require identification of the control technologies, methods, or control equipment, if any, to be implemented or installed and the schedule, including increments of progress, for implementation or installation. For sources in nonattainment areas, final control program implementation is

required by December 31, 1982. These control programs are subject to review and approval by the Commission, which can only approve a control program upon the entry of a legally enforceable order or an approved permit to install or operate. If an adequate program is not submitted, the Commission may proceed toward the entry of a final order which contains a provision for the submittal of an acceptable control program.

Fugitive dust control programs are required for the following sources:

(1) The loading or unloading of open storage piles of bulk materials,

(2) Outdoor transporting of bulk materials,

(3) Outdoor conveying,

(4) Roads and lots,

(5) Inactive storage piles,

(6) Building ventilation, and

(7) Construction, renovation, or demolition.

In addition, the rules for fugitive dust specify typical control methods that can be used for controlling the sources listed above. The list of control methods is sufficiently comprehensive so as to allow an adequate and flexibile control program. The listing of appropriate control methods within these rules is very comprehensive. However, in the event a source's control program includes an alternative control method not specifically listed, then that control plan must be submitted to EPA for approval as a source specific SIP revision.

Rule 336.1372(7) contains provisions which apply to fugitive dust emissions from building openings and is generally acceptable. Enforceable emission limitations, with an appropriate test method are required for process fugitive sources subject to this rule. On March 7, 1980, the State of Michigan submitted a letter to EPA confirming the use of general opacity rules 336.1301–1303, for both stack and non-stack sources and for both continuous and intermittent discharges. The 3 minutes per hour of emissions which are allowed between 20 percent and 40 percent opacity are evaluated as an aggregate. That is, if 13 or more instantaneous 15 second readings indicate opacity between 20 percent and 40 percent, it is considered a violation. On May 22, 1981, EPA approved Michigan's letter of March 7, 1980, as part of the federally approved Michigan SIP (46 FR 27923).

Since the applicability portion of the rules for fugitive dust is not specific enough to determine exactly what sources will be covered, the State of Michigan, on January 25, 1982, submitted a method for selecting sources required to implement a fugitive dust control program. Following are the general criteria to be used by Michigan to document whether a particular fugitive dust source has sufficient ambient impact as to warrant a fugitive dust control program:

1. The company's history of complaints related to fugitive dust emissions.

2. The company's history of violations of opacity regulations.

3. Whether the fugitive dust sources of concern, within the company, exceed the exemption limits specified in Michigan Rule 372.

4. Whether there exists evidence that the company has either not adhered to a required fugitive dust control program or that a fugitive dust control program currently in effect is not adequate.

5. Where there exists evidence of a fugitive dust problem based on photographs or samples taken in the vicinity of a company.

6. Where there exists evidence of a fugitive dust problem based on the ongoing studies (emission inventories, dispersion modeling, receptor modeling, etc.) of the sources impacting on the nonattainment area.

The criteria listed above will be evaluated for all companies with potentially significant fugitive dust problems that are located in or near the primary non-attainment area. A summary of this analysis will be submitted to EPA Region V. In addition, on May 3, 1982, the State of Michigan submitted a letter listing ten sources with fugitive dust control program, which represent a substantial portion of the Wayne County nonattainment area. EPA has reviewed this revision and believes that Michigan's General Rules and criteria for fugitive dust control satisfy the State's commitment for adopting industrial fugitive regulations that represent RACT for traditional sources. EPA's review of these regulations is discussed in its technical support documents of June 4, 1981, and March 24, 1982. EPA, therefore, proposes to approve the March 6, 1981, and January 25, 1982, submittals concerning the general rules for fugitive dust control as a revision to the Michigan SIP.

A 30-day public comment period is being provided on this notice of proposed rulemaking. Public comment received on or before July 29, 1982 will be considered in EPA's final rulemaking. When possible, comments should be submitted in triplicate. All comments will be available for inspection during normal business hours at the Region V Office listed at the beginning of this notice. Please call the contact person listed at the beginning of this notice, before visiting the Region V Office.

Pursuant to the provisions of 5 U.S.C. Section 605(b), the Administrator certified on January 27, 1981 (46 FR 8709) that approvals or conditional approvals of SIPs under Section 110 and 172 of the Clean Air Act and revisions of attainment status designations under Section 107(d) would not, if promulgated, have a significant economic impact on a substantial number of small entities. Today's action approves an action submitted pursuant to the provisions of Section 110 of the Act. It imposes no new requirements beyond those which the State has already imposed.

Under Executive Order 12291, (46 FR 134139) USEPA must also judge whether a regulation is "Major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. Today's action does not constitute a major regulation since it proposes to approve provisions which the State adopted and submitted to EPA as part of their conditional approval commitment.

EPA is not imposing any requirements which are different from those already required by the State. This regulation was exempt from the Office of Management and Budget under 12291.

List of Subjects in 40 CFR Part 52

Air Pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(This proposed rulemaking is issued pursuant to the authority of Section 110 of the Clean Air Act.)

Dated: April 20, 1982.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc 82-17534 Filed 6-28-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[PR Docket No. 82-319; FCC 82-260]

Amendment of the Commission's Rules To Remove Unnecessary Reporting and Record Keeping Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: This Notice proposes to eliminate certain reporting and record keeping requirements in the Aviation Services. These proposals result from the FCC's program to reduce paperwork requirements. The proposed

amendments are intended to eliminate unnecessary regulations.

DATES: Comments must be received on or before July 22, 1982, and reply comments must be received on or before August 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert H. McNamara, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 87

Aeronautical stations, General aviation, Radio.

In the matter of amendment of Part 87 of the rules to eliminate unnecessary reporting, record keeping and record retention requirements; PR Docket No. 82-319; Notice of proposed rule making.

Adopted: June 10, 1982.

Released: June 22, 1982.

1. In this Notice of Proposed Rule Making we are proposing to eliminate reporting, record keeping and record retention requirements in the Aviation Services (Part 87 of the Commission's rules) which we believe impose unnecessary burdens on the aviation community.[1] The requirements and rule sections affected are discussed in the paragraphs below.

2. Section 87.101 requires all stations licensed in the aeronautical public service [2] to keep a file of all record communications and all ground stations to keep a record of radiotelephone contacts. We no longer have any licensed aeronautical public service stations providing record communications services. Further, the "ground" stations providing radiotelephone service are public coast stations licensed in the maritime mobile service. Such stations comply with record keeping requirements contained in Part 81 (we will address these requirements in a separate Notice in the near future). Therefore, § 87.101 is obsolete in part and redundant in part and, accordingly, we are proposing to delete it from the rules.

3. Section 87.111(b) requires that at specified times a signed entry be made in the station's records indicating frequency measurements are within required tolerances or that an automatic frequency monitor was in service. Although measurement will still be required when transmitters are originally installed and when adjustments are made, we believe the record requirement is unnecessary. These historical records are seldom if ever utilized for any regulatory purpose and, therefore, we are proposing this record requirement be deleted from Part 87.

4. Section 87.293 of the rules indicates the frequencies available for domestic VHF aeronautical enroute communications.[3] Paragraph (b) permits networks of interconnected enroute stations to employ offset carrier techniques. Paragraph (b) also requires that the Commission be notified by letter of the precise offset from the authorized frequency. We are proposing to delete this reporting requirement. Since the interconnected stations in these enroute networks are licensed to a single entity, and the offset parameters are described in the rules, we feel the subject reporting requirement is unnecessary and are proposing it be deleted from Part 87.

5. Section 87.467 of the rules describes the conditions for the cooperative use of operational stations [4] by eligible licensees. Paragraphs (f) through (j) of § 87.467 specify notification and reporting requirements for licensees sharing their facilities under this section. This rule affects a small and specialized part of the communications community. Further, no problems have been noted regarding these sharing arrangements, and no use has been made of required reports. Accordingly, we believe the notification requirements contained in paragraphs (f) through (j) of § 87.467 are unnecessary, and propose they be deleted from the rules.

6. Additionally, we note that § 87.21, which makes the general statement that applications must be submitted on prescribed forms, is redundant. Other sections specify the application form to be used when seeking a particular class of station authorization. Therefore, we are proposing that § 87.21 be deleted from Part 87 of the rules.

7. The proposed amendments to the Commission's rules as set forth in the attached Appendix are issued under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

8. Under procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before July 22, 1982, and reply comments on or before August 6, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the report and order.

9. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

10. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding

[1] In the Notice of Proposed Rule Making in Gen. Docket No. 82-182, released April 15, 1982, 47 FR 17309, we have previously proposed to eliminate station log requirements in the Aviation Services.

[2] Frequencies available for assignment to "aircraft stations" in the aeronautical public service are the medium and high frequencies available for public correspondence in the maritime services. The aeronautical public service should not be confused with the service to airborne stations provided in the Public Mobile Radio Services (Part 22) for communications with land mobile stations which are interconnected to the nationwide telephone system.

[3] The aeronautical enroute service provides air-ground communications for the operational control (flight management) of aircraft by the operating companies (such as airlines).

[4] Operational stations in the Aviation Services are used for links or control circuits.

must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

11. The rule amendments proposed in this proceeding, while expected to benefit the aviation public by eliminating unnecessary reporting and recordkeeping requirements will not result in a significant economic impact on any person or entity. Therefore, the Commission has determined that sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rulemaking proceeding, because the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

12. Regarding questions on matters covered in this document contact Robert H. McNamara (202) 632–7175.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX

PART 87—AVIATION SERVICES

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows.

§ 87.21 [Removed]

1. Part 87 is amended by removing § 87.21.

§ 87.101 [Removed]

2. Part 87 is amended by removing § 87.101.

3. In § 87.111 paragraph (b) is removed and paragraph (c) is revised to read as follows:

§ 87.111 Frequency measurements.

* * * * *

(c) The determination required by paragraph (a) of this section may, at the option of the licensee, be made by any qualified engineering measurement service.

§ 87.293 [Amended]

4. In § 87.293 paragraph (b) is amended by removing the last sentence.

§ 87.467 [Amended]

5. In § 87.467 paragraphs (f), (g), (h), (i) are removed.

[FR Doc. 82–17574 Filed 6–28–82; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

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

Revision and Redesignation of the Rules of Practice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Interstate Commerce Commission is proposing to revise and redesignate all of its procedural regulations governing the conduct of formal and informal cases which come before it for decision. Included in the redesignation project are all the regulation now appearing in 49 CFR Parts 1100 through 1151. The purpose of the proposal is to bring the arrangement of the procedural regulations into conformity with the recodified Interstate Commerce to make easier to locate and to use by persons practicing before the Commission. Some substantive changes and also being proposed, and most are identified in the test of this notice.

DATE: Comments should be no later than August 13, 1982. Subsequently filed comments may be considered at the Commission's discretion.

ADDRESSES: An original and, if possible, 15 copies of comments should be sent to: Ex Parte No. 55 (Sub-No. 55), Room 2209, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Copies of the proposed text can be obtained by writing or calling the Office of the Secretary, Publications Unit, B–221, Interstate Commerce Commission, Washington, DC 20423 or 202–275–7833.

FOR FURTHER INFORMATION CONTACT: James H. Bayne, 202–275–7429, or Kathleen M. King, 202–275–0956.

SUPPLEMENTARY INFORMATION:

Proposed Redesignation

The Commission is proposing a redesignation of Subchapter B—Practice and Procedure (Parts 1100 through 1199) of Chapter X of Title 49 of the Code of Federal Regulations (CFR). The existing material in Subchapter B will be rearranged to paralled the arrangement of the codified Interstate Commerce Act 49 U.S.C. 10101 et seq. The six major categories are as follows:

Parts 1100–1129—Rules of General Applicability.

Parts 1130–1149—Rate Procedures.

Parts 1150–1169—Licensing Procedures.

(a) Parts 1150–1159—Rail Licensing Procedures.

(b) Parts 1160—Non-rail Licensing Procedures.

Parts 1170–1199—Finance Procedures.

Parts have been reserved at the end of each major subdivision so that future regulations can be assigned part numbers within this system.

We believe that this redesignation will make our regulations easier to use. The restructuring will enable users to take advantage of certain reader's aids which are included in the basic structure of the Code of Federal Regulations. For example, under our proposal current §§ 1100.251 through 1100.253, which contain our rules governing applications for motor carrier authority will be combined into a separate Part 1160 *How to Apply for Operating Authority*. Currently, those rules are contained in special rules under the general rules of practice. As a separate Part, the Part heading will appear in the table of contents of the CFR volume which contains the rules. Also, there will be a detailed table of contents preceding each individual part. Such an arrangement will enable users of the CFR to locate regulations more easily. In reviewing this proposal, parties should be especially aware of proposed rule 1100.2. The general rules apply only in the absence of more specific ones.

Nature of the Revisions Proposed

Extensive revision and reorganization is proposed for the rules of general applicability and for those regulations governing rate procedures which have relatively board applicability. Only two of the non-rail licensing procedures—those governing the issuance of certificates of registration to motor carriers operating in a single state and those governing water carrier extensions of authority—are being revised to any significant extent. None of rail licensing procedures or finance procedures are being revised significantly. All procedural rules, however, are being renumbered and revised to update statutory citations and internal references.

In proposed Parts 1100 through 1129, rules of General Applicability, the language of some sections has been rephrased for clarity. A few substantive changes are being proposed, but it is believed that these changes will not

have a significant effect upon parties to Commission proceedings or those practicing before the agency. The most important of these changes are identified below, and comments are requested on them.

Substantial revision has been made in certain of the rate case procedures which will appear as new Parts 1130–1133, and in the licensing procedures identified in the preceding paragraph, which would be codified as Parts 1161 and 1166.

In the remaining text, revisions will be limited to changes in the numbering of the parts and their subdivisions; the updating of statutory references to reflect the codification of the Interstate Commerce Act; and revision of internal cross-references to correspond to the redesignated CFR provisions. We will also make some language changes, such as changing the term "order" to "decision" to reflect current Commission practice. Some Part and Section headings will be revised to describe more clearly the material involved.

Appended to this notice is a summary table of contents listing all of the Commission's procedural regulations as it is proposed to rearrange and renumber them in the revised Subchapter B—Practice and Procedure. (Appendix A) Copies of proposed sections 1100 through 1119, 1130 through 1133, 1161 and 1166 (which are those undergoing significant revision) together with a complete table of contents and derivation and redesignation tables, may be obtained free of charge from the Office of the Secretary by those wishing to comment.

The public is invited to comment on all aspects of the proposal. Suggestions for further rearrangement or retitling which would make the regulations easier to find and use are particularly invited. For example, would it be useful to organize proposed Parts 1110, 1111, and 1117–8 under one heading identifying case "types", with Parts 1112–3 listed under case "procedures"? The Commission will also accept comments on any particular rule in the present General or Special Rules of Practice which members of the public believe should be revised.

While our proposed redesignation involves present Subchapter B—Practice and Procedure (Parts 1100 through 1199) primarily, we are proposing to move present Part 1031A—

Procedures for Requesting Surcharge Costs and Revenue From Rail Carriers Applying a Commodity Oriented Surcharge or Cancelling the Application of a Joint Rate Pursuant to 49 U.S.C. Section 10705a into revised Subchapter as Part 1138 because it is a procedural rule. The public is invited to comment on this change. They are also invited to suggest other rules in Subchapter A—General Rules and Regulations (Parts 1000 through 1099) or any other subchapter which they believe more properly belong in Subchapter B.

In recodifying a body of administrative regulations which, by necessity, is constantly changing, some cut-off date for what can be included is essential. It is for this reason that an examination of the attached table of contents will reveal that some recently adopted rules have not been included. Such rules may have to be renumbered, but will not be substantively changed, upon completion of this proceeding.

Highlights of Proposed Changes to the Text of Subchapter B

We will refer to our proposed rules by the redesignated citation. If reference is made to existing rules, the present section number will be used.

Proposed Part 1100—*General Provisions.* The dual citation system contained in the existing rules which assigns a Code of Federal Regulations citation and a Rule number citation is proposed to be eliminated. Subchapter B of Chapter X of Title 49 will be redesignated the Rules of Practice.

Proposed Part 1101—*Definitions and Construction.* In this proposed Part the statutory definitions contained in 49 U.S.C. 10102 are adopted. Only the definitions for Act, Commission, decision, party and proceedings are retained from the present § 1100.5. The rules of construction contained in Chapter 1 of Title 1 of the United States Code are proposed to be adopted.

Proposed Part 1102—*Communications.* In this proposed Part the Commission's ex parte communication rules which currently are appendix C to Part 1100 are assigned to a specific section.

In proposed § 1102.2(a)(3), we have modified the definition of ex parte communication concerning the merits to read as follows:

> "Ex parte communication concerning the merits" means an oral or written communication by or on behalf of a party which is made without the knowledge or consent of any other party that could or is intended to influence anyone participating or who could reasonably be expected to participate in the decision.

The purpose of the modification is to clarify that it is the lack of knowledge of another party about a communication to the Commission which makes a communication a prohibited communication.

We have also deleted the definition of employees of the Commission which previously made specific reference to only certain groups of Commission employees. Deletion of the definition means that ex parte communication to any employee of the Commission participating or reasonably expected to participate in a decision is prohibited.

In proposed § 1102.2(c), we will include a prohibition against engaging in any *ex parte* communication with any Commissioner, hearing officer, joint board member, employee board member or employee of the Commission "who may reasonably be expected to participate in the decision in the proceeding."

Proposed Part 1103—*Practitioners.* The Canons of Ethics for ICC Practitioners which now appear as appendix A to Part 1100 are proposed to be added to Part 1103 as § 1103.10–1103.35. The Canons have been reorganized and rephrased for clarity. Existing Canons 6 and 40 are proposed to be deleted.

Canon 6 states that a practitioner shall not attempt to influence the appointment of Commissioners on any basis other than fitness. It is believed that this is a matter properly within the control of the Congress and beyond the jurisdiction of the Commission itself.

Canon 40 deals with the activities of a practitioner who formerly held public employment. This is a situation now covered by Federal law, 18 U.S.C. 207, and by other Commission regulations. See 49 CFR part 1000, App. II, Sec. 4. Canon 40 would therefore be eliminated as unnecessary.

The following clarifying sentences will be added to the Canons of Ethics in Proposed Part 1103. In proposed § 1103.20(g), we will add: "A practitioner shall bill and collect from a client, and thereafter retain only such payments and reimbursements for expenses as have actually been incurred on behalf of the client." In proposed § 1103.21, we will add: "Most particularly, a practitioner must refrain from filing documents in cases before the Commission containing material misstatements, false representation of fact and unauthorized affidavits of support."

Proposed Part 1104—*Pleadings Generally.* Proposed § 1104.2 amends existing § 1100.13 by deleting most of the specific requirements relating to paper size and type specifications. These regulations can be modified since most documents are now microfilmed rather than maintained in binders.

Currently the Commission considers documents which are sent by private express mail timely filed if they are received by the private express carrier at least 3 days prior to the due date. To

reflect that practice, we will add the following sentence in proposed § 1104.6: "Private express mail, received by the private express mail carrier at least 3 days prior to the due date, also will be accepted as timely filed."

Proposed Part 1111—*Complaint and Investigation Procedures.* The Commission now has no regulations governing procedures for filing, responding to, and handling complaints generally. Current § 1100.24–1100.35 have been followed for many years in dealing with all formal complaints. However, they were originally intended to apply to complaints involving rate matters.

In the proposed reorganization of the procedural regulations, much of the material now contained in § 1100.24–§ 1100.35 will appear twice. Proposed Part 1131 discussed below, will contain rules applicable to formal complaint proceedings involving rate matters. Proposed Part 1111 will contain general provisions applicable to all other formal complaint proceedings.

The source materials have been rearranged and restated.

The material contained in present § 1100.31, which deals with amended complaints, serves no useful purpose and has been omitted.

In proposed § 1111.1, we have added the requirement that the formal complaint should include the address of each complainant and defendant to aid the Commission in serving complaints and related decisions.

Proposed Part 1112—*Modified Procedure.* The source materials are rearranged and simplified. This proposed Part is intended to provide general procedural rules for modified procedure cases of all kinds not covered by specific rules. Therefore, references to complaints, complainants, and defendants found in the old rules, are omitted. They are replaced, as is made clear by the second sentence of proposed § 1112.2, by references to intitial statements, reply statements, and rebuttal statements.

It is contemplated (see proposed § 1112.2) that modified procedure proceedings governed by these provisions will be instituted by decision of the Commission. That decision will indicate the schedule for filing pleadings and the number of copies needed. Thus, the specific references to these matters now found in § 1100.49 and § 1100.50 have been omitted.

Revised § 1112.4 is new, but it is modeled on present § 1100.71, dealing with intervention in oral hearings. It is included to eliminate any doubt whether similar standards for intervention apply in modified procedure cases.

Proposed § 1112.7, which deals with the introduction of records in other Commission proceedings, is also new, but it has its source in present § 1100.80. That rule is being revised, as § 1113.10, to make it clear that it applies only to oral hearings. For clarity, a similar rule is being added to apply specifically to modified procedure cases.

Present § 1100.45 and § 1100.52 have been omitted as redundant.

Present § 1100.44(a), which relieves defendants in formal complaint proceedings from answering compliant if the proceeding is set for modified procedure is omitted, but use of the procedure is preserved in proposed §1111.4.

Proposed Part 1113—*Oral Hearing.* The new Part rearranges and restates the source material. Proposed § 1113.3 constitutes a substantial revision of the statement of the authority of hearing officers, but it is not believed that any substantial change is made, except in paragraph (d). Under that paragraph, authority to determine whether live media coverage will be allowed during a hearing is vested in the officer, instead of the Chairman of the Commission as is now the case.

In § 1113.4 paragraph (d), a time certain (20 days) has been set for objecting to the report on a prehearing conference. The present rule simply requires that objections be filed within a reasonable time.

The first sentence of paragraph 1113.7(a) provides a clear statement that intervention is normally allowed only upon petition. While this has been the Commission's practice, the present rules do not contain a positive provision to that effect.

Section 1113.17 paragraph (c) provides for the first time a procedure to be followed by parties who may disagree with proposed corrections to the transcript of a hearing advanced by other parties.

All of § 1100.53 paragraph (b) except the first sentence has been omitted from the revision. This material provides for a hearing procedure in which the hearing is electronically transcribed but no written transcript is made. The procedure has not been used, and the applicable rule is being eliminated. Paragraph 1100.53(c) is likewise omitted as there appears to be no need for the Commission to include in its rules a description of how it will serve its notices.

Section 1100.78 of the present rules relates to the admission into evidence of documents which contain some matter not relevant to the proceeding. It is omitted as unnecessary in light of the general authority given to the officer to control the hearing and the admission of evidence.

Section 1100.89 paragraphs (a) and (b) of the present rules, which establish specifications for post-hearing briefs, are omitted as pleading specifications generally are covered elsewhere in the rules.

Proposed Part 1118—*Procedures in Informal Proceedings Before Certain Employees Boards.* The revised Part is primarily a restatement of the sources materials, but some changes and additions have been made.

Present § 1100.225 provides procedures for all the Commission's employee boards except the review boards, the Restriction Removal Board, and the Accounting and Valuation Board. The last named is brought within the ambit of these provisions by the revision, and the appellate procedures applicable to valuation decisions made by that board (now found in § 1100.39) are incorporated in the new part.

The present provisions refer to the Motor Carrier Board, which no longer exists; references to that board have been stricken, and § 1100.225 paragraph (g), relating to appeals from Motor Carrier Board decisions in transfer cases has been eliminated. These proceedings are now assigned to a review board and subject to the Commission's general appellate procedures.

Section 1118.4 paragraph (d), which contains new material, provides for the filing at the Commission's regional office of appeals from the decisions of the Regional Motor Carrier Boards.

Section 1118.4 paragraph (f), which also contains new material, is intended to allow employee boards to review appeals to their decisions and correct their own errors. This practice is now followed in proceedings handled by the Regional Motor Carrier Boards, and it would be extended to apply to employee boards having jurisdiction over informal cases.

Proposed Part 1130—*Informal Complaints.* Editorial changes are proposed to clarify and simplify the language in the proposed Part. Proposed § 1130.2(a)(3) is revised to reflect the removal of the "preference and prejudice" language from 49 U.S.C. 10741.

Language citing existing 49 CFR 1100.96–98 as authority for administrative appeals of Tariff Integrity Board decisions is removed since the revised appellate rules do not apply to informal matters. A repetitive reference to the section dealing with formal complaint procedures is removed from proposed § 1130.2(f)(2).

A requirement that complainant include the addresses of each defendant against which a claim is made is added to proposed § 1130.3(b) to facilitate the Commission's service of complaints.

A cross-reference to the Special Docket Board procedure section is added to proposed § 1130.3(e). In proposed § 1130.3(f), the reference to existing § 1100.225 is removed because it adds nothing.

Proposed Part 1131—*Formal Complaints, Rail Intrastate Petitions and Investigations.* Editorial changes are made in this proposed Part which clarify and simplify the language and section headings and remove unnecessary material. Some of the sections are combined and others are reorganized. The entire proposed Part is reordered for clarify and conformity with Proposed Part 1111.

Present § 1100.28(b) is being deleted because that section is too vague, considering 49 U.S.C. 11501. Proposed § 1131.4 is added to reflect the changes made by the Staggers Rail Act of 1980 regarding Commission review of intrastate rates. Similarly, existing § 1100.24(b) is being deleted, as it does not reflect current procedure in these cases.

In proposed § 1131.9, the 20-day period for filing an answer to a complaint is also made applicable to answers filed in response to a cross-complaint. The fact that defendant is responsible for serving copies of answers to complaints upon the other parties is made clear. Also in that proposed section, the responsibility of complainant for serving answer to cross-complaints is specifically stated.

Present § 1100.44(a) is moved to § 1131.9(d) because it is more appropriately included in the section dealing with answers than in the Part dealing with modified procedure.

Proposed § 1131.9(e) is clarified to indicate that when defendant fails to timely file an answer, only issues of fact, and not issues of law are joined as to that defendant. This clarification is necessary because issues of law are never conceded by default.

The motions covered in proposed § 1131.10 are made applicable to cross-complaints as well as to complaints. All reference in that statement to statements submitted under the modified procedure are removed since proposed Part 1131 does not deal with modified procedures.

Also, language is added to require the complainant to provide the addresses of all defendants, which will facilitate the Commission's service of complaints upon defendants.

Proposed Part 1132—*Protests Against Tariffs; Procedures in Certain Suspension and Long and Short Haul Restriction Matters.* Existing §§ 1100.40 and 1100.200 have been combined in this proposed Part. The title of proposed § 1132.1 is changed to correct an error.

Proposed Part 1133—*Recovery of Damages.* In this proposed part, two existing sections, § 1100.47(c) and § 1100.95 are combined into a single proposed Part. The title change in proposed § 1133.1 results in a more accurate description of this rule, which is now a subparagraph of a general rule governing content of pleadings under modified procedure. A cross-reference to the rules regarding modified procedure is added.

The form for filing a statement under proposed § 1131.2 presently appears as Form 5 of Appendix B to Part 1100.

Proposed Part 1161—*Procedures for the Issuance of Certificates of Registration.* In this proposed Part, the material is rearranged and simplified. The second sentence of existing § 1100.245 paragraph (e)(3) and all material in existing § 1100.245 paragraph (g) are omitted as redundant. The material found in existing § 1100.245 paragraph (e)(1) and designated paragraphs (i) through (n) are omitted. That material was included by mistake. The material contained in the Appendix now appears as Form 7 of Appendix B to Part 1100.

Proposed Part 1166—*Extension of Operations by Water Common Carriers.* The material in this proposed Part is rearranged and simplified. The proposed Part heading is modified to clarify that these rules apply only to water carriers.

Energy and Environmental Rules

Rules governing the Implementation of the Energy Policy and Conservation Act of 1975 and Guidelines for the Implementation of the National Environmental Policy Act of 1969 now appear as 49 CFR Parts 1106 and 1108, respectively. These regulations are in part substantive and in part procedural. Our initial proposal is to relocate them, with no substantive change, in subchapter A of Chapter X of Title 49 of the CFR which contains our general rules. However, they could be included in Subchapter B among the procedural rules of general applicability—for example, as Parts 1105 and 1106. Comments are requested on the most convenient location for these regulations.

Deletion Table

Also appended to this notice is a deletion table summarizing the rules that are being deleted as obsolete because of statutory changes, or which have been combined with other provisions of the revised rules. (Appendix B).

Regulatory Flexibility Act Statement

In this proceeding we are proposing to reorganize and simplify our Rules of Practice. The language of some of the rules is proposed to be modified, to make our rules easier to read and understand. However, no substantial changes are proposed. Therefore, it is certified that this rule, when promulgated will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This action will not significantly affect the quality of the human environment and conservation of energy.

List of Subjects in 49 CFR Chapter X

Administrative practice and procedure, Motor carriers, Railroads, Maritime carriers, Freight forwarders, Buses, Freight, Securities.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: June 21, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, Andre and Simmons. Commissioner Gresham did not participate.

Agatha L. Mergenovich,

Secretary.

Subchapter B—Rules of Practice

Parts 1100–1129—Rules of General Applicability

Part

1100 General Provisions
1101 Definitions and Construction
1102 Communications
1103 Practitioners
1104 Pleadings: Generally
1105–1109 [Reserved]
1110 Procedures Governing Informal Rulemaking Proceedings
1111 Complaint and Investigation Procedures
1112 Modified Procedures
1113 Oral Hearings
1114 Evidence: Discovery
1115 Appellate Procedures
1116 Oral Argument Before the Commission
1117 Petitions (for Relief) Not Otherwise Covered
1118 Procedures in Informal Proceedings Before Certain Employee Boards
1119 Compliance With Commission Decisions
1120–1129 [Reserved]

Parts 1130–1149—Rate Procedures

1130 Informal Complaints
1131 Formal Complaints, Rail Intrastate Petitions and Investigations
1132 Protests Against Tariffs: Procedures in Certain Suspension and Long and Short Haul Restriction Matters

1133 Recovery of Damages
1134 Procedures for the Elimination of Discrimination Against Recyclables
1135 Railroad Cost Recovery Procedures
1136 Rail and Motor Carrier Commutation of Suburban Passenger Fare Increase Proceedings
1137 Procedures Relating to Railroad Revitalization and Regulatory Reform Act of 1976
1138 Procedures for Requesting Surcharge Costs and Revenues From Rail Carriers Applying a Commodity Oriented Surcharge or Cancelling the Application of a Joint Rate Pursuant to 49 U.S.C. § 10705a.
1139 Motor Carrier Cost Recovery Procedures
1140–1149 [Reserved]

Parts 1150–1169—Licensing Procedures

Parts 1150–1159—Rail Licensing Procedures

1150 Rail Carrier Certificate of Public Convenience and Necessity
1151 Feeder Railroad Development Program
1152 Abandonment and Discontinuance of Rail Lines and Transportation Under 49 U.S.C. § 10903
1153 Discontinuance of Change of Rail or Ferry Operations Under 49 U.S.C. § 10908
1154 Determination of Avoidable Losses
1155 Standards for Determining Rail Services Continuation Subsidies
1156 Submission of Cost Data to Justify Reimbursement for Directed Service
1158–1159 [Reserved]

Parts 1160–1169—Nonrail Licensing Procedures

1160 How To Apply for Operating Authority
1161 Procedures for the Issuance of Certificates of Registration
1162 Temporary Authority Procedures
1163 Temporary Operating Authorities and Approvals
1164 Owner-Operator Food Transportation
1165 Restriction Removals
1166 Extension of Operations by Water Common Carriers
1167 Compensated Intercorporate Hauling Operations
1168–1169 [Reserved]

Parts 1170–1199—Finance Procedures

Parts 1170–1179—Securities, Security Interests and Financial Structure

1170 Issuance of Securities and Assumption of Obligations and Liabilities
1171 Changes in Securities or Instruments
1172 Recordation of Documents
1173–1179 [Reserved]

Parts 1180–1189—Combination and Ownership

1180 Railroad Acquisition, Control, Merger, Consolidation Project, Trackage Rights and Lease Procedures
1181 Transfers of Operating Rights Under 49 U.S.C. 10926
1182 Applications To Consolidate, Merge, or Acquire Control Under 49 U.S.C. 11343 and 11344
1183 Control or Consolidation of Motor Carriers or Their Properties
1184 Motor Carrier Pooling Applications
1185 Interlocking Officers
1186–1189 [Reserved]

Parts 1190–1199—Reorganizations

1190 Reorganization of Railroads
1191 Corporate Reorganization of Carriers and Corporations
1192 Corporate Reorganization of Motor Carriers
1193–1199 [Reserved]

APPENDIX B.—DELETION TABLE

Existing sections to be deleted	Existing parts to be deleted
1100.24	
1100.28	
1100.36	Part 1107.
1100.37	Part 1110.[1]
1100.38	Part 1113.
1100.45	
1100.49	
1100.50	
1100.52	
1100.78	
1100.83	
1100.91	
1100.92	
1100.96	
1100.100	
1100.101	
1100.102	
1100.248	
1100.249	
Appendix B	
Forms 1, 2 & 4	
Appendices C–G	

[1] Deleted by Ex Parte No. 433, *Deletion of General Requirements* (49 CFR 1110), served June 4, 1982 (47 FR 24594, June 7, 1982).

[FR Doc. 82-17350 Filed 6-28-82; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 47, No. 125
Tuesday, June 29, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Continental Telephone Company of Kentucky, London, Kentucky; Proposed Loan Guarantee

Under the authority of Public Law 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 320–22, "Guarantee of Loans for Telephone Facilities," dated February 4, 1975, published in proposed form in the **Federal Register**, September 16, 1974, (Vol. 39, No. 180, pages 33228–33229) notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $12,840,000 to Continental Telephone Company of Kentucky, London, Kentucky. The loan funds will be used to finance the construction of facilities to extend telephone service to new subscribers, and improve telephone service for existing subscribers.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information and details of the proposed project from Mr. Harold J. Marshall, President, Continental Telephone Company of Kentucky, 1135 E. Chocolate Avenue, Hershey, Pennsylvania 17033.

To assure consideration, proposals must be submitted on or before July 29, 1982 to Mr. Marshall. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as the Continental Telephone Company of Kentucky and REA deem appropriate. Prospective lenders are advised that financing for this project is available from the Federal Financing Bank under a standing loan commitment agreement with the Rural Electrification Administration.

Copies of REA Bulletin 320–22 are available form the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.851–Rural Telephone Loans and Loan Guarantees.

Dated at Washington, D. C., this 22nd day of June, 1982.

Jack Van Mark,

Acting Administrator, Rural Electrification Administration.

[FR Doc. 82–17494 Filed 6–28–82; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Critical Area Treatment RC&D Measures, New Hampshire

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Envrionmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for certain Critical Area Treatment RC&D Measures in New Hampshire.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Porter, State Conservationist, Soil Conservation Service, Federal Building, Box G. Durham, New Hampshire 03824, telephone 603—868—7581.

SUPPLEMENTARY INFORMATION: The environmental assessments of these types of federally assisted actions indicate that the projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Richard L. Porter, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for these projects if the planned action and impacts are substantially as described in the finding of no significant impact for Critical Area Treatment RC&D measures, New Hampshire.

The measures concern a plan for critical areas treatment. The planned works of improvement include soil and water conservation practices to stabilize eroding areas. Practices include surface water control structures, subsurface drainage, Riprap, statement stabilization, and vegetation establishment including lime, fertilizer, and Mulch.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the aove address. The basic data developed during the environmental assessments are on file and may be reviewed by contacting Mr. Richard L. Porter.

No administrative action on implementation of the proposal will be initiated until July 29, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: June 10, 1982.

Richard L. Porter,

State Conservationist.

[FR Doc. 82–17507 Filed 6–28–82; 8:45 am]

BILLING CODE 3410–16–M

St. Mary's City; Critical Area Treatment R.C. & D. Measure, Maryland

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the St. Mary's City Critical Area Treatment R.C. & D. Measure, St. Mary's County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301–344–4180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Gerald R. Calhoun, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment on the St. Mary's River near St. Mary's City. The planned works of improvement include placing fill at the toe of the present slope and rock on the water face of the fill.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Gerald R. Calhoun. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will not be taken on or before July 29, 1982.

Gerald R. Calhoun,

State Conservationist.

June 21, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 82–17459 Filed 6–28–82; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Amendment To Preliminary Affirmative Countervailing Duty Determinations; Certain Steel Products From Belgium

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to notice of preliminary affirmative countervailing duty determinations.

SUMMARY: This notice is to advise the public that the Department of Commerce is amending Appendix A to the "Notice of Preliminary Affirmative Countervailing Duty Determinations, Certain Steel Products From Belgium" to correct the product definitions of certain steel bar products. The correction affects the proceedings on certain steel products from South Africa and from the United Kingdom.

EFFECTIVE DATE: June 17, 1982.

FOR FURTHER INFORMATION CONTACT: David L. Binder, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–1273.

SUPPLEMENTARY INFORMATION: The Department of Commerce published a "Notice of Preliminary Affirmative Countervailing Duty Determinations, Certain Steel Products From Belgium," in the **Federal Register** on June 17, 1982 (47 FR 26300). In Appendix A to that notice (47 FR 26307), the product definitions of hot-rolled carbon steel bars, hot-rolled alloy steel bars, and cold-formed carbon steel bars inadvertently contained the phrase "and not coated or plated with metal." Accordingly, we hereby amend our notice by deleting the phrase "and not coated or plated with metal" from each of those product definitions. This correction affects the proceedings on certain steel products from South Africa and from the United Kingdom.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

June 23, 1982.

[FR Doc. 82–17558 Filed 6–28–82; 8:45 am]

BILLING CODE 3510–25–M

National Bureau of Standards

Approval of Federal Information Processing Standard 93, Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63bpmm (1600 bpi), Phase Encoded

Under the provisions of Public Law 89–306 (79 Stat. 1127; 40 U.S.C. 759 (f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce (Secretary) is authorized to establish uniform Federal automatic data processing standards. On April 30, 1980, notice was published in the **Federal Register** (45 FR 28788–28789) that a standard for Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63bpmm (1600 bpi), Phase Encoded was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this reveiw, NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 93. The provisions of this standard are effective June 29, 1982.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230.

The objective of this approved FIPS is to augment the existing FIPS related to recorded magnetic media for information interchange. The recording method, density, format, encoding, and error detection techniques specified in this standard characterized the recorded media so that information can be readily interchanged when recorded on this media. Federal information processing systems acquired in compliance with this approved FIPS would possess the capability to reliably interchange such information. This reliability would increase the operational and cost effectiveness of Federal information processing systems.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice. This FIPS incorporates by reference the technical specifications of American National Standard X3.72–1981, Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track, 0.250 inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded.

By arrangement with the American National Standards Institute, interested parties may purchase copies of this standard, including the specifications portion, from the National Technical

Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mr. Michael Hogan, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: June 23, 1982.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 93

Date

Announcing the Standard for Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded (FIPS PUB 93).

Category of Standards. Hardware Standard, Interchange Codes and Media.

Explanation. This standard specifies the recorded characteristics for a 6.30 mm (¼ in) wide magnetic tape cartridge with data recorded across four parallel tracks in order to provide for data interchange between information processing systems at a recording density of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques. This standard is one of a services of Federal Information Processing Standards implementing the Code for Information Interchange (FIPS 1–1) on flexible magnetic media.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standard Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track, 0.250 Inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded, X3.72–1981.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUBS 1–1 and 7.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 35.

c. American National Standard Unrecorded Magnetic Tape Cartridge for Information Interchange, 0.250 inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded, X3.55–1977.

d. American National Standard Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 0.250 inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded, X3.56–1977, FIPS PUB 52.

Applicability. This standard is applicable to the acquisition and use of all magnetic tape cartridge recording and reproducing equipment employing 6.30 mm (¼ in) wide magnetic tape with data recorded across four parallel tracks at a recording density of 63 bits per millimeter (1600 bits per inch) using phase encoding. Federal information processing systems employing such equipment, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in compliance with the requirements set forth in this standard.

Specifications. This standard incorporates by reference the technical specifications of American National Standard Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track, 0.250 Inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded, X3.72–1981.

Qualifications. None.

Patents. Magnetic tape cartridges implementing this standard may be covered by a U.S. patent.

Implementation Schedule. All applicable equipment ordered on or after the date of this FIPS PUB must be in conformance with this stndard unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following causes:

a. For equipment installed or on order prior to the date of this FIPS PUB.

b. Where procurement actions are into the solicitation phase (i.e., Request for Proposals or Invitation for Bids has been issued) on the date of this FIPS PUB.

Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, , Washington D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of non-conforming equipment unless it has already obtained such approval.

Special Information. Federal standards and/or specifications for unrecorded magnetic tape cartridges will be developed and issued by the General Services Administration. Until such time as these are available, American National Standard X3.55–1977, Unrecorded Magnetic Tape Cartridge for Information Interchange, should be cited in Federal procurements.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National standards Institute). When ordering, refer to Federal Information Processing Standards Publication 93 (NBS–FIPS–PUB–93) and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

[FR Doc. 82–17515 Filed 6–28–82; 8:45 am]

BILLING CODE 3510—CNM

National Oceanic and Atmospheric Administration

Fishermen's Contingency Fund

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notification of claim pursuant to Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 (Title IV). Notification 07–82.

SUMMARY: 50 CFR 296.6 requires that the Chief, Financial Services Division (FSD),

publish in the **Federal Register** a notice of claim received under the Title IV Program. Any interested person may, on or before July 29, 1982, submit to the Chief, FSD, National Marine Fisheries Service (NMFS), evidence concerning the claim or a request to the admitted as a party to any hearing concerning the claim.

IMPORTANT DATE: Any evidence concerning any claim described in this Notice, and any request to be admitted as a party to any hearing concerning any such claim, must be submitted, in writing, to the Chief, FSD, within on or before July 29, 1982.

ADDRESS: Send evidence and any request to be admitted as a party to any hearing to: Mr. Michael L. Grable, Chief, Financial Services Division, Attention: Charles L. Cooper, National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Washington, D.C. 20235 (telephone 202–634–4688).

SUPPLEMENTARY INFORMATION: Title IV establishes a Fishermen's Contingency Fund (FCF) to compensate fishermen for eligible claims for actual and consequential damages, including lost profits, due to damages to, or loss of, fishing vessels or fishing gear by items associated with oil and gas exploration, development, or production on the Outer Continental Shelf (OCS). Title IV regulations require that upon receipt of a timely-filed claim which is not clearly ineligible because of statutory exemptions from eligibility, the Chief, FSD publish a 30-day notice of the claim in the **Federal Register** (50 CFR 296.6(a)(1)(iii)). Upon expiration of the 30-day period following publication of the **Federal Register** notice, the claim will be referred to the Administrative Law Judge (ALJ).

Dated: June 23, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

The following claims have been received.

Claim No., Nature of loss and location, and Amount

FCF–44–82 On 5–1–82 claimant lost 2 nets and 2 bridles while trawling for shrimp at the following coordinates: 7980X14159.3 7980Y46413.9:

Gear loss	$2228.64
Economic loss	
Consequential loss	
Total	2228.64

FCF–45–82 On 5–21–82 claimant lost one complete trawl and lazy line while trawling for shrimp at the following coordinates: 29°06'13.06"N 92°12'28.37"W:

Gear loss[1]	Unknown.
Economic loss	Unknown.
Consequential loss	Unknown.
Total	Unknown.

[1] Amounts not yet reported at this publishing.

FCF–46–82 On 6–4–82 claimant lost 2 42 ft. nets and tickler chains while trawling for shrimp at the following coordinates: 7980X29064.8 7980Y4957.5:

Gear loss[1]	Unknown.
Economic loss	Unknown.
Consequential loss	Unknown.
Total	Unknown.

[1] Amounts not yet reported at this publishing.

FCF–47–82 On 5–11–82 claimant lost his vessel and fixtures while trawling for shrimp at the following coordinates: 7980X28492.0 7980Y46851.0:

Gear loss[1]	Unknown.
Economic loss	Unknown.
Consequential loss	Unknown.
Total	Unknown.

[1] Amounts not yet reported at this publishing.

[FR Doc. 82–17547 Filed 6–28–82; 8:45 am]

BILLING CODE 3510–22–M

Office of the Secretary

Advisory Committee on Minority Enterprise Development; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. (1976)) and Office of Management and Budget Circular A–63 of March, 1974, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee on Minority Enterprise Development is in keeping with the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will aid the Department and the Minority Business Development Agency in the conduct of a complete review of the effectiveness of Federal minority business assistance programs, many of which have been ongoing for ten years or more. The Commitee will also develop recommendations for changes to or improvement in these programs.

The Commmitte will consist of 12 members to be appointed by the Secretary to assure a balanced representation of both the majority and minority business communities.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, 15 days from the date of publication of this notice.

For further information contact: Any comments or inquiries regarding the establishment or activities of the Advisory Committee on Minority Enterprise Development may be addressed to Victor M. Rivera, Director, Minority Business Development Agency, Washington, D.C. 20230, telephone 202/377–5061; or Mrs. Yvonne Barnes, the Department's Committee Management Analyst, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202/377–4217.

Dated: June 16, 1982.

Jimmie D. Brown,

Director, Office of Information Systems.

[FR Doc. 82–17474 Filed 6–28–82; 8:45 am]

BILLING CODE 3510–CW

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Level for Certain Wool Textile Products From the Republic of Singapore

June 24, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling imports of Women's, Girls's, and infants' Wool Dresses in Category 436, produced or manufactured in Singapore and exported during trhe agreement year which began on January 1, 1982 at a level of 2,033 dozen.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654))

SUMMARY: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, between the Governments of the United States and the Republic of Singapore, the United States has decided to control imports of wool textile products in Category 436 in the same manner as other categories are currently being controlled.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** (46 FR 61687) a letter dated December 15, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in Singapore, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. The letter published below further amends the letter of December 15, 1981 to include an import control level of 2,033 dozen for Category 436. The level for Category 436 has not been adjusted to account for any imports after December 31, 1981. Imports during the January-April 1982 period have totaled 1,584 dozen and will be charged. When the data become available, charges will also be made for the period which began on May 1 and extends to the effective date of this directive.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

June 24, 1982.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 15, 1981 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1982.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the bilateral Cotton, Wool, and Man-Made Textile Agreement of August 21, 1981, as amended between the Governments of the United States and Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951, of January 6, 1977, you are directed to prohibit, effective on July 1, 1982 and for the twelve-month period beginning on January 1, 1982 and extending through December 31, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 436, produced or manufactured in Singapore in excess of 2,033 dozen.[1]

Textile products in Category 436 which have been exported to the United States prior to January 1, 1982 shall not be subject to this directive.

Textile products in Category 436 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926) and May 13, 1982 (47 FR 20654)).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Republic of Singapore and with respect to imports of wool textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementaion of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementaion of Textile Agreements.

[FR Doc. 82-17559 Filed 6-28-82; 8:45 am]

BILLING CODE 3510-25-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 82-C0001]

The Fountainhead Group Inc., a Corporation, Marimar Manufacturers Co., Inc., a Corporation, D. B. Smith & Co., Inc., a Corporation and Blue Mountain Products, Inc., a Corporation; Provisional Acceptance of a Consent Order Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a consent order agreement under the Consumer Product Safety Act.

SUMMARY: Under requirements of 16 CFR 1118.20, the Commission must publish in the **Federal Register** consent agreements which it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally-accepted Consent Order Agreement with the Fountainhead Group, Inc., et al.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by July 14, 1982.

ADDRESS: Persons wishing to comment on this Consent Order Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Ronald Yelenik, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION:

Consumer Product Safety Commission

[CPSC Docket No. 82–C0001]

In the Matter of The Fountainhead Group, Inc., a corporation, Marimar Manufacturing Company, Inc., a corporation, D. B. Smith and Company, Inc., a corporation, and Blue Mountain Products, Inc., a corporation.

Consent Order Agreement

This agreement is made by and between The Fountainhead Group, Inc., a corporation (hereinafter, "Fountainhead"), Marimar Manufacturing Company, Inc., a corporation (hereinafter, "Marimar"), D. B. Smith and Company, Inc., a corporation (hereinafter, "Smith"), Blue Mountain Products, Inc. (hereinafter, "Blue Mountain"), and the staff of the Consumer Product Safety Commission (hereinafter, the "Commission"), pursuant to 16 CFR 1118.20, in settlement of a Complaint for a civil penalty pursuant to 15 U.S.C. 2069, which alleges that Fountainhead, Marimar, Smith, and Blue Mountain knowingly failed to immediately inform the Commission and continued to fail to make reports and provide required information concerning a defect in certain GP and GQ series galvanized steel air-compressed home and garden sprayers (more fully described in the attached Complaint), which could create a substantial product hazard, as required by 15 U.S.C. 2064(b), in violation of 15 U.S.C. 2068(a) (3) and (4). A copy of the Complaint is attached hereto and incorporated herein by reference.

Fountainhead, Marimar, Smith, and Blue Mountain and the staff of the Commission stipulate and agree:

1. The Consumer Product Safety Commission has jurisdiction over Fountainhead, Marimar, Smith, and Blue Mountain (hereinafter, collectively referred to as the Respondents) and the subject matter of

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1981. Imports in Category 436 during the January-April 1982 period have amounted to 1,584 dozen.

this Consent Order Agreement pursuant to 15 U.S.C. 2051 *et seq.*

2. Fountainhead is a corporation organized and existing under the laws of the state of New York with its principal place of business located in Utica, New York. Fountainhead is a holding company for several subsidiaries, including those listed in the paragraphs below.

3. Marimar, a wholly owned subsidiary of Fountainhead, is a corporation organized and existing under the laws of the State of New York with its principal place of business located in Chadwicks, New York. Marimar is engaged in the manufacture of spray equipment and fire pumps.

4. Smith, a wholly owned subsidiary of Fountainhead, is a corporation organized and existing under the laws of the State of New York with its principal place of business located in Chadwicks, New York. Smith engages in the distribution and sale of spray equipment and fire pumps.

5. Blue Mountain, a wholly owned subsidiary of Fountainhead, is a corporation organized and existing under the laws of the State of New York with its principal place of business located in Chadwicks, New York. Blue Mountain is a private labeler and distributor of sprayers manufactured by Marimar.

6. The Respondents "manufactured" and "distributed in commerce" as these terms are defined in 15 U.S.C. 2052(a) (8), (11), and (12), respectively, certain GP and GQ series galvanized steel air-compressed home and garden sprayers (hereinafter, the "sprayers"). The sprayers are used to disperse pesticides and chemicals and are equipped with a hand-operated pump to pressurize the sprayer tank.

7. The sprayers were produced and distributed in commerce for use in the around a permanent or temporary household or residence, a school, in recreation, or otherwise, and are therefore "consumer products" within the meaning of 15 U.S.C. 2052(a).

8. Between June 1977 and June 1978, the Respondents manufactured and distributed in commerce a substantial number of sprayers that the staff of the Commission alleged contained a defect consisting of an improperly located weld at the bottom of the sprayer, which presented a "substantial product hazard" within the meaning of 15 U.S.C. 2064(a)(2), as more fully set forth in the Complaint.

9. In the Complaint, the staff of the Commission alleges that the Respondents knowingly failed to immediately inform the Commission that they had obtained information which reasonably supported the conclusion that the sprayers contained a defect which could create a "substantial product hazard," as required by 15 U.S.C. 2064(b)(2), in violation of 15 U.S.C. 2068(a)(4). The staff also alleges in the Complaint that the Respondents violated 15 U.S.C. 2068(a)(3) by continuing to fail to make reports or to provide information as required by 15 U.S.C. 2064(b). The staff of the Commission, pursuant to 15 U.S.C. 2069, seeks in the Complaint a civil penalty against the Respondents up to the maximum allowable under law and consistent with the facts as established in this proceeding.

10. Without admitting the existence of a defect which could create a substantial product hazard or a violation of any reporting requirements under 15 U.S.C. 2064(b), and solely for the purposes of settling the Complaint, the Respondents hereby agree to pay the sum of $10,000 upon final acceptance of this Consent Order Agreement by the Commission, in full settlement of any and all claims set forth in the Complaint pertaining to violations of 15 U.S.C. 2068(a) (3) and (4).

11. Upon final acceptance by the Commission of this Consent Order Agreement, the Respondents knowingly and voluntarily waive any and all rights to an administrative or judicial hearing, and to any and all procedural stages, including the right to judicial review or otherwise to challenge or contest the validity of this Consent Order Agreement and the Commission's Order.

12. Upon execution of this Consent Order Agreement by the Respondents and the Commission staff, and provisional acceptance by the Commission, as provided in 16 CFR 1118.20(d), pursuant to 16 CFR 1118.20(e), this Consent Order Agreement will be made a matter of the public record by inclusion in the Commission's Public Calendar, and by publication in the Federal Register for a period of fifteen days. The Commission will then consider and act upon the Consent Order Agreement pursuant to 16 CFR 1118.20 (f) and (g).

13. Final acceptance by the Commission of the Consent Order Agreement and issuance of the Order contained herein, pursuant to 15 U.S.C. 2069, shall settle any and all claims set forth in the Complaint pertaining to violations of 15 U.S.C. 2068(a) (3) and (4).

14. This Consent Order Agreement shall become effective upon final acceptance by the Commission, and service upon the Respondents.

15. Upon final acceptance, the Commission will disclose the terms of this Consent Order Agreement to the public and will make the Consent Order Agreement available for public viewing at the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207.

Order

It is ordered that The Fountainhead Group, Inc., Marimar Manufacturing Company, Inc., D. B. Smith and Company, Inc., and Blue Mountain Products, Inc. shall within twenty days after receipt of a copy of this Order, pay to the order of the United States Treasurer, the total sum of ten thousand dollars ($10,000) in full settlement of any and all Commission claims set forth in the Complaint pertaining to violations of 15 U.S.C. 2068(a) (3) and (4). The Complaint accompanies this Consent Order Agreement.

Signed this 28th day of July 1981.

The Fountainhead Group, Inc., a corporation.
David W. Wood,
Vice President, Utica, N.Y.

Marimar Manufacturing Company, Inc., a corporation.
David W. Wood,
Executive Vice President, Utica, N.Y.

D. B. Smith and Company, Inc., a corporation.
David W. Wood,
Executive Vice President, Utica, N.Y.

Blue Mountain Products, Inc., a corporation.
Ernest J. McMurray,
President, Utica, N.Y.

Ronald G. Yelenik,

Trial Attorney, Counsel for the staff of Consumer Product Safety Commission.

Dated: June 23, 1982.
Sadye E. Dunn,
Secretary.

[FR Doc. 82-17544 Filed 6-28-82; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

New

Questionnaire—Centralized Payment of Invoices

The Defense Fuel Supply Center (DFSC) recently established a centralized paying office at Cameron Station, Alexandria, VA, for contractor invoices covering the supply of motor gasoline, diesel fuel and heating oil shipped to Army, Navy and certain other Department of Defense installations. Previously, contractor invoices were paid by the ordering or receiving installation or a regional finance office. A questionnaire, to be completed on a voluntary basis, will be mailed to fuel suppliers currently under contract with DFSC for the supply of the above fuel items. The purpose of the questionnaire is to determine if payment of invoices by the centralized office

improved the timeliness of payment and resolution of payment problems. The questionnaire contains five questions and offers the suppliers an opportunity to comment on the centralized paying office concept.

Petroleum distributors and refiners: 575 responses; 144 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB Washington, DC 20503, and John V. Wenderoth, DOD Clearance Officer, OASD (C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, DC 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from T. H. Fletcher, OPI, Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22314, ATTN: DFSC–CB, telephone (202) 274–7334.

June 22, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82–17442 Filed 6–28–82; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on August 12 1982, at the Palisades Institute for Research Services, Inc., 201 Varick Street, New York 10014.

The mission of the Advisory Group is to provide the Under-Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of Electron Devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardend Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with 5 U.S.C. App. 1 10(d)(1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552(b)(c) 1976)) and that accordingly, this meeting will be closed to the public.

M. S. Healy

OSD Federal Register Liaison Officer, Department of Defense.

June 23 1982.

[FR Doc. 82–17486 Filed 6–28–82; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Electronic Warfare (Future Systems Subgroup); Notice of Advisory Committee Meeting

The Future Systems Subgroup of the Defense Science Board Task Force on Electronic Warfare will meet in closed session on August 30–31, 1982 in Los Angeles, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meeting on August 30–31, 1982 the Task Force will discuss the application of technology to future systems designed to improve U.S. Electronic Warfare capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b (c)(1) (1976), and that accordingly these meetings will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

June 24, 1982.

[FR Doc. 82–17528 Filed 6–28–82; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board; Notice of Advisory Committee Meeting

The Defense Science Board will meet in closed session July 26–30, 1982 at the Air Force Academy, Colorado Springs, Colorado.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting to be held July 26–30, 1982 the Board will examine the substance, interrelationships, and U.S. national security implications of three critical areas identified and tasked to the Board by the Secretary of Defense and Under Secretary of Defense for Research and Engineering. The subject areas are Training and Training Technology, New Weapons Concepts, and Close-Air Support. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Research and Engineering, for his consideration in determining resource policies, short- and long-range plans, and in shaping appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I (1976)), it is hereby determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1) (1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

June 24, 1982.

[FR Doc. 82–17529 Filed 6–28–82; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board; Notice of Advisory Committee Meeting

The Defense Science Board will meet in closed session August 2–6, 1982 at the Air Force Academy, Colorado Springs, Colorado.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting to be held August 2–6, 1982 the Board will examine the substance, interrelationships, and U.S. national security implications of three critical areas identified and tasked to the Board by the Secretary of Defense and Under Secretary of Defense for Research and Engineering. The subject areas are Training and Training Technology, New Weapons Concepts, and Close-Air Support. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Research and Engineering, for his consideration in determining resource policies, short- and long-range plans, and in shaping

appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)), it is hereby determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

June 24, 1982.

[FR Doc. 82-17530 Filed 6-28-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Continuous Patrol Aircraft (CPA); Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Continuous Patrol Aircraft will meet in closed session on July 21, 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

At the meeting on July 21, 1982 the Task Force will continue discussions on the survivability of continuous patrol aircraft.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)); It has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly these meetings will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

June 24, 1982.

[FR Doc. 82-17531 Filed 6-28-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Post Secondary Education; Cancelled Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Cancellation of meeting.

The meeting scheduled for July 8–10, 1982 at the Hampton Institute, Hampton, Virginia, which appeared in the **Federal Register** on Thursday, June 17, 1982, page 26180, has been cancelled.

Dated: June 22, 1982.

Thomas P. Melady,

Assistant Secretary for Postsecondary Education.

[FR Doc. 82-17539 Filed 6-28-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Shore Oil Co., Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Shore Oil Company, Incorporated, 2204 N. Longview, Kilgore, Texas 75662. This Proposed Remedial Order charges Shore Oil Company, Incorporated, with pricing violations in the amount of $852,755.51 connected with the sales of motor gasoline during the period March 1, 1979 through December 31, 1979.

A copy of the Proposed Remedial Order with confidential information deleted, may be obtained from Mr. William R. Gibson, Deputy Director, Atlanta Office, Economic Regulatory Administration, 1655 Peachtree Street, N.W., Atlanta, Georgia 30309, Telephone (404) 881–2661. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the U.S. Department of Energy, Office of Hearings and Appeals, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Atlanta, Georgia on the 16th day of June 1982.

Leonard F. Bittner,

Director, Atlanta Office, Economic Regulatory Administration.

[FR Doc. 82-17537 Filed 6-28-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

National Polutant Discharge Elimination System General Permit for Concentrated Animal Feeding Operations in South Dakota

[W-8-FRL 1909-2]

AGENCY: Environmental Protection Agency (EPA), Region VIII.

ACTION: Notice of Issuance of Final General NPDES Permit.

SUMMARY: On May 22, 1981, Region VIII published notice of its intent (FR 28008) to issue a General NPDES Permit for concentrated animal feeding operations (feedlots). Several comments were received from State and federal agencies, and from private individuals. All were in favor of the issuance of this general permit for animal feedlots. Thus, having received no adverse comments after proper notice of our intent, Region VIII hereby publishes notice of issuance of the permit.

EFFECTIVE DATE: This General Permit shall be effective on or before July 29, 1982.

FOR FURTHER INFORMATION AND COPIES OF FINAL PERMIT CONTACT: Marshall Fischer, Region VIII, U.S. Environmental Protection Agency, Water Management Division, Compliance Branch, 1860 Lincoln Street, Denver, Colorado 80295, (303) 327–4901.

SUPPLEMENTARY INFORMATION: *General Permit Authorization Under the National Pollutant Discharge Elimination System for Concentrated Animal Feeding Operations in South Dakota* Permit No. SD–0026000.

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1250 et seq.) (hereinafter referred to as "the Act"), all concentrated animal feeding operations (commonly known as feedlots): (1) with 1,000 or more animal units (slaughter and feeder cattle or equivalent animals as defined in Appendix B to 40 CFR Part 122); (2) with less than 1,000 animal units but more than 300, if pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals concentrated in the operation; or (3) which have ever been designated as a significant contributor of pollution in accordance with the designation procedures set forth in the applicable regulations, are authorized to discharge from facilities located in the State of South Dakota, to waters of the United States, in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II hereof.

This permit shall become effective on or before July 29, 1982. Any outstanding individual facility permits shall continue to apply unless such individual permits

either expire or are revoked by letter from the permit issuing authority.

This permit and authorization to discharge shall expire at midnight, December 31, 1986.

This permit was submitted to the State of South Dakota for review. Though no adverse comments or objections were received, the State contends that it has no authority to certify the permit in acccordance with section 401(a)(1) of the Clean Water Act. Therefore, the Regional Administrator certifies that the conditions and limitations imposed in the permit assure compliance with the applicable conditions of the CWA 208(e), 301, 302, 303, 306 and 307, and with appropriate requirements of State law.

Part I

A. Effluent limitations and waste disposal requirements.

1. *Effluent Limitations.* During the term of this permit, the following effluent limitations apply to all of the concentrated animal feeding operations covered by this permit:

There shall be no discharge of process waste water pollutants to the waters of the United States except as provided for below.

A discharge of pollutants to the waters of the United States may occur whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed, and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the concentrated animal feeding operation. That is, control facilities must contain all runoff from storms less intense than those which occur once every 25 years (during a 24-hour period).

A chart showing 25-year, 24-hour rainfall for South Dakota is given on Appendix A [1] to this permit. The 25-year, 24-hour rainfall value for concentrated animal feeding operation covered by this permit shall be determined from this chart.

For purpose of determining compliance with the effluent limitations of this permit, the amount of precipitation that occurred shall be based on the data from the nearest weather stations in South Dakota. The permittee may, at his option, maintain a precipitation gage at the facility.

2. *Waste Disposal Requirements.* a. All land areas utilized by and operated under the authority of the permittee for the disposal of manure, other waste solids, and liquid wastes shall be isolated to prevent any pollutant from such materials from entering the waters of the United States, subject to the provisions as provided in permit conditions under "Effluent Limitations" (Part I, A.1.). Such provisions apply only to the discharge of pollutants from a "point source" as defined in Section 502(14) of the Act. The diffused drainage of natural precipitation on agricultural land resulting from a "non-point source" is not subject to the conditions of this permit under the referenced authority of the Act.

b. All land areas utilized by and operated under the authority of the permittee for the storage or holding of manure, edding materials, silage, feeds, and feed concentrates, and other substances having a waste contributing potential shall be isolated to prevent any pollutant from such materials from entering the waters of the United States, subject to the provisions as provided in permit conditions under "Effluent Limitations" (Part I, A.1.). Such provisions apply only to the discharge of pollutants from a "point source" as defined in Section 502(14) of the Act. The diffused drainage of natural precipitation on agricultural land resulting from a "non-point source" is not subject to the conditions of this permit under the referenced authority of the Act.

c. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutant from such materials from entering the waters of the United States, subject to the provisions as provided in permit conditions under "Effluent Limitations" (Part I, A.1.), and then only in accordance with the provisions of any toxic pollutant effluent standards established pursuant to Section 307(a) of the Act.

B. Monitoring and reporting requirements.

1. *Monitoring Requirements.* The permittee shall monitor all discharges and record the following information:

a. A description of the discharge and cause, whether excess precipitation, snow melt, or other specified causes (e.g., structural failure, equipment breakdown, flooding);

b. The period of discharge including exact dates and times;

c. An estimate of discharge volume;

d. Name of receiving stream;

e. Name of person recording discharge;

f. Corrective steps taken, if appropriate; and

g. A record of the precipitation at the nearest National Weather Service station (refer to Note at end of document) with a precipitation gage or at a facility rain gage for the period of inclement weather that resulted in the drainage.

If the permittee elects to maintain a precipitation gage at the facility, the permittee shall monitor and record precipitation daily using a National Weather Service standard rain gage or equivalent.

All records and information resulting from the monitoring activities required by this permit shall be retained for a minimum of three (3) years or longer if requested by the Regional Administrator or the South Dakota Department of Water and Natural Resources.

2. *Reporting Requirements.* The premittee shall monitor and report within five (5) days to the permit issuing authority, any discharge resulting from a precipitation event. Any discharge resulting from a non-precipitation event (e.g., dike or structural failure, equipment breakdown, human error) shall be monitored and reported immediately (within 24 hours) by calling (303) 837–3880 anytime, day or night. The permittee shall provide the permit issuing authority with a written report within five (5) days of such notification. The information shall be submitted to the U.S. Environmental Protection Agency and the South Dakota Department of Water and Natural Resources at the following address: U.S. Environmental Protection Agency, Water Management Division, Compliance Branch, 1860 Lincoln Street, Denver, Colorado 80295 and, South Dakota Department of Water and Natural Resources, Joe Foss Building, Pierre, South Dakota 57501, Attention: Office of Water Quality. All such reports shall be signed in accordance with the requirements of 40 CFR 122.6(b), (c), and (d), (May 19, 1980, 45 FR 33425).

Part II

General conditions.

1. *Facilities Operation.* The permittee shall at all times maintain in proper working order and operate as efficiently as possible, all control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes all circumstances listed under 40 CFR 122.7(e) (May 19, 1980, 45 FR 33426).

2. *Power Failures.* As necessary to maintain compliance with the effluent limitations and prohibitions of this

[1] Chart filed with original document, and available at Region 8, 1860 Lincoln St, Denver, Colo. 80295.

permit, the permittee shall provide an alternate power source sufficient to operate the waste water control facilities.

3. *Adverse Impact.* The permittee shall take all reasonable steps to correct or minimize any adverse impact to receiving waters or environment resulting from unauthorized discharges.

4. *Right of Entry.* The permittee shall allow the head of the State of South Dakota Department of Water and Natural Resources, the Regional Administrator, and/or their authorized representatives, upon the presentation of credentials:

a. To enter upon the permittee's premises where a real or potential discharge is located or in which any records are required to be kept under the terms and conditions of this permit; and,

b. At reasonable times to have access to and copy any records required to be kept under the terms and conditions of this permit; to inspect any monitoring equipment or monitoring method required in this permit; and to sample any discharge of pollutants.

5. *Transfer of Ownership or Control.* In the event of any change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter.

6. *Availability of Reports.* Except for data determined to be confidential under Section 308 of the Act, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the South Dakota Department of Water and Natural Resources and the Regional Administrator. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Act.

7. *Toxic Pollutants.* If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued in accordance with the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under 307(a) of the Act within the time provided by the regulations establishing these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

8. *Oil and Hazardous Substances Liability.* Nothing in the permit shall be constructed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

9. *State Laws.* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

10. *Property Rights.* The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury of private property or any invasion of personal right, nor any infringement of Federal, State or local laws or regulations.

11. *Severability.* The provisions of this permit are severable, and if any provision of this permit, or the application of any provisions of this permit to any circumstances, is held invalid, the application of such provisions to other circumstrances, and the remainder of this permit, shall not be affected thereby.

12. *Other Conditions.* The following conditions are applicable to this NPDES permit: 40 CFR §§ 122.7(a), (c), (h), (k), (1)(2), (1)(6), (1)(7), and (1)(8) and 122.60(a)(2), (c), (d), (f), (g) and (h) (May 19, 1980, 45 FR 33425–6, 33447–8).

13. *Requiring an Individual NPDES Permit.* The Director (Regional Administrator or his designee) may require any owner or operator covered under this permit to apply for and obtain an individual NPDES permit. Instances where general permits may be required include:

a. The discharge(s) is a significant contributor of pollution;

b. The discharger is not in compliance with the conditions of this General Permits; or,

c. Conditions or standards have changed so that the discharge no longer qualifies for a General Permit.

The owner or operator must be notified in writing that an application for an individual NPDES permit is required. When an individual NPDES permit is issued to an owner or operator otherwise covered under this General Permit, the applicability of the General Permit to that owner or operator is automatically terminated upon the effective date of the individual NPDES permit.

14. *Requesting an Individual NPDES Permit.* Any owner or operator covered by this General Permit may request to be excluded from the coverage by applying for an individual NPDES permit.

15. *Requesting Coverage Under the General Permit.* The owner or operator of a facility excluded from coverage by this General Permit solely because that facility already has an individual permit may request that the individual permit be revoked and that the facility be covered by this General Permit. Upon revocation of the individual permit, this General Permit shall apply to that facility

16. *Permit Modification, Revocation, Termination.* This General Permit may be modified, revoked, revoked and reissued, or terminated with cause in accordance with the Consolidated Permit Regulation requirements of 40 CFR Parts 122 and 124 (FR Volume 45 No. 98, May 19, 1980).

Note.—Please refer to the most recent United States Weather Service Station Index.

EPA has reviewed the effect of Executive Order 12291 on this final general permit and has determined the permit not to be major under that order. The permit will result in substantially reduced paperwork required of regulated facilities by eliminating permit applications and reducing reporting requirements.

This permit was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the Water Management Division, Compliance Branch, U.S Environmental Protection Agency, 1860 Lincoln Street, Suite 900, Denver, Colorado 80295.

Information Collection Requirements contained in this general permit (Part I, section B1 and Part II, section 12) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control numbers 2000–0448, 2000–0199, and 2000–0201.

Signed this 5th day of January, 1982.

Steven J. Durham,

Regional Administrator.

[FR Doc. 82–16356 Filed 6–28–82; 8:45 am]

BILLING CODE 6560–50–M

[A-6-FRL-2158-4]

New Source Performance Standard (NSPS); Applicability Determination for N-ReN Southwest, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Information notice.

SUMMARY: On March 19, 1982, N-ReN Southwest, Inc. informed Region 6 that their nitric acid plant was composed of existing equipment relocated to the Carlsbad, New Mexico site. The company concluded that the plant should not be subject to NSPS emission limitations because it is not a "New source".

Based on their combining of components from two existing facilities, it is EPA's determination that N-ReN's nitric acid plant cannot be classified as a relocated facility for purposes of NSPS, and, therefore, the NSPS standard for nitric acid plants applies to N-ReN's Carlsbad facility.

DATE: Effective immediately.

ADDRESS: Copies of the background material and the determination are available for public inspection at the Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, First International Building, 28th Floor, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Tom H. Diggs, Air Branch, address above, telephone (214) 767–5142 or (FTS) 729–5142.

SUPPLEMENTARY INFORMATION: N-ReN Southwest, Inc., owns and operates an ammonia production plant which includes a nitric acid plant located near Carlsbad, New Mexico. The nitric acid plant was constructed in early 1975 and was initially started up on December 13, 1975. The effective date of the New Source Performance Standard (NSPS) for nitric acid plants (Subpart G) is August 17, 1971.

N-ReN contends that the components of the plant were moved to Carlsbad from other N-ReN facilities in Tuscola, Illinois, and Cincinnati, Ohio, and should not be considered a "modification" as defined under NSPS. They also contend that the total capital equipment costs of the plant as constructed were considerably less than one-half of what a new plant would have cost at the time of construction, and, therefore, cannot be viewed as a "reconstructed" facility under 40 CFR 60.15.

EPA agrees, based on the information submitted, that the total capital equipment cost of the plant as constructed was less than one-half of what a comparable new plant would have cost and would not be classified as a reconstructed facility under 40 CFR 60.15. EPA also agrees that N-ReN's Carlsbad nitric acid plant is primarily composed of existing equipment, however, since the components of the plant were moved from different locations, the N-ReN facility cannot simply be classified as a relocation of an existing source and a candidate for the exemption of 40 CFR 60.14(e)(6). This exemption states that the relocation or change in ownership of an existing facility is not a modification.

An existing nitric acid plant, as defined at 40 CFR 60.2 and 60.70, is any nitric acid production unit the construction of which was commenced before August 17, 1971. N-ReN's Carlsbad, New Mexico, facility did not exist as a production unit before August 17, 1971; rather, it represents a new nitric acid production unit formed from parts of several existing units as well as $168,532 of new components. Because this plant was constructed from components of several existing facilities after August 17, 1971 (even though some of its components were in existence before that date), it is a new facility and is subject to the requirements of 40 CFR Part 60, Subpart G.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by August 30, 1982.

Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of this notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Dated: June 3, 1982.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 82-17514 Filed 6-28-82; 8:45 am

BILLING CODE 6560-50-M

[OPTS-59089A; TSH-FRL 2156-8]

Polester Resin; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM–82–19) under section 5 of the Toxic Substances Control Act (TSCA) on May 14, 1982. Notice of receipt of the application was published in the **Federal Register** of May 28, 1982 (47 FR 23554). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on June 18, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–221, 401 M St., SW., Washington, DC 20460, (202–382–3733).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register**. If EPA grants the test marketing exemption, it may impose restrictions on the test marketing activities.

On May 14, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM–82–19. The manufacturer claimed its identity, the specific chemical identity, the specific exposure and production volume of the new substance as confidential business information. The generic name of the new substance is polyester resin, and it will be used as a polymer component. The test marketing period is not to exceed 135 days. During manufacture and use exposure to workers will be limited to the amount

and duration stated in the application. A notice published in the **Federal Register** of May 28, 1982 (47 FR 23554) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the substance described in TM–82–19, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment. No significant health or environmental concerns were identified for the TME substance. The substance has a high molecular weight and is not designed to be water soluble.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

3. The production volume of the new substance may not exceed that described in the test marketing exemption application.

4. The test marketing activity approved in this notice is limited to a period of 135 days commencing on the date of signature of this notice by the Administrator.

5. The number of workers exposed to the new chemical should not exceed that specified in the application, and the duration of exposure should not exceed that specified.

The Agency reserves the right to recind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: June 18, 1982.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82–17513 Filed 6–28–82; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59088A; TSH–FRL 2157–2]

Unsaturated Alkyl Amino Alkyl Dioxolane; Approval of Test Marketing Exemption

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM–82–17) under section 5 of the Toxic Substances Control Act (TSCA) on May 12, 1982. Notice of receipt of the application was published in the **Federal Register** of May 26, 1982 (47 FR 23021). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on June 18, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St., SW., Washington, DC 20460, (202–382–3733).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not in the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On May 12, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM–82–17. The manufacturer claimed its identity, the specific chemical identity, the specific end-use and production volume of the new substance as confidential business information. The generic name of the new substance is unsaturated alkyl amino alkyl dioxolane, and it will be used as a site-limited intermediate. The test marketing period is not to exceed 2 months. Exposure is limited to sampling during manufacture. A notice published in the **Federal Register** of May 26, 1982 (47 FR 23021) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the substance described in TM–82–17, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment. Although there are health concerns for the TME substance, exposure to workers during manufacture is expected to be minimal. Health concerns include extreme irritation to the skin, CNS effects, liver toxicity, and lung irritation from acute dermal or inhalation exposure. Exposure is limited to sampling and proper protective equipment is worn.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. The production volume of the new substance may not exceed that described in the test marketing exemption application.

3. The test marketing activity approved in this notice is limited to a period of 2 months commencing on the date of signature of this notice by the Administrator.

4. The type of exposure to the new chemical should not exceed or differ from that specified in the application, and the duration of exposure should not exceed that specified.

5. The substance is site-limited and may not be shipped. Manufacturing procedures outlined in the application must be followed and personal protective equipment described in the application is mandatory.

The Agency reserves the right to rescind its decision to grant this exemption should any new information

come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: June 18, 1982.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-17512 Filed 6-28-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 82-327 et al.; File No. BPH-810126AC et al.]

Cecil W. Hubbard et al.;

Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Cecil W. Hubbard, Bridge City, Texas, Req. 92.1 MHz, channel 221A, 3 kQ (H&V), 230 feet, BC Docket No. 82-327, File No. BPH-810126AC; Carl Haynes TR/AS Haynes Communications Co., Nederland, Texas, Req. 92.1 MHz, Channel 221A, 3 kW (H&V), 141 feet, BC Docket No. 82-328, File No. BPH-810618AH; Ronald D. Haney, Van D. Goodall and Nancy Havey d/b/a Mid County Communications, Nederland, Texas, Req. 92.1 MHz, Channel 221A, 3 kW (H&V), 300 feet, BC Docket No. 82-329, File No. BPH-810814AC; Bridge City Broadcasting Crop., Bridge City, Texas, Req. 92.1 MHz, Channel 221A, 3 kW (H&V), 300 feet, BC Docket No. 82-330, File No. BPH-810819AE; Voice in the Wilderness Broadcasting, Inc., Groves, Texas, Req. 92.1 MHz, Channel 221A, 3 kW (H&V), 300 feet, BC Docket No. 82-331, File No. BPH-810819AU; For Construction Permit for a new FM Station.

Adopted: June 11, 1982.

Released: June 22, 1982.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Cecil W. Hubbard (Hubbard), Carl Haynes tr/as Haynes Communications, Co. (Haynes), Ronald D. Haney, Van D. Goodall and Nancy Havey d/b/a Mid County Communications (Mid County), Bridge City Broadcasting Corporation (Bridge City), and Voice in the Wilderness Broadcasting, Inc. (Voice).

2. *Hubbard.* Analysis of the financial portion of Hubbard's application reveals that he will require $51,883 to construct the proposed facility and operate for three months, itemized as follows:

Equipment down payment	$19,913
Equipment payments with interest (three months)	4,668
Building	1,250
Miscellaneous and other costs	9,420
Operating costs (three months)	16,632
Total	51,883

Hubbard plans to finance construction and operation with the following funds: (i) existing capital—$70,000 and (ii) station revenue—$45,528. However, Hubbard's undated balance sheet does not segregate current liabilities from long-term liabilities. Accordingly, we must assume that all liabilities shown are current. Since these liabilities exceed current assets, we find no funds available from this source. In addition, the Commission's financial qualifications standard requires an applicant to demonstrate that it has sufficient funds to cover construction costs and the initial start-up period between inauguration of broadcast service and the point where advertising accounts begin to "pay-off." Consequently, an applicant must show the ability to construct and operate for three months without reliance on advertising revenues. *New Financial Qualifications Standard for Aural Broadcast Applicants,* 69 FCC 2d 407, 43 RR 2d 1101 (1978). Thus, an applicant may not rely upon anticipated advertising to establish financial qualifications. *Amber Productions, Inc.,* 46 RR 2d 448 (1979). Therefore, the applicant has not shown any funds available to meet the proposed costs of $51,883. In view of the foregoing, a financial issue will be specified.

3. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give localnotice of the filing of their applications. We have no evidence that Hubbard published the required notice. To remedy this deficiency, Hubbard must publish local notice, if he has not already done so, and so inform the presiding Administrative Law Judge.

4. In addition, Hubbard has not submitted a description, in narrative form, of the planned programming service relating to the issues of public concern facing his proposed service area. See *Deregulation of Radio,* 84 FCC 2d 968, 999 (1981). An amendment is required to be filed with the presiding Administrative Law Judge.

5. *Voice.* Analysis of the financial portion of Voice's application reveals that it will require $68,575 to construct the proposed facility and operate for three months, itemized as follows:

Equipment (cash)	$5,000
Equipment down payment	23,250
Equipment payments with interest (three months)	8,370
Land (leased)	3,000
Building	1,000
Miscellaneous and other costs	5,900
Operating costs (three months)	22,055
Total	$68,575

Voice plans to finance construction and operation with the following funds: (i) existing capital—$3,250, (ii) new capital (unfulfilled stock subscriptions)—$22,500 and (iii) bank loan—$45,000. However, under the terms of the subscription agreement, eight of the nine principals of the corporation are required to purchase stock totalling $22,500. But, an examination of their balance sheets and/or financial statements reveals that only two principals—Messrs. P. L. Cooper, Jr. and M. J. Adair—have the net liquid assets to meet their $1,500 commitments. Therefore, the applicant has shown only $51,250, an amount insufficient to meet proposed costs of $68,575. In view of the foregoing, a financial issue will be specified.

6. The Voice and Bridge City proposals constitute major environmental actions, as defined by Section 1.1305(a) of the Commission's Rules, since the antenna towers will exceed 300 feet in height above ground. Therefore, a proposal to construct such a tower must include a narrative statement containing environmental information specifically requested under § 1.1311 of the Commission's Rules. Accordingly, Voice and Bridge City will be required to submit to the presiding Administrative Law Judge the environmental narrative statements required by § 1.1311.

7. In addition, Voice has not submitted a description, in narrative from, of the planned programming service relating to the issues of public concern facing its proposed service area. See *Deregulation of Radio,* 84 FCC 2d 968, 999 (1981). An amendment is required to be filed with the presiding Administrative Law Judge.

8. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as

proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated Proceeding, at a time and place to specified in a subsequent Order, upon the following issues:

1. To determine with respect to Cecil W. Hubbard:

(a) The source and availability of funds to meet its expected costs; and

(b) Whether in light of the evidence adduced pursuant to (a) above the applicant is financially qualified to construct and operate the proposed station.

2. To determine with respect to Voice in the Wilderness Broadcasting, Inc.:

(a) The source and availability of funds over and above the $51,250 indicated; and

(b) Whether in light of the evidence adduced pursuant to (a) above the applicant is financially qualified to construct and operate the proposed station.

3. To determine the areas and populations which would receive primary aural service (1 mV/m or greater in the case of FM) from each proposal and the availability of other primary service to such areas and populations.

4. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

11. It is further ordered, That Hubbard shall inform the presiding Administrative Law Judge as to whether it has complied with the public notice requirements of § 73.3580(f) of the Commission's Rules.

12. It is further ordered, That Hubbard shall file an amendment with the presiding Administrative Law Judge outlining his proposed programming.

13. It is further ordered, That Voice and Bridge City shall submit environmental narrative statements with the presiding Administrative Law Judge, pursuant to § 1.1311 of the Commission's Rules.

14. It is further ordered, That Voice shall file an amendment with the presiding Administrative Law Judge outlining its proposed programming.

15. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-17521 Filed 6-28-82; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1360

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 23, 1982.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed on or before July 14, 1982. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Parts 89, 91, 93 and 95 of the Commission's Rules and Regulations to Adopt New Practices and Procedures for Cooperative Use and Multiple Licensing of Stations in the Private Land Mobile Radio Services. (Docket No. 18921, RM's 1197, 1218 & 1330).

Filed by: Merrill T. See, C & E Service Co., on 6-4-82. Kenneth E. Hardman, Attorney for Telocator Network of America on 6-7-82.

Subject: An Inquiry into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications Systems. (BC Docket No. 78-253.)

Filed by: Don Franco, President & Stephen R. Bell & Paul J. Sinderbrand, Attorneys for Microband Corporation of America on 6-14-82.

Peter Gutmann & Stanley Fleishman, Attorneys for Dick Dorwart on 6-15-82.

Theodore D. Frank & Pamela Stanton Baron, Attorneys for National Association of Public Television Stations on 6-17-82.

Parry D. Teasdale, Chairman & Michael Couzens, President for The Television Center, Inc., on 6-17-82.

Linda Colvard Corian & Thomas L. Root, Attorneys for Corporation for Public Broadcasting on 6-17-82.

Howard J. Braun & Russell C. Balch, Attorneys for Bogner Broadcast Equipment Corp., on 6-17-82.

Paul James Broyles, President for International Broadcasting Network on 6-17-82.

Sol Schildhause, Attorney for Neighborhood TV Company, Inc., on 6-17-82.

Leon T. Knauer, Attorney & Dr. B. W. St. Clair, Technical Advisor for The National Translator Association on 6-17-82.

Erwin G. Krasnow, Valerie G. Schulte & William E. Kennard, Attorneys for National Association of Broadcasters on 6-17-82.

Shelley Sadowsky, Legal Assistant & E. W. Bundy, Ph. D., Executive Director for Rocky Mountain Corporation for Public Broadcasting on 6-17-82.

Subject: Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, of the Commission's Rules and Regulations with respect to accounting for station connections, optional payment plan revenues and related capital costs, customer provided equipment and sale fo terminal equipment. (CC Docket No. 79-105).

Filed by: Raymond F. Scully, Leater G. Stiel & W. Preston Granbery, Attorneys for American Telephone and Telegraph Company on 6-17-82.

Subject: Interconnection Arrangements Between and Among the Domestic and International Record Carriers. (CC Docket No. 82-122)

Filed by:

Roger P. Newell, Attorney for FTC Communications, Inc., on 6-2-82. Ian D. Volner & David M. Rickless, Attorneys for Consortium Communications International, Inc., on 6-2-82.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 82-17522 Filed 6-28-82; 8:45 am]
BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group; Steering Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's Steering Committee scheduled to meet on Tuesday, June 29, 1982, at 8:00 a.m. in Conference Room A-B (10th Floor) of the AT&T offices located at 1120 20th Street, N.W., Washington, D.C. It will be open to the public. The agenda is as follows:

I. General Administrative Matters.
II. Definitions and Rules Subcommittee proposal for USOA functional categorization.
III. Other Business.
IV. Presentation of Oral Statements.
V. Adjournment.

With prior appproval of TIAG Chairman, Gerald P. Vaughan, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of the Committee's objectives. Anyone wishing to make an oral presentation should contact Stephen T. Duffy, TIAG Vice-Chairman (202) 634-1509.

The TIAG Definitions and Rules Subcommittee, previously scheduled to meet at 9:30, will meet at 9:30 or immediately following the Steering Committee meeting, whichever occurs later.

The Commission's Advisory Committee Management Officer has reviewed the need for this abbreviated Notice. Due to the urgent need for the steering Committee to pass on recently proposed guidelines for accounting system design (to be employed as soon as possible by TIAG Account Subcommittees), this Notice has been approved.

William J. Tricarico,
Secretary, Federal Communications Commission.
[FR Doc. 82-17697 Filed 6-28-82; 9:32 am]
BILLING CODE 3510-25-M 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before July 19, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, inporters, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the Uuited States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-3071-2.
Filing Party: Mr. Frank Wagner, Deputy City Attorney, Office of the City Attorney, Harbor Division, P.O. Box 151, San Pedro, California 90733.
Summary: Agreement No. T-3071-2, between the City of Los Angeles (City) and Japan Line, Ltd., Mitsui O.S.K. Lines, Ltd., and Yamashitta-Shinnihon Steamship Co., Ltd. (the Lines), modifies the parties' basic agreement which provides for the non-exclusive preferential use by the Limes of certain premises in the Port of Los Angeles, as well as the option to use additional property adjacent to that initially covered by the agreement. The modification provides (1) that the Lines will surrender any rights to exercise its option or right of first refusal for certain property described in the basic agreement or in FMC T-3071-1; (2) Lines are granted additional 13 acres of property contiguous to existing leased premises; (3) City will make improvemens on the new premises; (4) annual rent will be $224,360; (5) refund will be made of certain fees previously paid to the City in the amount of $47,636.62; (6) Lines may use a 60 ft. strip of land adjacent to the original premises; (7) all other existinig terms of the basic agreement and amendment No. 1 will remain in effect.

Agreement No.: T-3527-5.
Filing party: Ms. Beverly J. Strike, Administrative Assistant, Port of Milwaukee, 500 N. Harbor Drive, Milwaukee, Wisconsin 53202.
Summary: Agreement No. T-3527-5, between the City of Milwaukee (City) and Meehan Seaway Service, Ltd. (Meehan), modifies the basic agreement between the parties which provides for the lease by City to Meehan of certain premises on the South Harbor Tract in the Port of Milwaukee, to be used for the receiving, shipping, storing and handling of general comodities. The purpose of the modification is to provide for the assessment of supplemental rent for containerized cargo, provided such rental sum exceeds $160,000 per annum.

Agreement No.: T-4047.
Filing party: Mr. Richard L. Landes, Deputy City Attorney, Office of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.
Summary: Agreement No. T-4047 between the City of Long Beach, California (City) and Fremont Forest Products (Fremont) provides for the lease by the City to Fremont of 2,028,000 sq. ft. at Pier E, Long Beach. The premises are to be used in connection with Fremont's business of storing, sorting and handling of lumber and wood products received at and shipped from the premises via water carriers. The term of the lease is for 40 years with a 10-year renewal option. Fremont will pay City all dockage and wharfage charges. There is a minimum annual rental of $202,000 with dockage and wharfage revenues credited toward said minimum. The compensation is to be renegotiated in 5-year intervals.

Agreement No.: T-4048.
Filing party: Mr. Paul G. Mattingly, General Marketing Manager, Jacksonville Port Authority, P.O. Box 3005, 2831 Talleyrand Avenue, Jacksonville, Florida 32206.
Summary: Agreement No. T-4048, between the Jacksonville Port Authority (Port) and Puerto Rico Maritime Shipping Authority (PRMSA), provides for the lease by Port to PRMSA of (1) 28.42 acres of paved area, (2) 21, 826 square feet of transit shed space, (3) an office complex, maintenance equipment building and port engineer office, and (4) RO/RO ramps, at rates of compensation set forth in the agreement. The agreement also provides for the preferential use by PRMSA of Berth No. 11, as well as for an additional preferential berth with container crane

and spreader. The term of the agreement is for ten years, with two five-year renewal options.

Agreement No.: T–4049.

Filing party: Mr. Frank H. Clark, Associate Director of Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T–4049 provides for the Port of Seattle's (Port) preferential lease to Matson Terminals, Inc. (Matson) of certain land, facilities and cranes at the Port's Terminal 18, which will be used for the loading and discharge of vessels of Matson, Nippon Yusen Kaisha Co., Ltd., Korea Marine Transport, Co., Ltd. and Showa Line, Ltd. as well as vessels of other lines as approved by the Port. Matson will compensate the Port for the use of the land and facilities according to a rental formula as mutually agreed. The term of the agreement is 3 years with one renewal option. The agreement is to cancel and supersede Agreement No. T–3806 between these same parties, approved by the Commission on June 14, 1979.

Agreement No.: T–4050.

Filing party: Mr. Frank H. Clark, Associate Director of Real Estate, Facilities, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Summary: Agreement No. T–4050 provides for the Port of Seattle's (Port) preferential lease to Hanjin Container Lines, Ltd. (Hanjin) of certain land, facilities and crane at the Port's Terminal 18, which will be used for the loading of Hanjin vessels and vessels of other lines as approved by the Port. Hanjin will compensate the Port for the use of the land and facilities according to a rental formula as mutually agreed. The term of the agreement is 5 years. The agreement is to cancel and supersede Agreement No. T–3951, between these same parties, approved by the Commission on April 30, 1981.

Agreement No.: 10050–4.

Filing party: Robert A. Peavy, Esquire, Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036.

Summary: Agreement No. 10050–4 modifies the U.S.-Flag Far East Discussion Agreement to define its scope with respect to U.S. Essential Trade Routes, add the exchange of operating cost data to the authorized activities, add surcharges and conditions of carriage to discussion topics, define in detail the purposes of the agreement and to render the term of the agreement indefinite by elimination of the current expiration date of December 19, 1982.

Agreement No.: 10454.

Filing party: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 10454, entered into by the parties of the U.S. South Altantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement and the U.S. North Atlantic Spain Rate Agreement, to be known as the Housekeeping Agreement of the Associated Mediterranean Freight Conferences, would establish a cooperative working arrangement for sharing common administrative facilities, staff and expenses associated therewith, as well as authority to jointly discuss and agree upon housekeeping, regulatory and legal matters.

By Order of the Federal Maritime Commission.

Dated: June 23, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–17427 Filed 6–28–82; 8:45 am]

BILLING CODE 6730–01–M

Notice of Filing and Approval of Agreement

The Federal Maritime Commission hereby gives notice that on June 8, 1982, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1980, P.L. 96–325, 94 Stat. 1021, and was deemed approved that date, to the extent it constitutes and assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No: LM–65–2.

Filing party: Mr. Peter C. Lambos, Lambos, Flynn, Nyland, & Giardino, 29 Broadway, New York, New York 10006.

Summary: Agreement No. LM–65–2 is an amendment to the Job Security Program (JSP) Agreement between steamship carriers operating on the North Atlantic, South Atlantic and Gulf Coasts and the International Longshoremen's Association, AFL–CIO (ILA), covering the period October 1, 1980, through September 30, 1983.

That purpose of the amendment is to require that stevedores and terminal operators employing ILA labor subject to the JSP agreement procure a Subscription Agreement from the carrier requesting the services of ILA labor in the loading or unloading of its vessels, if said carrier has not directly subscribed to the JSP Agreement. Stevedores and terminal operatores who fail to get such Subscription Agreements from carriers utilizing ILA labor in the ports subject to the JSP agreement shall be jointly liable with the non-subscribing carrier for the amount of any unpaid JSP tonnage assessment.

By Order of the Federal Maritime Commission.

Dated: June 23, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–17426 Filed 6–28–82; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views 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 interest, or unsound banking practices." Any comment on an application that requests a hearing must include 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 that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 22, 1982.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation,* New York, New York (investment advisory activities; California): To engage through its subsidiary, Van

Deventer & Hoch, in activities that may be carried on by an investment adviser, including offering portfolio investment advice to individuals, corporations, governmental entities and other institutions on both a discretionary and non-discretionary basis. These activities would be conducted from an office in Newport Beach, Orange County, California, serving southern California.

2. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Texas): To expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Dallas, Texas, and to expand the activities of an existing office of its subsidiary, Citicorp Homeowners, Inc., at the same Dallas, Texas, location. The new activities in which the office of Citicorp Person-to-Person Financial Center, Inc. will engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned activities shall be comprised of the entire state of Texas. The new activities in which the office of Citicorp Homeowners, Inc. will engage *de novo* are as follows: making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the making, acquiring, and servicing for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale or mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire state of Texas for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

3. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Texas): To expand the activities of an existing office of its subsidiary, Citicorp Homeowners, Inc., located in Houston, Texas, and to establish a *de novo* office of Citicorp Person-to-Person Financial Center, Inc., at the same Houston, Texas location. The activities to be engaged in at this location by Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners Inc. will include: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the making, acquiring, and servicing for its own account and for the account of others, of extensions of credit secured by liens on residential or nonresidential real estate; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The proposed service area of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc. at this location shall be comprised of the entire state of Texas for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

4. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Texas): To expand the activities of an existing office of its subsidiary, Citicorp Homeowners, Inc., located in San Antonio, Texas, and to establish a *de novo* office to Citicorp Person-to-Person Financial Center, Inc. at the same San Antonio, Texas location. The activities to be engaged in at this location by Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners Inc. will include: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the making acquiring, and servicing for its own account and for the account of others, of extensions of credit secured by liens on residential or nonresidential real estate; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The proposed service area of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc. at this location shall be comprised of the entire state of Texas for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

5. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Virginia): To expand the activities of two existing offices of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., and to establish two *de novo* offices of Citicorp Homeowners, Inc. at the same locations. The new activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. propose to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of each of the Citicorp Person-to-Person offices for the aforementioned proposed activities shall be comprised of the entire state of Virginia. The activities in which the proposed *de novo* offices of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service areas of the *de novo* offices of Citicorp Homeowners, Inc. shall be comprised of the entire state of Virginia for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of

Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc. The aforementioned activities will be conducted from 503 Libbie Avenue, Richmond, Virginia, and 5718 E. Virginia Beach Boulevard, Norfolk, Virginia.

6. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Ohio): To expand the activities of existing offices of its subsidiaries, Citicorp Person-to-Person Financial Center, Inc. and Citicorp Person-to-Person Mortgage Corporation, located in Columbus, Ohio, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Columbus, Ohio location. The new activities in which the office of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Person-to-Person Mortgage Corporation propose to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire state of Ohio. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire state of Ohio for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc., Citicorp Person-to-Person Mortgage Corporation and Citicorp Homeowners, Inc.

7. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Ohio and Indiana): to expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Mortgage Corporation located in Independence, Ohio, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Independence, Ohio, location. The new activities in which the office of Citicorp Person-to-Person Mortgage Corporation proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire states of Ohio and Indiana. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire state of Ohio and Indiana for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Mortgage Corporation and Citicorp Homeowners, Inc.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Samsome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (financing, servicing, and insurance activities; expansion of geographic scope; North Carolina): To continue to engage, through its indirect subsidiary, FinanceAmerica Mortgage Services Inc., a New Hampshire corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance, credit-related accident and health insurance, and credit-related property insurance. Such activities will include, but not be limited to, making consumer installment loans, making loans and other extensions of credit to small businesses, making loans and other extensions of credit secured by real property, and offering credit-related life, credit-related accident and health, and credit-related property insurance directly related to extensions of credit made or acquired by FinanceAmerica Mortgage Services Inc. These activities will be conducted from an existing office located in Greensboro, North Carolina, serving the entire State of North Carolina.

Board of Governors of the Federal Reserve System, June 22, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-17497 Filed 6-28-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of New York.** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation*, New York, New York; to acquire 100 percent of the voting shares or assets of Chemical First State Corporation, Wilmington, Delaware, and indirectly acquire Chemical Bank (Delaware), Wilmington, Delaware. Comments on

this application must be received not later than July 23, 1982.

B. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

A. *Colorado National Bankshares, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares or assets of The Exchange National Bank of Colorado Springs, Colorado Springs, Colorado. Comments on this application must be received not later than July 23, 1982.

Board of Governors of the Federal Reserve System, June 23, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-17496 Filed 6-28-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

1. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical First State Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Chemical Bank (Delaware) Wilmington, Delaware. Comments on this application must be received not later than July 23, 1982.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *City Bancorp, Inc.*, New Iberia, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of City Bank & Trust Company, New Iberia, Louisiana. Comments on this application must be received not later than July 23, 1982.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Crete Bancorporation, Inc.*, Crete, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of United Bank of Crete-Steger, Crete, Illinois. Comments on this application must be received not later than July 23, 1982.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue,, Kansas City, Missouri 60198:

1. *Perry Bancshares, Inc.*, Perry, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange Bank and Trust Company, Perry, Oklahoma. Comments on this application must be received not later than July 23, 1982.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Dallas Guaranty Bancshares, Inc.*, Dallas, Texas; to become a bank holding comapny by acquiring at least 80 percent of the voting shares of Guaranty Bank, Dallas, Texas. Comments on this application must be received not later than July 23, 1982.

2. *Lower Rio Grande Valley Bancshares*, La Feria, Texas; to become a bank holding company be acquiring 80 percent of the voting shares of The First National Bank of La Feria, La Feria, Texas; The First National Bank of Mercedes, Mercedes, Texas; and Valley National Bank, Harlingen, Texas, a proposed new bank. Comments on this application must be received not later than July 23, 1982.

Board of Governors of the Federal Reserve System, June 23, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR. Doc. 82-17495 Filed 6-28-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views 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 interest, or unsound banking practices." Any comment on an application that requests a hearing must include 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 that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 22, 1982.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Illinois): To expand the activities and service areas of existing offices of its subsidiaries, Citicorp Person-to-Person Financial Center, Inc. and Citicorp Person-to-Person Financial Center of Illinois, Inc., located in Schaumburg, Illinois, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Schaumburg, Illinois, location. The new activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Person-to-Person Financial Center of Illinois, Inc. propose to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire state of Illinois. The proposed expanded service area of the Citicorp Person-to-Person Financial Center, Inc. office shall be the

entire state of Illinois for a portion of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The proposed expanded service area of the CPTP-Illinois office shall be the entire state of Illinois for a portion of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the extensions of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire state of Illinois for all the aforementioned activities. Credit related life, accident, and health insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc., Citicorp Person-to-Person Financial Center of Illinois, Inc. and Citicorp Homeowners, Inc.

2. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Georgia): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Morrow, Georgia, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Morrow, Georgia, location. The new activities in which the Citicorp Person-to-Person Financial Center, Inc. office proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire state of Georgia. The proposed expanded service area of Citicorp Person-to-Person Financial Center, Inc. shall be comprised of the entire state of Georgia for a portion of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required, the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The activities in which the *de novo* office of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit-related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of *de novo* office of Citicorp Homeowners, Inc. shall be comprised of the entire State of Georgia for all the aforementioned proposed activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowner, Inc.

3. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Louisiana): To expand the activities and service areas of three existing offices of its subsidiary, Citicorp Person-to-Person Financial Center, Inc. and to establish three *de novo* offices of Citicorp Homeowners, Inc. at the same locations. The new activities in which the offices of Citicorp Person-to-Person Financial Center, Inc. propose to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of each of the Citicorp Person-to-Person offices for the aforementioned proposed activities shall be comprised of the entire state of Louisiana. The proposed expanded service areas of the Citicorp Person-to-Person offices shall be the entire state of Louisiana for a portion of their previously approved activities, specificially, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The activities in which the proposed *de novo* offices of Citicorp Homeowners, Inc. will engage are: the making, acquiring, of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability

insurance directly related to extensions of mortgage loans. The proposed service areas of the *de novo* offices of Citicorp Homeowners, Inc. shall be comprised of the entire State of Louisiana for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc. The aforementioned activities will be conducted from the following three locations: 9029 Mansfield Road, Suite 103, Shreveport, Louisiana; 3621 Veterans Memorial Boulevard, Metairie, Louisiana; Aurora Village, 4132 General DeGaulle Drive, New Orleans, Louisiana.

4. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Georgia and Florida): To expand the activities of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center of Florida, Inc., located in Jacksonville, Florida, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Jacksonville, Florida, location. The activities to be engaged in at this location by Citicorp Person-to-Person Financial Center of Florida, Inc. and Citicorp Homeowners, Inc. will include: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the making, acquiring, and servicing for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or nonresidential real estate; the sale of credit related life and accident and health of decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The proposed service area of Citicorp Person-to-Person Financial Center of Florida, Inc. and Citicorp Homeowners, Inc. at this location shall be comprised of the entire states of Florida and Georgia for all the aforementioned activities. Apart from this notification, Citicorp Person-to-Person Financial Center of Florida, Inc. will also continue to engage in the previously approved activity of the sale of credit-related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person, Inc., and to the extent permissible under applicable state insurance laws and regulations in its previously approved service area of Georgia. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, and affiliate of Citicorp Person-to-Person Financial Center of Florida, Inc. and Citicorp Homeowners, Inc.

5. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Florida): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center of Florida, Inc., located in Fort Lauderdale, Florida, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Fort Lauderdale, Florida, location. The new activities in which the office of Citicorp Person-to-Person Financial Center of Florida, Inc. proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the *de novo* activities shall be comprised of the entire state of Florida. The proposed expanded service area of Citicorp Person-to-Person Financial Center of Florida, Inc. shall be comprised of the entire state of Florida for a portion of its previously approved activities, specifically, the sale of credit-related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required. The activities in which the *de novo* office of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the making, acquiring, and servicing for its own account and for the account of others, of extensions of credit to individuals secured by liens or residential or nonresidential real estate; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The proposed service area of the *de novo* office of Citicorp Homeowners, Inc. shall be comprised of the entire state of Florida for all the aforementioned proposed activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, and affiliate of Citicorp Person-to-Person Financial Center of Florida, Inc. and Citicorp Homeowners, Inc.

6. *Citicorp,* New York, New York (consumer finance and credit-related insurance activities; Florida): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center of Florida, Inc., located in Tampa, Florida and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Tampa, Florida location. The new activities in which Citicorp Person-to-Person Financial Center of Florida, Inc. proposes to engage *de novo* are: the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire state of Florida. The proposed expanded service area of Citcorp Person-to-Person Financial Center shall be comprised of the entire state of Florida for a portion of its previously approved activities, specifically, the sale of credit-related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required. The activities in which the *de novo* office of Citicorp Homeowners, Inc. proposes to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of the *de novo* office of Citicorp Homeowners, Inc. shall be comprised of the entire State of Florida for all the aforementioned proposed activities.

Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center of Florida, Inc. and Citicorp Homeowners, Inc.

7. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Kansas and Missouri): To expand the activities and service area of an existing office of its subsidiary, Citicorp Person-to-Person Financial Center, Inc., located in Overland Park, Kansas, and to establish a *de novo* office of Citicorp Homeowners, Inc. at the same Overland Park, Kansas, location. The new activities in which the Citicorp Person-to-Person Financial Center, Inc. office proposes to engage *de novo* are: the making, acquiring and servicing, for its own accountant and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area for the aforementioned proposed activities shall be comprised of the entire states of Kansas and Missouri. The proposed expanded service areas of the Citicorp Person-to-Person Financial Center, Inc. office shall be the entire states of Kansas and Missouri for a portion of its previously approved activities, specifically, the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The activities in which the proposed *de novo* office of Citicorp Homeowners, Inc. will engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the the servicing, for any person, of loans and other extensions of credit; the making, acquiring and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability insurance directly related to extensions of mortgage loans. The proposed service area of Citicorp Homeowners, Inc. shall be comprised of the entire States of Kansas and Missouri for all the aforementioned activities. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. and Citicorp Homeowners, Inc.

Board of Governors of the Federal Reserve System, June 23, 1982.

Delores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-17498 Filed 6-28-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0162]

Proposed Recommendations to the Drug Enforcement Administration Regarding the Scheduling Status of Marihuana and Its Components and Notice of a Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces (1) its proposed recommendations, including scientific and medical evaluations, on the appropriate scheduling of marihuana plant materials under the Controlled Substances Act and (2) that the proposed recommendations will be the subject of a public legislative-type hearing to be held on September 16, 1982. The proposed recommendations are published to give interested persons the opportunity to comment on the recommendations and on the scientific and medical evaluations. FDA will consider these comments as well as the information gathered from the public hearing in preparing its final recommendations and scientific and medical evaluations of the marihuana plant materials before transmitting them to the Assistant Secretary for Health, Department of Health and Human Services (DHHS). The Assistant Secretary for Health is responsible for making the DHHS recommendation to the Drug Enforcement Administration (DEA).

DATES: Comments on the proposed recommendations by October 1, 1982. Notice of participation in the public hearing by August 27, 1982. Public hearing to be held September 16, 1982.

ADDRESSES: Written comments on the proposed recommendations to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written or oral notice of participation along with the text or comprehensive outline to the Division of Neuropharmacological Drug Products (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION:

I. Background

The plant, *Cannabis sativa*, commonly known as marihuana, contains hundreds of chemical compounds. Sixty-one of the chemicals that have been identified in the plant—the cannabinoids—are specific to connabis. Ten are now routinely quantified in identifying cannabis samples (Ref. 1).

The major psychoactive ingredient contained in the marihuana plant is delta-9-tetrahydrocannabinol (THC). THC content in cannabis plants varies not only among the different parts of a single plant (flowers, leaves, stems, seeds, etc.), but also at different stages of development of the same part of a single plant. The geographic location in which the plant is grown and the time of day at which the plant is harvested also affect THC content.

The variability of THC content in natural plant material tends to render the marihuana plant, resin, leaves, and seeds difficult substances for precise scientific investigation, and scientific and medical evaluations have therefore focused primarily on THC itself, and its immediate synthetic precursor, cannabidiol.

Nonetheless, marihuana itself is currently under investigation in the United States as an agent useful in, among other purposes, the control of nausea and vomiting from cancer chemotherapy, in the reduction of the vision-destroying increase in intraocular pressure which occurs in open-angle glaucoma, and in the reduction of muscular spasticity in certain neurologic diseases (Ref. 1).

Cannabis, cannabis resin, cannabis extracts, and tinctures of cannabis are controlled in Schedule I of the 1961 Single Convention on Narcotic Drugs (Single Convention), to which the United

States is a party. Schedule I is the most restrictive schedule in the Single Convention with mandated regulatory controls. Schedule I also includes heroin, morphine, and cocaine. Its major controls are import/export permits, quotas, prescriptions, and prevention of drug stockpiling and accumulations. In addition, cannabis and cannabis resin are controlled concurrently in Schedule IV of the Single Convention. Schedule IV is best described as a "Super Schedule I" because it highlights the need for additional controls to be placed on certain drugs scheduled concurrently in Single Convention Schedule I. Heroin is the prototype for drugs in this schedule. The drugs in Schedule IV of the Single Convention are considered particularly dangerous and lack demonstrated therapeutic value. Although Schedule IV drugs are not subject to specific additional controls under the Single Convention, the treaty calls upon individual countries to use discretion in imposing whatever additional controls are necessary to protect the public health, including, if appropriate, a prohibition on production and trade. The Single Convention requires the United States to impose certain domestic controls on the marihuana plant materials listed above. The United States carries out these responsibilities under the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.).

In 1970 Congress enacted the CSA, establishing control schedules I through V (21 U.S.C. 812(b) (1) through (5)). Congress placed marihuana in schedule I of the CSA, the classification providing for the most stringent domestic controls. See 21 U.S.C. 812. The findings required for schedule I drugs or substances are: high potential for abuse; no currently accepted medical use in treatment in the United States; and lack of accepted safety for use under medical supervision. The major schedule I controls are: limitation of dispensing to research use only; the requirement of separate recordkeeping; and limitation of the amounts produced during a given calendar year, i.e., quotas.

The CSA contains procedures by which changes in scheduling can be effected (21 U.S.C. 811(a)) including "on petition of any interested person". In May 1972, the National Organization for the Reform of Marijuana Laws (NORML) petitioned the Bureau of Narcotics and Dangerous Drugs (now the Drug Enforcement Administration, DEA) under section 201(a) of the CSA (21 U.S.C. 811(a)) to remove marihuana and its components from control under the CSA or to move marihuana and its components to a less restrictive schedule. DEA denied NORML's requests (37 FR 18097; September 1, 1972). NORML appealed the denial to the United States Court of Appeals for the District of Columbia Circuit, and, in *NORML* v. *Ingersoll*, 497 F.2d 654 (D.C. Cir. 1974), the court ordered DEA to hold hearings and reconsider the NORML petition on the basis of evidence introduced at the hearings. Following these hearings, DEA again denied the NORML petition and ruled that the substances at issue would remain in CSA schedule I (40 FR 44164; September 25, 1975). NORML appealed the second denial and the court remanded the petition to DEA with instructions to refer it to the Secretary of DHHS for medical and scientific findings and recommendations for rescheduling. *NORML* v. *DEA*, 559 F.2d 745, 750 (D.C. Cir. 1977). The court directed the Secretary of DHHS to make evaluations and recommendations for each of the following cannabis materials: "cannabis" and "cannabis resin" (minimum control—CSA II); cannabis leaves (minimum control—CSA V); cannabis seeds capable of germination (minimum control—CSA V); synthetic tetrahydrocannabinol (THC) (no minimum control under CSA). The "minimum controls" schedules are the least restrictive domestic schedules consistent with the treaty obligations under the Single Convention on Narcotic Drugs, 1961, as interpreted by the court. THC was not listed by the court as having a minimum domestic schedule because THC is not controlled under the Single Convention. (THC is subject to control under the Psychotropic Convention, however, and thus is subject to control under the CSA.)

In addition, the court directed DEA to comply with the rulemaking procedures in 21 U.S.C. 811 (a) and (b) after it received the Secretary's evaluation and recommendation.

In June 1977, DEA referred the NORML petition to the Secretary of the Department of Health, Education, and Welfare (now DHHS). FDA's Controlled Substances Advisory Committee (CSAC) considered the NORML petition in November 1977 and March 1978. The CSAC (now the Drug Abuse Advisory Committee (DAAC)) recommended that the marihuana plant materials remain in CSA scheule I and that THC and cannabidiol be rescheduled to CSA schedule II. by letter dated June 4, 1979, the Secretary recommended that all these substances remain in schedule I. The advisory committee's rationale for recommending placing THC and cannabidiol in Schedule II was that it would facilitate research on the substances. The Secretary concluded, however, that facilitation of research was not relevant to any of the scheduling criteria established by the statute and, therefore, was not an appropriate basis for a scheduling recommendation.

In the **Federal Register** of June 20, 1979 (44 FR 36123), DEA denied NORML's petition and denied a request for hearing on the ground that there was lack of substantial evidence to support lesser control of the substances that are the subject of NORML's petition.

NORML petitioned the Court of Appeals for review of DEA's final order denying the petition. On October 16, 1980, the court ordered that the case be remanded to DEA and that DEA refer all the substances at issue to DHHS for scientific and medical findings and recommendations on scheduling. The court directed that the DHHS review take into acount new evidence concerning medical use of the substances at issue. *NORML* v. *DEA and HEW*, No. 79–1660 (D.C. Cir., October 16, 1980). On April 22, 1981, DEA referred the NORML petition to DHHS for review. DHHS Has adopted the following procedures in making the evaluations and scheduling recommendations for cannabis-containing substances (a separate procedure applies to THC, see 47 FR 10080, March 9, 1982):

1. Review by FDA of evidence concerning the uses of those substances, including comment from other appropriate units in DHHS.

2. Publication of the proposed scientific and medical evaluations and scheduling recommendations in this **Federal Register** notice for public comment.

3. The holding of a legislative-type hearing under 21 CFR Part 15 on the proposed findings and recommendations (see details below in Part IV).

4. Consideration of the comments received as a result of the **Federal Register** notice and consideration of the pertinent information generated by the hearing in preparing FDA's findings and recommendations for the Assistant Secretary for Health.

5. Review of the evaluations and recommendations by the Assistant Secretary for Health and transmittal to DEA.

II. Scheduling Recommendation

FDA proposes to recommend to the Assistant Secretary for Health that the marihuana plant materials that are the subject of the NORML petition remain in schedule I.

FDA notes that the ultimate determination of the scheduling status of the marihuana plant materials under the CSA will be influenced not only by the results of these proceedings but also by U.S. treaty obligations under the Single Convention as interpreted by the court in *NORML* v. *DEA*. In *NORML* v. *DEA*, the court found that the Single Convention prescribes different controls for various parts of the marihuana or cannabis plant. Thus, the court concluded that the minimum domestic controls under the CSA for those materials required by the Single Convention were also different. 559 F.2d 735, 757 (D.C. Cir. 1977). The court, in its directive to the Secretary of DHHS to make evaluations and recommendations on the cannabis materials subject of the NORML petition, delineated the minimum domestic control schedule required by the Single Convention for each of the substances at issue (see above). FDA's proposed conclusions are, however, based solely on its medical and scientific review of available data, not on its interpretation of this country's treaty obligations. FDA has carefully considered, from a medical and scientific standpoint, each of the five CSA schedules as well as no control and tentatively concludes that the marihuana substances at issue meet the findings only for CSA schedule I.

Marihuana Materials To Be Considered

Under the CSA (21 U.S.C. 802(15)):

The term "marihuana" means all parts of the plant Cannabis Sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

As previously noted, this ducument will address three separate categories of marihuana products: (1) cannabis and cannabis resin, (2) cannabis leaves, and (3) cannabis seeds capable of germination.

Cannabis is the entire plant material including the seeds, the resin, the leaves, the stems, the stalk, and all extracts obtained from the plant. Cannabis resin, which is generally referred to as hashish, is a concentrated extract from the plant. The composition of the cannabis plant, and of cannabis extract, has been investigated and reported in the Journal of Natural Products (Ref. 2). This reference reports a total of 421 known chemicals with new ones constantly being discovered and reported. Among the known compounds reported are 61 cannabinoids (chemical compounds perhaps unique to cannabis). In the following discussion, cannabis and cannabis resin will be referred to in most places collectively as "cannabis".

Cannabis leaves contain the active substance THC and are the primary ingredients for making cannabis cigarettes. An analysis of the THC content of cannabis plant parts published in the Journal of Pharmaceutical Sciences (Ref. 3) showed the male flowers contained 1.6 percent THC, the bracts, or female flower, 3.7 percent, the small female leaves, 1.4 percent, leaves from the male plant, 1.0 percent, stems from the male plant, 0.89 percent THC, and seeds from the female plant, 0.01 percent. THC content varies significantly in leaves from various cannabis plants and from leaves within the same plant. The National Institute on Drug Abuse has reported results from an analysis of various samples of cannabis obtained in 1976. The THC content of leaves from five separate samples varied from 2.51 percent THC to 4.68 percent.

The third category of marihuana material that must be analyzed is cannabis seeds capable of germination. As discussed above, the seeds themselves have a very low percentage of THC content and are not known to have any potential for misuse except in being used to grow marihuana plants.

In making a scheduling recommendation, the Department must consider the eight factors listed at 21 U.S.C. 811(c). FDA's analysis of these eight factors with respect to each of the marihuana plant materials that are the subject of the NORML petition follows:

1. *Its actual or relative potential for abuse (21 U.S.C. 811(c)(1)).* The legislative history of the CSA, or Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (see House Report 91–1444, Part I (Ref. 4)), defines potential for abuse as including the following elements:

(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community;

(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels;

(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

These elements will be discussed for each of the materials at issue.

a. *Cannabis and cannabis resin.* 1. FDA proposes to fin that individuals take cannabis in sufficient amounts to create a hazard to their health or to the safety of other individuals, or of the community. The extent of this use is discussed under Factors 4 and 5. The hazards to health are discussed under Factors 2, 3, and 6.

2. FDA proposes to find that there is not now a significant diversion of cannabis from legitimate drug channels. Cannabis is currently available through legitimate channels for reserach purposes only. The lack of significant diversion may result from the availability of illicit cannabis of equal or greater potency. If the illicit availability were not so widespread, there would presumably be additional pressure for diversion from legitimate channels.

3. FDA proposes to find that a significant number of persons take cannabis on their own initiative rather than on the basis of medical advice. When compared with the amount illicit cannabis available for persons to take on their own initiative, the amount of drug distributed in the course of medical research (the only currently authorized taking of cannabis under medical supervision) is insignificant. Approximately 10,000 to 15,000 times as much illicit cannabis as legitimate cannabis is available for distribution. Of the total amount of cannabis available for legitimate use, only approximately 5 to 10 percent was actually distributed for research in 1980 and the remainder remained under security in storage. It can be concluded that the overwhelming majority of individuals using cannabis do so on their own initiative, not on the basis of medical advice from a practitioner licensed to administer the

drug in the course of professional practice. An indication of the numbers of individuals taking the drug illicitly is given under Factors 4 and 5 concerning the current pattern and scope of abuse.

4. The fourth element in potential for abuse defined in the legislative history and discussed above does not apply to cannabis.

Considering the four elements discussed above, FDA proposes to conclude that because of the large amount of materials which is illicitly available and the number of individuals taking the drugs on their own initiative that cannabis and cannabis resin have a high potential for abuse.

b. *Cannabis leaves.* The four elements described above can be applied to cannabis leaves in two ways. First, cannabis leaves can be considered in the way they are now available in illicit use, i.e., in conjunction with other parts of the marihuana plant in the mixture that has been referred to above as "cannabis". Alternatively, one could view cannabis leaves as a separate product, containing only the leaves, although this product is not currently widely known or available in this country. The first approach seems more reasonable and is adopted in this proposal. FDA's discussion of cannabis (above) applies equally well to cannabis leaves; FDA therefore proposes to conclude that cannabis leaves have a high potential for abuse.

Alternatively, if "cannabis leaves" are considered to be a separate product, the fourth element identified from the legislative history is applicable. Cannabis leaves are, because of their content of THC, so related in their action to "cannabis," described above, that it is reasonable to assume that there may be significant diversions from legitimate channels (assuming that those diversions became easier than obtaining cannabis from other illicit sources), that there may be significant use contrary to or without medical advice, and the product would have a substantial capability of creating hazards to the health of the user. These conclusions are reached on the basis of the agency's experience with and knowledge of cannabis itself. Under this alternative analysis, FDA again proposes to find that cannabis leaves have a high potential for abuse.

c. *Cannabis seeds capable of germination.* Cannabis seeds capable of germination may be planted and cultivated to produce the cannabis plant. According to one source, the amount of illicit marihuana being grown or produced and harvested in the United States has an estimated value of more than $1 billion per year and is continuing to increase (Ref. 5, Washington Post, November 15, 1981 (F–13)).

When the four elements from the legislative history are applied to cannabis seeds, they would not identify the seeds themselves as having an actual or relative potential for abuse. Thus, there is no evidence that individuals are taking cannabis seeds in an amount sufficient to create a hazard to their health or the safety of others. There is not a significant diversion of cannabis seeds from legitimate drug channels, though it is reasonable to assume that if diversion became easy, it would occur because the seed could be used to grow marihuana. Individuals do not appear to take marihuana seeds on their own initiative. Marihuana seeds do not have an action so related to drugs already listed as having a potential for abuse as to require their identification as drugs subject to abuse.

Yet, Congress in articulating the bases for conclusions concerning the actual or relative potential for abuse of a product did not expect FDA to close its eyes to reality. Cannabis seeds capable of germination can obviously be used to produce cannabis, cannabis resin, and cannabis leaves, all of which plainly present a potential for abuse. For that reason FDA proposes to find that cannabis seeds capable of germination present a significant actual or relative potential for abuse as those terms are used in 21 U.S.C. 811(c)(1).

2. *Scientific evidence of its pharmacological effect if known (21 U.S.C. 812(c)(2)).* House Report 91–1444 (Ref. 4) states "The state of knowledge with respect to the effect of uses of a specific drug is, of course, a major consideration, e.g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect. The best available knowledge of the pharmacological properties of a drug should be considered."

House Report 91–1444 (Ref. 4) states that this factor and factor 3 ["The state of current scientific knowledge regarding the drug or other substance" (21 U.S.C. 811(c)(3))] are closely related. This document distinguishes between factors 2 and 3 in the following manner: The discussion of factor 2 uncritically summarizes the relevant, available scientific evidence. In contrast, the discussion of factor 3 presents the agency's evaluation of what may be reasonably and fairly concluded on the basis of the evidence discussed under factor 2.

a. *Cannabis and cannabis resin.* The voluminous literature on marihuana (over 8,000 references) precludes, for any practical purpose, a complete and systematic review by agency staff of the original references concerning the pharmacological effects of cannabis and its derivatives. The agency, in evaluating the evidence, has reviewed major original articles as well as authoritative secondary sources. Major reviews in the following list are easily available sources of the evidence described in this section.

Institute of Medicine Report, 1982 (Ref. 6).

NIDA Research Monograph, 1980 (Ref. 7).

Addiction Research Foundation, 1981 (Ref. 8).

Journal of Clinical Pharmacology, August-September 1981 (Ref. 9).

"Marihuana," ed R. Mechoulam, Academic Press, 1973 (Ref. 10).

"Pharmacology of Marihuana," ed. Braude and Szara, Raven Press, 1976 (Ref. 11).

Evidence on the effects considered to be related to the use of cannabis is presented in two separate sections: Central Nervous System and Other Major Body or Organ Systems.

Central Nervous System

A. *Cognitive and subjective effects.* Cannabis and its derivatives have been reported to cause disorders in each of the following areas: (1) experience of self, (2) perception and the interpretation of the meaning of perceptions (apperception), (3) thought, (4) feelings and effects, (5) will or volition, (6) control of instinctual behavior or drives, (7) memory, and (8) the higher intellectual functions, which include cognition, reason, and judgment (Ref. 6).

1. *Disordered experience of the self.* Cannabis use can be associated with alterations in the experience of the self in bizarre but well-characterized ways.

For example, depersonalization (the sense that one is not one's normal, natural self) and distortions of body image (the sense that one's body is distorted or different) have been commonly reported in association with the use of cannabis. In the more severe clinical syndromes associated with cannabis use, disturbances in the experience of self of psychotic proportion have been described (e.g., the heart vibrating the entire body, limbs growing longer, the head enlarging). Cannabis use is said to cause distortions in the subjective experience of time and in one's sense of relatedness to the environment (derealization).

2. *Disordered perception and apperception.* Perception and apperception are part of the complex

process by which an individual interacts with the environment, obtains (via the senses) data about the environment, and comes to understand the processed sensory data in a normal, meaningful way. Cannabis use has been associated with varied types of psychopathology affecting perception and apperception.

Sensory distortions are commonly reported with cannabis use and can involve changes in the intensity or quality of perceptions as well as their form (i.e., size, shape, proportions). For example, visual images may seem unusually intense, or three-dimensional objects may appear flat. Sensory stimuli may be misperceived (i.e., illusions) and frank hallucinations (i.e., perceptions without a corresponding environmental stimulus) may occur. These phenomena may be quite frightening or disturbing to the person who experiences them and may be associated with a paranoid experience (see discussion below).

3. *Disturbances of thought.* Two types of disturbances of thought may be associated with the use of cannabis: (1) a formal thought disorder and (2) disorders of thought content. A formal thought disorder consists of several related phenomena involving impairments in a person's ability to control the sequence, organization, and rate of thoughts. A formal thought disorder often appears to the observer as an inability of a person to communicate in a meaningful way. Speech may seem interrupted in an irregular and unpredictable manner by abrupt silences or by illogical, garbled, nonsensical, or unintelligible utterances.

The disorders of thought content consist for the most part of delusions (fixed, illogical, idiosyncratically held beliefs from which the individual cannot be persuaded by appeals to logic or reason) or delusion-like beliefs. Delusions may be classified as to their specific content or type (i.e., grandiose, paranoid, etc.). Among the various types of delusions, those of paranoid character are probably most important. Because a person suffering a paranoid delusion may act upon it as though it were factual, inappropriate aggressive behavior may sometimes be expressed by such persons. Less-organized paranoid beliefs merge imperceptibly with feelings or moods and are described in the next section on feeling and affects.

4. *Feeling and affects.* Feeling and affects (the conscious, subjective aspects of an emotion) subsume a wide variety of moods and states, both pleasing and dysphoric.

Euphoria, or a state of elevated mood, is often reported as a result of cannabis use. This feeling state, variously described as a "high" or as mellow contentment, is thought to contribute to the widespread illicit use of cannabis.

Dysphoric mood states also occur, however. Paranoia, the feeling of being and object of ridicule or persecution, is sometimes reported—especially in persons who may be considered to have less stable personality organizations (i.e., persons more prone to exhibit psychopathology under adverse circumstances). Paranoid experiences and behavior are also reported to be associated with the acute organic brain syndromes (i.e., delirium) attributed to cannabis intoxication. Paranoia may be more organized and take the form of a delusion-like idea or a full-blown delusional system (see discussion above).

Unrealistic fright or fear, sometimes occurring in discrete episodes of overwhelming terror (panics), has been reported to occur in a relatively large proportion (i.e., one-third) of cannabis users (Ref. 6). Lesser degrees of anxiety or dysphoria may occur quite frequently in a large proportion of users. Indeed, intolerance to the dysphoric mood effects of cannabis is said to impair its usefulness as a potential therapeutic agent in many groups (i.e., the elderly).

5. *Disturbances of will or volition.* The "amotivational syndrome" is reported to be a consequence of chronic cannabis use. Apparently, some especially heavy, usually daily, users of cannabis demonstrate a loss of ambition and interest in the more commonly held life goals. Work or school performance deteriorates and the affected person shows features of what might be considered a personality disorder (i.e., apathy, ineffectiveness, inability to plan for the long-term, etc.). Convincing proof that cannabis use is the cause rather than the result of these personality changes is lacking, however, as the evidence is based upon casual clinical observations (case reports).

6. *Disturbances in the control of instinctual urges or drives.* The acutely intoxicated person may, by virtue of organic central nervous system depression or delirium exercise poor judgment and control. The potential for hostile behavior may be increased, especially when the person experiences paranoid feelings in the state of altered consciousness of intoxication caused by cannabis. Aggression is also alleged to occur idiosyncratically, independent of intoxication, in some cannabis users.

7. *Disorders of memory and attention.* Cannabis may alter the ability of a person to attend to a task, to concentrate, to learn new information, to retain that information, or to recall at a later time that information acquired while under the influence of cannabis. Ability to recall information acquired in the intoxicated state may be improved by re-intoxication (an example of state-dependent learning).

8. *Distrubances of higher intellectual functions.* These functions include those of reason, intellect, and judgment. The "amotivational syndrome" can be categorized as an example of this class of pathology, but it has been discussed above as a disorder of volition.

B. *Impairment of motor and psychomotor performance.* General motor coordination may be affected when cannabis is taken in amounts equivalent to that used in social settings. The degree of impairment is dose-related. Reaction time, which is a measure of attentiveness as well as motor agility, may also be compromised. Tracking, the ability to follow a moving target, is impaired at low doses of cannabis intake. Tracking skill is correlated with driving and flying ability (Ref. 6).

Other Major Body or Organ Systems

1. *Cardiovascular.* Acute cannabis use is associated with an acceleration of the heart rate; however, there may be some tolerance to this effect after chronic exposure. In addition, cannabis has effects (these vary with body position, dose, and chronicity of use) on cardiac output, blood pressure, and peripheral vascular resistance (Ref. 6).

2. *Pulmonary.* The effect of cannabis on the pulmonary system is difficult to distinguish from the effects of smoking itself. Cannabis, in small doses, has an acute bronchodilator effect; but this action may, with time, be overshadowed by the irritant properties of smoke which can cause bronchoconstriction. Indeed, chronic smoking of cannabis may cause respiratory system pathology, similar to that produced by tobacco cigarette smoking (Ref. 6).

3. *Reproductive system.* In men, chronic cannabis use may lead to reduced sperm counts and motility; however, the relationship of these changes to male fertility is not known (Ref. 6). In women, there is some reason to believe that cannabis use might contribute to "subfertility," but the evidence to support this belief is indirect (Ref. 6).

4. *Genetic information.* The evidence for a mutagenic effect of delta-9-THC must be distinguished from the mutagenic effect of cannabis when smoked. There is evidence of mutagenicity for the drug when it is smoked. There are also reports of chromosomal breaks occurring in cell

samples obtained from persons using cannabis (Ref. 6).

5. *Immune system.* Cannabis use may be associated with impairment of the function of the immune system (Ref. 6).

b. *Cannabis leaves.* As noted above, cannabis leaves are a constituent of the marihuana product that is normally used both illicitly and in research. Thus, the discussion above is directly applicable to cannabis leaves when viewed in the context in which they have been used. Because cannabis leaves are not known to have been used separated from other parts of the marihuana plant, there is no body of scientific evidence on the pharmachlogical effect of a product containing only cannabis leaves. Because cannabis leaves contain a percentage THC content that is roughly equivalent to the percentage of THC in the cannabis discussed above, however, it is a reasonable scientific conclusion that the effects discussed in the previous section are also those of cannabis leaves alone.

c. *Cannabis seeds capable of germination.* FDA is not aware of scientific evidence of any pharmacological effect of cannabis seeds capable of germination in and of themselves. In fact, because the THC content of the seeds is relatively low, it would not be expected that the seeds by themselves would produce the effects discussed above. On the other hand, as previously noted, the seeds would predictably be used to grow marihuana plants and by that route produce the pharmacological effects discussed in subsection (a) of this discussion.

3. *The state of current scientific knowledge regarding the drug or other substance (21 U.S.C. 811(c)(3)).* as noted previously, this discussion presents FDA's evaluation of the evidence discussed under factor 2 above.

a. *Cannabis and cannabis resin.* In weighing the scientific evidence on the effects of cannabis use, the agency has concluded that much of what is said and written about the plant and its derivatives is unsupported testimony and argument. Such evidence cannot be used to estimate rates of risk for specific effects or establish cause and effect relationships. It is not known what proportion of a representative sample of normal persons would experience many of the effects described in the preceding section. The relationship of the observed effects of cannabis to the quantity of drug consumed and to the duration of its use is not always evident. Moreover, the mere association of a drug with a phenomenon does not demonstrate that the drug caused the phenomenon. The putative drug effect may be merely coincidentally associated with drug use.

In light of these many qualifications about the nature of the available scientific evidence, it is important to explain how the agency distinguished reliable from unreliable information and reached its conclusions about the "state of current scientific knowledge regarding" cannabis.

First, members of the agency's staff who are expert in issues of illicit drug use and the requirements for scheduling recommendations relied upon their own experience and knowledge of cannabis and experience in reviewing other scheduled drugs to reach their conclusions.

Second, the expertise of the agency's expert staff and other appropriate agency officials has been supplemented with expertise from specific experts on cannabis who are or where either special government employees or members of the agency's Drug Abuse Advisory Committee.

Finally, the agency has relied upon the scientific literature. Recent published evidence reviewed by the agency includes the report by the Institute of Medicine (IOM), National Academy of Sciences, on *Marihuana and Health* (National Academy Press, Washington, 1982) (Ref. 6). The IOM report is not only recent and comprehensive but the IOM committee that wrote the report appears to be an impartial and disinterested group of scientists whose goal was an accurate statement of our current knowledge about the relationship of cannabis use to the public health.

FDA's conclusion about the state of current scientific knowledge regarding cannabis follows; they are organized by body or organ system in a manner that parallels the presentation of the evidence under factor 2.

Central Nervous System

Although the agency has no means to estimate the exact proportion of cannabis users that will be affected, there is little reason to doubt that cannabis has potent effects on psychological and neurological behaviors of people. Available evidence shows that cannabis use can alter perception (cause illusions and hallucinations) and mood (cause anxiety, dysphoria, paranoia, etc.), and can cause panic and reactions of psychotic degree. Cannabis use can impair motor and psychomotor performance, and can alter the level of consciousness, impulse control, and, perhaps, judgment. The acute effects of cannabis range from mild, subjectively pleasing changes in affective state to frank, organic delirium. The acute behavioral effects are linked to cannabis use in a causal way. In contrast, evidence on the long-term adverse consequences is less persuasive. In particular, it is not clear whether the well-characterized "amotivation" syndrome associated with chronic, heavy marihuana use is a manifestation of the personal character or psychopathology of some marihuana users or an expression of drug effect.

Body Systems Other Than the Central Nervous System

Cannabis has effects on the heart, lungs, and endocrine systems. The magnitude and significance of these effects is not known, but each must be considered a possible potential risk to the public health.

In summary, the effects of major social and medical significance associated with cannabis use and important to a scheduling recommendation are largely related to the central nervous system but include the cardiovascular and pulmonary systems. Cannabis does not appear to have major effects of known significance on other organ systems. It is important to emphasize, however, that the available evidence often does not address the critical questions.

The agency agrees with the general conclusion of the IOM (Ref. 6) that, "[t]he scientific evidence published to date indicates that marihuana has a broad range of psychological and biological effects, some of which, at least under certain conditions, are harmful to human health. Unfortunately, the available information does not tell us how serious this risk may be" (p. 5).

b. *Cannabis leaves.* The conclusion in the previous discussion concerning cannabis and cannabis resin applies to cannabis leaves for the reasons and to the extent stated in this document's discussion of Factor 2 as it applies to cannabis leaves. Current scientific knowledge concerning cannabis leaves not in conjunction with other parts of the marihuana plant is totally undeveloped because the leaves are not used separately.

c. *Cannabis seeds capable of germination.* Although current scientific knowledge concerning the pharmacological effects of cannabis seeds is undeveloped, because the THC content of the seeds is relatively very low, it can be fairly concluded that the seeds themselves will not have the pharmacological effects associated with other parts of the marihuana plant. As previously noted, however, the pharmacological effects of cannabis, discussed above, may be said to be associated with the seeds in that the

seeds will likely be used to grow the plant.

4. *Its history and current pattern of abuse (21 U.S.C. 811(c)(4)).* In the legislative history of the CSA, Congress commented on Factor 4 as follows: "To determine whether or not a drug should be controlled, it is important to know the pattern of abuse of that substance, including the social, economic, and ecological characteristics of the segments of the population involved in such abuse."

The following information demonstrates a history and current pattern of widespread illicit use of cannabis in the United States, as measured by wide use and illegal importation and distribution.

a. *Cannabis and cannabis resin.* Cannabis use goes back to the beginning of recorded history. For example, cannabis preparations have been used for thousands of years in Asia. Cannabis spread West to Europe and by the time Europeans reached the New World, they were using the cannabis plant as a source of cloth and as an intoxicant. Marihuana or cannabis use began to grow in popularity in the United States during the 1920's. By 1927, 46 States and the District of Columbia had passed laws against marihuana and in the same year, the Federal government enacted the Marihuana Tax Act. This Act made registration and taxation of marihuana buyers and sellers mandatory, and imposed criminal penalties. The Act effectively banned the possession and use of cannabis preparations. Subsequently in 1961, it was controlled under the Single Convention on Narcotic Drugs. In the United States, it was subsequently controlled under Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

There have been a number of studies on the pattern of use and abuse of cannabis related to the pattern of use of other drugs of abuse. These studies show that cannabis is used concurrently with alcohol or other drugs of abuse (e.g., Ref. 13).

Results from a 1979 survey on drug use reported by the National Institute on Drug Abuse (Ref. 14) were as follows: in 1979, 8 percent of 12 and 13 year-olds reported some experience with cannabis, and by ages 14 and 15, the percentage who had used cannabis increased to 32 percent. More than half (51 percent) of 16 and 17 year-olds had used cannabis. In the overall 12 to 17 year-old group, 31 percent had "ever experienced" marihuana use, more than double the figure (14 percent) which was reported in 1972. The peak use was in the age group from 18 to 25 years; 68 percent in 1979 compared with 48 percent in 1972.

With respect to current use of cannabis, defined as use within the month preceding the survey, 16.7 percent of the 12 to 17 year-old group in the 1979 survey currently used cannabis, while 35 percent of the 18 to 25 year-old group were currently using cannabis. In the 1979 survey, in the age group 26 years and over, 19.6 percent reported ever having used cannabis, while 6 percent reported current use. Corresponding figures for 1972 were 7.4 percent for having experienced cannabis use and 2.5 percent currently using cannabis. Current users age 12 to 17 in 1972 represented 7 percent of that age group, while in 1979 that same group (now members of the 18 to 25 year-old group) had a current use rate of 35 percent. Thus approximately 28 percent of the individuals who were current users between the ages of 18 and 25 in 1979 (the differences between 7 percent and 35 percent) began using after the age of 17.

A similar study, using different age parameters and focusing on the year 1977, provides confirmatory data. According to the NIDA Research Monograph, No. 35, May 1981 (Ref. 15), in 1977 there were 9,632,000 (56.8 percent) out of 16,958,000 young adults age 18 to 21 years, and 9,261,000 (60.3 percent) out of 15,358,000 young adults age 22 to 25 years who reported ever having used marihuana. These rates represent increases of 4 percent and 13 percent over the 1974 rates for 18 to 21 years and 22 to 25 years, respectively. The survey indicates there were 3,233,000 regular users of marihuana out of 13,415,000 (24.1 percent) age 18 to 25 years in 1977.

The special problem of drug abuse among women was reported in 1980 (Ref. 16). Results were obtained from a sample of 14,428 women clients in treatment centers. The paper addressed differences in use of heroin, marihuana amphetamines, barbiturates, and sedatives according to age, race, and education. Marihuana was the second most commonly abused drug among these women.

A special U.S. population that has been surveyed is the military. "Highlights from the Worldwide Survey of Nonmedical Drug Use and Alcohol Use Among Military Personnel, 1980" (Ref. 17). For the total military, 27 percent reported using any drug within the past 30 days, and 26 percent reported using marihuana or hashish within the past 30 days. Twenty-six percent reported using marihuana, or hashish, during the past 30 days. Thirty-six percent reported using any drug during the past 12 months, while 35 percent reported using marihuana or hashish during the past 12 months. Further, for the total military, 19 percent of the population reported using marihuana or hashish at least once a week during the past 30 days. The next closest drug group used frequently by the military was amphetamines or other stimulants, at the rate of 3 percent at least once a week during the past 30 days. Cannabis, i.e., marihuana or hashish, is thus by far the most widely abused drug in the military.

The National Institute on Drug Abuse (NIDA) also has reported on demographic trends in drug abuse, 1980–1995 (Ref. 15). In this report, NIDA uses information from previous surveys, up to the 1977 survey, to predict illicit drug use for the next 10 to 15 years. NIDA concluded that illicit drug use is decreasing among all age groups.

b. *Cannabis leaves.* The discussion above of the history and current pattern of abuse of cannabis and cannabis resin applies to cannabis leaves as commonly used. FDA is unaware of any significant history of use of cannabis leaves separated from all other parts of the marihuana plant.

c. *Cannabis seeds capable of germination.* The discussion above on the history and current pattern of abuse of cannabis and cannabis resin applies to cannabis seeds capable of germination because cannabis may be produced by use of such seeds. FDA is unaware of any history or current pattern of abuse of the seeds other than their use to grow cannabis.

5. *The scope, duration, and significance of abuse (21 U.S.C. 811(c)(5)).* In House Report 91–1444, Congress stated that:

In evaluating existing abuse, not only must the Attorney General know the pattern of abuse, but he must also know whether the abuse is widespread. He must also know whether it is a passing fad, or whether it is a significant chronic abuse problem like heroin addiction. In reaching his decision, the Attorney General should consider the economics of regulation and enforcement attendant to such a decision. In addition, he should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

a. *Cannabis and cannabis resin.* The discussion in the previous section of percentages of marihuana users demonstrates that the cannabis abuse is of wide scope, involving, among others, the young and members of the military, is of considerable significance, and has continued for over a decade. Further

evidence on cannabis abuse is provided by information concerning the total amount of cannabis available in this country from illicit sources.

According to the Drug Enforcement Administration (DEA), about 10,000 to 15,000 metric tons of cannabis (marihuana) were smuggled into the United States in 1978, a 4 percent increase over the 12,000 metric tons smuggled in 1977 (Ref. 20). The value of the marihuana in 1978 was estimated by DEA to be $15 to 23 billion (approximately $19,000,000,000 in 1977) (id).

For 1979, DEA has estimated the total cannabis supply to be between 10,000 and 13,600 metric tons. Seventy-five percent of the total cannabis in 1979 was from Columbia, 11 percent from Mexico, 7 percent from Jamaica, and 7 percent from domestic U.S. sources. For the year 1980, the current estimate is 10,600 to 15,500 metric tons. Columbia supplies 75 percent, Mexico 9 percent, Jamaica 10 percent, and domestic U.S. sources account for 6 percent. The total amount would convert to 23,320,000 to 34,100,000 pounds of cannabis available in the United States in 1980. This amount compares with the estimated 24,000,000 pounds available in 1977. The amount of cannabis grown for scientific and medical investigations in the United States in 1979 was 986 kilos or 2,100 pounds and approximately 2,000 kilos or 4,400 pounds for the year 1980.

These statistics show that the scope of the illicit cannabis traffic is significant, and has been significant for a least 5 years. Also, the extent of the illicit use of cannabis, particularly among the young and the young adults, is widespread throughout the United States. Further, these statistics show that the drain of funds into illicit channels as a result of cannabis use is significant.

b. *Canabis leaves.* The discussions above regarding the scope, duration, and significance of abuse for cannabis and cannabis resin apply to cannabis leaves when used in conjunction with other parts of the marihuana plant. FDA is unaware of any use of cannabis leaves separated from all other parts of the marihuana plant and the agency, thus, has no information about scope, duration, and significance of abuse of leaves separated from other parts of the plant.

c. *Cannabis seeds capable of germination.* There are no data concerning the extent of illicit traffic in cannabis seeds capable of germination. As discussed previously, there are no data available on abuse of the seeds per se, as opposed to the plants that may be grown from the seeds.

6. *What, if any, risk there is to the public health (21 U.S.C. 811(c)(6).* With respect to this factor, House Report 91–1444 states: "If a drug creates no danger to the public health, it would be inappropriate to control the drug under this bill."

a. *Cannabis and cannabis resin.* Under factors 2 and 3 above, the scientific evidence of the pharmacological effects and the state of current scientific knowledge regarding cannabis are discussed in detail. The agency agrees with the general conclusions of the IOM (Ref. 6) that, "[t]he scientific evidence published to date indicates that marijuana has a broad range of psychological and biological effects, some of which, at least under certain conditions, are harmful to human health. Unfortunately, the available information does not tell us how serious the risk may be" (p. 5).

The adverse consequences associated with marihuana use include both acute and chronic effects. The acute health hazards are most important and include, among others, impairments in almost all aspects of central nervous system function, and decrements in psychomotor performance skills necessary for driving or flying. Certain cardiovascular effects (e.g., those that can lead to increased heart rate and associated circulatory changes) may be harmful, especially to those with pre-existing heart disease. The acute health hazards often result in medical problems requiring immediate medical attention at hospital emergency rooms.

The chronic hazards of marihuana use are less well established. One probable risk of importance is the one associated with the common route of cannabis administration, smoking. Smoking of tobacco cigarettes is a well-documented health hazard, and it is reasonable to assume that smoking of cannabis cigarettes is hazardous as well.

Much of the most recent evidence about the effects of marihuana use in humans is reported in the Addiction Research Foundation Report, 1981 (Ref. 8) prepared by internationally recognized scientists in the field of drug abuse and effects of marihuana and the Institute of Medicine Report, 1982 (Ref. 6), previously discussed. The National Institute on Drug Abuse also provided much of the most recent information relative to the epidemiology of effects of cannabis on the public use. The risk to the public health from acute and chronic cannabis use is evaluated on the basis of the effects included in these reports. Also, as is discussed in Part III below, cannabis or marihuana has no currently accepted medical use in treatment in the United States. Thus, in weighing the risks against the benefits of marihuana use, FDA proposes to conclude that the scale is tipped heavily towards the risks. Clinical investigations designed to determine whether marihuana has medical utility and whether marihuana may be used safety under medical supervision are still ongoing.

In estimating the number of individuals who use cannabis and, thus, are at risk of suffering the reported adverse health consequences, the Federal government uses data from several sources including certain surveys, including the Drug Abuse Warning Network (DAWN), the National Household Survey on Drug Abuse (Household Survey), and the High School Senior Survey (High School Survey). DAWN represents an ongoing reporting system, while the Household Survey and the High School Survey are periodic data collection efforts. Each survey contributes valuable information to the overall drug abuse picture.

The reports of death from medical examiners collected by DAWN for the calendar year 1980 placed marihuana at the lower end of the spectrum of frequency among the 100 drugs or substances reported. During the same period, however, marihuana was listed at the top end of the spectrum of frequency among the 100 drugs or substances reported as the reason for an emergency room visit during this period (Ref. 21). Marihuana was, for example, mentioned more than twice as often as amphetamines. Thus, it would appear that the adverse effects from marihuana use rarely result in a fatal outcome but are serious enough to be one of the major drug causes for seeking emergency room treatment.

In the High School Survey, high school seniors reported that they believe the regular use of marihuana has caused them to experience significant problems. For example, 28 percent reported they think less clearly, while 11 percent reported they felt less stable emotionally. Young people are believed to be especially at risk from the use of marihuana because of their ongoing physical and emotional maturation. It is possible that young, regular marihuana users may not be able to develop appropriate "life skills" on schedule, and that failing to do so it may be difficult, if not impossible, for them to make up these developmental differences later in life (Ref. 12).

As discussed earlier, although certain adverse effects have been reported from cannabis use, the exact percentage of cannabis users who are experiencing these adverse effects is unknown. FDA tentatively concludes that the risk to the

public health from marihuana use is particularly serious because the number of marihuana users is so large. Whatever the precise risk, widespread use of cannabis will obviously produce a greater incidence of harm than relatively little use of cannabis. Moreover, although in some cases the relationship of cannabis use to reported adverse effects is not certain, particularly the emotional and "amotivational" effects, the consequences of these effects, if real, are so great that, in the absence of good evidence against the reported association, the risk to the public health must be considered great. FDA's proposed conclusion that cannabis does create a significant risk to public health is thus based on its known adverse effects and adverse effects that are suggested but not yet proved to be related to marihuana use, both in a setting of relatively widespread use.

Based on the 1979 Household Survey, teenagers in the United States use more marihuana than teenagers anywhere else in the world (Ref. 22). Although a recent trend shows that marihuana use and use of other drugs has declined, it is too early to tell whether this decrease will continue or is merely a pause in the rise. Despite this recent trend, the overall prevalence of use of marihuana has remained at approximately 60 percent of high school seniors for the years 1978, 1979, and 1980 (Ref. 6). Currently, it is estimated that 22 million or about 10 percent of the total U.S. population now use marihuana (Ref. 22). In 1960, less than 7 percent of young adults age 18 to 25 had used marihuana. In 1979, more than 60 percent of young adults had used marihuana (Ref. 22).

FDA, thus, proposes to conclude that cannabis may produce significant adverse health effects to persons who use marihuana. And, because approximately 22 million Americans are reported to be current users of marihuana, FDA proposes to conclude that there is a significant risk to the public health from marihuana or cannabis use.

b. *Cannabis leaves.* The risk to the public health associated with use of cannabis leaves in the state in which they are normally found, i.e., in conjunction with others parts of the marihuana plant, is significant for the reasons stated in subsection (a) above. There is virtually no reported experience with a product containing cannabis leaves separated from all other parts of the marihuana plant. Because the leaves themselves have significant THC content, however, it is reasonable to conclude that a use of a leaf-only product would present the same risk as use of cannabis itself.

c. *Cannabis seeds capable germination.* The risk associated with cannabis seeds derives only from the probability that such seeds would be used to grow marihuana, which would in turn produce the risks described above.

7. *Its psychic or physiological dependence liability (21 U.S.C. 811(c)(7)).* In House Report 91–1444, Congress states that: "There must be an assessment of the extent to which a drug is physically addictive or psychologically habit-forming, if such information is known."

a. *Cannabis and cannabis resin.* (1) *Psychological (psychic) dependence liability.* In the Federal Register of March 9, 1982 (47 FR 10083), FDA proposed to conclude that some individuals should be considered sufficiently strong drug-seeking in their behavior to be considered severely psychologically dependent on cannabis. The basis for this conclusion is our belief that repeated seeking of an illicit drug with an established potential to cause injury constitutes prima facie evidence of psychological dependence. Also, it should be noted that a report of the American Medical Association's (AMA) Council on Scientific Affairs, as adopted by the AMA House of delegates, concluded that marihuana is hazardous to health and that there was a growing prospect of appreciable number of marihuana users incurring physiological and psychological impairment (Ref. 23). Since the March 9, 1982 Federal Register publication, FDA has completed a review of two recent and significant reports on marihuana and health (Institute of Medicine Study and Addiction Research Study) (Refs. 6 and 8). These reports include nothing that changes FDA's earlier proposed conclusions. Thus, FDA proposes to conclude that marihuana use can result in severe psychological dependence.

(2) *Physical (physiological) dependence liability.* The agency defines physiological dependence as the appearance of a characteristic syndrome, consisting of physical signs and symptoms, that appears upon cessation of drug use. Only one investigator has reported withdrawal signs and symptoms after frequent large doses of THC (Ref. 11). Other investigators have failed to observe a withdrawal syndrome. However, it is important to emphasize that drugs now well known to cause physiologic dependence (such as barbiturates, benzodiazepines, amphetamines, and some mixed opioid agonist/antagonist analgesics) were for many years assumed to be free of any such liability. It was only after many years of medical use, under conditions of close scrutiny, that the serious physiological dependence caused by these drugs was recognized. Thus, although the agency is unable to conclude at this time, on the basis of the evidence available, that cannabis produces physiologic dependence, the experience with known dependence-producing drugs (described above) must be considered.

b. *Cannabis leaves.* For the reasons discussed above, cannabis leaves present a psychological dependence liability. This conclusion necessarily follows from the evidence concerning cannabis, whether the leaves are considered as components of marihuana as generally used or as a separate product that, because of its THC content, would have the same effects as cannabis. Like cannabis, cannabis leaves cannot now be considered to have a physiological dependence liability.

c. *Cannabis seeds capable of germination.* As previously noted, the seeds do not themselves present a dependence liability, but, because they may be used to grow marihuana, have a liability associated with that fact.

8. *Whether the substance is an immediate precursor of a substance already controlled under this title (21 U.S.C. 811(c)(8).* House Report 91–1444 states that: "The bill allows inclusion of immediate precusors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture."

a. *Cannabis and cannabis resin.* Cannabis and cannabis resin are not precursors of any substance already controlled. Cannabis and cannabis resin are substances which are themselves already controlled in Schedule I of the Controlled Substances Act.

b. *Cannabis leaves.* Cannabis leaves are not an immediate precursor to a substance already controlled under this title. Because they are viewed as a component of cannabis, they are already controlled in schedue I.

c. *Cannabis seeds capable of germination.* Cannabis seeds capable of germination are not an immediate chemical precursor to a substance already controlled under this title. They are a "precursor" of cannabis in the sense that cannabis may be grown from the seeds. Because they are a component of cannabis, they are already controlled in schedule I.

III. Criteria For Scheduling

The eight factors described above are used to determine into which of the five

CSA schedules, if any, a given drug or substance should be placed. Each of the five CSA schedules (I to V) has three criteria (A to C) to aid in this determination. To assign a substance to a schedule, the Attorney General must find that the substance meets the statutory criteria for that schedule. See 21 U.S.C. 811(a).

Criterion A for all five schedules is a series of descriptions of abuse potential, declining from high to low abuse potential. Schedules I and II are identical in this regard, both requiring a finding of "high" potential for abuse. Schedules III through V require findings of lower, though still some, abuse potential.

Criterion B for all five schedules deals with whether the drug, or other substance, has a currently accepted medical use. Schedule I drugs must be found to have "no currently accepted medical use in treatment in the United States" while schedules II through V all require a "currently accepted medical use * * *." In addition, criterion B for schedule II allows an alternative finding: "currently accepted medical use with severe restrictions."

Criterion C is different for schedule I than for the other schedules. For schedule I, the criterion requires a finding of "lack of accepted safety for use of the drug or other substance under medical supervision." For schedules II through V, this criterion consists of a sliding scale of the drug's dependence-producing capacity, either physical or psychological. Schedule II drugs require a finding of the highest dependence-producing capacity while schedule V drugs require the lowest.

In the Federal Register of June 20, 1979 (44 FR 36127), DHHS stated that it believed, from a medical/scientific standpoint, that the marihuana (or cannabis) plant materials "could be placed in either schedule I or schedule II" but recommended continued control in schedule I. A factor in the determination that both schedules I and II were appropriate from a medical scientific standpoint included the statements that: "Conceivably, the current investigational use of some of the substances could be classified as 'a currently accepted medical use with severe restrictions' within the meaning of the second criterion for schedule II. That is a plausible interpretation of that criterion but its appropriateness is not free from doubt." (It should be noted that these statements were made in the context of the 1979 proceedings which applied to THC as well as the marihuana (or cannabis) plant materials at issue here.)

Although certain developments have occurred with respect to these substances in the intervening years (i.e., Federally approved research continues, legislation in some States provides for various degrees and kinds of research controls, and FDA has approved, on the recommendation of its oncologic drugs advisory committee, THC distribution under the National Cancer Institute's "Group C" system), these developments do not change the fact that, as explained below, in FDA's opinion the marihuana plant materials, as opposed to THC, meet all three criteria only for schedule I. Accordingly, FDA proposes that they remain in schedule I.

A. *Criterion A*—On the sliding scale of abuse potential, FDA proposes to conclude that cannabis, cannabis resin, cannabis leaves, and cannabis seeds capable of germination (because they are planted, cultivated, grown, and harvested to produce the plant) have a high potential for abuse and thus meet this criterion for schedules I and II (the criterion is identical for these two schedules).

As plant constituents, these cannabis substances have been shown to have a high potential for abuse (see discussion in factor 1 above). Thus, although licit plant materials have not been abused because they have been subject to stringent controls as an investigational drug under the Federal Food, Drug, and Cosmetic Act and a schedule I substance under the CSA, illicit plant materials are widely abused. These substances have marked psychotropic effects and, if more freely available, their abuse would very likely increase as major drugs of abuse (see discussions in factors 4 and 5). If the stringent CSA controls are removed from these substances, it can be anticipated that there would be attempted thefts, that attempts would be made to divert the drug from legitimate channels, and that any drug so diverted would command premium prices in the illicit market.

The tentative conclusion that these substances have a high potential for abuse (thus meeting criterion A for schedules I and II) logically precludes them from meeting criterion A for schedules III through V, for drugs in each of these three schedules have a progressively lower abuse potential than schedule I and II drugs.

B. *Criterion B*—This criterion involves the "accepted medical use" of the drug and has three different variations among the five schedules, as follows:

1. *Schedule I:* "The drug or other substance has no currently accepted medical use in treatment in the United States."

2. *Schedule II:* "The drug or other substances has a currently accepted medical use in treatment in the United States *or* a currently accepted medical use with severe restrictions." (Emphasis added.)

3. *Schedules III through V:* "The drug or other substances has a currently accepted medical use in treatment in the United States."

FDA interprets the term "accepted medical use" to mean lawfully marketed under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq. The agency stated this interpretation previously in the Federal Register document dealing with THC (47 FR 10084). NORML, in a subsequent action brought in the United States Court of Appeals for the District of Columbia, challenged that interpretation as conflicting with a statement made by the court in a footnote in *NORML* v. *DEA, supra,* 559 F.2d at 750, n.65. In the footnote, the court noted that the interrelationship between the Federal Food, Drug, and Cosmetic Act, in particular its "new drug" approval provision, and the Controlled Substances Act was far from clear. The court stated that it was appropriate for NORML to apply for rescheduling of marihuana under the Controlled Substances Act before obtaining approval of a new drug application under the Federal Food, Drug, and Cosmetic Act. *Id.*

A drug may be marketed lawfully under the Federal Food, Drug, and Cosmetic Act after approval of a new drug application (NDA) for that drug. There are, theoretically, other ways in which a drug could be marketed legally. The drug could satisfy either the requirements for exemption from the definition of "new drug" in 21 U.S.C. 321(p) or the requirements for a "grandfather clause" from the new drug approval provision, see, 21 U.S.C. 321(p)(1) and Pub. L. 87-781, sec. 107(c)(4). It is obvious, however, that the marihuana substances at issue here would not qualify either for exemption from the "new drug" definition or for the "grandfather clause" exceptions to premarket clearance.

A drug may also, theoretically, be legally marketed without violating the Federal Food, Drug, and Cosmetic Act if it is manufactured, processed, and used entirely within a single State without any connection at all with interstate commerce. (See, however, Article 23 and 28 of the Single Convention on Narcotic Drugs regarding restrictions imposed by treaty on manufacture of marihuana.) The agency has considered whether there is any basis to conclude that the

substances at issue in this document have obtained "accepted medical use" by virtue of totally intrastate production and use and has found no basis for a conclusion that these products have obtained acceptance of their medical use by that means.

Thus, there is no reason to conclude that the marihuana substances at issue here would qualify for "accepted medical use" in the absence of the approval by FDA of an NDA.

The mechanism set up by Congress for lawful marketing of a new drug requires submission of an NDA to FDA and FDA approval of that application before marketing. Before FDA can approve an NDA, however, the drug sponsor must submit data from an extensive battery of experimental testing on both animals and humans to establish the drug's safety and effectiveness for its proposed uses. In addition, the sponsor must submit data on manufacturing controls demonstrating that standards of identity, strength, quality, and purity will be met. Finally, the sponsor must submit labeling which adequately reflects the proper conditions for use. See 21 U.S.C. 355(d) and 21 CFR 314.1. Only after FDA has evaluated this information can the agency make a decision on whether the NDA should be approved and the drug marketed.

Thus, the lack of an approved NDA for a drug substance leads FDA to find that that substance lacks an "accepted medical use in treatment" for two reasons. First, if use of the drug is unlawful whenever interstate commerce is involved, medical use of the drug cannot be classified as accepted. Second, in the absence of the data necessary for approval of an NDA, the agency has no basis for concluding that medical use of the drug in treatment can be considered acceptable by medical standards.

Because "currently accepted medical use * * * " (schedules III through V and schedule II, first clause) means lawfully marketed under the act, "no currently accepted medical use * * * " must mean not lawfully marketed. The substances at issue fit into the later category because they are new drugs within the meaning of the act and there is not an approved NDA for the drugs. Thus, they cannot be legally marketed without an approved NDA. The lack of data from any sources demonstrating that use of these substances is medically acceptable, i.e., that sufficient data exists to qualify the substances for NDA approval, confirms the finding that these substances do not meet this criterion for schedules III through V. Therefore, these substances meet criterion B for schedule I.

A plausible argument exists, however, that these substances also meet the second clause of criterion B for schedule II because they have "a currently accepted medical use with severe restrictions." Although this clause is not defined in either the statute or the legislative history, the agency believes that only certain investigational drugs in the later stages of the investigational process may fall within this statutory language.

Investigational drugs progress from experimentation in a very limited, closely supervised setting involving only a few individuals to use in a broader investigational protocol using hundreds of patients. Under FDA's regulations, reports of these clinical studies are periodically sent to FDA so that the agency can monitor properly the ongoing research and progression to broader clinical trials. See 21 CFR Part 312.

The placement of THC in National Cancer Institute's "Group C" distribution scheme is an example of clinical research progression that qualifies as a "currently accepted medical use with severe restrictions." See 47 FR 10080, March 9, 1982. Clinical research on the marihuana (cannabis) materials at issue, however, has not progressed to the point that FDA believes that they have a currently accepted medical use with severe restrictions. In typical drug development, following studies in animals, studies in humans are conducted in phases or stages to provide necessary information. The information gathered at each phase must be evaluated and determinations made based on the evaluation before a subsequent phase may begin. Early phase studies usually involving small numbers of patients are necessary to provide initial evidence as to safety, pharamacological effects, and dose-related side effects, principally so that later studies can be carefully designed. Subsequent phases of studies are necessary to provide evidence of clinical safety and effectiveness, i.e., knowledge of effective dose and side effects and indications of therapeutic potential in humans. Later phases of studies are conducted to confirm and extend the findings indicated by earlier phase studies. In later phases a drug is used the way it would be administered when marketed. By the time these later studies are completed, the drug or substance usually has been studied in several hundred to several thousand patients. Generally by this time sufficient data have been generated to that FDA can make a dertermination regarding whether the drug is safe and effective under the statutory definitions. See 21 U.S.C. 355(d).

THC is a drug in the late phases of investigation as described above while the investigational studies on the marihuana plant materials are properly classified as in the earlier phases of study. Moreover, before a drug substances may be used in the practice of medicine it must have a composition of active ingredients that has been established and accepted as standard (for example, conjugated estrogens and powdered digitalis). Such standardized identity, purity, potency, and quality are specified either in a new drug application or in official compendium, e.g., U.S. Pharmacopeia or National Formulary. There is no standard cannabis substance.

Legislation in more than 20 States authorizes the use of marihuana and/or THC for medical research, primarily to combat nausea and vomiting associated with cancer chemotherapy and in the treatment of glaucoma. Such uses, however, should not be confused with the "accepted medical use" standard. These uses are all investigational uses. At least 11 States FDA-approved protocols for such investigations. The American Medical Association's Council on Scientific Affairs, in its report entitled "Marihuana in the '80s" (Ref. 23), makes the following statement: "For those [s]tates with enabling legislation that has not as yet been implemented, it is recommended that appropriate regulations and guidelines be established to insure that bonafide research is carried out, and that medical use beyond the context of clinical investigation is not permitted." This statement clearly is in accord with FDA's view that cannabis materials, as investigational research substances, are without accepted medical use in therapy or treatment by physicians practicing medicine in the United States.

Such State legislation, often referred to in their titles as "Therapeutic Research Acts," should not be confused with State laws which "decriminalize" the possession or transfer of certain marihuana materials for personal use, including recreational uses. These latter State laws involve reductions in criminal penalties and do not address medical research with these substances. Consequently, FDA tentatively concludes that although an argument that the second clause of criterion B for schedule II might be bet by certain marihuana substances under investigational use, the marihuana

substances at issue here do not meet criterion B for schedule II.

C. *Criterion C*—FDA proposes that the substances at issue meet criterion C for schedule I because there is "a lack of acccepted safety for use of the drug or other substance under medical supervision." FDA believes that "accepted safety," like "accepted medical use," has not been shown for a drug product that has not qualified for lawful marketing under the act. Accordingly, because these substances are not lawfully marketed, there is a "lack of accepted safety * * *."

As noted above, the Federal Food, Drug, and Cosmetic Act provides that FDA approve an NDA upon scientific evidence that the drug has been shown to be safe and effective for its proposed uses. See 21 U.S.C. 355(d). Because no drug is ever completely safe in the absolute sense, FDA considers "safe" to mean (in the context of a human drug) that the therapeutic benefits to be derived from the drug outweigh its known and potential risks under the conditions of use in the labeling. For this reason, FDA requires, before approval of an NDA, that extensive clinical and preclinical testing be conducted to establish the safety of the drug. Indeed, FDA must deny approval of an NDA if inadequate information about the drug's adverse reactions is presented. See 21 U.S.C. 355(d)(1).

Another factor considered by FDA in assessing the drug's safety is the proposed labeling, which is approved at the time of approval for marketing. A drug might be considered safe for some proposed uses but not others. Only those proposed uses where the benefit/risk ratio is favorable will be included in the indications section of the drug's labeling. Physicians depend on detailed labeling for information on when and how a drug should be used, and any claim in the labeling must be supported by clinical studies. False or misleading proposed labeling also precludes FDA approval of an NDA. 21 U.S.C. 355(d)(6).

Clearly, the further along a drug is in the investigational process, the more information about safety and effectiveness there will be. But it is only upon approval for marketing, when there has been an institutional decision based on scientific judgment by the regulatory agency charged with the responsibility of evaluating the safety and efficacy of new drugs, that a drug becomes "accepted" as safe under medical supervision.

The safety and efficacy of the cannabis materials at issue have not yet been fully studied. Indeed, these materials are currently distributed to a limited number of physicians and several States as investigational new drugs only, and a considerable amount of clinical research is still needed before an NDA could be submitted. Only when full information is received and reviewed by FDA can a responsible, scientific judgment be made that marihuana materials have "accepted safety for use * * * under medical supervision". Accordingly, under the present facts, FDA proposes that the cannabis substances at issue meet criterion C for schedule I.

Criterion C for schedule II provides that "[a]buse of the drug or other substance *may* lead to severe psychological *or* physical dependence" (emphasis added). FDA proposes that abuse of the substances at issue may lead to severe psychological dependence in some individuals (see discussion in factor 7). Whether this psychological dependence might be better characterized as "high" (schedule III criterion) rather than "severe" (schedule II criterion) is a matter of scientific judgment. However, FDA tentatively concludes, based on the information before it, that the psychological dependence-producing ability of these substances lies at the top end of the spectrum and is most appropriately characterized as "severe," thereby meeting the criterion for schedule II.

In terms of possible physical dependence, FDA believes the available information before it, at this time, is insufficent to determine with certainty whether physical dependence occurs.

D. *Summary chart.* FDA's proposed recommendations on scheduling criteria for cannabis, cannabis resin, cannabis leaves, and cannabis seeds capable of germination may be summarized in the following chart:

Note.—The criterion varies according to the schedule.)

	Criterion A	Criterion B	Criterion C
Schedule I	Met	Met	Met.
Schedule II	Met	Not met	Met.
Schedule III	Not met	Not met	Possibly met.
Schedule IV	Not met	Not met	Not met.
Schedule V	Not met	Not met	Not met.

E. *Conclusion.* FDA proposes to recommend that, based on the scientific and medical evaluation, each of the cannabis materials at issue meet all three criteria for schedule I. FDA proposes to recommend that each of the cannabis materials at issue remain in schedule I.

IV. Public Hearing

Under 21 CFR Part 15, the Commissioner of Food and Drugs may, as a matter of discretion, permit persons to present information and views at a public hearing on any matter pending before FDA. The Commissioner has concluded that it is in the public interest to hold such a public hearing for the purpose of obtaining information and views on the material in Parts II and III above concerning the appropriate scheduling status under the CSA of cannabis, cannabis resin, cannabis leaves, and cannabis seeds capable of germination.

The public hearing will be be held on September 16, 1982, from 9 a.m. to 4 p.m. in Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

Every effort will be made to accommodate each person who wants to participate in the public hearing. However, each person who wants to ensure his or her participation in the hearing is encouraged by close of business on August 27, 1982, to: (a) submit the text of the presentation so that the presiding officer and any other persons who may serve on a panel conducting the hearing may formulate useful questions to be posed at the hearing (a comprehensive outline may be submitted as an alternative to the text); and (b) file a written notice of participation containing the name, address, phone number, affiliation, if any, of the participant, topic of presentation, and approximate amount of time requested for the presentation. Oral notice of participation may be made by telephone as an alternative to the written notice.

The text or comprehensive outline and the written or oral notice of participation may be made to: Frederick J. Abramek, Bureau of Drugs (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3800.

Shortly after August 27, 1982, the amount of time allotted to each person and the approximate time that oral presentation is scheduled to begin will be determined. A hearing schedule showing the persons making oral presentations and the time allotted to each person will be filed with the Dockets Management Branch (address above) and mailed or telephoned to each participant before the hearing. If the number of persons formally requesting time for presentation exceeds the number that can be accommodated during the day session, the hearing will be carried over past the scheduled time and, if necessary, to the following day. An attempt will be made to hear, at the conslusion of the hearing, any person who is late. Other interested persons attending the hearing who did not

request an opportunity to make an oral presentation will be given an opportunity to make an oral presentation at the conclusion of the hearing, in the discretion of the presiding officer, to the extent that time permits. The hearing will be informal in nature and the rules of evidence do not apply.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Marihuana and Health, 8th Annual Report, 1980.
2. *Journal of Natural Products*, 42(2) March-April 1980.
3. *Journal of Pharmaceutical Sciences*, 60:1264, 1971.
4. House Report 91-1444 (Part I), Comprehensive Drug Abuse Prevention and Control Act of 1970.
5. Washington Post, November 15, 1981, (F-13).
6. Institute of Medicine Report, pp. 25, 27, 29, 38, 41, and 43.
7. NIDA, Research Monograph Series No. 31, "Marihuana Research Findings, 1980."
8. Addiction Research Foundation, 1981.
9. *Journal of Clinical Pharmacology*, 21 (8 and 9, Supplement), August-September 1981.
10. "Marihuana," ed. Raphael Mechoulam, Academic Press, 1972.
11. "Pharmacology of Marihuana," ed. Braude and Szara, Raven Press, 1976.
12. Statement of William Pollin, M.D., Director, National Institute on Drug Abuse, before the Committee on Foreign Affairs, House of Representatives, April 20, 1982.
13. *American Journal of Drug and Alcohol Abuse*, 6(4), pp. 447-462, 1979.
14. NIDA, "Excerpts from the National Survey on Drug Abuse—1979," U.S. Printing Office, 1980, O-311-246/6014.
15. NIDA, Research Monograph Series No. 35, "Demographic Trends and Drug Abuse 1980-1995."
16. *International Journal of the Addictions*, 15(3), pp. 304-321, 1980.
17. Burt Associates, Inc., "Highlights from the Worldwide Survey of Nonmedical Drug Use and Alcohol Use Among Military Personnel, 1980," Contract No. NIDA 903-79-C-0667, Bethesda, MD.
18. Bulletin on Narcotics, XXXII, No. 4, pp. 29-45, 1980.
19. Bulletin on Narcotics, XXXIII, No. 1, pp. 9-19, 1981.
20. Drug Enforcement Administration, *Drug Enforcement*, March 1980.
21. Project DAWN Annual Report—1980, Drug Enforcement Administration and National Institute on Drug Abuse.
22. "Health Consequences of Marijuana Use," Government Printing Office 869-675, 1980.
23. AMA Council on Scientific Affairs, "Marijuana in the '80s," Adopted by the House of Delegates, December 1980.

Interested persons may, on or before October 1, 1982, submit to the Dockets Management Branch (address above), written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 7, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-17331 Filed 6-28-82; 8:45 am]
BILLING CODE 4160-01-M

Advisory Committees; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Circulatory System Devices Panel

Date, time, and place. July 23, 8:30 a.m., Rm. 403-425A, 200 Independence Ave. SW., Washington, D.C.

Type of meeting and executive secretary. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 10:30 a.m.; closed committee deliberations, 10:30 a.m. to 3:45 p.m.; open committee discussion 3:45 p.m. to 4:00 p.m.; Glenn A. Rahmoeller, Bureau of Medical Devices (HFK-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 14, 1982, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss several premarket applications (PMA's) for pacemakers and may also review one or more PMA's for other cardiovascular devices.

Closed committee deliberations. The committee may discuss trade secret or confidential commercial information relevant to one or more PMA's for pacemakers or other cardiovascular devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be

requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Governmment in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: June 22, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82–17472 Filed 6–28–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 79P–0054]

CGR Medical Corp.; Approval of Extenson of Variance for Lateral Fluoroscopic Automatic Field Limiter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that an extension of a variance from the performance standard for diagnostic x-ray systems and their major components has been approved by the Bureau of Radiological Health for the Lateral Fluoroscopic Automatic Field Limiter manufactured by CGR Medical Corp., Baltimore, MD. The variance allows for continued operation of the fluoroscopic system by use of a bypass switch in the vent of automatic system failure. The use of the bypass may allow the primary beam to exceed the primary protective barrier.

DATE: The termination date of Variance No. 79P–0054 is extended from September 24, 1981, to September 24, 1983.

ADDRESS: The application and all correspondence on the application have been placed on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Phillips, Bureau of Radiological Health (HFX–460), Food and Drug Administration, 5600 Fishers Land, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 24, 1979 (44 FR 49792), FDA announced that a variance from the provisions of § 1020.32(a)(1) (21 CFR 1020.32(a)(1)) requiring that a primary protective barrier be in position to intercept the entire useful beam before an x-ray tube used for fluoroscopy can produce x-rays had been granted to CGR Medical Corp., 2519 Wilkens Ave., Baltimore, MD 21203. The variance was granted under § 1010.4 (21 CFR 1010.4) for the Lateral Fluoroscopic Automatic Field Limiter and was assigned Variance No. 79P–0054.

CGR Medical Corp. has submitted to FDA an application for a 2-year extension of the September 24, 1981 expiration date of Variance No. 79P–0054. The application for extension of the variance is based on the same arguments used in support of the original August 24, 1981 notice.

The Director of the Bureau of Radiological Health has determined that the arguments that led to the original granting of Variance No. 79P–0054 are still valid. Furthermore, the Director has concluded that the CGR Lateral Fluoroscopic Automatic Field Limiter still provides alternate means of radiation safety and protection equal or superior to those of products that comply with the standard. Therefore, by letter of May 20, 1982, the Director approved a 2-year extension of the variance, which terminates on September 24, 1983. This extension is being granted under the same terms and conditions as the original variance, with the additional condition that any further extension will be contingent upon CGR Medical Corp. providing evidence of an effort to eliminate the design limitation that makes this variance necessary.

As requested, this variance is being extended for 2 years, which will allow the Bureau the opportunity to reevaluate the need and basis for the variance. Such a reevaluation will consider the possible amendment of the performance standard, the then current state-of-the-art, industrial usefulness, radiation protection criteria, and other relevant factors.

In accordance with § 1010.4, the application and all related correspondence on the application (including the data and information in support of the original request and the written notice of approval) have been placed on public display in the Dockets Management Branch, Food and Drug Administration (address above), and may be seen in that office between 9 a.m. and 4 p.m., Monday though Friday.

Dated: June 18, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–17469 Filed 6–28–82 8:45 am]

BILLING CODE 4160–01–M

[Docket Nos. 80P-0137 et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by the Bureau of Radiological Health for 18 organizations that manufacture or import ultraviolet-A (UVA) sunlamp products. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table under "Supplementary Information."

ADDRESS: The applications and all correspondence on the various applications have been placed on display in the Dockets Mangement Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4), each of the 18 organizations listed in the table below has been granted a variance from one or more of the requirements of the performance standard for sunlamp products in 21 CFR 1040.20. Approval has been granted for the listed products to vary as specified from § 1040.20(c)(2)(ii), which requires that the maximum timer interval for a sunlamp product shall be 10 minutes or less; from § 1040.20(c)(3), which requires a control for termination of radiation emission from the product; or from § 1040.20(d)(1)(i), (f)(1)(ii), or (f)(2)(ii), which specify the exact wording of the warning statement to be included (1) on the sunlamp product, (2) in the instructions supplied to the user of the sunlamp product, and (3) in the instructions provided to users of an ultraviolet lamp when the lamp does not accompany the sunlamp product. All other provisions of § 1040.20 remain applicable to the sunlamp products and ultraviolet lamps manufactured or imported by the applicants.

Each variance permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wave lengths shorter than 320 nanometers. FDA's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturers does not result in severe, acute skin burns or corneal injury. Therefore, some of the requirements of the sunlamp performance standards are not appropriate for UVA products. However, even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk of chemically sensitized lenses or of cornea damage or of long/term development of lens opacities. Suitable or alternate means of radiation protection will be provided by constraints on the physical and optical design and by warnings in the user manual and on the products. In addition, procedures are prescribed for personnel who will operate the products of the company that has been granted a variance from § 1040.20(c)(3).

So that the product will bear evidence of the variance approved for the manufacturer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) the docket number and effective date of the variance as specified in the table below. By letter to each manufacturer, the Director of the Bureau of Radiological Health approved the requested variances.

APPROVED VARIANCES

Docket No.	Organization granted the variance	Sunlamp products	Paragraph in 21 CFR 1040.20 pertaining to variance	Effective date and termination date
80P-0137 (amendment).	Sun Industries, P.O. Box 2026, Jonesboro, AK 72401	SunTana Sun System Models SB-6 and SF-2.	(c)(2)(ii), (d)(1)(i), (f)(1)(ii)	July 10, 1981. Mar. 17, 1986.
80P-0400 (amendment).	Rheem Nederland B.V., c/o Sunfit U.S.A., Inc., 222 Saint Paul Place, Baltimore, MD 21202.	Sunbed Model 125 GPU, Sunroof Model 125 PPU.	(c)(2)(ii), (d)(1)(i), (f)(1)(ii), (f)(2)(ii)	Nov. 30, 1981. Dec. 4, 1985.
80P-0450	Tan Body, Inc., G-3237 W. Pasadena Ave., Flint, MI 48504	Ultraviolet-A Suntanning beds	(c)(2)(ii)	Apr. 30, 1982. Apr. 30, 1987.
81P-0129	AmLab, Inc., P.O. Box 1117, Mountainside, NJ 07092	UVALUX (No. 1015), UVALUX (No. 1016).	(c)(2)(ii), (d)(1)(i), (f)(1)(ii)	July 20, 1981. July 20, 1986.
81P-0205	Westinghouse Electric Corp., One Westinghouse Plaza, Bloomfield, NJ 07003.	UVA Sunlamp F72T12-BL-S-HO, UVA Sunlamp F72T12/BL-S/SHO-O.	(f)(2)(ii)	Aug. 26, 1981. Aug. 26, 1986.
81P-0208	CPC Systems, Inc., West St., East Hanover, NJ 07936	Songegra Sunbrella (Overhead-tanning unit), Sontegra Lounge (tanning beds or couches) and all models within the model family.	(c)(2)(ii)	Aug. 26, 1981. Aug. 26, 1986.
81P-0213	JK International, Inc., 7402 E. Camelback Rd., Suite D, Scottsdale, AZ 85251.	JK UVA sunbeds	(c)(2)(ii), (d)(1)(i), (f)(1)(ii)	Apr. 7, 1982. Apr. 7, 1987.
81P-0217 and 81P-0338.	Klafs Sunlight Corp., One Northfield Plaza, Northfield, IL 60093.	Model 101—Elite Sun Lounge, Model 102—Saturn Sunbrella, Model 103—Exquisite Sun Lounge, Model 104—Comet Sunbrella Model 105—Junior 863—Partial Body Tanning Device, Model 106—Bellarium Suitcase, Model 107—Exclusive Sun Sofa, Model 108—Comfort Sun Sofa, Model 120—Favorit Sun Lounge, Model 121—Favorit Sunbrella.	(c)(2)(ii)	Nov. 24, 1981. Nov. 24, 1986.
81P-0239	Sunmaker, Inc., c/o Dunten, Beckman, Lawson and Snyder, 2410 Ft. Wayne Bank Bldg., Fort Wayne, IN 46802.	Sunmaker Sun Tanning Beds	(c)(2)(ii)	Feb. 25, 1982. Feb. 25, 1987.
81P-0323	The Silver Group, Inc., 2 Kansas St., San Francisco, CA 94103.	Silver solarium Professional JT (tanning bed with canopy).	(c)(2)(ii), (c)(3)	Mar. 22, 1982. Mar. 22, 1987.
81P-0337	S.C.A. Corp., 2799 152nd Ave. NE., Redmond, WA 98052	Wolff System Sun Sky SHWWAS/12 Sun Lounge SLWWA/12.	(c)(2)(ii)	Nov. 16, 1981. Nov. 16, 1986.
81P-0371	Uvalux International, Inc., 21 Webster Ave., Toronto, Ontario, Canada M5R1N6.	Uvalux Sun Bed and Sunny Sky	(c)(2)(ii)	Jan. 11, 1982. Jan. 11, 1986.
81P-0378	Dr. Goebel, Inc., P.O. Box 10331, Panama City, FL 32401	Solarium Combination Suntanning bed with overhead Sky and UVA lamps used in these products.	(c)(2)(ii), (d)(1)(i), (f)(1)(ii), (f)(2)(ii)	Feb. 3, 1982 Feb. 3, 1987.
81P-0410	Sun Shanty, Inc., 5090 State St., Saginaw, MI 48603	Sun Shanty Tanning Booths (UVA Hex unit).	(c)(2)(ii)	Jan. 27, 1982. Jan. 27, 1987.

APPROVED VARIANCES—Continued

Docket No.	Organization granted the variance	Sunlamp products	Paragraph in 21 CFR 1040.20 pertaining to variance	Effective date and termination date
82P-0074	M.G. Industries, Inc., R.D. #2, Bushkill Dr., Easton, PA 18042.	UVA tanning booths	(c)(2)(ii)	Apr. 8, 1982. Apr. 8, 1987.
82P-0091	Strato-Ray Co., 6500 Walker St., Minneapolis, MI 55426	UVA suntanning equipment	(c)(2)(ii)	Apr. 9, 1982. Apr. 9, 1987.
82P-0104	Veltronic Export Ltd., Witte Paal 30, Schasen, The Netherlands.	UVA suntanning canopy and bench	(c)(2)(ii)	Apr. 9, 1982. Apr. 9, 1987.
82P-0109	Solana, Inc., 1840 Royal Oaks Dr., Duarte, CA 91010	Solana solariums	(c)(2)(ii)	Apr. 30, 1982. Apr. 30, 1987.

In accordance with § 1010.4, the applications and all correspondence (including the written notices of approval) on the various applications have been placed on public desplay under the designated docket number in the Dockets Management Branch, Food and Drug Administration (address above), and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 18, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc 82-17470 Filed 6-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice withdraws approval of the new drug applications for certain single-entity coronary vasodilator drug products for which FDA offered an opportunity for a hearing, but for which no hearing was requested. The drugs lack substantial evidence of effectiveness.

EFFECTIVE DATE: July 9, 1982.

ADDRESS: Communications in response to this notice should be identified with Docket No. 77N-0240 and the reference number DESI 1786 and directed to the attention of the office named below:

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, National Center for Durgs and Biologics (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 25, 1972 (37 FR 4001), FDA classified certain coronary vasodilators as possibly effective for the management, prophylaxis, or treatment of anginal attacks.

In a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), as amended July 11, 1973 (38 FR 18477), August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), FDA temporarily exempted certain single-entity coronary vasodilators from the time limits established for the Drug Efficacy Study Implementation (DESI) program pending completion of clinical studies to determine effectiveness and a commitment from each manufacturer to conduct bioavailability studies on its product.

In a notice published in the **Federal Register** of April 23, 1982 (47 FR 17673), FDA revoked the temporary exemption for continued marketing of those single-entity coronary vasodilators that failed to comply with the conditions for marketing. That notice affected all products containing mannitol hexanitrate or trolnitrate phosphate because no sponsor is conducting clinical studies on any of the products. It affected specific products containing other active ingredients because no bioavailability data had been submitted for those products. The notice also reclassified the drug products to lacking substantial evidence of effectiveness, proposed to withdraw approval, and offered an opportunity for hearing on the proposal.

Products for Which no Hearing was Requested

The sponsors of certain products did not request a hearing. As stated in the notice of opportunity for hearing, the failure to request a hearing constitutes an election not to make use of the opportunity for a hearing. Accordingly, this notice withdraws approval of the new drug applications listed below.

1. NDA 1-786; Maxitate Tablets containing mannitol hexanitrate; Pennwalt Prescription Products Division, P.O. Box 1710, Rochester, NY 14603.

2. NDA 3-193; Nitranitol Tablets containing mannitol hexanitrate; Merrell-Dow Pharmaceutical, Inc. (formerly Merrell-National Laboratories), 2110 East Galbraith Rd., Cincinnati, OH 45215.

3. NDA 4-730; Mannitol Hexanitrate Tablets; S. F. Durst & Co., Inc., Division of O'Neal, Jones, & Feldman, Inc., 1304 Ashby Rd., St. Louis, MO 63132.

4. NDA 8-294; Metamine Tablets containing trolnitrate phosphate; Pfizer Laboratories, Division of Charles Pfizer & Co., Inc., 235 East 42d St., New York, NY 10017.

5. NDA 8-798; Metamine Tablets containing trolnitrate phosphate; Pfizer & Co., Inc.

6. NDA 8-852; Pencard and Pencard No. 2 Tablets containing pentaerythritol tetranitrate; Cole Phamacal Co., P.O. Box 14404, St. Louis, MO 63178.

7. NDA 9-196; Nitretamine and Nitretamine-10 Tablets containing trolnitrate phosphate; Squibb Pharmaceutical Co, Division of E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540.

8. NDA 10-131; Metamine Sustained Tablets containing trolnitrate phosphate; Pfizer & Co., Inc.

9. NDA 12-317; Penta-Erythritol Tetranitrate Nyscaps containing pentaerythritol tetranitrate; USV Laboratories, Division of USV Pharmaceutical Corp., 1 Scarsdale Rd., Tuckahoe, NY 10707.

10. NDA 12-450; Tetrasul-80 Timesules containing pentaerythritol tetranitrate; Storck Pharmaceuticals, Inc., Division of Arnar-Stone Laboratories, Inc., 601 East Kensington Rd., Mount Prospect, IL 60056.

11. NDA 12-488; Pentestan-80 Stancaps containing pentaerythritol tetranitrate; Standex Laboratories, 585 West Second Ave., Columbus, OH 43215.

12. NDA 12-529; Metranil Duracap containing pentaerythritol tetranitrate; Meyer Laboratories, Inc., 1900 West Commercial Blvd., Ft. Lauderdale, FL 33309.

13. NDA 12–646; Timed Pentryate Stronger Capsules containing pentaerythritol tetranitrate; Fellows-Testagar, Subdivision of Chromalloy Pharmaceuticals, Inc., 12741 Capital Ave., Oak Park, MI 48237.

14. NDA 12–317; Perispan Timed Disintegration Capsules containing pentaerythritol tetranitrate; USV Laboratories.

15. NDA 12–519; Corodyl Forte Sustained Release Tablets containing pentaerythritol tetranitrate; Bock Pharmacal Co., 5435 Highland Park Dr., St. Louis, MO 63110.

16. NDA 12–613; Pent-T-80 Sustained Release Capsules containing pentaerythritol tetranitrate; Moricon Industries, Inc., 420 S.W. Washington St., Peoria, IL 61602.

17. NDA 13–303; Tetrate-80 Time Disintegrating Capsules containing pentaerythritol tetranitrate; Pasadena Research Laboratories, Inc., 2107 E. Villa St., Pasadena, CA 91107.

18. NDA 16–425; Pentaerythritol Tetranitrate Tablets; Philips Roxane Laboratories, Division of Philips Roxane, Inc., P.O. Box 1738, Columbus, OH 43216.

19. NDA 16–436; Vasitol Tablets containing pentaerythritol tetranitrate; Rowell Laboratories, 210 Main St. West, Baudette, MN 56623.

20. NDA 16–445; Tranite Tablets containing pentaerythritol tetranitrate; Westerfield Laboratories, Inc., Division of O'Neal, Jones, & Feldman, Inc., 3941 Brothreton Rd., Cincinnati. OH 45209.

21. NDA 16–449; Dipentrate Tablets containing pentaerythritol tetranitrate; Invenex Pharmaceuticals, Division of The Mogul Corp., 3175 Staley Rd., Grand Rapids, NY 14072.

22. NDA 16–459; Pentaerythritol Tetranitrate Tablets; Kirkman Laboratories, Inc., P.O. Box 3929, Portland OR 97208.

23. NDA 16–498; Pentaerythritol Tetranitrate Tablets; Arnar-Stone Laboratories, Inc., 601 East Kensington Rd., Mount Prospect, IL 60056.

24. NDA 16–499; Tranite D-Lay Sustained Release Capsules containing pentaerythritol tetranitrate; Westerfield Laboratories, Inc.

25. NDA 16–502; Nitrin Tablets containing pentaerythritol tetranitrate; The Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102.

26. NDA 16–537; Pentaerythritol Tetranitrate Tablets; Davis-Edwards Pharmacal Corp., Backus Ave., Danbury, CT 06810.

27. NDA 16–545; Pentaerythritol Tetranitrate Tablets; Lit Drug Co., 2530 Polk St., Union NJ 07083.

28. NDA 16–553; Pentran Tablets containing pentaerythritol tetranitrate; Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.

29. NDA 16–558; Pentaerythritol Tetranitrate Tablets; West-Ward, Inc., 465 Industrial Way West, Eatontown, NJ 07724.

30. NDA 16–561; Pentaerythritol Tetranitrate Tablets; Stanlabs, Inc., Box 3108, Portland, OR 97208.

31. NDA 16–567; Pentaerythritol Tetranitrate Tablets; Reid-Provident Laboratories, Inc., 640 Tenth St., N.W. Altanta, GA 30318 (Formerly held by Tutag Pharmaceuticals, Inc.).

32. NDA 16–593; Pentaerythritol Tetranitrate Tablets; American Pharmaceutical Co., Inc., P.O. Box 448, Passaic, NJ 07055.

33. NDA 16–661; Dilival Tablets containing pentaerythritol tetranitrate; Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.

34. NDA 16–855; Pentaerythritol Tetranitrate Tablets; Philips Roxane Laboratories.

Any drug products that are identical, related, or similar to these products and are not the subject of an approved application are covered by the applications listed above, and are subject to this notice. Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the National Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053, as amended (21 U.S.C. 355)), and under authority delegated to him (see 21 CFR 5.82 and 47 FR 26913 published in the Federal Register of June 22, 1982) finds that, on the basis of new information before him with respect to the products, evaluated together with the evidence available to him when the applications listed above were approved, there is a lack of substantial evidence that the drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. Therefore, pursuant to this finding, approval of the applications listed above and all amendments and supplements applying to them is withdrawn effective July 9, 1982. Shipment in interstate commerce of the above products or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

This withdrawal of approval does not apply to the following products named in the April 23, 1982 notice, for which a hearing was requested.

Products for Which Hearing Was Requested

1. ANDA 84–473; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg isosorbide dinitrate of the drug per tablet; Zenith Laboratories, Inc., 140 LeGrande Ave., Northvale, NJ 07647.

2. ANDA 84–474; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg isosorbide dinitrate of the drug per tablet; Zenith.

3. ANDA 86–035; Isosorbide Dinitrate Tablets containing 10 mg isosorbide dinitrate of the drug per tablet; Zenith.

4. ANDA 86–044; Isosorbide Dinitrate Tablets containing 10 mg isosorbide dinitrate Per tablet; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.

5. ANDA 86–045; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Bolar.

6. ANDA 86–048, Isosorbide Dinitrate Tablets containing 20 mg of the drug per tablet; Bolar.

7. ANDA 86–051; Isosorbide Dinitrate (sustained release) Tablets, containing 40 mg of the drug per tablet; Bolar.

8. ANDA 86–071; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Chelsea Laboratories, Inc., 428 Doughty Blvd., Inwood, NY 11696.

9. ANDA 86–072; Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Chelsea.

10. ANDA 86–073; Isosorbide Dinitrate (sublingual) Tablets, containing 2.5 mg of the drug per tablet; Chelsea.

11. ANDA 86–078; Isosorbide Dinitrate Tablets containing 10 mg of the drug per tablet; Chelsea.

12. ANDA 86–191; Isosorbide Dinitrate (sublingual) Tablets, containing 5 mg of the drug per tablet; Bolar.

13. ANDA 86–362; Isosorbide Dinitrate (sublingual) Tablets containing 2.5 mg of the drug per tablet; Bolar.

14. ANDA 86–908; Dipyridamole Tablets containing 25 mg of the drug per tablet; Lemmon Co., P.O. Box 30, Sellersville, PA 18960 (formerly held by Premo Pharmaceutical Laboratories, inc.).

15. ANDA 86–922; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Par Pharmaceutical, Inc., 12 Industrial Ave., Upper Saddle River, NJ 07458.

16. ANDA 86–923: Isosorbide Dinitrate Tablets containing 5 mg of the drug per tablet; Par.

17. ANDA 86–924; Isosorbide Dinitrate (sublingual) Tablets containing 5 mg of the drug per tablet; Par.

18. ANDA 86-925; Isosorbide Dinitrate (sublingual) Tablets containing 10 mg of the drug per tablet; Par.

19. ANDA 86-944; Dipyridamole Tablets containing 25 mg of the drug per tablet; Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.

20. ANDA 86-981; Dipyridamole Tablets containing 25 mg of the drug per tablet; Bolar.

21. ANDA 87-008; Dipyridamole Tablets containing 25 mg of the drug per tablet; Zenith.

22. ANDA 87-039; Dipyridamole Tablets containing 25 mg of the drug per tablet; Chelsea.

23. ANDA 87-094; Dipyridamole Tablets containing 25 mg of the drug per tablet; Par.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the National Center for Drugs and Biologics (see 21 CFR 5.82 and 47 FR 26913 published in the **Federal Register** of June 22, 1982).

Dated: June 23, 1982.

Harry M. Meyer, Jr.,

Director, Bureau of Drugs and Biologics.

[FR Doc. 82-17473 Filed 6-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0087]

Potassium Iodide as a Thyroid-Blocking Agent in a Radiation Emergency: Final Recommendations On Use

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of final recommendations about administering potassium iodide to the general public in a radiation emergency. The final recommendations prepared by FDA's Bureau of Radiological Health and the Bureau of Drugs are being made available to assist State and local authorities in developing emergency-response plans for preventing adverse effects from exposure to radiation in the event that radioactivity is accidentally released into the environment.

ADDRESS: The final recommendations are on display in, and comments may be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and copies may be obtained from Bernard Shleien at the address below.

FOR FURTHER INFORMATION CONTACT: Bernard Shleien, Bureau of Radiological Health (HFX-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6220 or Edwin V. Dutra, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 22, 1980 (45 FR 69904), the Federal Emergency Management Agency (FEMA) outlined the responsibilities of several Federal agencies concerning emergency-response planning guidance that the agencies should provide to State and local authorities. The October 22, 1980 notice updated an earlier notice on the subject that the General Services Administration (GSA) published in the **Federal Register** of December 24, 1975 (40 FR 59494). (GSA responsibility for emergency management was transferred to FEMA by Executive Order 12148.)

The Department of Health and Human Services' (HHS) responsibilities for emergency-response planning include assisting State and local authorities in developing plans for preventing adverse effects from exposure to radiation in the event that radioactivity is released into the environment. These plans include the prophylactic use of drugs that would reduce the radiation dose to specific organs from the sudden release into the environment of large quantities of radioactivity that might include several radioactive isotopes of iodine.

As one step toward meeting the Department's responsibilities, FDA issued a notice in the **Federal Register** of December 15, 1978 (43 FR 58798) announcing its conclusion that potassium iodide is safe and effective for use as a thyroid-blocking agent in a radiation emergency under certain specified conditions of use. The notice also announced, however, that potassium iodide has not been used to such an extent or for such a period of time under radiation emergency conditions to permit the conclusion that the drug may be marketed without an approved new drug application (NDA). Thus, in the interest of public safety, the notice encouraged interested persons to submit to the agency NDA's for potassium iodide in oral dosage forms for use as a thyroid-blocking agent. In the issue for February 22, 1980 (45 FR 11912), FDA announced that potassium iodide as a thyroid-blocking agent is available commercially in both tablet and solution form. (Since that time, FDA has approved an additional NDA for potassium iodide in solution form for use as a thyroid-blocking agent.)

In the **Federal Register** of June 5, 1981 (46 FR 30199), FDA issued a notice announcing the availability of draft recommendations about administering potassium iodide to the general public in a radiation emergency. The draft recommedations were made available for public comment to provide FDA with views to be considered as it developed its final recommendations on this use of potassium iodide. The comment period closed on October 5, 1981 (see the **Federal Register** of September 18, 1981; 46 FR 46402).

FDA received comments from individual citizens, professional and consumer advocate groups, State and local health agencies, and other Federal agencies. The issues they raised are discussed in the "Background" section of the final recommendations.

One purpose of FDA's final recommendations is to facilitate a national consensus on the use of potassium iodide during a radiation emergency. Another is to provide information and guidance to Sate and local public health agencies and other persons responsible for formulating emergency-response plans for radiation accidents.

Uncertainties still exist about the dose-response for radioiodine-induced thyroid cancers and the incidence and severity of side effects from potassium iodide. These uncertainties, which are discussed in the final recommendations, are unlikely to be resolved soon.

Based on its consideration of comments received and its analysis of available information, FDA concludes in the final recommendations that risks from the short-term use of relatively low doses of potassium iodide for thyroid blocking in a radiation emergency are outweighed by the risks of radioiodine-induced thyroid nodules or cancer at a projected dose to the thyroid gland of 25 rem. FDA recommends that potassium iodide in doses of 130 milligrams (mg) per day for adults and children above 1 year and 65 mg per day for children below 1 year of age be considered for thyroid blocking in radiation emergencies in those persons who are likely to receive a projected radiation dose of 25 rem or greater to the thyroid gland from radioiodines released into the environment. To have the greatest effect in decreasing the accumulation of radioiodine in the thyroid gland, these doses of potassium iodide should be administered immediately before or after exposure. If a person is exposed to radioiodine when circumstances do not permit the immediate administration of potassium iodide, the initial administration will still have substantial benefit even if it is taken 3 or 4 hours after acute exposure.

Taken together, the comments received during the public comment period and the actions of national and foreign radiation protection groups make these recommendations prudent because, although slightly above the range presented in draft recommendations (10 to 20 rem), a 25-rem projected dose to the thyroid is equal numerically to the Environmental Protection Agency's (EPA) upper Protective Action Guidance level for the general public and the United Kingdom's National Radiation Protection Board's upper level proposed for potassium iodide use. (EPA Protective Action Guides call for sheltering, evacuation, and controlled access as protective actions when the total accumulated thyroid doses are projected at 5 to 25 rem for the general population. The EPA guides do not specifically note the use of potassium iodide as a protective action for the general population.) These agencies would expect some protective action to be taken at 25 rem projected dose to the thyroid. Use of a single recommended value also eliminates questioned by State and local public health agencies about whether to use the upper or the lower part of a range of values.

FDA further recommends that officials responsible for radiation emergency response planning include in the emergency response planning a system of public information on the use of potassium iodide and a system of medical contact, reporting, and assistance.

Each State is responsible for formulating guidance on when, if at all, the public should be supplied with potassium iodide along with instructions on how to use it. In preparing guidance and making rules, State and local agencies should inform citizens of the nature of the radiation hazard and of the potential benefits and adverse effects of potassium iodide.

These final recommendations on potassium iodide use must be seen in the context of radiation emergency planning as a whole. The use of potassium iodide in the radiation emergency is not a panacea. It does not reduce the uptake by the body of other radioactive materials or provide protection against external radiation. The cost and effectiveness of other protective measures such as seeking shelter, evacuation, or respiratory protection also need to be considered.

Although FDA received written comments on the draft recommendations and considered them in formulation of these final recommendations, under 21 CFR 10.90 interested persons may submit further written comments on these final recommendations to the Dockets Management Branch (address above).

Dated: June 22, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-17468 Filed 6-28-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0181]

Union Carbide Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announing that Union Carbide Corp. has filed a petition proposing that the food additive regulations be amended to provide for specification changes in polysulfone resins as articles or components of articles intended for repeated use in contact with food.

FOR FURTHER INFORMATION CONTACT: Julia L. Ho, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3629) has been filed by Union Carbide Corp., River Road, Bound Brook, NJ 08805, proposing that Part 177 (21 CFR Part 177) of the food additive regulations be amended to provide for a change in the molecular weight specifications and testing requirements for polysulfone resins as articles or components of articles intended for repeated use in contact with food.

The agency has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 18, 1982

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-17471 Filed 6-28-82; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Cancer Center Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, July 15-16, 1982, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on July 15 from 8:30 a.m. to 10:00 a.m. to review administrative details, and to present reports by the Division Director and the Branch Chief. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 15, from 10:00 a.m. to adjournment, and on July 16, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentale material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Robert L. Manning, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 803, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7721) will furnish substantive program information.

Dated: June 17, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

(Catalog of Federal Domestic Assistance Number 13.397, project grants in cancer center support, National Institutes of Health)

(NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular)

[FR Doc. 82-17464 Filed 6-28-82; 8:45 am]

BILLING CODE 4140-01-M

Cancer Regional Studies Review Committee; Establishment and Renewal

The Director, National Institutes of Health, announces the establishment on June 2, 1982, of the Cancer Regional Strudies Review Committee by the Director, National Cancer Institute, under the authority of section 404(b)(3) of the Public Health Service Act (42 U.S.C. 285(b)(3)). Such advisory committee shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) setting forth standards governing the establishment and use of advisory committees.

This committee shall advise the Director, National Cancer Institute, and the Director, Division of Extramural Activities, concerning the scientific merit review of research cooperative agreement applications for the support of cooperative clinical trial groups of the following two types: 1) those groups organized to carry out clinical trials in a specific geographic region; and 2) those organized to pursue clinical trials related to a specific tumor type or anatomic site.

Authority for this committee shall terminate on June 2, 1984, unless renewed by appropriate action as authorized by law.

The Director, National Institutes of Health, announces the renewal by the Director, National Cancer Institute, of the Board of Scientific Counselors, Division of Resources, Centers, and Community Activities. Authority for this committee shall terminate on September 15, 1983, unless renewed by appropriate action as authorized by law.

Dated: June 14, 1982.

James B. Wyngaarden, M.D.,

Director, National Institutes of Health.

[FR Doc. 82-17462 Filed 6-28-82; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Advisory Board Subcommittee on Activities and Agenda; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Activities and Agenda, National Cancer Institute, August 17, 1982, Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. to adjournment, to review administrative details and plan the agenda and activities for the National Cancer Advisory Board and its meeting for October 1982. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, Subcommittee on Activities and Agenda, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, Room 10A03, Bethesda, Maryland 20205, (301) 496–5147, will furnish substantive program information.

Dated: June 23, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-17466 Filed 6-28-82; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, September 13, 1982. The meeting will be held in Conference Room B119 of the Federal Building, 7550 Wisconsin Avenue, Bethesda, Maryland 20205.

This meeting will be open to the public on September 13, from 8:30 a.m. to adjournment to discuss new initiatives and program policies and issues. Attendance by the public is limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496–4236, will provide summaries of meetings and rosters of committee members. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20205, phone (301) 496–2533, will furnish substantive program information.

Dated: June 23, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

(NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular)

[FR Doc. 82-17465 Filed 6-28-82; 8:45 am]

BILLING CODE 4140-01-M

Renewal of NIH Public Advisory Committees

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776, October 6, 1972), the National Institutes of Health announces the renewal by the Secretary, HHS, with the concurrence of the Committee Management Secretariat, General Services Administration, of the following committees:

Aging Review Committee
Animal Resources Review Committee
Biotechnology Resources Review Committee
Board of Scientific Counselors, National Institute on Aging
Board of Scientific Counselors, National Institute of Dental Research
Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke
Cellular and Molecular Basis of Disease Review Committee
Communicative Disorders Review Committee
Epilepsy Advisory Committee
General Clinical Research Centers Committee
General Research Support Review Committee
Genetic Basis of Disease Review Committee
Minority Access to Research Careers (MARC) Review Committee
National Advisory Council on Aging
National Advisory Dental Research Council
National Advisory General Medical Sciences Council
National Advisory Neurological and Communicative Disorders and Stroke Council
National Advisory Research Resources Council
National Institute of Dental Research Programs Advisory Committee
Neurological Disorders Program-Project Review A Committee
Neurological Disorders Program-Project Review B Committee
NIDR Special Grants Review Committee
Pharmacological Sciences Review Committee
Scientific Programs Advisory Committee, National Institute of Neurological and Communicative Disorders and Stroke

Authority for the above committees will expire on May 31, 1984, with the exception of the Biotechnology Resources Review Committee, which

will terminate on May 31, 1983, unless the Secretary formally determines that continuance is in the public interest.

Dated: June 22, 1982.

James B. Wyngaarden, M.D.,

Director, National Institutes of Health.

[FR Doc. 82-17463 Filed 6-28-82; 8:45 am]

BILLING CODE 4140-01-M

International Workshop on Acquired Immunodeficiency and Kaposi's Sarcoma

An international workshop sponsored by the Department of Health and Human Services' Committee to Coordinate Environmental and Related Programs; the Environmental Sciences Laboratory, Department of Community Medicine (Irving J. Selikoff, M.D., Director), and the Division of Clinical Immunology, Department of Medicine, The Mount Sinai School of Medicine; and the Institute of Environmental Medicine (Arthur Upton, M.D., Director), New York University School of Medicine, will be held on Tuesday, July 13, 1982, from 8:00 A.M. to 5:30 P.M. (Registration at 7:30 A.M.) in the Stern Auditorium, Mount Sinai Medical Center, 100th Street and Fifth Avenue, New York, New York. Attendance by the public will be limited to space available. There is a $20 fee to cover lunch and refreshments.

The program for this open meeting will include detailed reviews of information concerning Acquired Immunodeficiency Disease including clinical syndromes recently evident in New York City, San Francisco, Los Angeles and other cities in the United States, and in other countries. Leading investigators in the field will review current studies. Extensive open discussions are scheduled, including consideration of candidate hypotheses concerning etiology and mechanisms.

Individuals wishing to attend, please send your name, address, telephone number and affiliation to: Director, The Page and William Black Post-Graduate School of Medicine, Mount Sinai School of Medicine (CUNY), New York, New York 10029. Please enclose your check or money order in the amount of $20 payable to the Page and William Black Post-Graduate School of Medicine.

If you have any other questions, please address them to: Ms. Cecelia Aleman, National Institute of Environmental Health Sciences, P.O. 12233, Research Triangle Park, N.C. 27709. Telephone: (919) 541-3506/FTS 629-3506.

Dated: June 21, 1982.

David P. Rall,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 82-17461 Filed 6-28-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. NI-98]

Intended Environmental Impact Statement; Southridge Village Planned Residential Community, City of Fontana, Calif.

The U.S. Department of Housing and Urban Development (HUD) gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix to this Notice: City of Fontana, California. This Notice is required by the Council on Environmental Quality under its rules (40 CFR Parts 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interest and indicate their readiness to aid the EIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of the Notice in the **Federal Register** a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C., June 22, 1982.

Francis G. Haas,

Deputy Director, Office of Environment and Energy.

Appendix

The U.S. Department of Housing and Urban Development (HUD) Los Angeles Area Office gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for a planned residential community in the City of Fontana, California and solicits information and comments for consideration in the EIS.

Description: The proposed land development project is identified as Southridge Village and is seeking loan assistance from the Department under its Title X program.

The Southridge Village planned residential community is proposed for approximately 8,600 mixed dwelling-unit types on an area of approximately 2,560 acres. The project will include supporting commercial uses, school sites, recreation facilities, open space and services uses. The location is at the foot of the Jurupa Mountains in the southwest corner of San Bernardino County. The project is bounded by Jurupa Avenue on the north, Sierra and Mulberry Avenues on the west, Citrus Avenue on the east and the San Bernardino County Line on the south.

Need: An EIS is proposed due to HUD threshold requirement in accordance with housing program environmental regulations and probable impact on: Topography, water quality, air quality, noise, vegetation, public sewers, utilities, and traffic volumes.

Alternatives: At this time, the HUD alternatives are: accept the proposed development as submitted, accept the proposed development with modifications, or reject the proposed development.

Scoping Meeting: A "scoping" meeting to review potential significant environmental impacts is proposed. The date, time and location of the scoping meeting will be announced at a later time through publishing of a notice in the local newspaper of general circulation and by a direct mailing to a list of Federal, State and local agencies and groups.

Comments: Comments and questions regarding this proposal should be sent within 30-days of the date of this announcement to: John J. Tuite, Area Manager HUD Los Angeles Area Office, 2500 Wilshire Boulevard, Los Angeles, California 90057. Attention: Ceferino Ahuero, Environmental Clearance Officer. The Area Office phone number is (213) 688-5899 or (213) 688-3836.

[FR Doc. 82-17499 Filed 6-28-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-17362]

Public Lands Exchange; Mohave County Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action—exchange, public lands in Mohave County, Arizona.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 27 N., R. 20 W.,
Sec. 16, all;
Sec. 20, N½,NW¼SW¼,S½SW¼,SE¼;
Sec. 28, all.
Comprising 1,880 acres, more or less.

In exchange for these lands, the Federal government will acquire non-Federal land from Dale D. Smith described as follows:

Gila and Salt River Meridian, Arizona

T. 28 N., R. 16 W.,
Sec. 1, lots 1 through 4, S½N½,S½;
Sec. 11, E½, NW¼,NE¼SW¼,S½SW¼;
Sec. 15, all;
Sec. 19 lots 1 through 4, E½,E½W½;
Sec. 21, all.
Comprising 3,157.48 acres, more or less.

The exchange proposal involves only surface estates with the exception of the public land in the N½NW¼,SW¼NW¼, NW¼SW¼, Section 20, T. 27 N., R. 20 W., where it is proposed to exchange the mineral estate, excluding oil and gas.

The purpose of the exchange is to acquire the non-Federal lands which contain crucial mule deer habitat and exhibit outstanding recreation potential within the Grand Wash Cliffs of the Music Mountains. The exchange is consistent with the Bureau's planning system. The public interest will be well served by making the exchange.

The value of the lands and interests to be exchange is approximately equal. Upon the completion of a final appraisal, acreages may be adjusted or a cash payment made, where the value of the public estates exceed that of the private, to equalize the value difference. Where a money payment is required to equalize values, the payment shall not exceed 25 percent of the value of the public interests being conveyed.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. A reservation of all oil and gas in the N½NW¼,SW¼NW¼,NW¼SW¼, Section 20, T. 27 N., R. 20 W., G&SRM, to the United States with the right to prospect for, mine and remove such deposits.

3. A road easement 100 feet in width for the White Hills Road constructed under the authority of R.S. 2477 as recorded in Mohave County, Book 274, Page 50, of Official Records.

4. Subject to those rights for a powerline as have been granted to Citizens Utilities, its successors and assigns, by right-of-way AR–035294–A under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

5. Subject to those rights for a roadway as have been granted to Mohave County Board of Supervisors, its successors or assigns, by right-of-way A–10109 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company.

The publication of this notice in the **Federal Register** will segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As set forth in 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or 2 years from date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the enviromental analysis and the record of public discussions, is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

On or before August 13, 1982 interested parties may submit comments to the District Manager, Phoenix District Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017. Any adverse comments may be evaluated by the Arizona State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 16, 1982.

W. K. Barker,

District Manager.

[FR Doc. 82–17527 Filed 6–28–82; 8:45 am]

BILLING CODE 4310–84–M

[CA 12901]

California; Humboldt County, Notice of Realty Action

The following described public land has been determined to be suitable for disposal under the provisions of Pub. L. 91–476, an Act to provide for the establishment of the King Range National conservation area (84 Stat. 1067), and sec. 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humboldt Meridian

T. 2 S., R. 5 E.,
Sec. 3, lot 1;
Sec. 22, N½NE¼.
Containing 121.84 acres.

George Tooby, et al., 2500 East Foothill Blvd., Suite 508, Pasadena, California 91107, have applied to acquire the above described lands in exchange for the following described privately owned lands.

Humboldt Meridian

T. 4 S., R. 1 W.,
Sec. 13, SW¼NW¼;
Sec. 14, lots 3, 4, 5, and NW¼NE¼.
Containing 156.49 acres.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public lands will be conveyed with the surface. The mineral estate of the privately owned lands will be conveyed with the surface.

The publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consummated before the end of that period.

The value of the lands to be exchanged is approximately equal and money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The purpose of the exchange is to acquire non-Federal land within the King Range National Conservation Area, is in conformance with bureau planning, and in the public interest.

Detailed information concerning the exchange, including the environmental analysis and the record of non-Federal participation, is available for review at the Eureka Area Office, BLM, 1585 J Street, P.O. Box II, Arcata, California 95521.

For a period of 45 days from the first publication of this notice interested parties may submit comments to the California State Director, Bureau of Land Management, E–2841 Federal

Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification, this realty action will become the final determination of the Bureau.

Harold R. Dietz,

Acting Chief, Lands Section Branch of Lands and Minerals Operations.

June 21, 1982.

[FR Doc. 82-17510 Filed 6-28-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30499, Survey Group 78]

Michigan; Notice of Filing of Plat of Survey

1. On November 19, 1981, the plat representing the survey of one island in the North Channel, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 27, 1982.

The tract shown below describes the island tract omitted from the original survey.

Michigan Meridian, Michigan

T. 43 N., R. 7 E.,
Tract No. 37.

2. The island described as Tract No. 37 is separate and distinct yet similar in all respects to that of the adjacent surveyed lands. It rises approximately 3 feet above the ordinary high water mark of Reynolds Bay and has a soil composition of humus over glacial-till. Tree species consist of cedar, spruce, balsam fir and birch. Borings showed trees up to 70 years old.

3. The tract described above was found to be over 50 percent upland in character within the purview of the Swampland Act of September 28, 1850 (9 Stat. 519). It is therefore held to be public land.

4. Except for valid existing rights, the island will not be subject to application petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to this island should be sent to the Chief, Division of Lands and Mineral Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before September 27, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-17509 Filed 6-28-82; 8:45 am]

BILLING CODE 4310-84-M

Nevada; Notice of Filing of Plats of Survey and Order Providing for Opening of Lands

June 21, 1982.

1. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on August 23, 1982.

Mount Diablo Meridian, Nevada

T. 29 N., R. 23 E.

2. The land within the above township is situated about 20 miles south of Gerlach, Nevada. Elevation varies from 4,400 to 6,200 feet above sea level. Terrain varies from steep slide areas in the mountains descending gradually to a level dry lake bed in the desert. Soil varies from sandy alkaline at the lower elevations to rocky sandy loam in the mountainous areas. Vegetation consists of sparse sagebrush and native grasses.

Nevada Highway No. 34 crosses the southeast corner of the township. A graded improved road crosses north and south through the center and numerous unimproved roads, mostly made by miners, are throughout the township.

There are patented placer claims in sections 4, 5, 8, 9, 16, 17, 20 and 21. Numerous mining claims are being surveyed throughout the township in the mountainous area and the low foothills as the areas are highly mineralized.

Principal users are miners and cattlemen. No timber is located within the township.

3.

Mount Diablo Meridian, Nevada

T. 30 N., R. 23 E.

This township is situated about 10 miles south of Gerlach, Nevada. Elevation varies from 4,000 to 5,700 feet above sea level. Terrain varies from steep slide areas in the mountainous areas descending gradually to the level dry lake bed of the San Emidio Desert. Soil varies from sandy alkaline at the lower elevations to rocky sandy clay in the mountainous areas. Vegetation varies from sparse sagebrush and grass in the mountainous to grease wood and rabbitbrush on the lake bed.

Nevada Highway No. 34 parallels the east boundary and graded improved roads cross the township from the east to the northwest and southwest. Numerous trail roads provide access throughout the area.

Many mining claims are located throughout the township, as the area is highly mineralized.

Principal users are miners and cattlemen. No timber is located within the township.

4. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law, the lands are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m. on August 23, 1982 shall be considered as simultaneoulsy filed at the time. Those received thereafter shall be considered in order of filing.

Inquiries concerning these lands shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Chief, Division of Operations.

[FR Doc 82-17519 Filed 6-28-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Overnight Camping Prohibited Along Segment of the Nestucca River

June 21, 1982.

Notice is hereby given that overnight camping on the following described land is prohibited in accordance with 43 CFR 8363.3 (Supplemental rules dealing with occupancy and use of lands):

Willamette Meridian, Oregon

T. 3 S., R. 7 W.,
Sec. 28, S½NW¼SE¼ and N½SW¼SE¼.

The above-described land contains 40 acres in Tillamook County and lies on a relatively flat bench adjacent to a segment of the upper Nestucca River in an area commonly known as the Hoag Pass Bridge site. Since construction of the Hoag Pass Access Road in 1965, the public has used this area extensively for a variety of outdoor recreation activities. Potable water is not available and the nearest sanitation facilities are located at the Bureau of Land Management's Alder Glen (2 miles west) and Elk Bend (1 mile east) Recreation Sites.

The concentration of earthen-pit privies and open-trench latrines developed by visitors to accommodate their occupancy and use of the area, particularly for overnight camping, has reached unmanageable proportions. The continued development and use of these inadequate sanitary facilities by the public could adversely affect both ground and surface water quality as well as pose a threat to visitor health and safety.

A copy of this notice, along with a standard "overnight camping prohibited" sign, will be conspicuously posted at the area. A map showing the land described above is available at the Bureau of Land Management, Salem

District Office, P.O. Box 3227 (1717 Fabry Road S.E.), Salem, Oregon 97302.

This prohibition does not apply to recreation uses other than overnight camping and is effective immediately and shall remain in effect unless revised, revoked or amended.

Dated: June 21, 1982.

Joseph C. Dose,

District Manager.

[FR Doc. 82-17523 Filed 6-28-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continential Shelf; Gulf Oil

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 0981, Block 237, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: June 18, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-17520 Filed 6-28-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 18, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 14, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

ALABAMA

Madison County,

Huntsville, *Kildare-McCormick House,* 2005 Kildare St.

ARIZONA

Maricopa County,

Phoenix, *Phoenix Union High School Historic District,* 512 E. Van Buren

CALIFORNIA

Alemeda County,

Berkeley, *Masonic Temple,* 2105 Bancroft Way and 2295 Shattuck Ave. Oakland, *Security Bank and Trust Company Building (Key System Building), 1000 Broadway*

Los Angeles County,

Claremont, *Atchison, Topeka, and Santa Fe Railroad Station,* 110 W. 1st St.

COLORADO

Denver County,

Denver, *Building at 1389 Stuart Street (West Colfax TR),*
Denver, *Building at 1390 Stuart Street (West Colfax TR),*
Denver, *Building at 1435 Stuart Street (West Colfax TR),*
Denver, *Building at 1444 Stuart Street (West Colfax TR),*
Denver, *Building at 1471 Stuart Street (West Colfax TR),*

La Plata County,

Bayfield vicinity, *Zabel Canyon Indiana Ruins,* SJNF Rds. 537 and 123

CONNECTICUT

Litchfield County,

Norfolk, *Bigelow House (Taylor, Alfredo, S. G., TR),* Laurel Way
Norfolk, *Braman Camp (Taylor, Alfredo, S. G., TR),* Doolittle Lake
Norfolk, *Carr House (Taylor, Alfredo, S. G., TR),* Beacon Lane
Norfolk, *Childs House Wing (Taylor, Alfredo, S. G., TR),* Windrow Rd.
Norfolk, *Converse Camp (Taylor, Alfredo, S. G., TR),* Doolittle Lake
Norfolk, *Eldridge Barn (Taylor, Alfredo, S. G., TR),* Stoeckel Estate
Norfolk, *Eldridge House (Taylor, Alfredo, S. G., TR),* Stoeckel Estate
Norfolk, *Farnam House (Taylor, Alfredo, S. G., TR),* Litchfield Rd.
Norfolk, *Gould House (Taylor, Alfredo, S. G., TR),* Golf Dr.
Norfolk, *Haddock House (Taylor, Alfredo, S. G., TR),* Litchfield Rd.
Norfolk, *Hillside (Taylor, Alfredo, S. G., TR),* Litchfield Rd.
Norfolk, *Holbrook Camp (Taylor, Alfredo, S. G., TR),* Doolittle Lake
Norfolk, *Hubbell and Hegeman Garage (Taylor, Alfredo, S. G., TR),* Litchfield Rd.
Norfolk, *Knox Camp (Taylor, Alfredo, S. G., TR),* Doolittle Lake
Norfolk, *Low House (Taylor, Alfredo, S. G., TR),* Highfield Rd.
Norfolk, *Ludlow Cottage (Taylor, Alfredo, S. G., TR),* Shepard Park Rd.
Norfolk, *Mead Camp (Taylor, Alfredo, S. G., TR),* Doolittle Lake
Norfolk, *Moseley House/Farm (Taylor, Alfredo, S. G., TR),* Greenwoods Rd.
Norfolk, *Moss Hill (Taylor, Alfredo, S. G., TR),* Litchfield Rd.
Norfolk, *Mulville House (Taylor, Alfredo, S. G., TR),* Mountain Rd.
Norfolk, *Noble House (Taylor, Afredo, S. G., TR),* Highfield Rd.
Norfolk, *Norfolk Country Club House (Taylor, Alfredo, S. G., TR),* Golf Dr.
Norfolk, *Norfolk Downs Shelter (Taylor, Alfredo, S. G., TR),* Gold Rd.
Norfolk, *Prentice House (Taylor, Alfredo, S. G., TR),* Route 183, N of Center.
Norfolk, *Rectory and Church of the Immaculate Conception (Taylor, Alfredo, S. G., TR),* North St.
Norfolk, *Rockwell House (Taylor, Alfredo, S. G., TR),* Laurel Way, W.
Norfolk, *Royal Arcanum Building (Taylor, Alfredo, S. G., TR),* Station Pl.
Norfolk, *Rubly Carriage House (Taylor, Alfredo, S. G., TR),* Litchfield Rd.
Norfolk, *Shepard Building (Taylor, Alfredo, S. G., TR),* Station Pl.
Norfolk, *Shepard, John, House (Taylor, Alfredo, S. G., TR),* Shapard Park Rd.
Norfolk, *Sports Building (Taylor, Alfredo, S. G., TR),* Windrow Rd.
Norfolk, *Starling Childs Camp (Taylor, Alfredo, S. G., TR),* Doolittle Lake.
Norfolk, *Stoeckel, Robbins, House (Taylor, Alfredo, S. G., TR),* Litchfield Rd.
Norfolk, *Tamarac Lodge (Taylor, Alfredo, S. G., TR),* Dennis Hill State Park.
Norfolk, *The Misses Eldridge Garage (Taylor, Alfredo, S. G., TR),* Stoeckel Estate.
Norfolk, *Thumb, Tom, House (Taylor, Alfredo, S. G., TR),* Windrow Rd.
Norfolk, *White House Stables (Taylor, Alfredo, S. G., TR),* Stoeckel Estate.
Norfolk, *World War I Memorial (Taylor, Alfredo, S. G., TR),* Greenwoods Rd. West and North Sts.

FLORIDA

Brevard County,

Melbourne, *Florida Power and Light Company Ice Plant,* 1604 S. Harbor City Blvd.

GEORGIA

Banks County,

Homer, *Banks County Jail,* Silver Sholas Rd.

Colquitt County,

Moultrie vicinity, *Tucker, Henry Crawford, Log House and Farmstead,* Off GA 37
Moultrie, *Ashburn, W. W., House,* 609 1st Ave.
Moultrie, *Carnegie Library of Moultrie,* 39 N. Main St.

Dougherty County,

Albany, *Carnegie Library of Albany,* 215 N. Jackson St.

Fannin County,

Blue Ridge, *Blue Ridge Depot,* Depot St.

Fulton County,

Atlanta, *Tyree Building,* 679 Durant Pl., NE

Lumpkin County,

Dahlonega, *Seven Oaks (Col. William P. Price House),* 403 S. Park St.

Walton County,

Monroe, *Walton Hotel,* Broad and Court Sts.

Whitfield County,

Dalton, *Martin, William C., House,* 101 S. Selvidge St.

IDAHO

Bonner County,

Sandpoint, *Tanner, Dan, House,* 602 N. 4th Ave.

Boundary County,

Eastport vicinity, *Snyder Guard Station Historical District,* S of Eastport on Forest Service Rd. 211.

Valley County,

Donnelly vicinity, *Korvola, John, Homestead (Long Valley Finnish Structures TR),* Roseberry Rd. and Farm to Market Rd.
Donnelly vicinity, *Maki, Jacob, Homestead (Long Valley Finnish Structures TR),* Off ID 55.
Lakefork vicinity, *Jarvi, Thomas, Homestead (Long Valley Finnish Structures TR),* N of Finn Rd.
Lakefork vicinity, *Johnson, John G., (Rintakangas) Homestead (Long Valley Finnish Structures TR),* S off Farm to Market Rd.
Lakefork vicinity, *Johnson, John S. (Sampila) Homestead (Long Valley Finnish Structures TR),* NE of Lakefork off Pearson Rd.
Lakefork vicinity, *Laituri, Gust, Homestead (Long Valley Finnish Structures TR),* NE of Lakefork off Pearson Rd.
Lakefork vicinity, *Ojala, Herman, Homestead (Long Valley Finnish Structures TR),* NE of Lakefork off Pearson Rd.
Lakefork vicinity, *Ruatsale, Matt, Homestead (Long Valley Finnish Structures TR),* N of Kantola Lane.
McCall vicinity, *Elo School (Long Valley Finnish Structures TR),* SE of ID 55 on Farm to Market Rd.
McCall vicinity, *Hill, Matt N., Homestead Barn (Long Valley Finnish Structures TR),* SE of McCall on Farm to Market Rd.
McCall vicinity, *Koski, Charles, Homestead (Long Valley Finnish Structures TR),* SE of McCall.
McCall vicinity, *Wargelin, Nickolai, Homestead (Long Valley Finnish Structures TR),* SE of McCall.

INDIANA

Delaware County,

Muncie, *Johnson, J. C., House,* 322 E. Washington.
Muncie, *Roberts Hotel,* 420 S. High St.

Dubois County,

Ireland vicinity, *Shiloh Meeting House and Cemetery,* SE of Ireland on 150 North Rd.

Johnson County,

Franklin, *Herriott House,* 696 N. Main St.

Lake County,

Hobart, *Hobart Carnegie Library,* 706 E. 4th St.

Marion County,

Indianapolis, *Graham, William H. H., House,* 5432 University Ave.

Tippecanoe County,

Lafayette, *Falley Home,* 601 New York St.

Wabash County,

Wabash, *Honeywell Memorial Community Center,* 275 W. Market St.

KENTUCKY

Gallatin County,

Warsaw, *Warsaw Historic District,* Roughly bounded by W. High, E. High, Franklin, Washington,
Market, Main, 3rd, 4th and Cross Sts.

LOUISIANA

Morehouse Parish,

Bastrop, *Christ Episcopal Church,* 206 S. Locust

Ouachita Parish

Monroe, *Masur House,* 901 3rd St.

MAINE

Oxford County,

Stow, *Brickett Place,* US 113

MARYLAND

Talbot County

St. Michaels, *Saint Michaels Mill,* 100 Chew Ave.

MICHIGAN

Wayne County

Detroit, *Washington Boulevard Historic District,* Washington Blvd., State and Clifford Sts.

MISSISSIPPI

DeSoto County,

Olive Branch Vicinity, *Miller Plantation House,* Miller Rd.

MISSOURI

Cooper County,

Boonville, Booneville Road Bridge (Boonville Missouri MRA), N. Main St.
Boonville, Historic District A (Boonville Missouri MRA), Vine and 2nd Sts.
Boonville, Historic District B (Boonville Missouri MRA), 4th and E. Spring Sts.
Boonville, Historic District C (Boonville Missouri MRA), E. High and 4th Sts.
Boonville, Historic District D (Boonville Missouri MRA), High and Main Sts.
Boonville, Historic District E (Boonville Missouri MRA), High, Spring and Morgan Sts.
Boonville, Historic District F (Boonville Missouri MRA), Extends North and South along 6th and 7th Sts.
Boonville, Historic District G (Boonville Missouri MRA), NE corner of Lot 5, Block 13
Boonville, Historic District H (Boonville Missouri MRA), SE corner of E. Morgan St. and Reformatory Dr.

NEBRASKA

Colfax County,

Schuyler, *Janecek, John, House, 805 E. 8th St.*

Dodge County,

Fremont, *Schneider, R. B., House,* 234 W. 10th St.

Hall County,

Grand Island, *Cathedral of the Nativity of the Blessed Virgin Mary,* 204 S. Cedar St.

Lancaster County,

Lincoln, *Wyuka Cemetery,* 3600 O St.

Nemaha County,

Auburn, *First United Presbyterian Church of Auburn,* 1322 19th St.

Seward County,

Seward, *Seward County Courthouse Square Historic District,* Roughly bounded by Jackson, 7th, and South Sts.

NEW MEXICO

Dona Ana County,

La Mesilla, *Building 148 (La Mesilla Historic District MRA),* NM 28.
La Mesilla, *Building 149 (La Mesilla Historic District MRA),* NM 28.
La Mesilla, *Building 150 (La Mesilla Historic District MRA),* NM 28.
La Mesilla, *La Mesilla Historic District,* Roughly bounded by Calle del Norte, Calle de El Paso, Calle del Cura and Calleion Guerro.

NEW YORK

New York County,

New York, *Appellate Divison Courthouse of New York State,* 27 Madison Ave.
New York, *Century Association Building,* 5—7 W. 43rd St.
New York, *Douglas, Adelaide L. T., House,* 57 Park Ave.
New York, *Loew, William Goadby, House,* 56 E. 93rd St.
New York, *New York Public Library,* 222 E. 79th St.

NORTH CAROLINA

Buncombe County,

Asheville, *Veterans Administration Hospital Historic District,* Off U.S. 70

Cleveland County,

Shelby, *Masonic Temple Building,* 203 S. Washington St.

Edgecombe County,

Pinetops vicinity, *Vinedale,* SW of NC 42/43 and SR 1122.

Forsyth County,

Winston-Salemn, *Rogers, James Mitchell, House,* 102 S. Cherry St.

Halifax County,

Brinkleyville vicinity, *Gray-Brownlow-Wilcox House,* NC 58, S of Brinkleyville.

Jackson County,

Balsam, *Balsam Mountain Inn,* SR 1700 and SR 1701.
Cashiers, *High Hampton Inn Historic Disctrict,* NC 107 and US 64.

Nash County,

Rocky Mount, *Rocky Mount Electric Power Plant,* 217 Andrews St.

Rockingham County,

Madison, *Academy Street Historic District,* Academy St.

Scotland County,

Laural Hill Church vicinity, *McMillan, Gilbert, House and Cemetery,* NE of SR 1325 and SR 1323.
Laurinburg, *Gill, Thomas J., House,* 203 Cronly St.

Stokes County,

Collinstown vicinity, *Jessup's Mill,* SR 4132.
Germantown, *St. Philip's Episcopal Church,* NC 65 and 8 and SR 1957.

OHIO

Athens County,

Athens vicinity, *White's-Vale Mill,* OH 682.

Butler County,

Hamilton, *Saint Stephen Church and Rectory,* 224 Dayton St.

Champaign County,

Urbana, *Mosgrove, Dr. Adam, House,* 127 Miami St.

Delaware County,

Ashley vicinity, *Sharp, Samuel, House (Sharp's Run),* 7436 Horseshoe Rd.

Hamilton County,

Cincinnati, *Underiters Salvage Corps,* 110–112 E. 8th St.

Hocking County,

Logan vicinity, *Woodruff, William H., House,* 35330 Linton Rd.

Stark County,

Canton, *Barber-Whitticar House,* 519 Cleveland Ave. SW.
Canton, *Canton Public Library,* 236 3rd St. SW.
Canton, *Dewalt Building,* 122 Market Ave. N.
Canton, *Eagles' Temple,* 601 S. Market St.
Canton, *Onesto Hotel,* 2nd and Cleveland, NW.
Canton, *Schuffenecker, August, Building,* 134 6th St. SW.
Canton, *City National Bank Building,* 205 Market Ave. S.

Trumbull County,

Champion vicinity, *Woodrow, William, House,* 138 Champion St. E.

Tuscarawas County,

Bolivar vicinity, *Lebold, John, House, Smokehouse, and Springhouse,* Route 1
Dover vicinity, *Reeves, Jeremiah, House and Carriage House,* 325 E. Iron Ave.

SOUTH CAROLINA

Lexington County,

Batesburg, *Hartley House (Batesburg-Leesville MRA),* 305 E. Columbia Ave.

SOUTH DAKOTA

Harding County,

Ludlow vicinity, *Lightning Spring 39HN204,*

TEXAS

Anderson County,

Frankston vicinity, *Saunders, A. C., Site, (41 AN 19),* E of Frankston off U.S. Hwy. 175 and 155.

Cherokee County,

Jacksonville, *Newton, William Walter, House,* 401 N. Bolton St.

Comal County,

New Braunfels, *Breustedt, Andreas, House,* 1370 Church Hill Dr.

Kimble County,

Junction, *Brambletye,* Off SR 2291.

Lubbock County,

Lubbock, *Bacon, Warren and Myrta, House,* 1802 Broadway.

VIRGINIA

Charlottesville (Independent City),

Charlottesville and Albemarle County Courthouse Historic District, Roughly bounded by Park, Water, Saxton, and Main Sts.

Hanover County,

Patrick Henry's Birthplace Archeological Site,

Rockingham County,

Harrisonburg vicinity, *Earman, George, House,* 109 Pleasant Hill Rd.

Staunton (Independent City),

Catlett House, 303 Berkeley Pl.
Hoge, Arista, House, 215 Kalorma St.

WEST VIRGINIA

Harrison County,

Clarksburg, *Clarksburg Downtown Historic District* (Boundary decrease, Pivotal Structure No. 44 removed), Roughly bounded by Elk Creek, 7th and Main Sts.

WISCONSIN

Portage County,

Stevens Point, *Fox Theater,* 1116–1128 Main St.

[FR Doc. 82-17505 Filed 6-28-82; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Mangement and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: Project Approval Information Form
Bureau Form Number: OSM–50B
Frequency: Annually
Description of Respondents: State Government
Annual Responses: 145
Annual Burden Hours: 72.5
Bureau Clearance Officer: Darlene Grose (202)343–5447

Darlene Grose,

Information Collection Clearance Officer.

June 24, 1982.

[FR Doc. 82-17541 Filed 6-28-82; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by the Office of Management and Budget

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Carroll Stearns (202) 275–7077. Comments regarding these information collections should be addressed to Carroll Stearns, Interstate Commerce Commission, Room 6217, 12th and Constitution, N.W., Washington, D.C. 20423 and to Donald Arbuckle, Office of Management and Budget, Room 3228

NEOB, Washington, D.C. 20503, (202) 395–7340.
Type of Clearance: Extension—No Change
Bureau/Office: Bureau of Accounts
Title of Form: Annual Report of Class I and II Motor Carriers of Household Goods
Agency Form No.: M–H
OMB Form No.: 3120–0033
Frequency Filed: Annually
Respondents: Class I and II Motor Carriers of Household Goods
Number of Responses: 251
Total Burden Hours: 10,547

Type of Clearance: Extension—No Change
Bureau/Office: Bureau of Accounts
Title of Form: Monthly Rerport of Employees, Service, and Compensation
Agency Form No.: Wage A and B
OMB Form No.: 3120–0074
Frequency Filed: Monthly with an annual summary
Respondents: Class I Railroads
Number of Responses: 533
Total Burden Hours: 64,493

Type of Clearance: Extension—No Change
Bureau/Office: Bureau of Accounts
Title of Form: Preliminary Report of Number of Employees of Class I Railroads
Agency Form No.: Preliminary Wage
Frequency Filed: Monthly
Respondents: Class I Railroads
Number of Responses: 492
Total Burden Hours: 6,888

Type of Clearance: Extension—Burden Change
Bureau/Office: Office of Proceedings
Title of Form: Rules for System Diagram Maps, Financial Assistance of Railroad Lines
OMB Form No.: 3120–0045
Frequency Filed: Annually
Respondents: Regulated Railroads
Number of Responses: 300
Total Burden Hours: 75,000

Type of Clearance: Extension—Burden Change
Bureau/Office: Office of Transportation Analysis
Title of Form: Minority Carrier Study
Agency Form No.: OPA–81–1
OMB Form No.: 3120–0050
Frequency Filed: Semi-annually
Respondents: Minority owned trucking firms with interstate authority
Number of Responses: 36
Total Burden Hours: 3

Type of Clearance: Revision
Bureau/Office: Bureau of Accounts
Title of Form: Annually Report of Motor Carriers of Property
Agency Form No.: Form M
OMB Form No.: 3120–0032
Frequency Filed: Annually
Respondents: Class I and II Motor Carriers of Property
Number of Responses: 2,721
Total Burden Hours: 124,000

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–17488 Filed 6–28–82; 8:45 am]
BILLING CODE 7035–01–M

[Volume No. 272]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: June 22, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

FINDINGS

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,
Secretary.

MC 4483 (Sub-32)X, filed June 14, 1982. Applicant: MONSON TRUCKING, INC., R.R. #1, Red Wing, MN 55066. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102. Lead and Subs 7, 8, 10, 12, 13, 15, 22, 26F, 27F, 28F, and 30F: (1) Broaden (a) mineral wool and mineral wool products, sewer pipe, sewer pipe fittings, flue lining, wall coping, septic tank pipe, drain tie, firebrick, fire clay, mortar mix, and clay filter media blocks, clay products, and brick and title to "building materials" in the lead and Subs 7, 8, 10, 12, and 13; (b) silos, knocked down or in sections, and accessories and equipment used in silo construction and operation to "construction and building materials" in Sub 15; (c) beverages, carbonated, flavored or phosphated (except alcoholic and malt beverages), dextrine, gluten, grits and starch, and food and kindred products to "food and related products" in Subs 22, 26F and 28F; and (d) materials, equipment and supplies used in the manufacture, distribution or application of sorbents, wallboard, cushioning materials, insulation materials, and mulch (except commodities in bulk) to "pulp, paper and related products, lumber and wood products, and forest products" in Sub 27; (2) change one-way to radial authority; (3) eliminate the facilities limitation in Sub 27; (4) broaden Red Wing, MN and points within 5 miles thereof to Goodhue County, MN and Pierce County, WI; What Cheer to Keokuk County, IA; Chaska to Carver County, MN; Cannon Falls to Goodhue County, MN; Duluth to St. Louis County, MN; Eau Claire, Somerset, and Ashland to Eu Claire, St. Croix, and Ashland Counties, WI; and Cloquet to Carlton County, MN; (5) expand port of entry at Grand Portage, MN to allow service at all ports of entry in Minnesota in Sub 26F; (6) remove the originating at and/or destined to restriction in Sub 22.

MC 109632 (Sub-38)X, filed March 25, 1982, and previously noticed in **Federal Register** May 19, 1982, republished as corrected this issue. Applicant: LOPEZ TRUCKING, INC., 131 Linden St., Waltham, MA 02154. Representative: Joseph M. Klements, 89 State St., Boston, MA 02109. Lead and Subs 11, 16, 17, 20, 21, 22, 23, 27, 28G, 30, 31 and 33 and E–1 letter notice. Broaden as previously noticed and, in addition: lead, New London, NH to Merrimac County, NH; Sub 27, points within an imaginary line

in NJ beginning at Belmar, NJ, to points in Monmouth, Mercer, Somerset, Morris, Passaic, Middlesex, Union, Essex Bergen, and Hudson Counties, NJ. The purpose of this republication is to correct inadvertent omissions.

MC 113784 (Sub-98)X, filed June 16, 1982. Applicant: LAIDLAW TRANSPORT, LIMITED, P.O. Box 3020, Station B 65, Guise St., Hamilton, Ontario, CN L8L 7X7. Representative: Harold G. Hernly, Jr., P.O. Box 1281, Old Town Station, Alexandria, VA 22313. MC 123503 acquired pursuant to MC–F–14729: (1) Broaden commodity description from rough and dressed lumber to "lumber and wood products"; and (2) expand ports of entry at the St. Lawrence, Niagara and Detroit Rivers to allow service at all ports of entry in NY and MI.

MC 140539 (Sub-5)X, filed June 17, 1982. Applicant: TENNESSEE EXPRESS, INC., 22 Stanly St., Nashville, TN 37210. Representative: George M. Catlett, 700–702 McClure Bldg., Frankfort, KY 40601. Lead and Sub 2 certificates: broaden (1) the general comodity authorities by removing "except those of unusual value and telephone equipment, materials and supplies;" and (2) to countywide authority: lead certificate to Rutherford County, TN (facilities in Rutherford County); and Sub 2 to Trousdale County, TN (facilities near Hartsville).

MC 146708 (Sub-5)X, filed June 17, 1982. Applicant: MAPPLE LEAF EXPRESS, LTD., 3600 South Western Ave., Chicago, IL 60609. Representative: H. Barney Firestone, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601. Lead and Subs 1F and 2F. Remove restrictions: To the transportation of traffic moving on bills of lading of freight forwarders in those authorities; and to foreign commerce only in Sub 2.

MC 149284 (Sub-5)X, filed June 15, 1982. Applicant: MARION D. DAY, d.b.a. DAY'S EXPRESS, 1942 7th St., Columbus, IN 47201. Representative: Stephen M. Gentry 55 S. Harding St., Indianapolis, IN 46222. Sub 1F, broaden to radial authority and Jeffersonville, IN facilities to Clark County.

MC 149409 (Sub-2)X, filed June 11, 1982. Applicant: ERVIN TRANSPORT COMPANY, INC., 451 Radium Springs Rd., Albany, GA 31705. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval St., Jacksonville, FL 32202. Lead certificate: Broaden Bauxite or, in bulk, in dump vehicles, between points in AL, FL, and GA, to "commodities in bulk, between points in AL, FL, and GA".

[FR Doc. 82–17491 Filed 6–28–82; 8:45 am]

BILLING CODE 7035–01–M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon requesta and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unles noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2–131

Decided: June 21, 1982.

By the Commission, Review Board No. 1, members Parker, Chandler, and Fortier.

WC 373 (Sub-1), filed June 7, 1982. Applicant: GUTTMAN TOWING, INC., Speers Rd., Belle Vernon, PA 15012. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219, 412–471–1800. To operate as a *common carrier*, by water, by non-self propelled vessels with the use of separate towing vessels, transporting *iron and steel articles*, between Mingo Junction, OH, on the one hand, and, on the other, Gibsonton and Allenport, PA, via the Monongahela and Ohio Rivers. Condition: Pursuant to 49 CFR § 1106.5(a)(8), cetification of water carrier service constitutes a major regulatory action under the Energy Policy and Conservation Act of 1975, and requires preparation of a Statement of Energy Impact (SEI). Applicant must submit the material required by 49 CFR § 1106.7, within 20 days after this publication.

WC 552 (Sub-19), filed May 25, 1982. Applicant: AMERICAN COMMERCIAL BARGE LINE COMPANY; 1701 Market St., Jeffersonville, IN 47130. Representative: William A. Kernan (same address as applicant), 812–288–0100. To operate, as a *common carrier*, by water, by non-self propelled vessels with the use of separate towing vessels and by towing vessels in the performance of *general towage*, (1) between ports and points on the Missouri River between Sioux City, IA, and the confluence of the Missouri River with the Mississippi River at St. Louis, MO, on the one hand, and, on the other, ports and points applicant is presently authorized to serve, and (2) between

ports and points on the Hiwassee, French-Broad, and Emory Rivers, on the one hand, and, on the other, ports and points applicant is presently authorized to serve.

MC 116712 (Sub-6), filed June 14, 1982. Applicant: MID-AMERICAN COACHES, INC., P.O. Box 335, Washington, MO 63090. Representative: W. R. England III, P.O. Box 456, Jefferson City, MO 65102, 314–635–7166. Transporting *passengers and their baggage,* in the same vehicle with passengers, in roundtrip charter and special operations, beginning and ending at points in MO and points in St. Clair and Madison Counties, IL, and extending to points in the U.S. (including AK, but excluding HI).

MC 129092 (Sub-6), filed April 28, 1982. Applicant: HARVEY TRANSPORT, LTD., 2900 sud, Ave du Pont, C.P. 580, Alma, Cte, Lac St-Jean, Que G8B, 5WL, Canada. Representative: Marshall Kragen, 1919 Pennsylvania Ave, N.W., Suite 300, Washington, DC 20006, 202–466–3778. Transporting *machinery,* between ports of entry on the international boundary line between the U.S. and Canada, at points in ME, on the one hand, and, on the other, points in ME.

MC 129712 (Sub-74), filed May 24, 1982. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 675, 3384 Peachtree Rd., N.E., Atlanta, GA 30326, (404) 237–6472. Transporting *lime, limestone, limestone products, and refractory products,* between points in the U.S. (except AK and HI), under continuing contract(s) with The J. E. Baker Company, of York, PA.

MC 131053 (Sub-1), filed May 27, 1982. Applicant: THREE B TRANSPORTATION, INC., P.O. Box 1037, Havertown, PA 19083. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561–1030. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between Philadelphia, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146303 (Sub-12), filed May 24, 1982. Applicant: COLO-TEX INDUSTRIES, INC., 1325 West Quincy Ave., Englewood, CO 80110. Representative: William J. Lippman, P.O. Box 6060, Snowmass Village, CO 81615, (303) 923–4565. Transporting *food and related products,* between points in CO and KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152672 (Sub-9), filed May 24, 1982. Applicant: A. ROGER LEASING, LTD., P.O. Box 863, Coraopolis, PA 15108. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180, (703) 442–8330. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153483 (Sub-5), filed May 24, 1982. Applicant: ANTWEILER TRUCKING CO., INC., Star Route, Montgomery City, MO 63361. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102, (314) 635–7166. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK, AZ, CA, CT, ID, ME, MA, NV, NH, OR, RI, UT, VT, WA, and HI).

MC 154582 (Sub-1), filed May 26, 1982. Applicant: RIGGS, INC., P.O. Box 38301, Germantown, TN 38138. Representative: Warren A. Goff, 109 Madison Ave., Memphis, TN 38103, 901–526–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Memphis, TN, and points in Shelby County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 157402, filed June 4, 1982. Applicant: MAGIC CITY TRANSPORTATION, 1681 19th Place, SW., Birmingham, AL 35211. Representative: Judith S. Crittenden, 817 Frank Nelson Bldg., P.O. Box 638, Birmingham, AL 35201, 205–322–3636. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter operations, beginning and ending at points in Jefferson County, AL, and extending to points in Orleans Parish, LA, Davidson and Knox Counties, TN, Fulton County, GA, Escambia, Bay, and Orange Counties, FL, Wayne County, MI, and those in NC and SC.

MC 161662, filed May 24, 1982. Applicant: HOLMES TRUCKING, INC., 206 East May, Osceola, IA 50213. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50322, (515) 274–4985. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 161912, filed May 10, 1982. Applicant: LUTTMAN TRUCKING, INC., 465 Van Sicklen St., Brooklyn, NY 11223. Representative: Dennis Luttman (same address as applicant), 212–996–3674. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of school supplies, between points in Mt. Laurel, NJ, Bronx, Queens, Kings, New York, Richmond, Westchester and Nassau Counties, NY, under continuing contract(s) with Beckley Cardy Co., of Mt. Laurel, NJ.

MC 162292, filed June 1, 1982. Applicant: RANDY L. VARNER, d.b.a. VTR ENTERPRISES, 1930 Table Rock Rd., Medford, OR 9750 1. Representative: Randy L. Varner, 5123 Gebhard Rd., Central Point, OR 97502, (503) 664–5375. Transporting *lumber and wood products, building materials, construction materials, and metal products,* between points in OR, WA, CA, AZ, NV, ID, MT, WY, CO, NM, UT, TX and OK.

MC 162302, filed June 1, 1982. Applicant: COOL TRANSPORTATION, 700 South Raymond, Fullerton, CA 92631. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986–8696. Transporting *such commodities* as are dealt in by grocery or food business houses between points in CA.

MC 162422, filed June 10, 1982. Applicant: NEW YORK TOUR & TRUCKING, INC., 29 Gadsden Place, Staten Island, NY 10314. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, 212–466–0220. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, between New York, NY and points in Nassau, Rockland, Suffolk, and Westchester Counties, NY, and Bergen, Hudson, and Essex Counties, NJ, and the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, VA, WV, and DC.

MC 162423, filed June 10, 1982. Applicant: RON BURGE TRUCKING, INC., 1876 West Britton Rd., Burbank, OH 44214. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215, 614–464–4103. Transporting *commodities in bulk,* between points in Medina, Wayne, Holmes, Summit, and Stark Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

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Decided: June 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 9153 (Sub-9), filed May 17, 1982. Applicant: J. R. CHRISTONI, INC., North Cherry Street Extension, Wallingford, CT 06492. Representative: Gerald A. Joseloff, 410 Asylum St., Ste. 532, Hartford, CT 06103, (203) 728–0700. Transporting *commodities which because of their size or weight require the use of special handling or*

equipment, machinery, and supplies, transportation equipment, and building materials, between those points in the U.S. in and east of WI, IL, KY, TN, and MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 25153 (Sub-15), filed May 21, 1982. Applicant: MARTIN FREIGHT SERVICE, INC., 112 Frick Ave., Waynesboro, PA 17268. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739–4860. Transporting *ground stone and related materials* between points in Washington County, MD, and Franklin County, PA, on the one hand, and on the other, those points in the U.S. in and east of TX, OK, MO, IA, and MN.

MC 52362 (Sub-6), filed May 17, 1982. Applicant: MARINEL TRANSPORTATION, INC., Ward Way, No. Chelmsford, MA 01863. Representative: William Shields III, 100 Federal St., Boston, MA 02110, (617) 357–9000. Transporting *passengers and their baggage* in the same vehicle with passengers, between points in the U.S., under continuing contract(s) with Butler Travel Tours, Inc., of North Chelmsford, MA.

MC 108973 (Sub-20), filed May 20, 1982. Applicant: INTERSTATE EXPRESS, INC., 2334 University Ave., St. Paul, MN 55114. Representative: Sterling R. Englehart (same address as applicant), (612) 645–3447. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S., under continuing contract(s) with Carnation Company, of Los Amgeles, CA, and Northrup King Company, of Minneapolis, MN.

MC 120472 (Sub-8), filed June 1, 1982. Applicant: GOLLOTT & SONS TRANSFER & STORAGE, INC., 1253 Caillavet St., Biloxi, MS 39533. Representative: Robert J. Gallagher, 1000 Connecticut Ave. N.W., Suite 1200, Washington, DC 20036, 202–785–0024. Transporting *household goods,* (1) between points in CA, AZ, NM, TX, LA, MS, AL, GA, FL, NC, SC, TN, AR, OK, CO, KS, MO, KY, VA, MD, OH, IN, IL, and DC, (2) between points in CA, AZ, NM, TX, LA, MS, AL, GA, FL, NC, SC, TN, AR, OK, CO, KS, MO, KY, VA, MD, OH, IN, IL, and DC, on the one hand, and, on the other, points in the U.S. (including AK and HI).

MC 120913 (Sub-3), filed May 20, 1982. Applicant: A & P TRANSPORTATION INC., 255 Brigham Street, P.O. Box 539, Marlboro, MA 01752. Representative: David P. LaCroix, (same address as applicant), (617) 481–5333. Transporting *electical and electronic equipment and parts, computers, data processing components* and *such commodities* as are used in the manufacture sale and distribution, of electrical and electronic equipment, between points in the U.S., under continuing contract(s) with Digital Equipment Corp., of Maynard, MA.

MC 140902 (Sub-22), filed May 17, 1982. Applicant: DPD, INC., 3600 N.W. 82nd Ave., Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant), (305) 593–3204. Transporting *automotive parts,* between points in the U.S., under continuing contract(s) with Safeguard Engine Parts, Division of KSG Industries, Inc., of Nashville, TN.

MC 123092 (Sub-2), filed May 24, 1982. Applicant: HERBERT F. JAUQUET, d.b.a. HERB JAUQUET TRUCKING, Box 175, Channing, MI 49815. Representative: Herbert & Wood, 127 South Cedar St., Manistique, MI 49854, (906) 431 2107. Transporting *paper,* between Manistique, MI, and points in WI and OH, under continuing contract(s) with Manistique Papers, Inc., of Manistique, MI.

MC 124212 (Sub-115), filed May 26, 1982. Applicant: MITCHELL TRANSPORT, INC., 6500 Pearl Rd., P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566–5639. Transporting *lumber and wood products,* between points in CT, DE, GA, MA, MD, ME, NC, NH, NJ, NY, PA, RI, SC, VA, VT, WV, and DC.

MC 127042 (Sub-311), filed June 1, 1982. Applicant: HAGEN, INC., P.O. Box 3208, Sioux City, IA 51102. Representative: Fred E. Hagen (same address as applicant), 712–255–8986. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with National-Standard, of Niles, MI.

MC 129732 (Sub-8), filed June 1, 1982. Applicant: EMPIRE TRANSFER CO., P.O. Box 126, Coos Bay, OR 97420. Representative: David C. Ehite, 2400 SW Fourth Ave., Portland, OR 97201, (503) 226–6491. Transporting *nonmetallic minerals and mineral solutions,* between points in OR, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, UT, WA, and WY.

MC 131033 (Sub-1), filed June 1, 1982. Applicant: MARY C. LUKE AND JAMES I. LUKE, d.b.a. AMERICA FIRST TOURS, P.O. Box 220, Collinsville, MS 39325. Representative: Mary C. Luke, Route 3, Box 123, Collinsville, MS 39325, (601) 626–8655. As a *broker* at Collinsville, MS, in arranging for the transportation by motor vehicle of *passenger and their baggage* beginning and ending at points in MS, and extending to points in the U.S.

MC 134872 (Sub-19), filed May 28, 1982. Applicant: GOSSELIN EXPRESS, LTD., 1699 Smith Blvd. North, C.P. 248, Thetford Mines, Quebec, Canada G6G 5S5. Representative: Richard H. Streeter, 1729 H. St. NW, Washington, DC 20006, 202–337–6500. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) between points in the U.S., under continuing contract(s) with (a) Bell Asbestos Mines, Ltd., of Thetford Mines, Quebec, Canada, (b) Ber Vac, Inc., of Thetford Mines, Quebec, Canada, (c) Bombardier, Inc., of Valencourt, Quebec, Canada, (d) Carey Canada, Inc., of East Broughton, Quebec, Canada, (e) Continental Wire, Inc., of St. Hubert, Quebec, Canada, (f) Henkel, of Ville D'Anjou, Quebec, Canada, (g) Kennebec Drilling, Ltd., of Robertsonville, Quebec, Canada, (h) Lac d'Amiante du Quebec, Ltee, of Black Lake, Quebec, Canada, (i) Le Patio Meubles D'Exterieur, Inc., of Charlesbourg, Quebec, Canada, (j) Les Industries Fournier, Inc., of Black Lake, Quebec, Canada, (k) Morin Equipment, division of Compagnie de Gestion Thomcor Limitee, of St. Augustin, Quebec, Canada, (l) Rioux Transport Enrg., of Brossard, Quebec, Canada, (m) Societe Nationale de l'Amiante, of Thetford Mines, Quebec, Canada, (n) Sico, Inc., of Longueuil, Quebec, Canada, and (o) unicanvas Ltee., of Black Lake, Quebec, Canada.

MC 141932 (Sub-54), filed May 17, 1982. Applicant: POLAR TRANSPORT, INC., 176 King St., Hanover, MA. Representative: Alton C. Gardner (same as applicant), (617) 871–2550. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., (except AK and HI), under continuing contract(s) with Nabisco Brands, Inc., of New York, NY. Condition: The person or persons who apper to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the applications(s) for common control to team 2, Room 2379.

MC 142113 (Sub-5), filed May 24, 1982. Applicant: CHESTER A. RICHMOND,

Sr., d.b.a. RICHMOND CARTAGE, P.O. Box 337, Craigsville, WV 26205. Representative: Chester A. Richmond, Sr. (same address as applicant) (304) 949–2684 Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between point in WV.

Note.—Applicant intends to tack with existing authority.

MC 142672 (Sub-189), filed May 17, 1982. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Box Drawer F, Hwy. 64 West, Mulberry, AR 72947. Representative: Harry Keifer (same as applicant) (501) 997–1683. Transporting *furniture and fixtures,* between New York City, NY, and Los Angeles, CA, on the one hand, and, on the other, points in the U.S., (except AK and HI).

MC 148083 (Sub-7), filed June 1, 1982. Applicant: SELLARS TRANSPORT SERVICE, INC., 1620 Parnell Dr., Eugene, OR 97404. Representative: Robert W. Sellars (same address as applicant) (503) 689–2835. Transporting *Time dated advertising, newspaper circulars and inserts and related products,* between points in Lane County, OR, on the one hand, and, on the other points in CA, UT, WA, MT, AZ, NV, OR, and ID.

MC 149573 (Sub-10). filed May 21, 1982. Applicant: NTL, INC., 4211 South 33rd St., P.O. Box 6645 Lincoln, NE 68506. Representative: J. Max Harding (same address as applicant) (402) 483–7633. Transporting (1) *Such commodities* as are used or dealt in buy wholesale and retail stores, between points in the U.S. (except AK and HI), under continuing contract with Lucky Stores, Inc., its divisions and subsidiaries, of Dublin, CA and (2) *Food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Hyplains Dressed Beef Co., of Dodge City, KS, and MBPXL Corporation, of Wichita, KS.

MC 151683, filed June 1, 1982. Applicant: NAVAJO TRANSIT SYSTEM, P.O. Box 1330, Window Rock, AZ 86515. Representative: William Riordan (same address as applicant), 602–871–4941 (x–1343). Transporting (I) over *Regular routes, passengers and their baggage, newspapers, and express* (1) between Tuba City and Window Rock, AZ, over AZ Hwy 264, (2) between Flagstaff, AZ, and Farmington, NM: from Flagstaff over U.S. Hwy 89 to junction U.S.Hwy 160, then over U.S. Hwy 160 to Shiprock, NM, then over U.S. Hwy 550 to Farmington, and return over the same route, (3) between Kayenta and Window Rock, AZ: from Kayenta over U.S. Hwy 160 to junction Navajo Rte. 59, then over Navajo Rte. 59 to Many Farms, then over AZ Hwy 63 to Chinle, then over Navajo Rte. 64 to Tsaile, then over Navajo Rte. 12 to Window Rock, and return over the same route, (4) between Shiprock, NM, and Window Rock, AZ: from Shiprock over U.S. Hwy 666 to Yatahey, NM, then over NM Hwy 264 to the AZ–NM state line, then over AZ Hwy 264 to Window Rock, and return over the same route, (5) between Thoreau, NM, and Window Rock, AZ: from Thoreau over NM Hwy 57 to Crownpoint, NM, then over NM Hwy 157 to junction U.S. Hwy 666, then over U.S. Hwy 666 to Yatahey, then over NM Hwy 264 to the NM–AZ State line, then over AZ Hwy 264 to Window Rock, and return over the same route, (6) between Window Rock, AZ, and Gallup, NM: from Window Rock over AZ Hwy 264 to Yatahey, NM, then over U.S. Hwy 666 to Gallup, and return over the same route, (7) between Tuba City and Flagstaff, AZ: from Tuba city over AZ Hwy 264 to junction AZ Hwy 87, then over AZ Hwy 87 to junction Navajo Rte. 60, then over Navajo Rte. 60 to junction AZ Hwy 87, then over AZ Hwy 87 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction AZ Hwy 99, then over AZ Hwy 99 to Leupp, then over Navajo Rte. 15 to junction U.S. Hwy 89, then over U.S. Hwy 89 to Flagstaff, and return over the same route, and (8) serving all intermediate points in routes (1) through (7) above; and (II) over *Irregular Routes, passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, between points in AZ and NM, on the one hand, and, on the other, points in AZ, NM, UT, CO, CA, NV, ID, OR, WA, OK, TX, KS, MS, IL, AR, TN, NC, VA, MO, LA, and DC.

Note.—Applicant may tack this authority with its existing authority.

MC 156233 (Sub-1), filed May 13, 1982. Applicant: PATRICIA A. HUTCHINSON, d.b.a., D. J. P. LEASING, 724 Carrollton Ave., Salem, VA 24153. Representative: Patricia A. Hutchinson, (same as applicant), (703) 389–6925. Transporting *iron castings,* between points in Roanoke County, VA, on the one hand, and, on the other, points in WV and OH.

MC 157493 (Sub-1), filed June 1, 1982. Applicant: LYNCH BUS LEASING SERVICE, INC., d.b.a. LYNCH BUS SERVICE, Rd. 1, Box 82–A, Carbondale, PA 18407. Representative: Paul J. Kenworthy, P.O. Box 25, Clarks Summit, PA 18411, (717) 587–2533. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Bradford, Luzerne, Monroe, Pike, Sullivan, Wayne and Wyoming Counties, PA, and extending to points in the U.S. (including AK but excluding HI).

MC 158152 (Sub-1), filed May 24, 1982. Applicant: BAXLEY TRUCKING CO., INC., Rte. 1, Box 13, Hemingway, SC 29554. Representative: C. Bradley Ruffin, Jr., P.O. Box 218–East Broad St., Hemingway, SC 29554, 803–558–2588. Transporting *canned goods,* between points in SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159433, filed May 27, 1982. Applicant: MARTIN J. HODGE, d.b.a. HODGE TRUCKING, 1170 Autumn Hills, Reno, NV 89511. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, 702–882–5649. Transporting *construction materials, metal products, and pipe,* between points in CA, OR, WA, UT, ID, AZ, TX, OK, MT, WY, CO, NM, AND NV.

MC 162042, filed May 17, 1982. Applicant: CONSOLIDATED TERMINALS, INC., 1911 West Mitchell St., Milwaukee, WI 53204. Representative: William P. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods) between Chicago, IL, on the one hand, and, on the other, Milwaukee, WI.

MC 162123, filed May 20, 1982. Applicant: OCEANIC TRAVEL SERVICE, INC., 127 South Fort Harrison, Clearwater, FL 33516. Representative: Richard M. Davis, Suite 320, Lewis State Bank Bldg., Tallahassee, FL 32301, (904) 222–5171. As a *broker,* as Clearwater, FL, arranging for the transportation by motor vehicle of *passenger and their baggage,* between points in Pinellas County, FL, on the one hand, on the other, points in the U.S.

MC 162143, filed May 12, 1982. Applicant: ROBERT N. BRODERICK, Route 4, Box 4063, Warren, OR 97053. Representative: Robert N. Broderick (same as applicant), (503) 397–1099. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AR, AZ, CA, CO, IA, ID, KS, LA, MN, MO, MT, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, and WY, under continuing contractg(s) with Cascade West Materials, Inc., of Lake Oswego, OR.

MC 162323, filed June 3, 1982. Applicant: RESORTS LIMOUSINE SERVICE CORP., 4 South Second St.,

Vineland, NJ 08360. Representative: Mark D. Kutner, 1179 East Landis Ave., P.O. Box 0, Vineland, NJ 08360, (609) 691–1200. Transporting *passengers and their baggage* in the same vehicle with passengers, in special operations, between points in NJ, on the one hand, and, on the other, Philadelphia, PA, and New York, NY.

Volume No. OP3–096

Decided: June 22, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

FF–604, filed June 11, 1982. Applicant: TRANSBULK, INC., 33 E. Monroe Street, Chicago, IL 60603. Representative: Donald E. Jessie (same address as applicant), (312) 853–5000. As a *freight forwarder* in connection with the transportation of *commodities in bulk, lumber and wood products,* between points in the U.S. (except AK and HI.

FF–605, filed June 14, 1982. Applicant: J. A. FRATE, INC., 6207 Factory Rd., Crystal Lake, IL 60014. Representative: William H. Towle, 180 N. LaSalle St., Suite 3520, Chicago, IL 60601, (312) 332–5106. As a freight forwarder, in connection with the transportation of *general commodities,* between points in Lake, Cook, McHenry, and Kane Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 15735 Sub 46, filed June 11, 1982. Applicant: ALLIED VAN LINES, INC. P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Associates Corporation of North America, of Dallas, TX.

MC 15735 (Sub-47), filed June 11, 1982. Applicant: ALLIED VAN LINES, INC. P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with International Harvester, of Chicago, IL.

MC 15735 (Sub-48), filed June 11, 1982. Applicant: ALLIED VAN LINES, INC. P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with the Kendall Company, of Boston, MA.

MC 29914 (Sub-3), filed June 15, 1982. Applicant: CITY TRANSFER AND STORAGE COMPANY, 1100 Redding Dr., High Point, NC 27261. Representative: Steven L. Weiman, 444 N. Frederick Ave., Suite 200; Gaithersburg, MD 20877, (301) 840–8565. Transporting (1) *household goods,* between those points in the U.S. in and east of MN, IA, MO, OK, and TX, and (2) *furniture,* between points in NC, on the one hand, and, on the other, points in the U.S. (except HI).

MC 113855 (Sub-536), filed June 11, 1982. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, MN 55901. Representative: Thomas J. Van Osdel, 15 Broadway—Suite 502, Fargo, ND 58102, (701) 235–4407. Transporting *general commodities* (except household goods, commodities in bulk, and classes A and B explosives), between points in the U.S., under continuing contract(s) with United Air Lines, Inc., of Chicago, IL.

MC 117344 (Sub-296), filed June 16, 1982. Applicant: THE MAXWELL CO., a corporation, 10300 Evendale Dr., Cincinnati, OH 45241. Representative: James R. Stiverson, 1396 W. Fifth Ave., Columbus, OH 43212, (614) 481–8821. Transporting *commodities in bulk,* between points in the U.S. (except AK and HI).

MC 135874 (Sub-177), filed June 9, 1982. Applicant: MIDLAND FREIGHTWAYS, INC., 550 East 5th St., South, South St. Paul, MN 55075. Representative: Randy Busse (same address as applicant), (612) 457–2911. Transporting *such commodities* as are dealt in or used by retail stores, between points in IA, IN, IL, KS, MI, MN, MO, MT, NE, ND, SD, and WI, on the one hand, and, on the other, points in KY, OH, and PA.

MC 136774 (Sub-29), filed June 14, 1982. Applicant: MC-MOR-HAN TRUCKING CO., INC., P.O. Box 368, Shullsburg, WI 53586. Representative: Donald B. Levine, 29 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *Chemicals and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Sicalco, Ltd., of Oak Brook, IL.

MC 145154 (Sub-7), filed June 11, 1982. Applicant: YOUNG'S TRANSPORTATION CO., 3401 Norman Berry Drive, Suite 246, East Point, GA 30344. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005, (202) 347–9332. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 145335 (Sub-5), filed June 14, 1982. Applicant: RIVER ENTERPRISES, INC., P.O. Box 458, South Roxana, IL 62087. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) *machinery,* and (2) *metal products,* between St. Louis, MO, and points in St. Louis County, MO, Jefferson County, KY, Duval County, FL, Orleans County, LA, Harris County, TX, and San Bernardino County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145914 (Sub-20), filed June 11, 1982. Applicant: COASTAL TRUCK LINE, INC., P.O. Box 600, How Lane, New Brunswick, NJ 08903. Representative: Zoe Ann Pace, One World Trade Center, Suite 2373, New York, NY 10048, (212) 432–0940. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of WI, IL, KY, TN and MS.

MC 146074 (Sub-7), filed June 15, 1982. Applicant: FORT TRANSFER CO., 225 South Maple, Morton, IL 61550. Representative: Douglas G. Brown, 913 South Sixth St., Springfield, IL 62703, (217) 753–3925. Transporting *chemicals,* between points in the U.S., under continuing contract(s) with Ciea-Giegy Corporation, of Ardsley, NY.

MC 149585 (Sub-2), filed June 14, 1982. Applicant: SCHMIDT BROTHERS TRANSPORT, INC., Box 37, R.R. #3, Augusta, WI 54722. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102, (612) 227–7731. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with South Alma Cheese Factory, Inc., of Alma Center, WI.

MC 151775 (Sub-2), filed June 10, 1982. Applicant: RAYMOND L. COOK, d.b.a. JAC LEASING, 415 Morris Ave., Boonton, NJ 07005. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180, (703) 442–8330. Transporting *rubber and plastic products,* and *pulp, paper, and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Malanco Plastics East, Inc., of Rockaway, NJ.

MC 151994 (Sub-3), filed June 14, 1982. Applicant: P. R. T., INC., 135 Wyandot Avenue, Marion, OH 43302. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215, (614) 464–4103. Transporting (1) *such commodities* as are dealt in or

used by manufacturers and distributors of candles, between points in Passaic County, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *bakery products,* between points in Queens County, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (3) *fertilizer and fertilizer ingredients, chemicals, feed, feed ingredients, limestone, salt, seed, petroleum products, and farm supplies,* between points in OH, on the one hand, and, on the other, points in IL, IN, MN, MO, TN and WI.

MC 152024 (Sub-2), filed June 14, 1982. Applicant: RUMM ASSOCIATES, INC., P.O. Box 521, Grand Blanc, MI 48439. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167, (313) 349–3980. Transporting *metal products,* between points in Chippewa County, MI, on the one hand, and, on the other, points in the U.S., under continuing contract(s) with General Motors Corporation, of Troy, MI.

MC 153864 (Sub-1), filed June 15, 1982. Applicant: R & M EXPRESS, INC., 12330 Park Drive, Orient, OH 43146. Representative: Frank L. Calvary, 3066 N. Star Rd., Columbus, OH 43221, (614) 459–4248. Transporting (1) *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Purdie Metals, Incorporated, of Westerville, OH, (2) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Worthington Industries, Inc., and subsidiaries, of Columbus, OH, and (3) *sand and foundry products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Keener Sand & Clay Company, of Columbus, OH.

MC 155585, filed June 14, 1982. Applicant: HOLIDAY MARINE, INC., Route 1, Box 73, Ruston, LA 71270. Representative: Max King (same address as applicant) (318) 255–8810. Transporting *oilfield equipment supplies,* between points in LA, TX and AR.

MC 155644 (Sub-1,) filed June 16, 1982. Applicant: WRIGHT BROTHERS KITTY HAWK EXPRESS SYSTEMS, INC., Hevelyn Rd., Elmsford, NY 10523. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD. 21740, (301) 797–6060. Transporting *general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in NY, NJ, CT, VT, OH, MD, DE, NH, ME, WV, MA, RI, PA, VA, and DC.*

MC 156845 (Sub-1), filed June 6, 1982. Applicant: WINN'S HAULING, INCORPORATED, 6805 School Avenue, Richmond, VA 23228. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229, (804) 282–3809. Transporting *household goods,* between points in MD, VA, WV and DC.

MC 158074, filed June 14, 1982. Applicant: DEBARNARDI BROS., INC., 514 "G" Street, Rock Springs, WY 82901. Representative: Richard L. DeBarnardi (same address as applicant), (307) 362–3451. Transporting *commodities in bulk,* between points in WY, ID, SD, CO and UT.

MC 158355, filed June 11, 1982. Applicant: F.A.R. CARTAGE INC., 5 N 038 Middle Creek Lane, St. Charles, IL 60174. Representative: James O'Grady, 430 Grand Ave., Waukegan, IL 60085. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between Chicago, IL, on the one hand, and, on the other, points in IL, OH, IN, MI, KY, MO, MN, WI, IA, and TN.

MC 158994 (Sub-2) filed June 15, 1982. Applicant: ABLE TRANSPORT, INC., 307 Progress Ave., Zelienople, PA 16063. Representative: Brian L. Troiano, 918 16th St., NW., Washington, DC 20006, (202) 785–3700. Transporting *clay, concrete, glass or stone products,* and *coal and coal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Independent Cement Corporation, of Albany, NY.

MC 159005, filed June 15, 1982. Applicant: JAMES P. HIGGINS and FRED C. GOEBEL, d.b.a. H & G HOTSHOT SERVICE, U.S. Highway 2 & 85 N., Box 731, Williston, ND 58801. Representative: Thomas J. Van Osdel, 15 Broadway-Suite 502, Fargo, ND 581102, (701) 235–4487. Transporting *Mercer commodities,* between points in ND, SD, MT, ID, WY, and CO.

MC 160494, filed June 14, 1982. Applicant: PAUL D. ELLIS, d.b.a. ELLIS FABRICATION & SUPPLY, 9350 Ridenour Road, Thornville, OH 43076. Representative: James R. Stiverson, 1396 W. Fifth Ave., P.O. Box 12241, Columbus, OH 43212, (614) 481–8821. Transporting *pipe,* between those points in the U.S. in and east of MT, WY, CO and NM, under continuing contract(s) with Pico Pipe Threaders Inc., of Mt. Vernon, OH.

MC 160614 (Sub-1), filed June 14, 1982. Applicant: DANNY STOUFFER AND SUSAN STOUFFER, d.b.a. DMF TRUCKING, 548 Main St., Highgrove, CA 92507. Representative: Frederick J. Coffman, P. O. Box 1455, Upland, CA 91786, (714) 981–9981. Transporting (1) *building and construction materials,* (2) *lumber and wood products, and* (3) *dolomite and dolomite products,* between Los Angeles, San Bernardino, and Inyo Counties, CA, El Paso and Titus Counties, TX, and Clark County, NV, on the one hand, and, on the other, points in PA, WV, FL, IN, TN, MS, and those points in the U.S. in and west of MN, IA, MO, AR, and LA.

MC 162425, filed June 9, 1982. Applicant: ITEL TRANSPORTATION SERVICES CORP., Two Embarcadero Center, 23rd Floor, San Francisco, CA 94111. Representative: Guy H. Postell, 3384 Peachtree Rd., NE, Suite 675, Atlanta, GA 30326, (404) 237–6472. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 1624654, filed June 11, 1982. Applicant: MIKE KAZEMI, d.b.a. TBT BUS LINES, 3314 Farnam St., Suite 1, Oakland, CA 94601. Representative: (same as applicant) (415) 535–2010. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at San Francisco, CA, and points in Alameda and Santa Clara Counties, CA, and extending to Carson City, NV, and points in Douglas, Storey and Washoe Counties, NV.

MC 162485, filed June 15, 1982. Applicant: EDWARD M. MARX, d.b.a. ECONOMY MOVING & STORAGE CO., 5826 North Clark St., Chicago, IL 60660. Representative: Edward M. Marx (same address as applicant), (312) 251–9374. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI).

MC 124905 (Sub-9), filed June 14, 1982. Applicant: GARY W. ARAY, P.O. Box 48, Delaware, NJ 07833.. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *petroleum and petroleum products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Union Oil Company of California, of Schaumburg, IL.

MC 129874 (Sub-5), filed June 15, 1982. Applicant: TYLER TRANSPORT LIMITED, 379 Queen St. East, Action, Ontario, Canada L7J 2M6. Representative: E. Tyler (same address as applicant), (519) 853–1550. Transporting *lumber and lumber products,* between ports of entry on the Interernational Boundary line between the U.S. and Canada, on the Detroit, St. Clair, Niagara and St. Lawrence Rivers,

on the on hand, and one the other, points in DE, IN, KY, MD, MI, NJ, NY, OH, PA, VA, WV, RI, CT, NH, VT, TN, GA, AL, NC, SC, and FL, under continuing contract(s) with Arbre Forest Products, Division of Tiaga Wood Products Limited, of Milton, Ontario, Canada.

MC 150735 (Sub-7), filed June 11, 1982. Applicant: BESTWAY TRANSPORT CO., Route #2, Willard, OH 44890. Representative: Lewis S. Witherspoon, 2455 North Star Road, Columbus, OH 43221, (614) 486–0448. Transporting *meat and meat products,* between New York, NY, Philadelphia, PA, Wilmington, DE, Pitman, NJ, and Baltimore, MD, and points in Carroll and Frederick Counties, MD, on the one hand, and, on the other, points in FL, GA, IA, IL, IN, KY, MI, MN, NC, NJ, OH, PA, SC, TN, VA, WI, and WV.

Volume No. OP4–226

Decided: June 17, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 3647 (Sub-467), filed June 9, 1982. Applicant: NJ TRANSIT BUS OPERATIONS, INC., 180 Boyden Ave., Maplewood, NJ 07040. Representative: John F. Ward, P.O. Box 10009 Newark, NJ 07101, (201) 648–6908. Over regular routes, transporting *passengers and their baggage, and express, in the same vehicle with passengers,* (1) between junction U.S. Hwy 46 and Little Ferry Traffic Circle, Little Ferry, NJ, and Moonachie Road, Moonachie, NJ, serving all intermediate points: from junction U.S. Hwy 46 and Little Ferry Traffic Circle over U.S. Hwy 46 to junction Liberty St., then over Liberty St., Little Ferry, NJ, to junction Moonachie Rd., then over Moonachie Rd., Moonachie, NJ, to junction Washington Ave., then over Washington Ave. to Junction Paterson Plank Rd., then over Paterson Plank Rd. to junction Gotham Parkway, then over Gotham Parkway (South Commercial Ave.), Carlstadt, NJ, to junction West Commercial Ave., then over West Commercial Ave. to junction Ceasar Place, then over Ceasar Place to junction Moonachie Ave., then over Moonachie Ave. to junction Moonachie Rd., Moonachie NJ, and return over the same route, (2) between points in Little Ferry, NJ, serving all intermediate points: from junction Liberty St., and Washington Ave., then over Washington Ave. to junction Riverside Ave., then over Riverside Ave. to junction Bergen Turnpike, then over Bergen Turnpike to junction U.S. Hwy 46 at the Little Ferry Traffic Circle, Little Ferry, NJ, and return over the same route, (3) between Berry's Creek Canal and Paterson Plank Rd., and junction Washington Ave., Carlstadt, NJ, and in Hwy 20 and NJ Hwy 3, East Rutherford, serving all intermediate points: from Barry's Creek Canal and Paterson Plank Rd., then over Paterson Plank Rd. to junction Washington Ave., Carlstadt, NJ, and NJ Hwy 20, then over NJ Hwy 20 to junction NJ Hwy 3, East Rutherford, NJ, and return over the same route.

Note.—Applicant intends to tack this authority with its existing routes only in connection with operations to and from New York, NY, via the George Washington Bridge.

MC 94227 (Sub-9), filed June 14, 1982. Applicant: BALLEW TRUCKING COMPANY, INC., 1621 E. Hwy 82, P.O. Box 715, Gainesville, TX 76240. Representative: J. Michael Alexander, Suite 301, Allied Bank-Southwest Bldg., 5801 Marvin D. Love Freeway, Dallas, TX 75237, (214) 339–4108. Transporting *Mercer commodities,* between points in TX, OK, NM, CO, UT, WY, MT, ND, SD, NE, KS, LA, AR, and MS.

MC 110567 (Sub-30), filed June 11, 1982. Applicant: SOONER TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: Kenneth L. Kessler, P.O. Box 855, Des Moines, IA 50304, (515) 245–2725. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with garden Fresh Markets, Inc., of Nutterforth, WV.

MC 115917 (Sub-42), filed June 15, 1982. Applicant: UNDERWOOD & WELD COMPANY, INC., P.O. Box 247, Crossnore, NC 28616. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth St., NW, Washington, DC 20005, (202) 296–5188. Transporting (1) *clay, concrete, glass or stone products,* between points in Spartanburg County, SC, and Gaston County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *buildings,* in sections, between points in Yadkin County, NC, and Lincoln County, NV, on the one hand, and on the other, points in U.S. (except AK and HI).

MC 121327 (Sub-3), filed June 11, 1982. Applicant: FINK'S FAST FREIGHT, INC., R.D. #1, P.O. Box 156, Millersville, PA 17551. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107, (215) 735–3090. Transporting *general commodities* (except classas A and B explosives, household goods and commodities in bulk), between points in Adams, Berks, Cumberland, Dauphin, Lancaster, Lebanon, and York Counties, PA, on the one hand, and, on the other, points CT, DE, MD, NJ, NY, OH, PA, VA, WV, and DC.

MC ,128837 (Sub-53), filed June 14, 1982. Applicant: TRUCKING SERVICE, INC., P. O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting *glass containers and glass materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with Midland Glass Company, of Cliffwood, NJ.

MC 140477 (Sub-1), filed June 11, 1981. Applicant: SEABROUCK TRANSPORT, INC., Route 3, Crookston, MN 56716, Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, (701) 237–4223. Transporting *food and related products,* between points in Polk County, MN and points in Foster, Grand Forks, Stutsman, and Ward Counties, ND, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141167 (Sub-11), filed June 14, 1982. Applicant: LANGDON TRANSPORTATION, INC., 5202 Industry Ave., Pico Rivera, CA 90660. Represenative: Milton W. Flack, 8484 Wilshire Blve., #840, Beverly Hills, CA 90211, (213) 655–3573. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 144927 (Sub-43), filed May 20, 1982, previsously noticed in the **Federal Register** issue of June 8, 1982, and republished this issue. Applicant: REMINGTON FREIGHT LINES, INC. Box 315, U.S. 24 West, Remington, IN 47977. Representative: Jack Luck (same address as applicant), (219) 261–3461. Transporting *drugs,* between Atlanta, GA, Chicago, IL, Dallas, TX, Denver, CO, Kansas City and St. Louis, MO, Minneapolis, MN, Portland, OR, San Francisco and Los Angeles, CA, and points in Franklin County, OH, Montgomery County, PA, and Shelby County, TN.

Note. The purpose of this republication is to include Franklin County, OH, which was inadvertently omitted from the Precious notice.

MC 152157 (Sub-4), filed June 15, 1982. Applicant: RO–MAR TERMINAL & WAREHOUSE CO., INC., 3356 South Ashland Ave., Chicago, IL 60608. Representative: Ronald N. Cobert, 1730 M St., N.W., Suite 501, Washington, DC 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 156387 (Sub-4), filed June 11, 1982. Applicant: JIM L. LANGENFELD, d.b.a.

D & J ENTERPRISES, Rural Route #2, Dow City, IA 51528. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Futuristics, LTD, of Denison IA.

MC 156517 (Sub-1), filed June 14, 1982. Applicant: GILLIAM TRUCKING, INC., 4585 South Harding St., Indianapolis, IN 46217. Representative: Harold C. Folliff, 3242 Beech Dr., Columbus, IN 47201, (812) 379–2556. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Ivy Hill Packaging, Division of Ivy Hill Corporation, of Terre Haute, IN.

MC 157727, filed June 14, 1982. Applicant: AIR FREIGHT EXPEDITERS, INC., 19030 28th Ave. So., Seattle, WA 98188. Representative: Robert G. Gleason, 1127 10th East, Seattle, WA 98102, (206) 325–8875. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WA.

MC 159576, filed June 15, 1982. Applicant: CONSTANTINE VAINALIS, d.b.a. DINO'S TRUCKING, 5072 Mardel Ave., St. Louis, MO 63109. Representative: Constantine Vainalis (same address as applicant), (314) 832–2508. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) So-Good Potato Chip Company, of St. Louis, MO.

MC 160006, filed June 15, 1982. Applicant: NATHANIEL E. WILLIS, JR., d.b.a. WILLIS TRUCKING, P.O. Box 103, Idaho City, ID 83631. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Ore-Ida Foods, Inc., of Boise, ID.

MC 161197, filed June 14, 1982. Applicant: ALLEN PLEGGENKUHLE, d.b.a. PLEGGENKUHLE GRAIN, Route 2, Fredericksburg, IA 50630 Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *fabricated buildings and feed or grain bins,* between Kansas City, MO and points in Knox County, IL, on the one hand, and, on the other, points in Bremer, Fayette, Buchanan, Black Hawk, Grundy, Butler, Floyd, Chickasaw, and Cerro Gordo Counties, IA.

MC 161296, filed June 14, 1982. Applicant: THOMAS E. HANSEN, Rt. 1, New Harford, IA 50660. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting *agricultural machinery, implements, and parts,* between points in the U.S. (except AK and HI), under continuing contract(s) with Huisman Implement Co., of Aplington, IA.

MC 162447, filed June 11, 1982. Applicant: THE CONSOLIDATED CARTAGE AND STORAGE COMPANY, 2050 West 3rd St., Cleveland, OH 44113. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OH. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 4, Room 2410.

MC 162437, filed June 11, 1982. Applicant: CUSTOM BLENDED OILS, INC., P.O. Box 41, Peotone, IL 60468. Representative: Carl L. Steiner, 29 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *petroleum and petroleum products,* between points in the U.S. (except AK and HI), under continuing contract(s) with E & L Tank Cleaners, Inc., of Peotone, IL.

MC 162457, filed June 11, 1982. Applicant: KEMP FURNITURE INDUSTRIES, INC., 108 W. Cola Dr., Goldsboro, NC 27530. Representative: Earl Buchan, 118 Spring Dr., Dudley, NC 28333, (919) 735–2801. Transporting *microfoam sheet and related products,* between points in Greenup County, KY, on the one hand, and, on the other, points in TN, VA, NC, and SC, under continuing contract(s) with E. I. du Pont de Nemours & Company, Inc., of Wilmington, D.E.

MC 162487, filed June 11, 1982. Applicant: LEISURE WORLD OF MARYLAND CORPORATION, 3701 Rossmoor Blvd., Silver Spring, MD 20906. Representative: Marilyn J. Goerg (Same address as applicant), (301) 598–7660. To engage in operations, in interstate or foreign commerce as a *broker,* at Silver Spring, MD, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* between points in Silver Spring, MD, on the one hand, and, on the other, points in the U.S.

Volume No. OP4–230

Decided: June 23, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 147446 (Sub-2), filed June 16, 1982. Applicant: TOWN TRUCKING CO., 1500 S. Roslyn Rd. Roselle, IL 60172. Representative: Albert A. Andrin, 180 N. La Salle St., Chicago, IL 60601, (312) 332–5106. Transporting *roofing and roofing materials,* and *asphalt and materials,* betwen points in Cook County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 150656 (Sub-7), filed June 11, 1982. Applicant: FARM SERVICE & SUPPLIES, INC., P.O. Box 154, Marengo, IL 60152. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Rd. W, Bradenton, FL 33507, (813) 758–4153. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (including AK and HI).

MC 162036, filed May 17, 1982, previously noticed in the **Federal Register** issue of June 8, 1982, and republished this issue. Applicant: MR. FRANK INC., 201 West 155th St., South Holland, IL 60473. Representative: Edward G. Bazelon, 29 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *hazardous materials and waste or scrap materials* not identified by industry producing, between points in the U.S. (except AK and HI), under continuing contract(s) with shippers of said commodities.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–17492 Filed 6–28–82; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket 29926]

Rail Carriers; Sidney & Lowe Railroad, Inc.; Exemption From 49 U.S.C. 10901 and 11301

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the operation by Sidney & Lowe Railroad, Inc. of a 10 mile rail line in and around Sidney, NE, from prior approval under 49 U.S.C. 10901.

DATES: The exemption is effective on July 29, 1982. Petitions to reopen must be filed by July 19, 1982, and petitions for stay must be filed by July 9, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room, 5414, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's Representative: Robert Lee Kessler, 5555 South DTC Parkway, Suite 3001, Englewood, CO 80111.

Refer to Finance Docket No. 29926.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, DC 20423, (202) 289–4357—DC Metropolitan Area, (800) 424–5403—Toll free for outside the DC area.

Decided: June 23, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, Sterrett, Andre, and Simmons.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–17487 Filed 6–28–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-No. 166)]

Rail Carriers; Southern Pacific Transportation Co. Exemption for Contract Tariff ICC–SP–C–0099

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

SUPPLEMENTARY INFORMATION: The Southern Pacific Transportation Company (SP) filed a petition on June 14, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract ICC–SP–C–0099 filed on June 14, 1982, to become effective on one day's notice. The contract provides for storage of carload shipments of paper and paper products.

As a preliminary matter, we grant petitioner's request under 49 CFR 1100.99 for an order protecting the information contained in the petitioner's separately submitted appendix. This appendix contains proprietary information which supplements the petition, and it need not, and will not, become part of the record.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Due to the economic downturn, the shipper has been unable to market sufficient amounts of the commodities that it manufactures. As a result, the shipper has been forced to store much of its product on site. However, the shipper's storage capacity is limited, and there is no reasonably priced alternative storage available. Without adequate, inexpensive storage, the shipper will be forced to curtail production, which would result in employee layoffs. The contract provides for such storage in boxcars that are presently idle. Short notice effectiveness of the contract will thus enable the shipper to continue production and will not adversely affect car supply. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

Petitioner's contract ICC–SP–C–0099 may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

> If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(e) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(d) if protests are filed within 15 days of publication in the **Federal Register.**

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

Authority: 49 U.S.C. 10505.

Dated: June 22, 1982.

By the Commission, Division 2, Commissioners Gresham, Gilliam, and Simmons. Commissioner Gresham did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–17489 Filed 6–28–82; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket 29820]

Rail Carriers; New York State Department of Transportation, Purchase, Consolidated Rail Corp., in New York, Intent To Purchase

On May 18, 1982, the New York State Department of Transportation (NYSDOT) filed a notice of its intent to request the Commission to require the sale of trackage. NYSDOT seeks to acquire the following lines of the Consolidated Rail Corporation (Conrail) in New York: the former Erie Lackawanna Southern Tier Mainline between the NY/NJ State line and CP Newburgh Junction, MP–29.3–44.9; the Grahaur line between CP Newburgh Junction and CP Howells Junction, MP 4409–76.6; the Erie Lackawanna Southern Tier Mainline between CP Howells Junction and Salamanca, MP 68.7–412.6; the Erie Lackawanna Southern Tier Mainline between Salamanca and the NY/PA State line, MP 0.0–49.2; and the Erie Lackawanna Southern Tier Mainline between Hornell and Buffalo, MP 331.2–418.0, pursuant to the feeder line development provisions of 49 U.S.C. 10910.

NYSDOT's application may be filed after August 16, 1982, (90 days after its notice). When an application is filed, any interested party may submit comments or recommendations to the Commission within 30 days and any financially responsible person may propose to acquire the property through a competing application, also within 30 days. All pleadings should refer to Finance Docket No. 29820 and should be submitted, with 10 copies to the Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423. A copy should also be sent to Louis Rossi, Director, Rail Division, N.Y.S. Department of Transportation, 1220 Washington Avenue, NY 12232.

For further information contact Wayne A. Michel (202) 275–7657 or Louis E. Gitomer (202) 275–7245 at the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–17490 Filed 6–28–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period June 14, 1982–June 18, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–12,668; Aileen, Inc., Edinburg, VA, Knitting Plant
TA–W–12,782; Aileen, Inc., Brookneal, VA, Sewing Plant
TA–W–12,854; Aileen, Inc., Culpeper, VA, Sewing Plant
TA–W–12,683; Ely and Walker, Inc., Yazoo City, MS
TA–W–12,690; Ely and Walker, Monterey, TN
TA–W–12,527; Finetone Knitting Mills, Inc., Jackson Heights, NY
TA–W–12,609; Modern Coat Annex, Union City, NJ
TA–W–12,610; Androme Leather Corp., Gloversville, NY
TA–W–12,549; Spring Valley Garment Co., Spring Valley, IL
TA–W–12,554; Hudson Pants Co., Jersey City, NJ
TA–W–12,560; Alpo Coat Co., Inc., Hoboken, NJ
TA–W–12,520; Stutz Products Corp., Hartford City, IN
TA–W–12,471; Charming Miss Fashions, Inc., Hoboken, NJ
TA–W–12,457; Cosmic Fashions, Hoboken, NJ
TA–W–12,434; Rosemary Fashions Coat Co., Hoboken, NJ
TA–W–12,189; J.C. Manufacturing Co., Inc., Long Branch, NJ
TA–W–12,366; Sturbridge, Inc., Philadelphia, PA
TA–W–12,433; Randy Coat Co., Inc., Hoboken, NJ

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–12,462; J.B. Coat, Inc., Hoboken, NJ
TA–W–12,547; Jo Gal Shoe Co., Lawrence, MA
TA–W–12,654; Beekay Fashions, Inc., New York, NY

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA–W–12,689; Avondale Mills, Pell City Plant, Pell City, AL

Affirmative Determinations

TA–W–12,114; High Fashion Sportwear, Inc., Paterson, NJ

A certification was issued in response to a petition received on January 14, 1981 covering all workers separated on or after September 28, 1980.

TA–W–12,643; Rockwell International, Inc., Bellefontaine, OH

A certification was issued in response to a petition received on April 17, 1981 covering all workers separated on or after January 1, 1981.

TA–W–12,665; Wells Lamont Corp., Las Cruces, NM

A certification was issued in response to a petition received on April 27, 1981 covering all workers separated on or after January 1, 1981 and before August 1, 1981.

TA–W–12,553; Gianna Originals, Jersey City, NJ

A certification was issued in response to a petition received on March 9, 1981 covering all workers separated on or after October 1, 1980.

TA–W–12,337; Atlantic Sportwear, Inc., East Rockaway, NJ

A certification was issued in response to a petition received on February 24, 1981 covering all workers separated on or after February 16, 1980.

TA–W–12,391; Peter Cooper Corp., Camden, NJ

A certification was issued in response to a petition received on March 2, 1981 covering all workers separated on or after January 1, 1981.

TA–W–12,402; William B. Haskell Manufacturing Co., Pawtucket, R.I.

A certification was issued in response to a petition received on March 3, 1981 covering all workers separated on or after January 10, 1981.

I hereby certify that the aforementioned determinations were issued during the period June 14, 1982–June 18, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 22, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–17567 Filed 6–28–82; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–12,844]

Jackie Stuart, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 20, 1981 in response to a petition received on July 13, 1981 which was filed by Local 23–25 of the International Ladies' Garment Workers' Union on behalf of former workers at Jackie Stuart, Incorporated, New York, N.Y. The workers produced ladies' coats and jackets.

In the course of the investigation it was found that Local 10 of the ILGWU, representing garment cutters, filed a petition on October 29, 1980 on behalf of workers at Jackie Stuart, Inc., New York, N.Y. As a result of that petition, on December 23, 1981 the Department issued a notice of determination which certified all workers at Jackie Stuart, Incorporated, New York N.Y. as eligible to apply for adjustment assistance benefits (TA–W–11,635). That certification's impact date was October 29, 1979, and its termination date was December 31, 1980.

Jackie Stuart, Incorporated permanently closed in December 1980. All remaining workers were laid off at that time. These workers were covered by an active certification (TA–W–11,635). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 21st day of June 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-17568 Filed 6-28-82; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-12,687 and 12,890]

James Textile Corp. and Pembee Manufacturing Corp.; Termination of Investigations

Pursuant to Section 221 of the Trade Act of 1974, investigations were initiated on August 10, 1981 in response to worker petitions received on August 3, 1981 which were filed on behalf of workers at James Textile Corporation, North Bergen, New Jersey and at Pembee Manufacturing Corporation, Lumberton, North Carolina (a division of James Textile Corporation).

The petitioner has requested that the petitions be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigations have been terminated.

Signed at Washington, D.C. this 21st day of June 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-17569 Filed 6-28-82; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application No. D-3402]

Proposed Exemption for Certain Transactions Involving the Cargill Group Life Insurance Plan for Office, Sales, and Supervisory Employees Maintained by Cargill, Inc., Located in Minneapolis, Minnesota

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt under certain conditions, the reinsurance by the Summit National Life Insurance Company (Summit) of group life insurance contracts sold to Cargill, Incorporated (the Employer) on behalf of the Cargill Group Life Insurance Plan for Office, Sales and Supervisory Employees (the Plan) maintained by the Employer. Summit is a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Employer, participants and beneficiaries of the Plan, Summit, and other persons participating in the transactions.

EFFECTIVE DATE: If the proposed exemption is granted, it will be effective January 1, 1975.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before August 16, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-3402. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406 (a) and (b) of the Act. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79-41, the Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79-41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and that unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is a corporation organized under the laws of the State of Delaware and is engaged primarily in the acquisition, processing, storage, transportation and the resale of agricultural and other bulk commodities on a worldwide basis. The Employer's principal place of business is Minneapolis, Minnesota.

2. The Plan is an employee welfare benefit plan which provides life insurance benefits to employees of the Employer. There are approximately 7,742 participants in the Plan.

3. Summit is a wholly owned subsidiary of the Employer. Summit is a corporation organized under the laws of the State of Ohio, with its principal offices in Akron, Ohio. Summit is engaged in various forms of insurance, including reinsuring risks under group insurance policies. As of December 31, 1980, Summit's balance sheet assets were approximately $55.5 million.

4. The benefits under the Plan have been funded since 1923 through the purchase of group insurance contracts by the Employer from the Prudential Insurance Company of America (Prudential). Prudential is unrelated to the Employer and to Summit. Summit has reinsured Prudential for a portion of its liability since 1973. Currently Summit reinsures Prudential for 75% of its group term liability under the Plan and 100% of its liability under the paid-up insurance policies. The benefits under the Plan are

provided unconditionally by Prudential, and the Plan is not a party to the reinsurance transactions.

5. The applicant represents that the subject reinsurance transactions have met all of the conditions of PTE 79-41 covering direct insurance transactions:

(a) Summit is a party in interest as described in Act section 3(14)(G) by reason of stock affiliation with the Employer maintaining the Plan.

(b) Summit is licensed to sell insurance in 31 states.

(c) Summit is audited by the Superintendent of Insurance of the State of Ohio and is presently in good standing. Summit received a Certificate of Compliance from the Insurance Commissioner of the State of Ohio on July 31, 1963. Such certificate is automatically renewed each year by the Ohio Insurance Department and continues to be effective unless rescinded. Summit's certificate has never been rescinded.

(d) Summit underwent a financial examination by the Superintendent of Insurance of the State of Ohio as of December 31, 1980.

(e) Summit has undergone in the past, and will continue to undergo in the future, an annual examination by an independent certified public accountant.

(f) The Plan pays no more than adequate consideration for the insurance contracts. Because Prudential is one of the largest group insurance underwriters in the country and enjoys substantial economies of sale in overall policy administration, the premium charge to the Plan is highly competitive. The reinsurance transactions are not a factor in the premium computation and thus do not in any way affect the cost to the Plan.

(g) No commissions will be paid in connection with either the direct sale of ther insurance contracts or with respect to the reinsurance agreement between Prudential and Summit, after December 31, 1981.

(h) The gross premiums and annuity considerations from reinsurance received in 1980 and 1981 by Summit for group life and health contracts for plans (and their employers) with respect to which Summit is a party in interest did not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in 1980 and 1981 by Summit. Further, Summit will not enter into any reinsurance arrangements in the future is such limitation would be exceeded.

6. In summary, the applicant represents that the subject transactions meet the statutory criteria of section 408(a) of the Act because: (1) Plan participants and beneficiaries are afforded insurance protection by Prudential, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arms-length negotiations; (2) Summit is a sound, viable insurance company which has been in business for many years, and which does a substantial amount of business outside its affiliated group of companies; and (3) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79-41 has been met under the subject reinsurance transactions.

Notice to Interested Persons

Notice of this proposed exemption will be provided to all participants and beneficiaries of the Plan within 14 days of the publication of the notice in the **Federal Register**. Participants who are currently employed will be notified by means of posting an announcement in a place that is customarily used for providing notice to Plan participants. Retired employees will be notified by mail. The notice to interested parties will contain a copy of the proposed exemption and will inform all interested persons of their right to comment and request a hearing.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective January 1, 1975, the restrictions of section 406 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Summit from the group life insurance contracts sold by Prudential to the Employer to provide benefits to the Plan, provided the following conditions are met:

(a) Summit—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with the Employer that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Compliance from the Insurance Director of its domiciliary state, Ohio, which has neither been revoked nor suspedned; and

(4) (A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Ohio) by the Insurance Commissioner of the State of Ohio within 5 years to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the group life insurance contacts;

(c) No commissions are paid with respect to the direct sale of such contracts, or the reinsurance thereof, after December 31, 1981; and

(d) For each taxable year of Summit, the gross premiums and annuity considerations received in that taxable year by Summit for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which Summit is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by Summit. For purposes of this condition (d):

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the laws of its domiciliary state, Ohio) by the Insurance Commissioner of the State of Ohio within 5 years to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the group life insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts, or the reinsurance thereof, after December 31, 1981; and

(d) For each taxable year of Summit beginning after December 31, 1981, the gross premiums and annuity considerations received in that taxable year by Summit for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which Summit is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by Summit. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale of life insurance, health insurance, or annuity contracts to such plans (and their employers) by Summit. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by Summit.

(2) All premiums and annuity considerations written by Summit for plans which it alone maintains are to be excluded from both the numerator and the denominator of this fraction.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this proposed exemption.

Signed at Washington, D.C., this 22nd day of June 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-17548 Filed 6-28-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2706]

Proposed Exemption for Certain Transactions Involving the W. A. Tayloe Co., Inc., Profit Sharing Plan Located in Dallas, Texas

AGENCY: (Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt the proposed loans (the Loans) of money for a period of seven years by the W. A. Tayloe Co., Inc. Profit Sharing Plan (the Plan) to the W. A. Tayloe Co., Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer, and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before August 9, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-2706. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constutition Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Lewis of the Department, telephone (202) 523-7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan (the Trustees), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. This notice of pendency was originally published in the Federal Register on February 5, 1982 (47 FR 5537). Due to a requested modification of the proposal by the applicant, this notice of pendency is being republished as follows:

2. The Plan is a profit sharing plan with thirty-four participants and net assets of approximately $496,000 on October 27, 1981. The Employer and sponsor of the Plan is a Texas corporation engaged in the distribution of materials handling equipment. Mr. Philip Eyre and Mr. W. A. Tayloe, both of whom are officers of the Employer, are the Trustees of the Plan. Investment decisions for the Plan are made by the Trustees.

3. The Trustees seek an exemption to allow the Plan to enter into a loan agreement (the Loan Agreement) with the Employer whereby the Plan will periodically lend to the Employer amounts of money (the Loans) up to an aggregate at any point in time of 35 percent of Plan assets. The proceeds of the Loans will be used to purchase new cars and trucks (the Vehicles) for use in the Employer's business. No more than 80% of the purchase price of the Vehicles will be financed through the Plan. The Loans will be made over a seven-year period, the first day of which will be the date the grant of an exemption is published in the Federal Register. All of the Loans will mature and become due and payable on or before the last day of such seven-year period. Each individual Loan will have a maturity of thirty-six months or less, with principal and interest amortized equally in monthly payments. The interest rate for each Loan granted under the Loan Agreement will be set in accordance with the rate that is normally charged in the Dallas, Texas area by lenders making similar loans, but will never be less than the higher of 13% per annum or two points above the existing yield of six month money market certificates of deposit of $100,000 sold by Texas American Bank of Dallas, Texas. The interest rate on any Loan will be adjusted every six months and will be approved in advance by Arthur Young and Company, the independent fiduciary for the Plan (the Independent Fiduciary).

4. Each Loan made during the seven year period will be secured by a perfected first lien on the Vehicles which will be used in the Employer's business. The fair market value of the Vehicles will at all times during the term of the Loan Agreement be not less than 150% of the outstanding Loan balances. If at any time the value of the Vehicles falls below this amount, additional collateral will be provided by the Employer. The Employer will warrant to own, throughout the term of the Loan Agreement, all collateral free from any security interests (other than security interests granted to the Plan) or encumbrances. The Vehicles will be fully insured against fire, theft and other hazards, with the Plan named as the beneficiary of the insurance policy. The Employer will pay all costs associated with the maintenance of the Vehicles, including but not limited to paying all taxes, insurance premiums, repairs and storage costs.

5. The Trustees and the Independent Fiduciary have reviewed the needs of the Plan and the Loan Agreement as proposed and have determined that the Loans are appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries. The Independent Fiduciary will monitor the terms and conditions of the Loan Agreement and the Loans made pursuant thereto, and will take any steps necessary to enforce the rights of the Plan. Additionally, the Independent Fiduciary will review the collateral quarterly to ensure that the fair market value of the collateral is at all times equal to 150 percent of the outstanding balances of the Loans.

6. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) the independent Fiduciary will approve the terms and conditions of each Loan made pursuant to the Loan Agreement, monitor the Loans and the value of the collateral and take any steps necessary to enforce the terms and conditions of the Loan Agreement and the Loans made pursuant thereto; (2) the Loans will be secured by a perfected first security interest in insured collateral which will at all times be maintained in an amount equal to 150% of the outstanding balances of the Loans; (3) the interest rates on the Loans will not, in any event, be less than the higher of 13% per annun or two points above the existing yield of six month money market certificates of deposit of $100,000 sold by Texas American Bank; (4) each Loan will be for a relatively short duration, not to exceed thirty-six months; and (5) the Trustees and the Independent Fiduciary represent that the Loans are in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Within ten days of its publication in the Federal Register a copy of the notice of pendence and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be hand delivered or mailed to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from

the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed Loans of money pursuant to the Loan Agreement as described herein, by the Plan to the Employer for a period of seven years from the date the grant of an exemption is published in the Federal Register, provided that the terms and conditions of each Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 22nd day of June 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pensions and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-17549 Filed 6-28-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3247]

Proposed Exemption for Certain Transactions Involving the Pension Plan for Members of the Graphic Arts International Union, Local 109-B, Located in Brattleboro, Vermont

AGENCY: Pension and Welfare Benefit Programs Office Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the participation by the Pension Plan for Members of the Graphic Arts International Union, Local 109-B (the Plan) in a loan (the Loan) by the First Vermont Bank and Trust Company (the Bank) to Book Press, Inc. (the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Employer, the participants and beneficiaries of the Plan and other persons participating in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before August 9, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-3247. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees (the Trustees) of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Respresentations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a pension plan maintained pursuant to the terms of a collective bargaining agreement between the Employer and the Graphic Arts International Union, Local 109-B (the Union). The Trustees consist of equal numbers of representatives from the Employer and the Union. As of July 1, 1980, the Plan had approximately 625 participants and beneficiaries and total assets of $2,505,069. The Employer is a book manufacturing corporation which produces approximately 38,000,000 books annually for a variety of publishers.

2. On November 15, 1981, the Employer entered into the Loan with the Bank under the terms of which the Employer borrowed $300,000 for the purchase and installation of a Hantscho Web Offset Printing Press (the Printing Press). The Printing Press has been purchased and installed by the Employer. The Loan is secured by a first security interest in the Printing Press and certain accessories for the Printing Press. Rudy Otepha Associates, Inc., an independent appraiser of printing equipment, located in Bensenville, Illinois has determined that the fair market value of the Printing Press and related accessories, as of January 25, 1982, was $430,000. Also, the payment of 90% of the unpaid principal balance of the Loan has been guaranteed by the Vermont Industrial Development Authority, an instrumentality of the state of Vermont. The Loan has a floating interest rate of 1% above the prime interest rate payable by the Bank and interest is payable every six months. The term of the Loan is six years. The Loan also requires the Employer to make annual "sinking fund" payments to the Bank beginning on November 15, 1982 in the amount of $25,000 and increasing by $10,000 each year through November 15, 1987, when the final sinking fund payment of $75,000 must be paid. The sinking fund payments are held by the Bank in a separate account with the Employer receiving interest on the sinking fund balance. On November 15, 1987, the entire sinking fund balance will be released to the Bank to repay the outstanding balance of the Loan.

3. The applicant is requesting an exemption to permit the Plan to participate in the Loan. The applicant proposes that participation certificates (the Participation Certificate(s)) in multiples of $50,000, up to a total of $300,000 be purchased from the Bank by the Plan. Upon purchase by the Plan of a Participation Certificate, the interest rate on that portion of the Loan would be fixed at 14.5% per annum. Interest would be payable to the Plan by the Employer twice annually. All Participation Certificates would be sold to the Plan with full recourse against the Bank upon any default under the Loan or Participation Certificate. Upon default, the Trustees could require the Bank to repurchase the Participation Certificates at a price equal to the principal balance on the Participation Certificates plus accured interest to the date of repurchase.

4. The Bank and the Trustee will also enter into a servicing agreement (the Servicing Agreement). Under the Servicing Agreement the Bank would assume responsibility for the collection of interest payments as they become due, for remitting such payments to the Plan and in the case of payments by the Employer to the sinking fund, for holding such payments in a separate account for eventual distribution to the Plan. The Bank would also monitor the Employer's compliance with the terms and conditions of the Loan and Participation Certificates. The Bank would receive a fee of ½% per annum of the outstanding amount on the Participation Certificates acquired by the Plan for this service.

5. The Chittenden Trust Company (Chittenden) and the Vermont Federal Savings and Loan Association (Vermont) of Burlington, Vermont have examined the terms and conditions of the proposed transaction and represent that the proposed transaction would be in the best interests and protective of the Plan. Chittenden and Vermont are both independent of the parties to the transaction. Additionally, Chittenden and Vermont represent that the fee charged by the Bank pursuant to the Servicing Agreement is commercially reasonable and fair to the Plan and its participants and beneficiaries. Chittenden will monitor the receipt of all interest and sinking fund payments by the Employer on the Participation Certificates.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) Chittenden and Vermont, independent parties, have represented that it is in the best interests and protective of the Plan and its participants and beneficiaries; (b) the value of the Printing Press has been determined by an independent appraiser; (c) the Participation Certificates will be purchases by the Plan with full recourse against the Bank in the event of default; (d) the Bank, pursuant to the Servicing Agreement, and Chittenden will monitor the payments to be received by the Plan pursuant to the Participation Certificates; and (e) the purchase of Participation Certificates will involve a low percentage of the assets of the Plan.

Notice to Interested Persons

Notice of the proposed exemption will be given to the Union and all participants and beneficiaries of the Plan within 10 days of the publication of the notice of pendency in the **Federal Register**. Notice will be given by 1st class mail and by posting on bulletin boards in the facilities of the Employer commonly used for employee notices. Notice will include a copy of the notice as it appears in the **Federal Register** as well as a statement informing all interested persons of their right to comment or request a hearing on the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Plan's participation in the Loan by the Bank to the Employer through the purchase of Participation Certificates in amounts up to $300,000, provided the terms and conditions of the Participation Certificates held by the Plan are as favorable to the Plan as the Plan could obtain in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 23rd day of June 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-17550 Filed 6-28-82; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting; Cancellation

On June 3, 1982 on page 24236 of the **Federal Register** notice was published on a Humanities Panel Meeting to be held on June 28–29, 1982 from 9:00 a.m. to 5:30 p.m. in Room 314 of the National Endowment for the Hunanities, 806 15th Street, N.W., Washington, D.C. 20506. This meeting was to review applications for Youth Projects Program, Division of

Special Programs, and was closed to the public. This meeting has been cancelled.

V. J. Loughnan,

Director of Administration.

[FR Doc. 82-17540 Filed 6-28-82; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed, on or before June 29, 1982. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the receipent nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 23rd day of June, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Acting Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (EXPORT)

Name of applicant, date of application, date received, and application No.	Material type	Material in kilograms		End-use	Country of Destination
		Total element	Total isotope		
Mitsui & Co., June 7, 1982, June 9, 1982, XSNM01963.	3.95% Enriched uranium	5,171	156	Reload fuel for Hamaoka Unit 1	Japan.
Mitsubishi Int'l., June 2, 1982, June 10, 1982, XSNM01964.	2.45% Enriched uranium	10,936	268	Reload fuel for Mihama Unit 1	Do.
Mitsubishi Int'l., June 7, 1982, June 11, 1982, XSNM01965.	2.15% Enriched uranium	26,698	575	Initial core fuel for Takahama Unit 3, Region 1	Do.
Mitsubishi Int'l., June 7, 1982, June 11, 1982, XSNM01966.	3.15% Enriched uranium	28,209	889	Initial core fuel for Takahama Unit 3, Region 3	Do.
Edlow Int'l., June 10, 1982, June 11, 1982, XSNM01967.	3.25% Enriched uranium	10,470.00	340.28	Reload fuel for Ohi Unit 2	Do.
Edlow Int'l., June 10, 1982, June 11, 1982, XSNM01968.	2.85% Enriched uranium	11,200.00	319.20	Reload fuel for Takahama Unit 1	Do.
Edlow Int'l., June 10, 1982, June 11, 1982, XSNM01969.	2.85% Enriched uranium	11,590	330.32	Reload fuel for Mihama Unit 3	Do.
Edlow Int'l., June 10, 1982, June 11, 1982, XSNM01970.	2.85% Enriched	10,940.00	311.80	Reload fuel for Takahama Unit 2	Do.
Transnuclear, June 8, 1982, June 14, 1982, XSNM01899(01).	93.3% Enriched uranium	Additional 3.300	Additional 3.079	Amend to increase quantity authorized for export for use in the NRX-NRU Research Reactors.	Canada.
		Total amount 101.300	94.513		Do.
Mitsui & Co., June 14, 1982, June 16, 1982, XSNM01971.	3.95% Enriched uranium	20,058	618	Routine reload fuel for Hamaoka Unit I	Japan.
Mitsui Int'l., June 7, 1982, June 16, 1982, XSNM01971.	2.65% Enriched uranium	26,195	695	Initial core for Takahama 3 (Region 2)	Do.

[FR Doc. 82-17565 Filed 6-28-82; 8:45 am]

BILLING CODE 7590-01-M

[50-454/455-OL]

Commonwealth Edison Co. (Byron, Units 1 and 2); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for Commonwealth Edison Company (Byron, Units 1 & 2), Docket Nos. 50454/455-OL, is hereby reconsituted by appointing the following Administrative Law Judge to the Board: Morton B. Margulies. Mr. Marshall E. Miller was chairman of this Board, but, because of a schedule conflict, is unable to continue to serve.

As reconstituted, the Board is comprised of the following Administrative judges:

Morton B. Margulies, Chairman
Dr. A. Dixon Callihan
Dr. Richard F. Cole

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Law Judge Morton B. Margulies, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland this 18th day of June 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 82-17560 Filed 6-28-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co. et al. (Clinton Power Station, Unit 1); Order Extending Construction Completion Dates

Illinos Power Company on behalf of itself, and as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., are holders of Construction Permit No. CPPR-137 issued by the Nuclear Regulatory Commission on February 24, 1976 for the Clinton Power Station Unit 1.

The Illinois Power Company stated that this extension was requested because construction has been delayed due to:

1. Impact of modifications resulting from the accident at the Three Mile Island Nuclear Power Station.
2. Additional design vertifications and controls imposed by stricter interpretation of standards, codes and regulations.
3. More extensive preoperational testing and startup requirements.
4. Construction delays caused by changes and increases in requirements resulting in material and equipment supplier problems.
5. Uncertainties and confusion resulting from licensing requirements, and their interpretation and implementation.

We have reviewed the information in Illinois Power Company's submittals and we conclude that factors one through four discussed above are reasonable and constitute good cause for delays. Thus, the requested extension of Construction Permit CPPR-137 to October 1, 1984 is justified.

This action involves no significant hazards considerations, good cause has been shown for the delay, and the requested extension is for a reasonable period, the bases for which are set forth in the staff evaluation. The preparation of an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the Order, other than that which has already been predicted and described in the Commission's Final Environmental Statement—Construction Permit Stage (FES-CP) for the Clinton Power Station, (Units 1 and 2) published in October 1974 and the Draft Environmental Statement—OL issued in December 1981. A Negative Declaration and an Environmental Impact Appraisal have been prepared and are available, as is the FES for the construction permit, at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the local public document room established for the Clinton Power Station, at the Warner Vespasian Library, Clinton, Illinois.

It is hereby ordered that the latest completion date for CPPR-137 be extended to October 1, 1984.

Date of Issuance: June 7, 1982.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-17561 Filed 6-28-82; 8:45 am]

BILLING CODE 7590-01-M

[STN 50-482-OL]

Kansas Gas & Electric Co., et al. (Wolf Creek, Unit 1); Reconstitution of Board

Purusant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for *Kansas Gas & Electric Company, et al.,* (Wolf Creek, Unit 1), Docket No. STN 50-482-OL, is hereby reconsituted by appointing the following Administrative Judge to the Board: Dr. Hugh C. Paxton. Dr. J. Venn Leeds, former member of this Board, has resigned from the Panel.

As reconsituted, the Board is comprised of the following Administrative Judges:

James P. Gleason, Chairman
Dr. George C. Anderson
Dr. Hugh C. Paxton

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Hugh C. Paxton, 1229 41st Street, Los Alamos, New Mexico 87544.

Issued at Bethesda, Maryland, this 18th day of June, 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 82-17562 Filed 6-28-82; 8:45 am]

BILLING CODE 75901-01-M

[50-367-CPA]

Northern Indiana Public Service Co. (Bailly, Unit 1); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for Northern Indiana Public Service Co. (Bailly, Unit 1), Docket No. 50-367-CPA, is hereby reconsituted by appointing the following Administrative Judge to the Board: Dr. Kenneth McCollom. Dr. J. Venn Leeds, former member of this Board, has resigned from the Panel.

As reconsituted, the Board is comprised of the following Administrative Judges:

Herbert Grossman, Chairman
Dr. Kenneth McCollom
Dr. Robert L. Holton

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Kenneth McCollom, 1107 West Knapp Street, Stillwater, Oklahoma 74074.

Issued at Bethesda, Maryland, this 18th day of June 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 82-17563 Filed 6-28-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-482]

Kansas Gas & Electric Co., et al.; Availability of Final Environmental Statement For the Wolf Creek Generating Station, Unit No. 1

Notice is hereby given that the Final Environmental Statement (NUREG-0878) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Wolf Creek Generating Station, Unit 1, by Kansas Gas & Electric Company, Kansas City Power and Light Company and Kansas Electric Power Cooperative, Inc. The plant is located in Coffey County, Kansas, approximately 28 miles east-southeast of Emporia, Kansas.

The Final Environmental Statement (NUREG-0878) is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the William Allen White Library, Emporia State University, 1200 Commercial Street, Emporia, Kansas 66801. The Final Environmental Statement is also being made available at the State Clearinghouse, Division of the Budget, Room 152 E. Capitol Building, Topeka, Kansas 66612.

The notice of availability of the Draft Environmental Statement (DES) for the Wolf Creek Generating Station, Unit 1 and request for comments was published in the Federal Register on January 29, 1982 (47 FR 4370). The comments received from Federal, State and local agencies, and interested members of the public have been included as appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG-0878) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5238 Port

Royal Road, Springfield, Virginia 22161, and from the Sales Office, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 21st day of June 1982.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 82-17564 Filed 6-28-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18824; File No. Amex-82-8]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Proposed Rule Change

Relating to Stock Index Options. Comments requested on or before July 29, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1982, the American Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Item 1. Text of Proposed Rule Change

Section 11. Stock Index options

Applicability and Definitions

Rule 900C

(a) *Applicability*—The rules in this Section are applicable only to stock index options (as defined below). In addition, except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and of all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of stock index options. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, stock index options are included within the definition of "security" or "securities" as such terms are used in the constitution and the Rules of the Exchange.

(b) *Definitions*—The following terms as used in the Rules in this Section shall, unless the context otherwise indicates, have the meanings herein specified:

(1) Stock Index Group—The term "stock index group" means a group of stocks each of whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market value in a widely disseminated stock index. Such stock indexes may reflect representative stock market values of a broad segment of the stock market or of specific categories of stocks.

(2) Stock Index Option (Contract)—the term "stock index option" means an option contract on a specific stock index group.

(3) Numerical Index Value—The term "numerical index value" means the level of a particular stock index, or any specified mulitiple or divisor thereof, as derived from the current market prices of the stocks in the underlying stock group.

(4) Current Index Group Value—The term "current index group value" means the numerical index value of a stock index group multiplied by $1.00.

(5) Market Closing Index Group Value—The term "market closing index group value" means the current index group value calculated at the close of business on the day of exercise or, if the day of exercise is not a trading day, on the last trading day before exercise.

(6) Index Multiplier—The term "index multiplier" means the number specified in a stock index option contract by which the market closing index group value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid excercise of the contract.

(7) Exercise Price—The term "exercise price" as used with reference to a stock index option contract means the specified index group value at which the market closing index group value may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of such option contract.

(8) Aggregate Exercise Price—The term "aggregate exercise price" as used with reference to a stock index option contract means the exercise price of the option contract times the index multiplier.

(9) Call—The term "call" means a stock index option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Options Clearing Corporation the multiple of the market closing index group value of the underlying stock index group covered by the option contract.

(10) Put—The term "put" means a stock index contract under which the holder of the option has the right, in accordance with the terms of the option, to sell to the Options Clearing Corporation the multiple of the market closing index group value of the underlying stock index group covered by the option contract.

(11) Class of Options—The term "class of options" means all option contracts of the same type of option covering the same underlying stock index group.

(12) Covered—(i) The term "covered" in respect of a short position in a call stock index option contract means that the writer's obligation is secured by a "specific deposit" or an "escrow deposit" meeting the conditions of Rule 610(f) or 610(h), respectively, of the rules of the Options Clearing Corporation or the writer holds in the same account as the short position, on the basis of market value ("covering" underlying stock) [1] or of the index multiplier (covering option contracts) a long position either in the underlying stock index group or in an option contract of the same class of options having an exercise price equal to or less than the exercise price of the option contract in such short position.

(ii) The term "covered" in respect of a short position in a put stock index option contract means that the writer holds in the same account as the short position on the basis of the index multiplier a long position in an option contract of the same class of options having an exercise price equal to or greater than the exercise price of the option contract in such short position.

(13) Underlying Stock Index Group—The term "underlying stock index group" as used with reference to a stock index option contract means the stock index group, a multiple of the market closing index group value of which the Options Clearing Corporation is obligated to sell (in the case of a call) or purchase (in the case of a put) upon valid exercise of the contract.

(14) Underlying Stock—The term "underlying stock" means any of the stocks included in an underlying stock index group.

Rule 901 C. Designation of Stock Index Options

(a) The Exchange may from time to time approve for listing and trading on the Exchange put option contracts and call option contracts in respect of underlying stock index groups comprised of 10 or more underlying stocks; provided that if stocks traded on the Exchange constitute 10% or more of the total market value of all of the underlying stocks included in a stock index group such group must consist of

[1] Definition to be supplied by Amendment.

not less than 50 underlying stocks; and provided further that if the stock index group shall consist of less than 25 underlying stocks, each of such underlying stocks must meet the criteria and guidelines set forth in Rule 915 and none of such underlying stocks may be stocks which are traded on the Exchange.

(b) Only stock index option contracts of a series of options approved by the Exchange and currently open for trading on the Exchange may be purchased or sold (written) on the Exchange. All such option contracts shall be designated as to the underlying stock index group to which the option contract relates, the type of option, the expiration month, the exercise price, the year of expiration of any option series having more than one year remaining to expiration and the multiple or divisor, if any, to be applied to the stock index to arrive at the numerical index value of the stock index group.

Commentary

.01 Initially, the Exchange has approved for trading options on stock index groups based on the Amex Market Value Index, the and the .

Rule 902 C. Terms of Stock Index Option Contract

Subject to the provisions of Rules 907 and 909, the rights and obligations of holders and writers of stock index option contracts dealt in on the Exchange shall be as set forth in the rules of the Options Clearing Corporation.

Rule 903 C. Series of Stock Index Options

Prior to opening of trading in any series of stock index options the Exchange shall fix the expiration month and exercise price of option contracts included in each such series in accordance with the provisions of Rule 903, except that the Exchange may at the commencement of trading of a particular class of stock index options open series of options therein having six different expiration months with successive three month intervals. The exercise price of each series of stock index options opened for trading on the Exchange shall be an integer which is reasonably close to the numerical index value of the underlying stock index group to which such options relate at or about the time such series of options is first opened for trading on the Exchange. Additional series of the same class of options may be opened for trading on the Exchange as the numerical index value of the underlying stock index group moves substantially from the initial exercise price or prices. The opening of a new series of stock index options on the Exchange shall not affect any other series of options of the same class previously opened.

Rule 904 C. Position Limits

(a) Position limits relating to stock index options shall be governed by the provisions of Rule 904 except that the position limit applicable to each account with respect to each stock index group shall be 40,000 contracts.

(b) In determining compliance with position limits applicable to stock index options, option contracts on a stock index group shall not be aggregated with option contracts on an underlying stock or stocks included in such group, and option contracts on one stock index group shall not be aggregated with option contracts on any other stock index group.

Rule 905 C. Exercise limits

The limitations on the exercise of options set forth in Rule 905 shall not be applicable to stock index options.

Rule 906 C. Reporting of Options Positions

Positions in stock index options shall be reported pursuant to Rule 906 except that the minimum position in an account which must be reported shall be 500 or more stock index option contracts. In computing reportable options positions and in reporting options positions under Rule 906, option contracts on a stock index group shall not be aggregated with option contracts on an underlying stock or stocks included in such group and option contracts on one stock index group shall not be aggregated with option contracts on any other stock index group.

Rule 909 C. Other Restrictions on Option Transactions

Restrictions pursuant to Rule 909 on the writing of uncovered calls at a "discount" on an underlying security subject to a stabilizing bid by underwriters shall normally not be applicable to stock index options.

Rule 916 C. Withdrawal of Approval

Whenever the Exchange determines that an underlying stock index group previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, the Exchange shall not open for trading any additional series of the class covering that underlying stock index group and may thereafter prohibit any opening purchase transactions in series of options of that class previously opened to the extent it shall deem such action necessary or appropriate. The fact that one or more underlying stocks included in a stock index group approved for Exchange option transactions shall subsequently be deleted from such stock index group, or shall fail to meet the guidelines set forth in Rule 916 for continued approval by the Exchange as an underlying security, will not in itself result in the withdrawal of approval of such stock index group for Exchange option transactions.

Rule 918 C. Trading Rotations

The opening trading rotation for each class of stock index options shall not be commenced until the current numerical index value of the underlying stock index group derived from the current market prices of the underlying stocks in such group is being disseminated in a normal manner. Trading on the Exchange in options on a stock index group shall be halted or suspended whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are that:

(1) all trading has been halted or suspended in the market which is the primary market for the plurality of the underlying stocks included in such stock index group, or

(2) the current calculation of the numerical index value derived from the current market prices of the underlying stocks in such stock index group is not available, or

(3) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading in any class or series of stock index options that has been the subject of a halt or suspension by the Exchange may be resumed upon a determination by the Exchange that the conditions which led to the halt or suspension are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading.

Rule 951 C. Premium Bids and Offers

Bids and offers for stock index options shall be expressed in terms of a percent (with fractions of a percent expressed (A) in the case of a premium of less than $300, in six-tenths, and (B) in the case of a premium equal to or greater than $300, in eighths) of the premium. (*E.g.*, a bid of 5⅛ shall represent a bid to pay a premium of $512.50 for a stock index option contract with an index multiplier of 100).

Rule 980 C. Exercise of Stock Index Options

Upon the exercise of a stock index option the market closing index group value shall be established as of the close of business on the day on which the exercise notice is delivered to the Options Clearing Corporation provided that, except on the last business day of trading in any series prior to expiration, the exercise notice is actually received by the Options Clearing Corporation at or prior to 4:00 P.M., E.S.T. (3:00 P.M., C.S.T.). Exercise notices received after such time will be treated as having been received the following day. Except as above provided, the exercise of stock index options shall be governed by the provisions of Rule 980 and the applicable rules of the Options Clearing Corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Item 3. Self-Regulatory Organizations' Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The rules proposed in this filing are designed to accommodate trading on the Amex of stock index options. These stock index options will have as their underlying securities, groups of stocks whose inclusion and relative representation in the underlying groups are determined by the relative weighting of their prices within a widely disseminated stock index. Initially, the Amex expects to authorize the trading of stock index options based on the Amex Market Value Index and on sub-indices related to particular industry segments of Amex traded stocks. In addition, the Amex expects to list stock index options on an index or indices constituted in accordance with a broad-based group of stocks other than those traded on the Amex and on sub-indices related to particular industry segments of those stocks.

Because of the practical difficulties inherent in fractional share delivery strictly in accordance with the relative weighting of each stock within the governing index, the proposed rules change [2] provides that a stock index option obligates the writer (in the case of a call) or the holder (in the case of a put) to sell to the Options Clearing Corporation the designated multiple (index multiplier) for the specific stock index option times the current index group value. That value is $1.00 multiplied by the current level of the governing index (or any specified multiple or divisor thereof—see definition of "numerical index value"). For example, a call option based on the Amex Market Value Index utilizing a multiple of 100 would entitle the holder, upon exercise of the option at a time when the Amex Index is 300, to "delivery" of $30,000 upon payment of the aggregate exercise price. It is also the Amex's expectation that the assignment of an exercise notice in, for example, a call option will result merely in the payment by the obligated party of the difference between the current index group value and the aggregate exercise price.

The Amex believes that stock index options will offer investors an enhanced ability to hedge against the risks of general market price movements as compared with individual stock price fluctuations and will provide a new and valuable tool for portfolio management. The availability of stock index options will permit investors with individual stock positions to protect themselves from the effects of a short-term downswing in the broad market by, for example, purchasing puts or writing call options on a stock index. Should a downswing then materialize, negatively affecting the investor's individual stock holdings, the proceeds from the sale of the call options or the gain from the put should, at least in part, offset that short-term loss. Diversified portfolios can be insulated from short-term market declines in a similar manner.

Stock index options are designed to mirror general market price movements. Options on indivdual stocks cannot equal the breadth of coverage provided by stock index options or approach the stock index option's symbiotic relationship to broad market movements. Therefore, the Amex believes that stock index options will provide to all investors, regardless of type of portfolio, a vastly expanded opportunity for diversity and an increased ability to accurately structure their holdings in a manner either designed to reflect broad market movements or to insulate their holdings against short term market swings.

The purposes of the specific rules designed to permit the listing and trading of index stock options are set forth below:

Rule 900 C. This rule sets forth the definitions necessary to supplement existing Amex rules so as to provide for the establishment, pricing, trading and settlement of index stock options.

"Stock Index Group" is defined to mean groups of stocks whose inclusion and relative representation in the group are based upon their inclusion and weighting in the governing stock index.

"Stock Index Option (Contract)" is defined to mean an option contract on a stock index group.

"Numerical Index Value" is defined as the level of the particular stock index as derived from the current market prices of the underlying stocks making up the index. Provision is also made in this definition for use of a multiple or divisor of a particular index. For example, if a particular index is structured so that its current level is approximately 1,000, the resulting contract may be too large to be attractive to most investors; therefore the Exchange may trade an option contract having a numerical index value one tenth the size of the index.

"Current Index Group Value" is defined as the product of $1.00 times the numerical index value and "Market Closing Index Group Value" means the value of the index (as adjusted by any multiplier or divisor to arrive at the numerical index value) calculated at the close of business on the day of exercise of a particular stock index option.

"Index Multiplier" is the amount specified in the contract by which the market closing index group value is to be multiplied to determine the required dollar value to be delivered upon valid exercise of the contract. It is anticipated that the "multiplier" will normally be 100. Only in the event of some major restructuring of the index would it be necessary to change the "multiplier".

"Class" is defined as options of the same type on the same underlying stock index group. This definition makes clear that options on a stock index group are not to be confused with options on any one of the underlying securities comprising the group.

Because the holder of a portfolio seeking protection against the risk of market- or sector-wide price movements cannot reasonably be expected to hold in his portfolio every stock represented

[2] This rules change must be read together with rules changes to be submitted by the Options Clearing Corporation in order to determine the obligations and rights of writers and purchasers of stock index options.

in an index and in exactly the same ratio as that used for computing the index, it is impractical to create the one-to-one correspondence between a long position in an underlying stock group and a short position in a call option thereon, which is one of the principal ways of "covered" writing in stock options. Accordingly, the Amex proposes that a representative sub-group of the stocks included in a stock index group constitute "covering" stocks so long as the sub-group stocks meet certain criteria such as (1) the sub-group's aggregate market value relative to the current index group value, (2) the eligibility of the underlying stocks for "covering" purposes, (3) the minimum number of stocks in a "covering" sub-group and (4) their relative representation in the "covering" sub-group. Since the question of what constitutes appropriate "covering" of stock index options is inextricably tied to margin requirements, and since both of these matters require further discusion with the Federal Reserve Board as well as the Commission, the Exchange has not attempted to define in this filing the details for covering short option positions through holdings of a representative group of underlying securities make up the stock index group. It plans to supply these details as well as margin requirements in an amendment to this filing.

Rule 901 C. As indicated above, the Amex plans to authorize options trading on both broad based stock indices and more narrowly focused indices. It also anticipates that some of such indices my be based either in part or entirely on stocks that are traded on the Amex and for which the Amex is the primary market. To avoid the structural problems identified by the Commission in its *Special Study of the Options Markets* such as possible manipulation and "side by side trading," the Exchange proposes not to trade options on any stock index comprised of less than 50 stocks if a substantial portion of such stocks (10% or more of total market value of all stocks included in the index) are traded on the Exchange. Moreover, if the index is based on a group of less than 25 stocks, none of such stocks could be stocks with respect to which the Amex is the primary market and at the time of approving the index for options trading each of the underlying stocks would be expected to measure up to the criteria and guidelines established by the Exchange for the trading of individual stock options.

Rule 903 C. The fixing of exercise prices and expiration months for stock index options is expected to follow very closely the procedures applicable to stock options, except that the Exchange plans to have series with six different expiration months spaced at three month intervals. Thus a new series of stock index options opened immediately after an expiration date will have a life of approximately 18 months. It is anticipated that exercise prices for stock index options would usually be established at five point intervals in relation to the current index group value but may be established at other intervals depending on the index volatility of the particular group.

Rule 904 C and 905 C. The Amex believes that the usual justification for position and exercise limits does not apply to stock index options settled by cash delivery since, amount other reasons, the deliverable "supply" is not limited to the amount of underlying stocks, thus precluding the possibility of a large position or a large number of exercises having an impact on the market prices of the underlying stocks or resulting in a "corner." Nevertheless, the Amex proposes to set a 40,000 contract limit for stock index groups of 50 or more stocks. It will be amendment to this filing establish appropriate lesser contract limits for stock index groups which include fewer than 50 stocks when it determines exactly what underlying stock index groups it is prepared to approve for Exchange options transactions. These rules also preclude aggregation of positions involving options on a stock index group with those involving options on component securities of such group or of any other group. Because stock index groups will be comprised at a minimum of 10 underlying stocks (or at least 50 underlying stocks if a significant number thereof are traded on the Amex), positions or exercises involving options on an index stock group would not appear susceptible to manipulative activity. Therefore, it is unlikely that the establishing of positions or the exercise of stock index options will exert undue pressure or cause disruption in the market for the underlying stocks. The same rationale has been applied in determining not to aggregate such options positions for purposes of reporting requirements in proposed Rule 906 C.

Rule 909 C. This rule makes clear that Rule 909 restictions on the writing of uncovered calls at a discount on an underlying stock subject to a stabilizing bid by underwriters shall normally not be applied to index stock options.

Rule 916 C. Whenever the Exchange determines that an underlying stock index group which has previously been approved for Exchange option transactions does not meet its current requirements for continuance of such approval, the Exchange will not open any additional series of the class covering that underlying stock index group and may thereafter prohibit any opening purchase transactions in series of that class previously opened. However, because of the nature of stock index groups, it would not be appropriate to withdraw approval of the group merely because a particular underlying stock is deleted from the group (or in the case of narrow based stock index groups, one or more of the underlying stocks ceases to meet the guidelines applicable to underlying securities for individual stock options). Specific underlying stocks may be deleted from or added to a stock index group for a variety of reasons, such as mergers, liquidations or because the particular stock is no longer representative of the industry which the stock index purports to measure. In most instances, the deletion of a particular underlying stock or the adding of a particular underlying stock to a stock index group would not significantly affect the level of the index.

Rule 918 C. Because current index group values will be based on current market prices of the underlying stocks in a stock group index and will be the basis on which investors will determine the premiums they are prepared to pay or receive, it would be inappropriate in most instances for trading in an index stock option to proceed when the stock index itself is not being currently computed and diseminated or when trading in a substantial number of the underlying stocks comprising a particular stock index group has been halted or suspended. Therefore, provision is made in this rule to halt trading in the stock index option when these conditions exist or when other unusual conditions or circumstances make it difficult to maintain a fair and orderly market in the stock index option. The Exchange reserves the authority to resume trading whenever the conditions which led to the halt or suspension are no longer present or when it determines that the interests of a fair and orderly market are best served by the resumption of trading.

Rule 951 C. Bids and offers for stock index options will be expressed in much the same fashion as bids and offers for stock options, with the specific bid or offer being multiplied by 100 (the index multiplier) in order to arrive at the total premium.

Rule 980 C. The Exchange proposes that exercises of stock index options

prior to the expiration date must be accomplished by the delivery or an exercise notice to the Options Clearing Corporation prior to the close of busiess on any given trading day in order for the exercise value of that option to be based on the market closing index group value computed on that date. Otherwise, it is felt that holders of options would have an advantage over writers when the particular stock index option is "in the money" because a holder could exercise after the close of trading knowing exactly the amount which he is to receive whereas a writer will not know that his position has been assigned an exercise notice until at least sometime the following day and in the meantime can take no steps to protect against the potential fluctuations in the current index group value. The requirement that exercise notices be received by the Options Clearing Corporation prior to the close of trading is aimed at equalizing the market risks of purchasers and writers.

Statutory Basis. The proposed rule change is consistent with the provisions of sections 6(b)(1) and 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it would provide a regulatory framework for the trading of standardized stock index options on the Exchange in accordance with the requirements of the Act and the various regulations promulgated thereunder. Read together with the Exchange's existing rules regulating the trading of securities on its trading floor, including stock options, the proposed rule changes would give the Exchange the capacity to carry out the purposes of the Act, to comply and to enforce compliance by its members (and persons associated with its members) with the provisions of the Act and the rules and regulations thereunder and to similarly enforce compliance with its own rules, insofar as they may relate to the trading of stock index options.

In particular the rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors in connection with the trading of stock index options. The stock index options covered by the rule change will be issued by and cleared and settled through the Options Clearing Corporation in accordance with established procedures for the clearance and settlement of stock options. The rule change contemplates that all of the safeguards and protections afforded investors in opening accounts, recommending transactions, providing disclosure and monitoring of trading presently applicable to stock options will also be applicable to stock index options. The Exchange believes by providing investors with increased flexibility in managing their portfolios and hedging against market risks the proposed rule change will advance the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or apropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that a regulated market for standardized stock index options will contribute significantly to the needs of individual investors as well as portfolio managers in hedging risks. The restrictions and requirements imposed in connection with stock index options are believed to be only those that are necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors, all as required pursuant to the Act. The development of a stock index option market with these protections will enhance competition in the securities area.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Other

Comments on the proposed rule change were neither solicited nor received. However, the rule change was developed under the guidance of a committee composed primarily of members and chaired by one of the Exchange's Public Governors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before August 3, 1982 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 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 at the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 30 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 21, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-17460 Filed 6-28-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 18827; SR-Amex-81-15]

American Stock Exchange, Inc.; Order Approving Proposed Rule Change

June 21, 1982.

The American Stock Exchange, Inc., ("Amex"), 86 Trinity Place, New York N.Y. 10006, submitted on August 11, 1981, and amended on August 27, 1981, and June 18, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Amex Rule 30. The proposed rule, regarding periodic reporting requirements for members, would provide for the imposition of a fee for certain reporting violations (i.e., the late filing of reports specified by the exchange).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18058, August 24, 1981) and by publication in the Federal Register (46

FR 43536, August 28, 1981). No comments were received with respect to the proposed rule filing.

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 sections 6 (b) and (d) and the rules and regulations thereunder in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-17555 Filed 6-28-82; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

June 23, 1982.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Imperial Oil Limited
Class A Capital Stock, No Par Value (File No. 7-6241)

This security is registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 15, 1982 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Security and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17553 Filed 6-28-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 12499; 812-5122]

ML Venture Partners I, L. P. and Merrill Lynch Venture Capital Inc.; Filing of Application

June 21, 1982.

Notice is hereby given that ML Venture Partners I, L.P. (the "Partnership") and Merrill Lynch Venture Capital Inc. (the "Management Company") (together the "Applicants"), 165 Broadway, New York, New York 10080, filed an application on February 25, 1982 and amendments thereto on June 7 and June 16, 1982 for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") declaring that the Independent General Partners of the Partnership are not "interested persons" of the Partnership as defined in section 2(a)(19) of the Act solely by reason of their being general partners thereof and pursuant to section 57(c) of the Act exempting the proposed acquisition of certain initial venture capital investments by the Partnership from the Management Company from the provisions of section 57(a) of the Act on the terms and conditions set forth in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicants state that the Partnership is a newly formed business development company organized as a Delaware limited partnership on February 16, 1982 pursuant to a Certificate and Agreement of Limited Partnership dated February 12, 1982 (the "Partnership Agreement"). The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments. The Partnership has filed a registration statement under the Securities Act of 1933 ("Registration Statement") with respect to a proposed public offering of up to 12,000 units of Limited Partnership Interest ("Units"). The proceeds of the offering will be invested in 25 to 50 venture capital investments over a period of up to three to four years. Each of these investments will be liquidated once it reaches a state of maturity when disposition can be considered, which typically will be four to seven years from the date of investment. The proceeds of liquidation will not be reinvested except in limited circumstances but will be distributed to the Partners. Since the Partnership will terminate not later than December 31, 1996, the Partnership will be an investment vehicle of limited duration which will have definite stages of development.

The Applicants state that Merrill Lynch Venture Capital Co., L.P., is the Managing General Partner of the Partnership and will be responsible for its venture capital investments. The Managing General Partner is a partnership controlled by the Management Company, which will perform the management and administrative services necessary for the operation of the Partnership pursuant to a Management Agreement. The Managing General Partner and the Management Company will be registered investment advisers under the Investment Advisers Act of 1940. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc., the parent of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), which will be the selling agent for the Units on a "best efforts" basis.

The Applicants state that the Partnership has elected to be a business development company pursuant to the provisions of section 54(a) of the Act, as amended by the Small Business Investment Incentive Act of 1980. As a business development company, the Partnership is subject to sections 55 through 65 of the Act and to those sections of the Act made applicable to business development companies by section 59 thereof.

The Applicants state that the General Partners of the Partnership will consist of Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of the Act), one individual affiliated with the Managing General Partner (collectively, the "Individual General Partners") and the Managing General Partner. According to the application, the Partnership will be managed solely by the Individual General Partners, except that the Managing General Partner, subject to the guidance and supervision of the Independent General Partners, is responsible for the management of the Partnership's venture capital investments and the admission of additional or assignee Limited Partners to the Partnership. Applicants represent that the Partnership Agreement will be amended to provide that only individuals may serve as Individual General Partners and that all functions

which are performed by directors of corporations will be performed solely by the Individual General Partners. Applicants further state that the Independent General Partners will provide overall guidance and supervision with respect to the operations of the Partnership and will perform all duties imposed on the directors of business development companies by the Investment Company Act and will monitor the activities of companies in which the Partnership has invested. The Managing General Partner will be excluded from participation in the management of the Partnership, except for certain specific responsibilities described in the Partnership Agreement.

Applicants state that the Partnership Agreement provides that the General Partners will be elected at the annual meetings of the Limited Partners and will serve for annual terms. The General Partners will from time to time recommend to the Limited Partners the number of persons to be elected as Independent General Partners. Applicants further state, however, that if at any time the number of Independent General Partners is reduced to fewer than three, the remaining General Partners will, within 60 days, designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to at least three.

The Partnership Agreement further provides that the Independent Geneard Partners may be removed either (i) for cause by the action of two-thirds of the remaining Independent General Partners or (ii) by failure to be re-elected by the Limited Partners. The Partnership Agreement provides that the Managing General Partner may be removed either (i) by a vote of a majority of the Independent General Partners or (ii) by failure to be re-elected by the Limited Partners. Applicants also underatake that the Managing General Partner will not resign or withdraw from the Partnership unless a successor managing General Partner has been appointed and consented to by the Limited Partners in compliance with the Partnership Agreement. As set forth in the Partnership Agreement, the managing General Partner may voluntarily resign or withdraw from the Partnership only upon compliance with certain specified procedures. These procedures are summarized as follows: (i) the Managing General Partner must, at least 60 days prior to such withdrawal, give notification to all Partners that it proposes to withdraw and that there be substituted in its place a person designated and described in such notification; (ii) the proposed managing General Partner must represent that it is experienced in performing fucntions that the Managing General Partner is required to perform under the Partnership Agreement; that it has the net worth required under the Partnerhsip Agreement and that it is willing to become the Managing General Partners under the Partnership Agreement and will assume all duties and responsibilities thereunder, without receiving any compensation for services from the Partnership in excess of that payable under the Partnership Agreement to the withdrawing Managing General Partner and without receiving any participation in the withdrawing Managing General Partner's interest other than that agreed upon by the Managing General Partner and the successor managing General Partner; (iii) there must be on file at the principal office of the Partnership audited financial statements of the proposed successor managing General Partner, certified by a nationally or regionally recognized firm of independent certified public accountants; (iv) a majority in interest of the Limited Partners must consent to the appointment of any successor managing General Partner; and (v) the withdrawing managing General Partner must cooperate fully with the successor Managing General Partner.

Applicants state that the Limited Partners have no right to control or otherwise participate in the management of the Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement, including voting rights, and the giving of consents and approvals provided for in the Partnership Agreement. The Partnerhsip Agreement authorizes Limited Partners to vote on certain matters including the election or removal of General Partners, approval or termination of management arrangements, ratification or rejection of the appointment of the independent public accountants of the Partnership, approval of the sale of all or substantially all the assets of the Partnership, and amendments of the Partnership Agreement, other than amendments to admit additional or substituted Limited Partners or to return or reduce the amount of capital contributions of the Limited and General Partners. Applicants further state that the exercise of such voting rights by the Limited Partners is subject to prior receipt of an opinion of counsel to the effect that the exercise of such rights will not adversely affect the status of the Limited Partners as limited partners of the Partnership. However, Applicants state in the registration Statement, which they incorporate by reference, that because of uncertainty under present law as to whether the exercise of such rights under certain circumstances could cause the Limited Partners to be deemed general partners of the Partnership under applicable state laws with a resulting loss of limited liability, the General Partners will take all action which may be necessary or appropriate for the continuation of the Partnership's existence as a limited partnership under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Limited Partners or to enable the Partnership to conduct the business in which it is engaged. Moreover, Applicants state, the General Partners will use their best efforts in the conduct of the Partnership's business to put all persons with whom the Partnership does business or in whom the Partnership invests on notice that the Limited Partners are not liable for Partnership obligations, and all agreements to which the Partnership is a party shall include a statement to the effect that the Partnership is a limited partnership organized under the Partnership Act.

According to the application, the Partnership does not presently have an insurance policy that would provide coverage to persons who become Limited Partners in the Partnership (errors and omissions insurance). Applicants state there are several reasons for this, including the following. The Partnership has been advised by its Delaware counsel that Units in the Partnership will constitute valid limited partnership interests in the Partnership and that subscribers to the Units will be Limited Partners of the Partnership entitled to all of the benefits of Limited Partners of the Partnership entitled to all of the benefits of Limited Partners under the Partnership Agreement and the Limited Partnership Act of the State of Delaware. Second, based upon the nature of the business to be conducted by the Partnership, the Partnership submits that the risk of liability for actions against the Limited Partners, including actions based upon contact or tort claims, is remote. Third, the Partnership Agreement obligates the General Partners of the Partnership to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. Applicants assert that the Partnership, as a business development company, is to be distinguished from a registered

investment company since the legislative history relating to the 1980 amendments to the Act indicates that it was contemplated that business development companies may be organized as limited partnerships.

Applicants state that Management of the Partnership has considered the possiblitiy of obtaining errors and omissions insurance. They further state that in light of the view of the staff of the Commission that generous insurance coverage is appropriate because of the special problems of using the limited partnership form for registered investment companies, the Partnership undertakes that it will periodically review the question of the appropriateness of obtaining an erros and omissions insurance policy for the Partnership.

Section 2(a)(19) of the Act provides, in pertinent part, that an "interested person" of another person when used with respect to an investment company includes an "affiliated person" of such investment company and any "interested person" of any investment adviser of or principal underwriter for such investment company. Section 2(a)(3)(D) of the Investment Company Act provides, in pertinent part, that an "affiliated person" of another person means any officer, director, partner, co-partner or employee of such other person. Section 2(a)(19) excludes from the definition of "interested person" of an investment company those individuals who would be interested persons solely because they are directors of an investment company. There is not equivalent exception for partners.

Applicants state that the Independent General Partners, therefore, are "interested persons" of the Partnership by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership. The Independent General Partners would also be "interested persons" of the Partnership by virtue of being "interested persons" of an investment adviser and principal underwriter to the Partnership. Applicants further state the Independent General Partners are "affiliated persons" of the Managing General Partner by virtue of being "co-partners" with the Managing General Partner, which could be construed to be an investment adviser of the Partnership. Furthermore, Applicants state, the Managing General Partner is under "common control" with the Management Company, an investment adviser of the Partnership, and with Merrill Lynch, the principal underwriter with respect to the sale of the Units, which makes the Managing General Partner an affiliated person of the Management Company and Merrill Lynch. While section 2(a)(19)(A)(iii) of the Act specifically refers to an affiliated person of an investment adviser, Applicants state that they believe it could be alleged that the Managing General Partner and the Management Company are in essence the same person.

To resolve this problem, ensure compliance with section 56(a) of the Act, which requires that a majority of a business development company's directors or general partners not be interested persons of such company, and enable the Independent General Partners to assume the responsibilities imposed upon the directors who are not interested persons within the scheme of regulation imposed upon a business development company by the Act, the Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent that the Independent General Partners would otherwise be deemed to be interested persons of the Partnership, the Managing General Partners, the Management Company or Merrill Lynch solely because such Independent General Partners are General Partners of the Partnership and co-partners with the Managing General Partner. Applicants state that the Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Section 2(a)(19) excludes from the definition of interested persons of an investment company those individuals who would be interested persons solely because they are directors of an investment company. Applicants submit that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of section 2(a)(19).

Applicants state it is contemplated that it will take a period of up to two to three months from the date of the filing of the amended application before the public offering of the Units is consumated and the Partnership receives the proceeds from the sale of such Units. Applicants state that they believe that during this period it is expected that several venture capital investment opportunities suitable for investment by the Partnership within the investment objectives and policies stated in the prospectus will come to the attention of the Managing General Partner. Applicants state that the Partnership will not have the funds to make such investments during this period, and such investment opportunities could be lost to the Partnership if not then acquired. Applicants propose that in such event the Management Company will acquire such venture capital investments, structured as if the Managing General Partner were negotiating for the Partnership to make the acquisition directly.

Applicants represent that any such initial investments will be acquired in arm's-length transactions and will not involve any entity which is an affiliated person (within the meaning of section 2(a)(3) of the Act) of the Management Company or any affiliated person thereof. Applicants state that the Management Company will hold such investments on behalf of the Partnership until the sale of the Units takes place, at which time the Partnership will acquire such investments from the Management Company at the lesser of cost or market value at the time of the acquisition. Applicants further state that if any of such investments are acquired by the Partnership, they will be acquired within 90 days after the closing of the Partnership's public offering. According to the application, the Partnership will not be obligated to acquire such investments if the acquisition of the investments is not approved by the Independent General Partners or if the public offering is not consummated. Applicants state that if the acquisition of the investments is approved by the Independent General Partners, the Management Company must transfer each investment so acquired in its entirety to the Partnership upon the sale of the Units. Applicants represent that each such investment and the cost thereof will be disclosed in the prospectus.

Section 57(a) of the Act provides, in pertinent part, that it shall be unlawful for any investment adviser to a business development company knowingly to sell any security to such business development company without an order of the Commission pursuant to section 57(c). Section 57(c) of the Act states that the Commission shall issue such order if evidence establishes that (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned; (2) the proposed transaction is consistent with the policy of the business development company

as recited in the filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders or partners; and (3) the proposed transaction is consistent with the general purposes of the Act.

Applicants submit that the statutory standards of section 57(c) are satisfied and, accordingly, Applicants request that an exemptive order be issued to permit the Partnership to make purchases from the Management Company upon the conditions described in the application.

Notice is further given that any interested person may, not later than July 16, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his/her interest the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter order a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–17551 Filed 6–28–82; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 12498; 812–5023]

Mutual Life Insurance Co. of New York and Mony Variable Account-B; Filing of Application

June 21, 1982.

Notice is hereby given that The Mutual Life Insurance Company of New York ("MONY"), a mutual life insurance company organized under the law of New York, and The MONY Variable Account-B ("VA-B"), 1740 Broadway, New York, NY 10019, a separate investment account of MONY ("Applicants"), filed an application on April 1, 1982 and an amendment thereto on June 17, 1982 for an order of the Commission exempting MONY and VA-B from the provisions of section 22(d) of the Investment Company Act of 1940 (the "Act") to the extent necessary to permit the transactions described in the application and amendment. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Applicants state that (i) VA-B was established for the purpose of providing an investment medium, during the accumulation period, for certain variable accumlation (fixed payout) annuity contracts to be issued by MONY and VA-B ("VA-B Contracts"); (ii) VA-B Contracts are to be offered to plans qualified under Section 403(b) of the Internal Revenue Code; (iii) VA-B is registered under the Act as an open-end diversified management investment company; and (iv) MONY also isues to 403(b) plans certain fixed-dollar deposit administration group annuity contracts ("Fixed Dollar Contracts").

Section 22(d)

Section 22(d) of the Act provides, in relevant part, that no registered investment company or principal underwriter thereof shall sell any redeemable security to the public except at a current public offering price described in the prospectus.

Applicants request an exemption from the provisions of section 22(d) of the Act to the extent necessary to permit the elimination of unnecessary or duplicative charges for sales and administrative expenses with respect to a payment made on behalf of an individual employee participant pursuant to a companion VA-B Contract, when the payment represents a transfer by such participant of all (or a designated portion) of the accumulated funds to his account under a Fixed Dollar Contract, but only to the extent of accumulated funds representing plan contributions received by MONY under the Fixed Dollar Contract during the period from October 1, 1981 through June 30, 1982 and interest credited thereon. According to Applicants, participants choosing to make such an election must do so within four months after the issuance of the exemptive order requested in the application.

MONY and VA-B submit that: (i) No additional sales expense and negligible administrative expenses will be incurred by MONY on the transferred sums; (ii) additional sales and administrative charges imposed on the transfer to VA-B would be duplicative and unnecessary; and (iii) permitting such no-load transfers gives participants flexibility in selecting the investment media they may desire for a portion of their retirement funds. Applicants further submit that the proposal to limit the no-load transfer right to accumulated funds representing plan contributions received by MONY under the Fixed Dollar Contract during the period from October 1, 1981, through June 30, 1982, is reasonable because a broader no-load transfer right would give an unfair preference to the transferring participants under the Fixed Dollar Contract over other MONY contracts and might unfairly penalize other MONY contractholders by producing some principal losses for the general account. Applicants hence submit that the requested exemption is cost justified and will not arbitrarily or unfairly discriminate against purchasers participating in VA-B. And, since a secondary market in variable annuity contracts is not possible, Applicants assert that the requested exemption presents no danger of disrupting the orderly pattern of mutual fund distribution which Section 22(d) seeks to preserve.

Section 6(c)

Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested party may, not later than July 16, 1982 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of

such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, and order disposing of the application will be issued as of course following July 16, 1982 unless the Commission thereafter orders a hearing upon request or upon the Commission's motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–17554 Filed 6–28–82; 8:45 am]

BILLING CODE 8010–01–M

Pacific Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

June 23, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

The Seagram Company Ltd.
Common Stock, No Par Value (File No. 7–6250)
Parker Drilling Company
Common Stock, $.16⅔ Par Value (File No. 7–6251)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 15, 1982 written data, views, and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82–17552 Filed 6–28–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18784; File No. SR–NASD–82–7]

National Association of Securities Dealers, Inc.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule regarding crossed markets; comments requested on or before July 20, 1982. Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 21, 1982, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change requires a market maker to make reasonable efforts to avoid a crossed market by attempting to trade with all other market makers whose quotations will be crossed.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed rule change is the result of several months study of locked and crossed markets by the Association's Trading Committee during which letters of inquiry were sent to market makers involved in locked and crossed markets. After review of the responses to these letters, the Association's Board of Governors has concluded that the proposed amendment is the most efficient method to prevent crossed markets in the NASDAQ System. This proposed rule change is consistent with section 15A(b)(11) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe this rule change presents a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

This proposed rule change was presented for comment in Notice to Members 82–22. Three comments were received and, after due consideration, the Association's Board of Governors determined to approve a slightly amended version of the rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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, 500 North Capitol Street, Washington, D.C. 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 1100 L Street, NW., Washington, D.C. Copies of such filing will also be

available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted on or before July 20, 1982. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 2, 1982.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-17556 Filed 6-28-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18785; File No. SR-NASD-82-8]

National Association of Securities Dealers, Inc.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule regarding locked markets; comments requested on or before July 20, 1982. Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 21, 1982, the National Association of Securities Dealers, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change expands the crossed market provisions of Schedule D to include locked markets. These provisions require a market maker to make reasonable efforts to avoid a locked market by attempting to trade with all other market makers whose quotations will be locked.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed rule change is the result of several months study of locked and crossed markets by the Association's Trading Committee during which letters of inquiry were sent to market makers involved in locked and crossed markets. After review of the responses to these letters, the Association's Board of Governors has concluded that the proposed amendment is the most efficient method to prevent locked markets in the NASDAQ System. This proposed rule change is consistent with Section 15A(b)(11) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe this rule change presents a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

This propsed rule change was presented for comment in Notice to Members 82-22. Three comments were received and, after due consideration, the Association's Board of Governors determined to approve a slightly amended version of the rule.

Notice to Members 82-22 (April 1, 1982) and responses thereto are attached as Exhibits A, B, C, and D.

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 approved 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, 500 North Capitol Street, Washington, D.C. 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, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 20, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 2, 1982.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A

To: All NASD Members

Re: Request for Comments on Proposed Amendments to Schedule D of the Association's By-Laws Regarding Locked and Crossed Markets

National Association of Securities Dealers, Inc.,

1735 K Street Northwest, Washington, D.C. 20006; (202) 833-7200

April 1, 1982.

Comment Period Closes on April 22, 1982

The Association's Board of Governors is publishing for comment a proposed amendment to Schedule D of the By-laws regarding locked and crossed markets.[1] This amendment, the text of which is attached to this Notice, would obligate a market maker desiring to enter a quotation which would lock or cross another quotation to make reasonable efforts to avoid such a condition by trading with each market maker whose quotation would be locked or crossed. After the comment period has expired, the Board of Governors will again review the proposal, taking into consideration the comments received, and will thereafter submit the proposal, as may be amended in response to the comments received, to the Securities and Exchange Commission for approval.

This proposed amendment is the result of several months' study of locked and crossed markets by the Association's Trading Committee during which letters of inquiry were sent to market makers involved in locked or crossed markets. The responses to these letters indicated that market makers which locked or crossed a market generally asserted that they were responding to changed market conditions by updating their

[1] A "locked" market occurs when the highest bid quotation is equal to the lowest ask quotation. A "crossed" market occurs when the highest bid quotation is greater than the lowest ask quotation.

quotations and that the locked or crossed quotations were "stale." On the other hand, market makers whose quotations were being locked or crossed often responded that their quotations were accurate reflections of their trading position and, in some cases, produced trade tickets representing trades at the quoted prices. After study of these responses, the Board of Governors has concluded that the proposed amendment is the most efficient method to prevent locked and crossed markets in the NASDAQ System.

As noted above, the proposed rule would require an updating market maker to make reasonable efforts to trade with each market maker it would be locking or crossing to the extent required to prevent a locked or crossed market. In this regard, it should be noted that the NASDAQ System is designed to prevent inadvertent entry of locking or crossing quotations through a two step process. Should an updating market maker enter a quotation which would lock or cross a market, the entry is rejected by the NASDAQ System and the market maker is informed through its terminal that its quotation will cause a locked or crossed market. The updating market maker must then retransmit the quotation to have it entered. Thus, the Association anticipates that, upon receipt of the locked or crossed market message, the updating market maker will attempt to trade with all market makers it would be locking or crossing before retransmitting its quotation. It should be noted that the nature of crossed and locked markets will cause these trades with market makers to be at prices equal to or superior to the quotation which the updating market maker seeks to enter. As such, the Association does not believe this requirement will present an undue burden on market makers.

The proposed amendment requires updating market makers to make "reasonable" efforts to trade with market makers it would be locking or crossing. The Board of Governors expects such reasonable efforts to include contacting each market maker and executing transactions to cause the market maker to update its quotation or to eliminate the need of the updating market maker to change its quotation. Failure of a market maker to honor its quotation for the greater of a normal unit of trading or the size displayed constitutes a violation of the "backing away" provisions of Schedule D.

Comments regarding this proposed amendment should be submitted no later than April 22, 1982 and should be directed to: S. William Broka, Secretary, National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

Questions regarding this Notice should be directed to Molly Bayley at (202) 833-7213.

Sincerely,

John H. Hodges, Jr.,

Senior Vice President, Market Services.

Proposed Amendment to Section C.3.a. of Part I of Schedule D

[Language to be deleted is in brackets; language to be added is in italics]

3. Continuing Qualifications.

(a) Character of quotations entered into the System.

(*i*) A registered market maker which receives a buy or sell order must execute a trade for at least a normal unit of trading at his quotations as they appear on NASDAQ CRT screens at the time of receipt of any such buy or sell order. [Each quotation entered by a registered market maker must be reasonably related to the prevailing market.] If a registered market maker displays a quotation which indicates that it is for a size greater than a normal unit of trading, he must execute a buy or sell order up to the size displayed.

(*ii*) *Each quotation displayed by a registered market maker must be reasonably related to the prevailing market.*

(*iii*) *Locked and* crossed markets. A registered market maker shall not be permitted, except under extraordinary circumstances, to enter quotations into the NASDAQ System if (1) the bid quotation entered is *equal to or* greater than the ask quotation of another registered market maker entering quotations in the same security or (2) the ask quotation is *equal to or* less than the bid quotation of another registered market maker in the same security. *A market maker has an obligation, prior to entering a quotation which locks or crosses another quotation, to make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed.*

Exhibit B

Amswiss International Corp.,
30 Montgomery Street, Jersey City, New Jersey 07302; (201) 451-3576

April 16, 1982.

S. William Broka, Secretary,
National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

Re: Comments on Proposed Amendments to Schedule D of the Association's By Laws Regarding Locked and Crossed Markets.

Dear Mr. Broka: I am writing on behalf of Amswiss International Corp. with regard to the Proposed Amendments to Schedule D of the Association's By Laws Regarding Locked and Crossed Markets. Our concern is that the Association in these amendments may be overlooking a legitimate function of the locked or crossed market. Specifically, in situations in which two member firms do not wish to trade with each other a locked or crossed market may be the only means of accurately reflecting the market of a stock.

In the ordinary course of transacting business with the hundreds of NASD members, occasionally trade problems arise. Usually these problems are settled rapidly and fairly. Sometimes, however, a problem can cause friction between two firms. In situations where repeated problems arise, good business sense dictates that the two firms not trade with each other in order to avoid risking the expense and aggravation of future trade problems. In such situations a member would find it preferable to lock or cross a market if the alternative was to trade with a firm with whom it has had a bad history.

It is inherent in NASD operation that a member firm is free to choose the firm with whom it will trade. It is not mandatory for a member to complete a transaction with a specific firm merely because that firm has the best listed quote. As long as the transaction is completed at the best price, it is clearly permissible to call a more favored firm and offer the order at the price "bid or offered away."

In a similar vein, it should not be mandated that a member must trade with a particular firm merely to avoid a locked or crossed market. In the situation previously mentioned in which two firms desire not to trade with each other a locked market would make better business sense than forcing the firms to trade with each other. In such instances both sides of the market would be genuine and thus "backing away" would not be an issue.

On the other hand, if the situation in which a market maker must choose between trading with a disfavored firm or not updating in order to avoid a locker or crossed market, the choice may be not to update. This could result in stalemated and inaccurate markets and would not benefit anyone.

To briefly summarize, the locked or crossed market resulting from two firms not wishing to trade with each other would be an isolated and infrequent occurrence. When it occurs, however, the most accurate reflection of the true market would result from permitting a locked or crossed market. In such situations both sides of the quotation would be genuine and backing away would not be a problem.

We request that the Board of Governors consider this exception in their review of the proposed Amendments.

Sincerely,

Barry Jay Finkelstein,

Vice President.

Exhibit C

The First Boston Corporation,
Park Avenue Plaza, New York, N.Y. 10055.

April 22, 1982.

Mr. S. William Broka, Secretary,
National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C.

Dear Mr. Broka: The First Boston Corporation appreciates this opportunity to comment on the proposed amendment to Schedule D of the Bylaws of the NASD concerning locked and crossed markets.

Although we support the purpose of the proposed rule, we believe that it inappropriately shifts the burden of assuring compliance with the NASD requirements concerning accurate quotations from the market maker who fails to diligently update his quotations to the more efficient and conscientious market maker.

We also regard the rule as particularly unsuitable for application to foreign securities. The price of a foreign security which trades in the United States marketplace is derived from transactions in the primary foreign market for that security. The U.S. price of the security must also reflect exchange rates and requires adjustment as changes occur in these rates.

As a result, each day a market maker in foreign securities must review his quotations

in every such security in light of changes in the overseas market and exchange rates, and update his quotations prior to the opening. As all market makers in these securities are involved in a similar effort to update their quotations during this period, the creation of a crossed market is unavoidable since the market makers will complete their quotation updates in different time sequences. In these circumstances unless all market makers effect a simultaneous change in their quotations it will be impossible for many market makers to update their quotations in compliance with the proposed rule by avoiding the creation of a crossed market.

Situations may also occur during the course of a trading session which have a dramatic effect on a market for a domestic security or the market or exchange rate for a foreign security which requires significant changes to be made in the quoted market for that security. Where this occurs it would be unreasonable to restrict a market maker from updating his quotations until he had contacted, or made efforts to contact, each market maker who would also be expected to be similarly engaged in updating his quotations to reflect changed conditions. In such a situation it might also properly be viewed as unprofessional to attempt to profit from the inability of another market maker to immediately correct his quotations.

Apart from this consideration, a market maker who seeks to complete a transaction in these circumstances may frequently be unable to do so since the other market maker may request, and properly expect that this request would be honored, that he not be held to quotations which are in the process of being updated. It will also frequently be true in buy markets, and markets in the process of sudden change, that many market makers will not pick up calls from other market makers with whom they do no customarily do business. Where this occurs, the market maker who seeks to promptly update his quotations may be denied important trading opportunities with his customers while he seeks to contact other market makers concerning their quotations and has recorded his efforts to contact these other market makers. Under the proposed rule the less diligent market maker is not similarly handicapped, nor need he be concerned that his conduct will constitute a violation of the proposed rule which, as indicated previously, has the effect of penalizing the more efficient market maker for the failure of the market maker who has failed to properly update his quotation.

We therefore believe the proposed rule, is unfair and contrary to the manner in which an effective rule should apply, and urge the Association to reexamine the approach taken in the proposal. If it would be helpful we would be pleased to have members of our firm meet with members of the Association's Trading Committee to discuss the development of an alternative rule.

Sincerely,

T. Brett Haire,

Managing Director, Equity Trading.

Exhibit D

Shearson/American Express Inc.,
14 Wall Street, New York New York 10005;
212 577 5514.

April 8, 1982.

S. William Broka, Secretary,
National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

Dear Mr. Broka: Locked and crossed markets take place on the listed exchanges all the time. I am concerned that no effort is being made to correct that problem. As a 19 C–3 market maker many of may clients were disadvantaged by these locked markets and trade throughs.

It is my understanding that most of the crossed markets occur in foreign securities because of the reluctance of some dealers to up date before the opening. I would suggest that the corssed market procedure should not affect those who are adjusting their markets before the opening. I would further suggest that the NASD contact all the dealers for foreign securities and demand that they have a current market by at least 9:50 a.m. It is apparent that the market makers obligation is necessary for this new regulation to work. However, it is embarrassing and time consuming for a market maker to call another market maker when the latter is several points away.

Sincerely,

Peter J. DaPuzzo,

Executive Vice Pres.

[FR Doc. 82-17557 Filed 6-28-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 795]

Intention To Cancel Registrations of Certain Investment Advisers

Correction

In FR Doc. 82–8028 appearing at page 12897 in the issue of Thursday, March 25, 1982 and corrected at page 24681 in the issue of Monday, June 7, 1982; second column, last line of correction number 4, "McDaniel, James G., 801–06971" should read "McDaniel, James D., 801–06971".

BILLING CODE 1505-01-M

DEPARTMENT OF STATE

[Public Notice 812]

Fishery Conservation and Management Act of 1976; Applications for Permits to Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94–265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the **Federal Register.**

Individual vessel applications for fishing in 1982 have been received from the Governments of the Union of Soviet Socialist Republics, the People's Republic of Bulgaria, the Polish People's Republic, Japan and Denmark (The Faroe Islands).

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F/CM7), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634–7432).

Dated: June 21, 1982.

James A. Storer,

Director, Office of Fisheries Affairs.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional council
ABS	Atlantic Billfishes and Sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Trawl, Longline and herring Gillnet.	North Pacific.
CRB	Crab (Bering Sea)	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic	New England, Mid-Atlantic.
SMT	Seamount Groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California Trawl.	Pacific.
PBS	Pacific Billfish and Sharks	Western Pacific.

Activity codes specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
U.S.S.R.:			
Mys Otradnyi, large stern trawler	UR-82-0073	WOC	2, 3
Mys Maltseva, large stern trawler	UR-82-0192	WOC	2, 3
Aragonit, large stern trawler	UR-82-0224	WOC	2, 3
Izumrudnyi, large stern trawler	UR-82-0747	WOC	2, 3
Mys Orekhova, large stern trawler	UR-82-0017	WOC	2, 3
Mys Belkina, large stern trawler	UR-82-0214	WOC	2, 3
Karagach, large stern trawler	UR-82-0028	WOC	2, 3
15 Syezd Profsoyuzov, large stern trawler	UR-82-0067	WOC	2, 3
Taman, large stern trawler	UR-82-0188	WOC	2, 3
Mramornyi, large stern trawler	UR-82-0713	WOC	2, 3
Mys Kurilskiy, large stern trawler	UR-82-0711	WOC	2, 3
Aleksandrovsk, large stern trawler	UR-82-0207	WOC	2, 3
Mys Chasovoy, large stern trawler	UR-82-0178	WOC	2, 3
Mys Obrucheva, large stern trawler	UR-82-0075	WOC	2, 3
Nadezhda, large stern trawler	UR-82-0061	WOC	2, 3
Sulak, factory/mothership	UR-82-0238	WOC	2, 3
The U.S.S.R. and the Marine Resources Co. (MRC), 192 Nickerson, Suite 307, Seattle, Wash., have applied to engage in a joint venture fishery aimed at producing 1,000 MT of Shortbelly Rockfish, plus incidental species not exceding 10 pct of target catch between the months of September 1 and October 30, 1982.			
Japan:			
Kiyo Maru, squid jigger vessel	JA-82-2026	NWA	1, 2
Freezer Prince, cargo/transport	JA-82-0571	BSA, GOA	3
Oak Leaf, cargo/transport	JA-82-1051	GOA, BSA, SNA, NWA	3
Koshin Maru No. 28, longliner	JA-82-1217	ABS	1
Shinei Maru No. 38, longline fishing vessel	JA-82-1486	ABS	1
Yayoi Maru, cargo/transport	JA-82-0018	GOA, BSA, SNA, NWA	3
Sankichi Maru No. 23, pot fishing vessel	JA-82-0848	SNA	1, 2
Poland:			
Sagitta, large stern trawler	PL-82-0040	BSA, GOA	2, 3
The Polish Foreign Trade Office, Rybex-Szczecin, ul. Ordrowaza 1, and Mrs. Paul's Kitchen, 5830 Henry Avenue, Philadelphia, Pa., have applied to engatge in a joint venture fishery aimed at producing 16,000 MT Pollock and 1,500 MT Pacific Cod from BSA, and 6,000 MT Pollock and 800 MT Pacific Cod from GOA during 1982.			
Admiral Arciszewski, large scale processor	PL-82-0081	NWA	2
Kanaryjka, trawler/processor	PL-82-0081	NWA	2
Gryspl of the Polish People's Republic and William Quinby, Joint Trawlers (North America) Ltd., P.O. Box 1209, Gloucester, Mass., have applied to engage in a joint venture fishery aimed at producing 9,000 MT of Atlantic Mackerel between the months of April and December 1982			
Bulgaria:			
Ofelia, freezer trawler	BU-82-0023	WOC	1
Okeansky Robilov (The People's Republic of Bulgaria) and the Joint Trawlers (Noth Pacific), Inc., Suite 1880, 1111 Third Avenue Building, Seattle, Wash., have applied to engage in a joint venture fishery aimed at producing 10,000 MT of Pacific Whiting between the months of May through November 1982. The *OFELIA* has replaced its sistership, the freezer trawler *AFALA*, BU-82-0007, due to major mechanical difficulties with her processing machinery.			
Albena, cargo/transport	BU-82-0006	WOC	3
Denmark (The Faroe Island):			
Bakur, longline fishing vessel	DA-82-1005	ABS	1, 2

[FR Doc 82-17518 Filed 6-28-82; 8:45 am]

BILLING CODE 4710-09-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Form Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Copies of the forms proposed for extension may be obtained from the Agency Clearance Officer, whose name and telephone number appear below.

Agency Clearance Officer: E. Eugene Mynatt, (615) 751-2146, FTS 858-2146

Type of Request: Extension

Title of Information Collection: TVA 6254, A, B, C, D, & E; TVA Home Insulation Program

Frequency of Use: Nonrecurring

Type of Affected Public: Individuals or households

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 900,000

Estimated Total Annual Burden Hours: 37,800

Need for and Uses of Information: Information is needed to determine the weatherization integrity of residences in the Tennessee Valley Authority region. The data will be compared to standards established by the Home Insulation Program followed by recommendations to the consumers outlining the methods and actions necessary to conserve and manage electrical energy.

Dated: June 21, 1982.

Charles Bonine, Jr.,

Manager, Office of Management Services.

[FR Doc. 82-17441 Filed 6-28-82; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. Public Debt Series—No. 17-82]

Washington, June 23, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $4,000,000,000 of United States securities, designated Treasury Notes of July 15, 1989, Series E-1989 (CUSIP No. 912827 NK 4). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may 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 securities will be dated July 8, 1982, and will bear interest from that

date, payable on a semiannual basis on January 15, 1983, and each subsequent 6 months on July 15 and January 15 until the principal becomes payable. They will mature July 15, 1989, and will not be subject to call for redemption prior to mauturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the pricipal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Thursday, July 1, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no late than Wednesday, June 30, 1982, and received no later than Thursday, July 8, 1982.

3.2. Each tender must state the face amount of securities bid for. 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 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. 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 report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3. 4. Tenders will be received without deposit for their own account 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; federal Reserve Banks; and Government accounts. Tenders from others must be accompainied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarnantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3. 5. Immediately after the closing hour, tender 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, a coupon rate will be established, on the basis of 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 98.250. That rate of interest will be paid on all of the securities. 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 Governmeent accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3. 6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or then the price 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 securities 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 allotted securities 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 securities allotted to institutional investors and to others whose tenders are accoompanied by a payment guaranted as provided in Section 3.4., must be made or completed on or before Thursday, July 8, 1982. Payment in full must accompanyu 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 but which are not overdue as defined in the general regulations governing United Staters securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from instututional investors no later than Tuesday, July 6, 1982. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and

other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 82-17502 Filed 6-24-82; 3:34 pm]

BILLING CODE 4810-40-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Duty Concessions on Certain Television Receiver Components and Printed Circuit Boards

Import releif actions proclaimed in Presidential Proclamation 4634 of January 26, 1979, and extended by Proclamation 4769 of June 30, 1980 concerning color television receivers and certain subassemblies thereof will terminate on June 30, 1982. This releif included orderly maketing agreements and temporary quantitative limitations as to importations from Taiwan and the Republic of Korea. Therefore, pursuant to Section E of Annex IV to Proclamation 4707 of December 11, 1979, which provides that upon the termination of these import relief actions the staging of items 685.16 and 685.18 of the concessions granted during the Tokyo Round of Multilateral Trade Negotiations on imports of certain television receiver components and printed circuit boards, provided for in tariff schedules of the United States (TSUS) will be implemented. Accordingly, such implementation shall occur with respect to articles entered, or withdrawn from warehouse for consumption, in accordance with the following schedule:

TSUS item	Rate from which staged	Rates of duty,[1] effective with respect to articles entered, or withdrawn from warehouse for consumption, on and after—							
		July 1, 1982	Jan. 1, 1983	Jan. 1, 1984	Jan. 1, 1985	Jan. 1, 1986	Jan. 1, 1987	Jan. 1, 1988	Jan. 1, 1989
685.16	5% ad val	4.8%	4.7%	4.5%	4.4%	4.2%	4%	3.9%	3.7%
685.18	5% ad val	4.8%	4.7%	4.5%	4.4%	4.2%	4%	3.9%	3.7%

[1]The symbol "%" indicates percent ad valorem.

David R. Macdonald,

Deputy, United States Trade Representative.

[FR Doc. 82-17475 Filed 6-28-82; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 125
Tuesday, June 29, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME: 10 a.m., Wednesday, June 30, 1982.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Bicycle Brake Test Procedures*
The Commission will consider issues related to procedures for the testing of bicycle brake systems.

Closed to the Public:

2. Compliance status Report
The staff will brief the Commission on compliance activities during the past month.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492-6800.

[S-948-82 Filed 6-25-82; 10:13 am]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, June 29, 1982.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Ratification of Notation Vote(s).
2. Freedom of Information Act Appeal No. 82-5-FOIA-32-SL, concerning a request for copies of documents contained in an ADEA complaint file.
3. Freedom of Information Act Appeal No. 82-04-FOIA-056-MK, concerning a request for all information supplied to the EEOC by a respondent company.
4. Freedom of Information Act Appeal No. 82-4-FOIA-21-NO, concerning a requests for all materials relating to EEOC Charge No. 085-79-0057.
5. Freedom of Information Act Appeal No. 82-3-FOIA-30-NY, concerning a request for witness statements and statistical analysis from an open age discrimination case file.
6. Proposed Section 93 of the EEOC Compliance Manual.
7. Proposed modification to an existing contract.
8. Proposed contract for services needed in connection with a court case.
9. State and Local Program: Recommended Mid-Year Modification of FY '82 New Charge Resolution Contracts.
10. Proposed Principles of EEOC's Title VII Program for State and Local Fair Employment Practices Agencies for FY '83.
11. Proposed Principles of EEOC's Program for State and Local ADEA Charge Resolution Contracts for FY '83.
12. A Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

(In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides recorded announcements *a full week in advance* on future Commission sessions. Please telephone (202) 634-6748 at all times for information on the time, place and subject matter of such meetings.)

CONTACT PERSON FOR MORE INFORMATION: Trava I. McCall, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued June 22, 1982.

[S-946-82 Filed 6-25-82; 8:45 am]

Billing Code 6570-06-M

3

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, July 1, 1982

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 1, 1982 which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* In re General Docket 81-461 concerning request of General Electric Co. to exempt medical diagnostic equipment from Subpart J of Part 15 of the Rules of the Federal Communications Commission. *Summary:* This action considers adoption of an exemption for certain medical equipment from the computing device rules Part 15 Subpart J, which limit the interference potential of devices that employ digital electronics. A Notice of Proposed Rule Making in this proceeding was adopted July 16, 1981 and released September 8, 1981, in response to a petition filed by General Electric Co.

Private Radio—1—*Title:* Amendment of Parts 2 and 97 of the Commission's Rules to protect military areas by power limitation on Amateur radio stations operating in the 420-450 MHz frequency band. *Summary:* The Commission will consider whether to adopt an Order to extend to two additional military areas the 50-watt power limit; and to enlarge the restricted areas around two other military locations already specified.

Private Radio—2—*Title:* Notice of Proposed Rulemaking in the Matter of Amendment of the "Grandfathering" Provisions for Transmitter and Antenna Standards in Part 94. *Summary:* The FCC will consider whether to adopt a Notice of Proposed Rulemaking looking toward grandfathering, for an indefinite period, transmitting equipment (including antennas) which was authorized in the Private Operational-Fixed Radio Service prior to July 1, 1976.

Aural—1—*Title:* In re application of Ettlinger Broadcasting Corporation for a construction permit for a new FM station. *Summary:* The Commission considers a petition by Ettlinger Broadcasting Corporation, applicant for a new FM station at Westmorland, California for reconsideration of our *Memorandum Opinion and Order*, adopted July 18, 1980, denying its waiver request and dismissing its application.

Broadcast—1—*Title:* An Inquiry Relating to the Commission's Radio Operator Licensing Program. *Subject:* The Commission will consider action to be taken in response to petitions requesting reconsideration of rule amendments made by a *Fourth Report and Order* concerning the radio operator licensing program. Petitioners requested restoration of the First Class Radiotelephone License, and both clarification and deletion of certain amended rules.

Broadcast—2—*Title:* Notice of Proposed Rule Making in the Matter of Amendment of Section 73.1201(b)(2) of the Commission's Rules—Additional City Identification. *Summary:* The Notice proposes to change the Commission's procedures under which broadcast stations may seek permission to identify by communities in addition to their community of license.

Broadcast—3—*Title:* Memorandum Opinion and Order, In the Matter of Petition for Stay, or in the Alternative, Extension of Divestiture Deadline—Anniston Broadcasting Corporation. *Subject:* The Memorandum Opinion and Order considers and resolves the issues raised by Anniston Broadcasting Company in its petition for stay of a divestiture deadline. That deadline is applicable to Anniston as it is one of the 16 egregious cases identified in the Second Report and Order in Docket No. 18110 in which an existing newspaper/broadcast cross-ownership combination had to be severed.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: June 24, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–952–82 Filed 6–25–82; 3:18 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From June 23rd Closed Meeting

The following item has been deleted at the request of the Broadcast Bureau from the list of agenda items scheduled for consideration at the June 23, 1982, Closed Meeting and previously listed in the Commission's Notice of June 16, 1982.

Agenda, Item No., and Subject

Complaints and Compliance—1—Field investigation into the operation of Station WABC–TV New York, New York.

Deletion of Agenda Item from June 23rd Open Meeting

The following item has been deleted at the request of Commissioner Dawson's office from the list of agenda items scheduled for consideration at the June 23rd Open Commission Meeting and previously listed in the Commission's Notice of June 16, 1982.

Agenda, Item No., and Subject

Aural—1—*Title:* In re application of Ettlinger Broadcasting Corporation for a construction permit for a new FM station. *Summary:* The Commission considers a petition by Ettlinger Broadcasting Corporation, applicant for a new FM station at Westmorland, California for reconsideration of our *Memorandum Opinion and Order,* adopted July 18, 1980, denying its waiver request and dismissing its application.

Issued: June 23, 1982.

William J. Tricarico,

Secretary, Federal Communication Commissions.

[S–953–82 Filed 6–25–82; 3:18 pm]

BILLING CODE 6712-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Wednesday, June 30, 1982, to take up the following matter:

Petition of the Investment Company Institute seeking a public hearing and certain other relief in connection with the creation and operation by The Boston Five Cents Savings Bank, Boston, Massachusetts, of two wholly-owned subsidiaries to advise and distribute shares in a mutual fund.

In calling the meeting, the Board of Directors determined, by affirmative vote of Chairman William M. Isaac, Director Irvine H. Sprague (Appointive), and Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business requires it to take up the matter on less than seven days' notice to the public.

No earlier notice of this meeting was practicable.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 25, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–955–82 Filed 6–25–82; 3:50 pm]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Thursday, June 24, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to make funds available for the payment of insured deposits in Citizens Bank, Tillar, Arkansas, which was closed by the Arkansas State Bank Commissioner on Wednesday, June 23, 1982.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague, concurred in by Mr. William A. Longbrake, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(B)).

Dated: June 24, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–950–82 Filed 6–25–82; 11:56 am]

BILLING CODE 6714-01-M

7

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 27447, June 24, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., June 30, 1982.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

1. Petition of Seatrain Lines, Inc. for relief from recordkeeping and reporting requirements.

[S–951–82 Filed 6–25–82; 3:17 pm]

BILLING CODE 6730-01-M

8

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Tuesday, July 6, 1982.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed extension of the reclamation authority of the Department of the Treasury.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward for a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

James McAfee,

Associate Secretary.

[S-954-82 Filed 6-25-82; 3:32 pm]

BILLING CODE 6210-01-M

9

POSTAL SERVICE

Board of Governors Meetings

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 2:00 p.m. on Tuesday, July 6, in San Francisco, California, and at 8:00 a.m. on Wednesday, July 7, 1982, in Classroom 4 in the Training Center of the Western Regional Headquarters Complex, 850 Cherry Avenue, San Bruno, California. As indicated in the following paragraph, the Tuesday afternoon session is closed to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

At its meeting on June 7, 1982, the Board of Governors of the United States Postal Service voted to close to public observation its meeting scheduled for July 6, 1982, which is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Hughes, Jenkins, McKean, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary of the Board Cox; Counsel to the Governors Califano; Assistant Postmaster General Cummings; and Executive Assistant to the Postmaster General Coughlin.

The portion of the Board meeting to be closed will consist of a discussion of Postmaster Service strategic planning.

Agenda

1. Minutes of the Previous Meeting.
2. Remarks of the Postal General.
   (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellanous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Report on the National Academy of Public Administration.
   (The Board will consider the Academy's report on Postal Service progress under the Postal Reorganization Act.)
4. Capital Investment Project:
   Bakersfield, California General Mail Facility
   (Mr. Caraveo, Acting Regional Postmaster General, Western Region, will present a proposal for a new General Mail Facility at Bakersfield, California.)
5. Postal Rate Commission Recommended Decision on Attached Mail Proceeding, 1981 and Attached Mail Rates, 1981 (Docket Nos. MC81-2 and R81-1)
   (The Board will consider this Recommended Decision, by the Postal Rate Commission, dated June 15, 1982.)

Louis A. Cox,

Secretary.

[S-947-82 Filed 6-25-82; 9:53 am]

BILLING CODE 7710-12-M

10

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 26067, June 16, 1982.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, June 11, 1982.

CHANGES IN THE MEETING: Additional item. The following item will be considered at a closed meeting scheduled for Thursday, June 24, 1982, following the 10:00 a.m. open meeting.

Settlement of administrative proceeding of enforcement action.

Chairman Shad and Commissioners Evans and Longstreth determined by vote that Commission business required consideration of this matter and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul J. Siegelbaum at (202) 272-2468.

June 24, 1982.

[S-949-82 Filed 6-25-82; 10:45 am]

BILLING CODE 8010-01-M

federal register

Tuesday
June 29, 1982

Part II

Department of Agriculture

Food Safety and Inspection Service

Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 318 and 319

[Docket No. 81-016 F]

Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is amending the Federal meat inspection regulations to (1) modify the definition and standard (including parameters for measuring compliance) and permitted uses for the finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses and the labeling requirements for meat food products in which it is used as an ingredient and (2) establish a labeling requirement of such product.

This rule is based on data, information, and arguments accumulated by and submitted to the Department since the regulations for this product were promulgated on June 20, 1978, the Department's review and reevaluation of these regulations, and comments received in connection with the Department's July 31, 1981 proposal to modify these regulations.

EFFECTIVE DATE: July 29, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Hibbert, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

When proposed, this action was reviewed under USDA procedures established to implement Executive Order 12291 and classified as a major rule pursuant to section 1(b)(1) of that order because it is likely to result in an annual effect on the economy of $100 million or more. The Department's preliminary review of its proposal was reported in its Preliminary Regulatory Impact Analysis (PRIA), which was published as an appendix to the proposal. The Department's review of its final rule is reported in its Regulatory Impact Analysis (RIA), which is available upon request from Robert G. Hibbert and is summarized below. The RIA also satisfies the analysis requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), which deals with the impact of regulation on small entities.

Purpose of the Amendments

The Department of Agriculture is amending the regulatory requirements for the finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses and for finished meat food products in which this product is used as an ingredient (9 CFR 317.2(j)(13), 318.18, 319.5, and 319.6 and Part 319). The purpose of these amendments is to facilitate the production and use of this product while continuing to fulfill the Department's statutory responsibility to prevent the preparation and distribution in commerce of meat and meat food products which are adulterated or misbranded or not properly marked, labeled, and packaged. See sections 1 (m) and (n), 7, and 10 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 (m) and (n), 607, 610).

The regulations which have governed the production and use of this product, under the name "Mechanically Processed (Species) Product" ("MP(S)P"), were promulgated in the middle of 1978. 43 FR 26416. Very little of this product was produced after these regulations became effective, despite the availability of the technology and raw materials. As a result, a potential food source was not made available to the general public. The red meat industry contended that its failure to market products containing MP(S)P was due to regulatory requirements which go beyond what is necessary to protect the public, and it asked the Department to reconsider these requirements in light of additional information compiled since the completion of the prior rulemaking in 1978. In particular, the Pacific Coast Meat Association (PCMA), a regional trade association of meat packing and processing companies, and the American Meat Institute (AMI), a national trade association of meat packing and processing companies, submitted a petition on behalf of their members in February 1981 which argued that they "are effectively precluded from producing or marketing mechanically deboned beef, pork, or veal or lamb by the misleading labeling and the unreasonable compositional standards imposed by" §§ 317.2(j)(13) and 319.5(a) of the Federal meat inspection regulations (9 CFR 317.2(j)(13) and 319.5(a)). In support of their request that these regulations be amended, PCMA and AMI also submitted two types of evidence to the Department: A report on a series of consumer focus group sessions exploring attitudes towards various types of meat food product labeling and an analysis of the economic impacts of the 1978 regulations.

Based on data, arguments, and information compiled since the completion of its prior rulemaking and its own review and reevaluation of the 1978 regulations in accordance with the principles of Executive Order 12291, and in view of the importance of taking advantage of all safe and wholesome sources of food, it appeared to the Department that certain of these regulations could and should be amended to facilitate the production and use of this product while continuing to protect the public against adulterated and misbranded products. Therefore, on July 31, 1981, the Department published a proposal to amend the Federal meat inspection regulations to (1) change the name of the product to one which appears to be less burdensome and more descriptive of its characteristics; (2) establish two categories of product: one which meets the current fat and protein content requirements, and a second as to which there are no fat or protein content requirements; (3) permit use of the second category of product only in meat food products subject to regulatory definitions and standards that limit fat content; (4) replace the limit on the amount of product meeting fat and protein content requirements which may be used with limits on the amount of calcium such product may contain (as a measure of its bone content) when it is used at various levels; (5) delete the requirement that the names of all meat food products containing the product must be qualified by a phrase indicating its presence, but consider retaining this requirement in particular situations on the basis of information submitted in this rulemaking; (6) replace the requirement that the names of meat food products containing the product must be further qualified to indicate the amount of powdered bone they contain with a requirement that their labels declare calcium content as part of a nutrition label—or, if a meat food product does not bear nutrition labeling, in a statement in immediate conjunction with the ingredients list—whenever the amount so declared would differ from the amount that would be declared if such meat food product contained only hand deboned ingredients; and (7) add labeling requirements for the product itself where this is necessary to assure compliance with the regulations. 46 FR 39274.

The proposal also reflected the Department's continuing belief that (1) the product differs materially from "meat" and should be subject to its own definition and standard and declared as a distinctive ingredient; (2) limits on bone particle size, bone content, and protein quality as well as handling controls and production under an approved quality control program are necessary to assure the product's safety and quality; and (3) use of the product should not be permitted in certain meat food products. However, the Department did propose additional minor changes in certain of the provisions embodying these requirements, primarily for purposes of clarification and simplification. 46 FR 39274, 39275.

The Department invited written comments on the proposal and the issues raised in its rulemaking notice for 90 days, until October 29, 1981. Since the publication of its proposal, the Department also has investigated further certain of the issues raised in its rulemaking notice. The information and analyses generated by this further investigation are reflected in documents in the record of this rulemaking.

After reviewing the comments submitted by the public in light of currently available information, the Department has determined that portions of the proposal should be adopted. Therefore, it is amending the Federal meat inspection regulations to (1) change the name of the product from "Mechanically Processed (Species) Product" ("MP(S)P") to "Mechanically Separated (Species)" ("MS(S)"); (2) establish two categories of product: one which meets maximum fat and minimum protein content requirements, and a second as to which there are no fat or protein content requirements; (3) permit use of the second category of product only in meat food products subject to regulatory definitions and standards that limit fat content; (4) delete the requirement that the names of all meat food products containing the product must be qualified by a phrase indicating its presence; (5) replace the requirement that the names of meat food products containing the product must be further qualified to indicate the amount of powdered bone they contain with a requirement that their labels declare calcium content as part of a nutrition label—or, if a meat food product does not bear nutrition labeling, in a statement in immediate conjunction with the ingredients list—where the product contributes 20 mg or more of calcium to a serving, unless the amount that would be declared would not differ from the amount that would be declared if the meat food product contained only hand deboned ingredients or unless the calcium content of a serving of the meat food product would be 20 percent of the U.S. RDA or more if the meat food product contained only hand deboned ingredients; and (6) add a labeling requirement for the product itself in order to assure compliance with the regulations.

In addition, certain amendments are being adopted for the purposes of clarifying and simplifying these regulations. Finally, the Department has determined, based on currently available information, that it should not amend these regulations to permit MS(S) to constitute more than 20 percent of the livestock and poultry product portion of meat food products. Therefore, it is withdrawing the portion of the proposal that would have replaced this limit for product which meets maximum fat and minimum protein content requirements with limits on the amount of calcium such product may contain when it is used at various levels.

Historical Background

1. Interim Regulation and First Proposal

The regulations promulgated in 1978 were the result of a rulemaking that began on April 27, 1976 with the publication of a notice of proposed rulemaking titled "Definitions of Meat and Classes of Meat, Permitted Uses, and Labeling Requirements." 41 FR 17560. That proposed rulemaking included, among other things, a proposal for defining and permitting the manufacture of the following three types of product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle: "Mechanically Deboned Meat," "Mechanically Deboned Meat for Processing," and "Mechanically Deboned Meat for Rendering." Different nutritional parameters were proposed for the first two types of product. None were proposed for the third type, which, as such, was not to be used in the formulation of meat food products. No limit was proposed on the amount of the first type of product that could be used in finished products; and the second type was to be limited to 20 percent of the total meat, meat byproducts, poultry products, and poultry meat used in the formulation. The proposal also specified the meat food products in which these two types of product were to be permitted. There were more than 1,100 public comments on this proposal, a number of which raised various health and safety questions.

On April 27, 1976, an interim regulation that included standards for the use of Mechanically Deboned Meat (MDM) also was published. This regulation was intended to be effective pending final rulemaking on the proposal, unless rescinded earlier. 41 FR 17535. The interim regulation was challenged by a coalition of various consumer oriented public interest groups, state officials, and a member of Congress in *Community Nutrition Institute, et al. v. Butz (CNI v. Butz)*, Civil Action No. 76–1585 (D.D.C., decided Sept. 10, 1976). The Court in *CNI v. Butz* held that the promulgation of the interim regulation was in violation of the Administrative Procedure Act and issued a preliminary injunction enjoining the Secretary from giving further effect to the interim regulation with respect to MDM.

In the Court's opinion, MDM was not "meat" as traditionally defined because of its bone particle content. Concluding that these bone particles must be regarded as a substance added during mechanical processing, the Court found that the Secretary had not considered adequately the health effects of MDM. The Court indicated that until these health questions were adequately assessed, MDM had to be considered as a substance which may injure health and, therefore, adulterated and an adulterant. In addition, it appeared to the Court that the interim regulation permitted misbranding because a product that contained MDM would have a higher calcium content than a comparable product without MDM. Since the public expects the "usual product", it would be misled by the labeling permitted by the regulation. This could prove especially harmful to persons on calcium-restricted diets, who would think that the product contained no more than the usual amount of calcium.

2. Panel Evaluation of Health and Safety Aspects

In order to respond to the health and safety questions raised by the Court, the Department initiated an analytical program to develop data on the amounts of nutrients and substances of concern which might be present in MDM. To evaluate findings from this analytical program and pertinent information and data gathered from other sources, an interagency panel of Government scientists was convened. This Panel consisted of experts in a wide range of subject areas dealing with health and safety aspects of food. The Panel was asked to respond to questions which had been raised by the Court, questions in the comments that had been filed on the proposed rulemaking, and other

issues which became evident during its deliberation.

The Panel's conclusions and recommendations were published in the reports titled "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume I-Final Report and Recommendations, Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II-Background Materials and Details of Data." The final report basically consists of a series of subcommittee reports, which were authored by persons having special expertise in the various subject fields and unanimously accepted by the Panel as a whole, and the conclusions and recommendations of the Panel. Both volumes were made available to the public in connection with the Tissue from Ground Bone proposal discussed below. 42 FR 54437, 54439; 43 FR 26416, 26417.

The following are the Panel's conclusions and recommendations, as supplemented by certain of the subcommittees' findings:

A. Bone particle size as obtained with mechanical deboners currently available presents no hazards to health. It seems likely that the bone particles will be dissolved by the stomach acid and provide an additional source of calcium. Non-digested particles, if they occur, will provide additional "bulk" to the diet, which is considered to be beneficial. However, the Panel recommended that limits for maximum particle size be included in any regulation to be promulgated allowing the preparation in commerce of MDM. The subcommittee believed it desirable to institute quality control measures to limit particle size to those levels presently associated with good manufacturing practice.

B. A slight nutritional benefit is to be expected for most people from the calcium in MDM, especially for persons whose customary intake of calcium falls below the Recommended Dietary Allowance. The calcium which would be added to the diet by MDM is not so great in amount as to pose a hazard to the health of most people except for those persons who are hyperabsorbers of calcium and likely already to be under medical supervision to limit their calcium intakes. The subcommittee suggested appropriate labeling to indicate that meat food products contain calcium so that the small percentage of the population which may require a low calcium intake for medical reasons would have the choice to avoid purchasing them.

C. The fluoride content of MDM poses no health problem for adults. Fluoride intakes of children need to be controlled more closely than intakes of adults in order to avoid mottling of teeth. Since little is known about the fluoride intake of children, caution is advised. Data on projected consumption of MDM show that intakes of fluoride from MDM would be negligible, even for children consuming much higher than average quantities of MDM with a high fluoride content. MDM in the Panel's judgment presents no problem for children. However, fluoride intake of infants is known to be high. The Panel, therefore, concluded that prudence dictates that MDM not be incorporated into baby and junior foods at present. This recommendation was based primarily on lack of information rather than evidence of a hazard and should be subject to further evaluation as data are gathered. Long term data on the fluoride content of MDM are not available at present, and the fluoride content of MDM may vary in different localities and may also depend on the age of the cattle used.

D. The Panel concurred with its subcommittee's evaluation that, based on currently available data and relative to the magnitude of other environmental sources of lead, the amount of lead which would be provided by MDM is toxicologically insignificant for children and adults.

E. Amounts of cadmium in MDM are so small as to be not detectable by current analytical procedures and are of no public health significance.

F. Selenium was judged not to be a health problem. There is no evidence to indicate that selenium concentrates in bone.

G. Increases in dietary intakes of strontium-90 from use of MDM would be negligible, amounting to about a 1 percent increase in exposures which are already well below tolerable limits. MDM poses no health hazard in regard to strontium-90.

H. Cobalt, copper, iron, nickel, zinc, arsenic, and mercury pose no potential problems in relation to use of MDM. Consumption data indicate that MDM would probably provide about 1 percent of the expected daily intake of cobalt. Additional iron from MDM would be in the order of 2.5 percent of the total iron intake and should be readily available to the body. Zinc content of MDM is essentially the same as zinc in hand deboned meat, and use of MDM should not affect bioavailability of zinc from other dietary sources. Arsenic has not been found in mechanically deboned poultry, and poultry would be expected to have greater relative intakes of arsenic than red meat animals. Therefore, arsenic should present no problem in MDM. Mercury does not accumulate in bone.

I. Chlorinated hydrocarbon residues present no special problem in MDM because if present in measurable amounts, they are found in quantities well below established tolerance or action limits.

J. Data presently available on the lipid spectrum of MDM show that it is comparable to the lipid pattern found in hand deboned meats. Available data, while limited, did not suggest that use of MDM will lead to any appreciable increase in dietary cholesterol or other lipids thought to be involved in pathological states in humans as compared with the consumption of other meat food products with similar fat contents; and no relationship between cholesterol content and total lipids content was observed. However, because of concern over the general problem of excessive intakes of fat and their effect on health, the Panel recommended that limits be placed on the fat content of MDM, on the basis of good manufacturing practices, and that limits also be placed on the fat content of products in which MDM could be used.

K. Proposed standards for protein content and quality (PER) are reasonable. Efforts should be continued to find more rapid and economical methods for monitoring protein quality to replace the cumbersome PER assay.

L. The microbiology of MDM presents no unique hazards and should not be a problem if good manufacturing practices and quality control programs are employed.

M. Tetracyclines accumulate in the bones of young animals, and a recent German study has found tetracyclines in calf bones. The amounts are such that even at the highest level found, residues in products made with MDM derived from calf bones likely would be within present permitted tolerances. The U.S. slaughters comparatively few calves, and it is unlikely that there will be calf MDM. Tetracyclines in older cattle and swine present no problem. Though it is apparent that the use of tetracyclines in calves is on the decline in the United States, controls should be established to assure that if MDM is prepared from calves, it will not exceed established tolerances for such drugs. (Mechanically Processed Veal Product (MPVP), the product referred to as "calf MDM" in the health and safety report, has, in fact, been produced in limited amounts since the promulgation of the 1978 regulations. In 1979, MPVP was being produced by a small establishment that is no longer in business. The Department collected and

analyzed three samples of this firm's product. Antibiotic residues were not detected in any of these samples. As of 1981, another firm was producing MPVP in small volume. Therefore, the Department established a sampling program to alert it if any tetracycline residue problem developed. After analysis of 12 samples, no antibiotic residues were detected in the samples collected under this program.)

N. The Panel agreed that MDM contained in food products should be so labeled in the ingredients statement so that persons who must stringently restrict calcium intake could avoid these products. The Panel further agreed that there was no need for health or safety reasons to make nutrition labeling mandatory for products containing MDM, although nutrition labeling of all food products should be encouraged.

O. The Panel recommended that efforts should be made to inform and educate health and medical professionals and the general public about dietary effects of use of MDM, especially in relation to calcium and fluoride.

P. The Panel recommended that further research should be encouraged on MDM when it is again produced commercially. Suggestions for research are given in several of the subcommittee reports.

3. Revised Proposal and Promulgation of a Final Rule in 1978

As a result of the Panel's conclusions and recommendations, *CNI v. Butz*, and the widespread public interest in and concern about this product, a revised proposal was published on October 6, 1977. 42 FR 54437. This proposal included the following changes from the original proposal:

(1) The product would be named "Tissue From Ground Bone" (TFGB) and would be labeled "Tissue From Ground (Species) Bone" in the ingredients statement. The name of the processed product in which it was used would be qualified by the term "Tissue From Ground (Species) Bone Added."

(2) The product would be classified as a meat food product rather than as a class of meat.

(3) The number of classes of this type of product would be reduced from three to one. "Mechanically Deboned Meat" and "Mechanically Deboned Meat for Processing" would be combined because the single use limitation for TFGB would make separate classes unnecessary.

(4) The product would be limited to 20 percent of the total of all meat, meat byproducts, poultry products, and poultry meat used in a processed product.

(5) The product could not be used in baby (strained), junior, or toddler foods.

(6) The calculation of percent of essential amino acids would be in terms of total amino acids rather than in terms of total protein; and data on the essential amino acid tryptophan would be excluded in making this calculation.

(7) The size of the openings of any screens, sieves, or ports used in preparing TFGB could be no greater than 0.5 millimeter in diameter.

(8) The requirements for minimum protein and maximum fat would be set at 14 and 30 percent, respectively.

The Department received 4,537 comments on this proposal, including presentations made at a February 14, 1978 public hearing. More than four-fifths of these comments were from consumers. Significant numbers of comments were also received from industry members (including meat packers, machinery and equipment companies, food processors, food wholesalers, retail organizations, and trade groups), academia (including university faculty and students and high school teachers), professionals (including physicians, dentists, veterinarians, dietitians, attorneys, and food managers), farmers and farm-related organizations, and government agencies.

The Administrator of the Food Safety and Quality Service (FSQS, the predecessor of FSIS) reviewed these comments and, among other things, made the following determinations as regards safety concerns: (1) The amount of calcium in the product should not exceed 0.75 percent. (2) Ingestion of bone particles from the product will not cause mechanical injury. (3) In view of all of the information available, with the addition of special processing and storage requirements, the product is wholesome and safe for use in products other than baby, junior, and toddler foods.

The Administrator agreed with comments that the proposed name, "Tissue From Ground Bone" ("TFGB"), could be misleading as the product contains both meat and bone, including bone marrow, and "TFGB" would incorrectly indicate that it is made wholly from parts of bone. He considered other proposed names and determined not to adopt "Mechanically Deboned Meat" because "deboned" would incorrectly represent that the product does not contain bone or bone marrow and "meat" would incorrectly represent that the product consists solely of "meat". The Administrator went on to conclude that the product should be named "Mechanically Processed (Species) Product", noting that the term "product" includes any substance from livestock which is capable of use as human food (9 CFR 301.2(ww)). As regards labeling, the Administrator concluded (1) since MP(S)P is unique and would not be an expected ingredient, a qualifying statement should be added to finished product names to indicate its presence; (2) the need of some individuals to limit their intake of calcium is an important consideration and, therefore, finished product names should bear the additional qualifying statement, "Contains Up To —% Powdered Bone"; and (3) MP(S)P should be listed separately from "meat" in its order of predominance by weight in the ingredient statements of finished products because MP(S)P is not meat and it would be a standardized product following publication of the rule.

The proposed requirements for minimum protein content and protein quality and maximum fat content were retained in order to assure a standardized product of high nutritional quality which could be used in a wide range of finished products. Among other things, the Administrator could not agree with comments that the protein content minimum would severely restrict the kinds of materials that could be used in preparing the product based on the information available to the Department. The Panel's reluctance to approve a product that would increase the total fat composition of meat products was noted, as well as the fact that there are not limitations on the fat content of a number of products in which MP(S)P is a suitable ingredient.

The Administrator also concluded that, in order not to discourage the development of different types of processing equipment, the proposed limit on the size of openings in the equipment through which the product is strained would be replaced with a limit on the size of bone particles that would result from use of the proposed procedures. In addition, the Administrator agreed with comments that special requirements are needed to assure that establishments formulate MP(S)P to comply consistently with the regulatory requirements and thereby avoid false or misleading labeling. Therefore, the utilization of an approved quality control program was made a prerequisite to label approval and analytical requirements were specified.

As regards proposed retrictions on how the product could be used, the Administrator determined that (1) the 20 percent use limit is optimum in that it allows for the use of MP(S)P without diminishing the quality and overall

expected characteristics of products in which it is permitted and does not result in any health or safety problems; and (2) permitting MP(S)P to be used in certain products is not warranted and would violate consumers' expectations about those products. In response to concerns about economic aspects of the use of MP(S)P, it was noted that labeling requirements would enable consumers to make cost comparisons between products containing and products not containing MP(S)P and that certain of the objections were not relevant to whether MP(S)P should be produced and distributed because the Administrator has no authority to prohibit the production of wholesome, unadulterated, and properly labeled products.

In view of the Panel's findings and the views, data, and information available to the Department, and being mindful of the need for increasing food supplies and reducing waste of available proteinaceous nutritive materials, the Administrator concluded that production of MP(S)P should be allowed with the restrictions being imposed and amended Parts 317, 318, and 319 of the Federal meat inspection regulation (9 CFR Parts 317, 318, and 319) accordingly.

4. PCMA Petition

In April 1979, 9 months after these regulations became effective, the Pacific Coast Meat Association (PCMA), a regional trade association of meat packing and processing companies, petitioned the Department on behalf of its members and an ad hoc group of companies "which are effectively precluded from mechanically deboning beef, pork and veal by the negative labeling and unrealistic standards required by USDA regulations." PCMA requested that the Department (1) amend § 317.2(j)(13) of the regulations (9 CFR 317.2(j)(13)) by deleting the requirement that names of products containing MP(S)P be qualified to indicate the presence of that ingredient and by replacing the requirement that they be further qualified with a statement of powdered bone content with a declaration of calcium content either in the ingredients statement or as part of nutrition labeling and (2) amend § 319.5(a) of the regulations (9 CFR 319.5(a)) by deleting the minimum protein and maximum fat content provisions of the MP(S)P standard and leaving applicable the general fat to lean ratio requirements that apply to meat trimmings.

PCMA stated that, based on data available to it, only 898,749 pounds of MP(S)P had been produced in the 7 months following publication of the regulations (17,040 from swine, 610,959 from cattle, and 270,750 from other sources, apparently calves), despite an investment in equipment of approximately $30 million by approximately 40 meat packers and processors; and the very few MP(S)P-containing products on the market are sold almost entirely to institutions, not retail consumers. (Data from the Department's meat inspection program indicate that approximately 2.3 million pounds of MP(S)P were produced in fiscal year 1979 and approximately 2.0 million pounds were produced in fiscal year 1980.) PCMA argued that the MP(S)P regulations should be changed immediately because (1) the failure to recover this product results in unnecessary additional consumer expenditures of $1 billion to $3 billion for meat and meat products and raises the price of all beef and pork cuts at least 3 to 4 cents per pound, (2) competitive poultry products without restrictive labeling and standards have gained significant marketplace acceptance, (3) the MP(S)P labeling provisions create misleading connotations of inferiority, and (4) the MP(S)P labeling and standards provisions are not supported by comments in the rulemaking record.

To support its contentions regarding economic impact, PCMA appended an economic evaluation that it had commissioned from Dr. Willard F. Williams, Professor of Agricultural Economics, Texas Tech University. Among other things, Dr. Williams estimated that existing machinery could produce 99 million pounds of MP(S)P per year (77 million from cattle and 22 million from swine). As regards labeling requirements, PCMA argued that (1) MP(S)P will virtually never be the most prominent ingredient in a product, the name MP(S)P is legalistic and unfamiliar to consumers, and consumers associate prominent legalistic label declarations with negative health implications; and (2) the powdered bone content declaration erroneously implies that this residue is detrimental to consumers, and it does not address the nutritional issue (sensitivity to calcium) raised by the Panel. PCMA also cited rulemaking comments opposing the minimum protein and maximum fat content requirements and argued that (1) the only feasible controls on fat composition are regulation of the end product and consumer taste preferences and (2) restrictions on ingredient composition only limit blending, a process which benefits consumers economically by allowing access to the most reasonably priced ingredients. Finally, PCMA contended that the review and approval of the health and safety aspects of MP(S)P during rulemaking and the huge inflationary impact of existing regulations make expedited rulemaking under 5 U.S.C. 553(b), without notice and comment procedure, appropriate.

The Department could not find sufficient grounds in PCMA's petition for granting the relief requested and, therefore, denied the petition in May 1979. PCMA was informed that while the Department does not want effectively to bar the marketing of any safe product or to inhibit the use of any process that may reduce industry costs and consumer prices, Dr. Williams' study did not support the petitioner's claims about the effects of current regulations. A copy of the Department's Economics, Statistics, and Cooperative Service's (ESCS's) review of the study was enclosed with the denial. The Department also indicated it was open to a resubmission of the PCMA's arguments with compelling evidence on (1) the effects on consumer preference of the current regulation and the amendments proposed by PCMA, (2) the economic effects of widespread use of MP(S)P, (3) industry's capability of producing and utilizing MP(S)P, and (4) whether the labeling proposed by PCMA would be false or misleading to any purchasers. The Department emphasized that the use of MP(S)P presents substantial problems of consumer understanding and education, citing the test for labeling set out in *Federation of Homemakers v. Hardin*, 328 F. Supp. 181 (D.D.C. 1971), *aff'd*, 466 F.2d 462 (D.C. Cir. 1972), and affirming the Department's belief that the current labeling provides information necessary for informed choice and is the best available alternative given present knowledge.

In June 1979, PCMA resubmitted its request along with a further explanation of its position, Dr. Williams' comments on ESCS's review, and a response to the comments on the petition which had been submitted by the Community Nutrition Institute. Because the resubmitted petition presented no new evidence, the Department denied it in September 1979. PCMA was informed that until further evidence was submitted to alter the conclusions in the original denial, the Department believed that they continued to be valid.

5. PCMA–AMI Petition

In the middle of 1980, PCMA and the American Meat Institute (AMI), a national association of meat packing and processing companies, informed the Department that they were compiling

information of the types to which the Department has referred in denying PCMA's 1979 petition. They submitted reports on the results of their efforts on February 11, 1981, along with a petition on behalf of their members to amend what they consider to be misleading labeling and unreasonable compositional requirements for MP(S)P which effectively preclude their members from producing or marketing various types of this product (beef, pork, veal, and lamb). Specifically, the PCMA–AMI petition requested that the Department (1) designate the ingredient resulting from the mechanical separation of meat from bone as "Mechanically Deboned Meat" ("MDM") because this name is clearer and more understandable to consumers than "Mechanically Processed (Species) Product" and it is the common or usual name by which the ingredient is known in the United States, (2) require that the presence of MDM be declared only in the ingredient statement, consistent with the general requirements for listing ingredients by their common or usual names in descending order of predominance (9 CFR 317.2(c)(2)), and delete the requirement that its presence be indicated in a phrase qualifying the names of meat food products in which it is used (9 CFR 317.2(j)(13)), (3) require a declaration of calcium content in the ingredient statement or as part of any nutrition label where the quantity of calcium in the meat portion of a meat food product is a nutritionally significant portion of the Recommended Daily Allowance (RDA) in lieu of the requirement that the names of meat food products be further qualified to indicate the amount of powdered bone they contain (9 CFR 317.2(j)(13)), (4) limit the total calcium content of the meat portion of a meat food product to no more than ¼ percent in lieu of the present provision limiting use of MP(S)P to no more than 20 percent of the meat portion of any meat food product (9 CFR 319.6(b)), as a technology-forcing feature providing an incentive to lower powdered bone content, and (5) delete the minimum protein and maximum fat specifications in the product definition and standard (9 CFR 319.5(a)). The petition also recommended that the Department reexamine its limits on bone particle size (9 CFR 319.5(a)) in reference to proposed Canadian requirements and requested that the wording of the regulations be changed to substitute "Mechanically Deboned Meat" for the meat food product called "Mechanically Processed (Species) Product" (9 CFR Part 319).

PCMA and AMI stated that in view of the fact that meat packers and processors have invested approximately $30 million in equipment, one can only conclude that the limited production of MP(S)P—less than 1 percent of the potential supply—is attributable to the unreasonably restrictive compositional and misleading labeling requirements; and they cited press reports of statements by the former Assistant Secretary of Agriculture for Food and Consumer Services and the former Associate Administrator of FSQS as indicating that the Department had reason to believe the burdensome nature of the present MP(S)P regulations requires a change. The petitioners believed that their proposed changes would have an extraordinarily positive environmental impact by making hundreds of millions of pounds of additional meat available with no added burden on agricultural production, by providing supplemental calcium, a needed nutrient, and by causing a huge conservation of valuable food resources. They also concluded that stifled production under existing regulations has had an inflationary impact on meat prices and is costing U.S. citizens more than $500 million per year, and that their proposed modifications can remedy these effects without sacrificing any health or economic benefits provided by the current regulations.

As noted above, when the Department denied PCMA's 1979 petition, it indicated its willingness to reconsider the arguments raised therein if additional information in various areas were presented. In response, PCMA and AMI based their petition on the following evidence, as well as the experience gained in the 32 months since the promulgation of the MP(S)P regulations: (1) "Consumer Focus Groups Concerning Mechanically Processed Meat Product," a September 1980 report by Market Research Services, Chicago, Illinois, on a qualitative market research study which was commissioned by PCMA to provide information regarding consumer preferences and perceptions (what the current label means to them, how they feel about it, and how they feel about the product) and (2) "Economic Impacts of Regulations on Mechanically Deboned Red Meats," a July 1980 report by J. Bruce Bullock and Clement E. Ward, Associate Professors, Department of Agricultural Economics, Oklahoma State University, an AMI-supported economic analysis, the objectives of which were to identify the nature and estimate the dollar value of the economic contribution that red meat mechanical deboning technology can have on the U.S. economy, to identify the nature of the economic impacts of regulations restricting production to less than economically feasible levels and estimate the economic costs of current regulations, and to develop information for determining the type of regulations (if any) needed to provide consumers with adequate information about the mechanically deboned red meat ingredient without preventing use of the efficiency-increasing technology.

Market Research Services reached the following conclusions on the basis of 8 focus group sessions lasting 1½ to 2 hours each and including a total of 69 women aged 25 to 54 from middle income households ($15,000 to $30,000) in 4 metropolitan markets (Chicago, Los Angeles, Atlanta, and Washington) who reported doing most of the grocery shopping for their households and frequent to use of many types of processed meat products:

(1) The term mechanically processed beef product is confusing to consumers, and it fails to adequately inform them as to what the product MPBP actually is.

(2) Most consumers reacted negatively to the emphasis of powdered bone (even in very small amounts) on a product label.

(3) It appears that consumers probably will not purchase products containing MPBP if labeled according to the 1978 USDA regulation.

(4) Mechanically deboned (beef) appears to be a more favorable and informative term than mechanically processed (beef) product.

(5) Once they know that MPBP actually is beef that has been mechanically deboned, most consumers believe it is unnecessary to emphasize the mechanical deboning process if, in fact, the product is safe and nutritious. Consumers do feel strongly, however, about listing all the product ingredients in the ingredient statement. (Underlining deleted.)

Market Research Services also cautioned that their research is exploratory in nature and their findings must be seen as hypotheses which are not intended to be projectable to any larger population.

PCMA and AMI stated that Market Research Services' conclusions should be read together with quantitative research prepared for the Gerber Products Company and previously submitted to the Department, which they believed confirms consumers' negative reactions to the format and content of existing labels for products containing MP(S)P. PCMA and AMI asserted that these materials should satisfy the

Department's request that compelling evidence regarding the effects of present and proposed regulations on consumer preference and whether the proposed labeling would be false or misleading to purchasers of the product accompany a resubmission of PCMA's arguments. PCMA's and AMI's arguments reflected the following positions: (1) "Mechanically Deboned Meat" is the common or usual ingredient name long used in the United States. (2) MDM is skeletal meat. Small and safe quantities of powdered bone do not decharacterize the ingredient's fundamental nature as "meat". Therefore, MDM as an ingredient is properly identified in the ingredient statement and requires no prominent qualifying phrase. (3) The powdered bone disclosure was required to provide information on calcium, a nutrient of which most consumers need more but intake of which some consumers should restrict. Consumers concerned about calcium content are best served by express information about calcium in the ingredient statement or, where nutrition labeling is used, in that labeling; however, such information should only be required where the amount of calcium is nutritionally significant.

The petitioners contended that the responses of the focus group participants support these positions. PCMA and AMI reported that the participants responded in an informed way to "Mechanically Deboned Meat", but were totally confused by the prominent qualifying phrase "Mechanically Processed Beef Product", that they found the word "processed" to be meaningless, that they found the word "product" to be confusing, and that they were immediately able to understand the term "Mechanically Deboned Meat" as meaning meat separated from bone by a mechanical means. PCMA and AMI also reported that the prominence given to the qualifying phrase indicating the presence of MP(S)P confused the focus group participants, arousing unwarranted apprehensions about a problem with the product without conveying information. In addition, PCMA and AMI reported that after the focus group participants learned that MPBP is beef that has been mechanically deboned, most believed it is unnecessary to emphasize the mechanical deboning process so long as the ingredient is safe and nutritious and it (like all product ingredients) is identified in the ingredient statement. Finally, the petitioners reported that the focus group participants found the powdered bone content declaration derogatory and misleading (with many mistakenly thinking it referred to a separately added powdered bone ingredient and others mistakenly thinking detectable or hazardous hard pieces of bone would be present) and that they did not relate it to the presence of calcium.

Drs. Bullock and Ward studied the potential demand and supply for beef and pork product produced by mechanical deboning, the economic value of the mechanical deboning technology, the economic costs and benefits of regulations, and the potential impact of the mechanical deboning technology on livestock prices. They used published information and information from a mail survey of meat packers and processors who have commercially produced or experimented with beef and pork product produced by mechanical deboning as well as industry contacts to look at the potential economic effects of removing the requirements for phrases qualifying the names of finished products and for fat and protein content. Their analysis assumed that, as USDA's evaluation of health aspects indicates, there are no harmful effects of consuming this product; and while this may not be true for individuals who must restrict their calcium intake, the contents portion of the label will contain enough information to allow these individuals to avoid consuming the product in unhealthy amounts, and the number of such individuals is small and will have a negligible impact on the demand for processed meat food products containing this product. Their analysis also assumed that, as evidenced by consumers' ready acceptance of mechanically deboned poultry and fish products plus the growing production of MDM prior to the imposition of labeling restrictions, consumers will readily accept this product as an ingredient in processed meat food products at prices that provide an adequate incentive for its production and use.

Drs. Bullock and Ward reached the following conclusions:

> Current MDM regulations generate social costs in the neighborhood of $513 million per year. Benefits generated by the regulations are limited to a small segment of the population who must restrict their intake of calcium. An alternative regulation requiring the product label to contain information about the calcium content would generate the same benefits as the current regulations without generating social costs associated with those regulations.
>
> (Their) analysis indicates that the following changes in MDM regulations would be in the public interest.
>
> 1. Revise product labeling requirements so that labels do not impede sales of MDM. The revised label probably should include information about the calcium content of the final product for calcium sensitive consumers. This modified labeling regulation would generate the same social benefits but avoid the social costs of the current regulations.
>
> 2. Removal of the current regulations regarding fat, protein, and calcium contents of MDM. Existing regulations insure that meat products such as franks and weiners will not exceed specified fat levels. Establishing upper limits on the fat content of MDM provides the consumer with no more protection than existing regulations. Therefore, current regulations prevent processors from making efficient use of existing resources. The fat restriction will prevent a large portion of the potential raw material from being used in MDM production. The * * * analysis indicates that modification of the product labeling regulations without also removing the fat restrictions would remove less than 30 percent of the social costs associated with the current regulations.
>
> 3. The current regulations limiting the content of MDM in final products to no more than 20 percent of the meat ingredients does not appear to be generating social costs at the present time. However, there is no economic justification for this type of regulation. The success of a processed meat product in the marketplace depends on repeat purchases of satisfied customers. The rigors of the marketplace will weed out products that contain too much MDM to satisfy consumers. While this regulation is not generating social costs at the present time, it might do so in the future. Continuation of the 20 percent limit on MDM content would preclude development of potential new products that might be quite acceptable to consumers. Hence, the public interest would be served by removing this regulation.

PCMA and AMI stated that the Bullock and Ward study, as well as previous analyses and submissions, responded to the Department's request that additional information regarding the economic effects of widespread use of mechanically processed meat and industry's capability of producing and utilizing the product accompany a resubmission of PCMA's arguments. The petitioners asserted that while the methodology and conclusions regarding the aggregate dollar value of benefits in the analysis by Bullock and Ward and earlier analyses (cited in the petition) by Willard Williams and D. W. McNiel differ, each study concludes that modified regulation would result in substantial benefits and Bullock and Ward suggest that full benefits can occur within 2 years. Finally, PMCA and AMI relied on Bullock and Ward study as showing that the existing fat and protein content requirements are at least as limiting as the present labeling requirements and, therefore, as

supporting the petitioners' position that they should be deleted as limits on this ingredient and, if appropriate, should be imposed only on finished products.

6. Proposal to Amend 1978 Regulations

The Department reviewed the PCMA–AMI petition and accompany reports and it carefully considered the arguments raised therein in conjunction with other information it had accumulated over the past several years. The Department's review included the development of a Preliminary Regulatory Impact Analysis (PRIA) which, among other things, evaluated the economic anylysis by Drs. Bullock and Ward. The Department also evaluated Market Research Services' report on a series on consumer focus group sessions. As transcripts or tapes of Market Research Services' focus group sessions were not submitted with the PCMA–AMI petition, the Department had not been able to verify the conclusions drawn in the report on this research at the time the proposal was published. Therefore, references to this research reflected the information then available and Market Research Services' evaluation of the data.

Based on its review and analysis, the Department decided to respond to the PCMA–AMI petition as part of a rulemaking which proposed changes in certain of the provisions in the 1978 regulations and sought comment regarding the issues raised by these proposed changes and other provisions. The Department's proposal was published on July 31, 1981. 46 FR 39274. The comment period ended 90 days later, on October 29, 1981.

After the publication of its proposal, the Department consulted its advisory committee on meat and poultry inspection regarding this matter, and it investigated further certain of the issues raised in the rulemaking notice. A transcript of the advisory committee's November 12–13, 1981 meeting has been placed on the record of this proceeding. In addition, documents reflecting the information and analyses generated by the Department's further investigation have been placed on that record. These documents include an analysis of additional data on the relative cholesterol, purine, and nucleic acid contents of products made by mechanically deboning livestock and meat. They also include an evaluation of Market Research Services' report on the consumer focus group research it conducted along with videotapes of the sessions themselves and transcripts of six of the eight sessions. As the evaluation indicates, the Department has concluded that Market Research Services' report is a reasonable interpretation of the research as utilized in this rulemaking.

The Department received 1,604 comments that were postmarked on or before October 29, 1981, the close of the comment period. Nine hundred and fifty-seven of these comments were submitted by individual consumers. Three hundred and ninety-seven of these individuals identified themselves as being employees or relatives of employees of meat or poultry industry members as well as consumers. Five hundred and ninety-cne of the comments came from industry-related individuals and groups: Meat and poultry industry members (individual producers, packers, and processors), their trade associations and organizations, equipment manufacturers and distributors, and 2 trade associations of food wholesalers. Sixteen of the comments from meat and poultry industry members and organizations endorsed, in whole or in part, the comments of trade associations or organizations. Of the 1,548 comments in these two categories, 902 were various form letters. While the specific positions taken in these letters varied, they all supported modifying the existing regulations to facilitate production and use of this product. The remaining 56 comments were submitted by a public interest organization, academia (including university faculty and students), other professionals (including physicians, dietitians, nutritionists, food scientists, and nurses), and State government officials and agencies.

Most of the comments from individual consumers focused on the requirements for finished meat food product labeling and the commenters' interest in using or avoiding product made by the mechanical separation and removal process. Most of the comments from industry, on the other hand, addressed the more technical aspects of the proposal, including various aspects of the definition and standard for this product (e.g., compositional and quality control requirements) and limitations on its use, as well as finished product labeling requirements and the benefits the product can provide.

The Department also received approximately 60 comments that were postmarked after October 29, 1981. Most of these comments were submitted by individual consumers; the remainder came from industry members, a trade association, professionals, and a State government agency. The Department has reviewed these comments. While they are not specifically referred to in the discussion of the final rule, the views they contain also were expressed by other commenters whose submissions are summarized in that discussion.

After reviewing the comments submitted by the public in light of currently available information, and in view of the importance of taking advantage of all safe and wholesome sources of food, the Department determined that certain of the regulations which it promulgated in 1978 should be amended in order to facilitate the production and use of this product while continuing to protect the public against the preparation and distribution of adulterated and misbranded products.

The Final Rule

The final rule amends the Federal meat inspection regulations by modifying the difinition and standard (including parameters for measuring compliance) and permitted uses for the product defined by regulation in 1978 as "Mechanically Processed (Species) Product" ("MS(S)P") and the labeling requirements for meat food products in which it is used as an ingredient, and by establishing labeling requirements for such product. The amendments contain the following provisions:

1. The definition and standard for the product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts is amended to include a new product name and two categories of product and to clarify its scope (9 CFR 319.5).

(a) The definition and standard is amended to clarify its scope by specifying that it applies to "finely comminuted" product.

(b) The name of the product is changed to "Mechanically Separated (Species)" in order to provide a more meaningful and concise description of its characteristics.

(c) The maximum bone particle size and bone solids content requirements are retained, but the definition and standard are amended to clarify that the maximum calcium content is a measure of maximum bone solids content and that product failing to meet the maximum bone particle size requirement shall be used only in producing animal fats.

(d) The definition and standard is amended to include two categories of product; one which meets maximum fat and minimum protein content requirements (not more than 30 percent fat and not less than 14 percent protein), and a second as to which there are no

fat or protein content requirements (product for processing).

(e) The minimum protein quality requirement (a PER of 2.5) is retained, but the definition and standard is amended (1) to permit use of product failing to meet the protein quality requirement only in producing animal fats, (2) to clarify the compliance provision by specifying the amino acids included in a calculation of total amino acids and simplify the provision by focusing on the comparison that is to be made between essential amino acid content and total amino acid content, and (3) to control the costs of measuring compliance by deleting cystine from the calculation of total amino acids.

(f) An approved plant quality control system for establishments producing the product is retained as a prerequisite for label approval for products consisting of or containing the product, but the requirements are modified as follows: (1) USDA's 1980 regulations regarding applications for plant quality control, their evaluation and approval by the Administrator of FSIS, and the conditions and procedures for terminating approval (9 CFR 318.4(d) (1) and (2), (e), and (g)(2)) are incorporated, (2) provisions designed to assure compliance with fat and protein content requirements are restricted to product which purports to meet such requirements, (3) the use of Chemistry Laboratory Guidebook methods is permitted if no AOAC method is available and provision is made for the submission of alternative methods of analysis to the Administrator of FSIS to determine their acceptability, (4) the quantity of product which may constitute a "lot" is clarified, and (5) the acceptability of methods other than laboratory analyses for assuring compliance with the bone particle size requirement and of either PER assays or amino acid content analyses for assuring compliance with the protein quality requirement is clarified.

2. The requirements for the handling of material for mechanical processing and the handling of the product itself are retained, but the references to "MP(S)P" and an imitation of "MP(S)P" are replaced by "MS(S)" (9 CFR 318.18).

3. Limitations on use of the product are retained to prevent potential health and safety problems and protect the quality and integrity of the meat food product supply, but the restrictions are modified to take into account the establishment of two categories of product; the scope of the restrictions is clarified; and the cross reference to labeling requirements (9 CFR 317.2(j)(13)) is eliminated as redundant (9 CFR 319.6).

(a) Product meeting fat and protein content requirements can be used in any meat food product in which its use is not prohibited; and product for processing can be used only in such a meat food product that is subject to a regulatory definition and standard which limits fat content.

(b) The list of meat food products in which use of the product is prohibited is clarified.

(c) The restriction on the amount of product that may be used in any meat food product is retained, but the basis for determining that limit is clarified as including all livestock and poultry product ingredients.

4. The definitions and standards of identity or composition for meat food products (9 CFR Part 319) in which the product may be used are amended as follows:

(a) "Mechanically Processed (Species) Product" is replaced by "Mechanically Separated (Species)".

(b) Those definitions and standards which limit fat content by setting a maximum on the amount of trimmable fat that the ingredients used in their formulation may contain (9 CFR 319.141, 319.143, 319.144, and 319.160) are amended to define the limit in terms of a maximum analytical content (50 percent) in order that product for processing may be used in their formulation.

(c) Certain of those definitions and standards (9 CFR 319.140, 319.145(a)(3), 319.281, and 319.305) are amended to clarify that use of the product is permitted.

5. A labeling requirement is established for the product to ensure that it is used in accordance with regulatory requirements; and the labeling requirements for meat food products in which it is used are amended to continue to provide adequate, nonmisleading information while reducing their burden and avoiding unwarranted and possibly derogatory implications (9 CFR 317.2(j)(13)).

(a) On the label of the product itself, the name of the product must be followed immediately by the phrase "for processing" unless such product contains not more than 30 percent fat and not less than 14 percent protein.

(b) The requirement that the name of the product must be listed in proper order of predominance in the ingredient statements of meat food products in which it is used, consistent with the general requirements for declaring ingredients in meat food products (9 CFR 317.2(c) (1) and (2) and (f)(1)), is retained, but the repetition of this requirement (in 9 CFR 317.2(j)(13)) is deleted as redundant.

(c) The requirement that the names of meat food products must be qualified to indicate the presence of this product as an ingredient is deleted as unnecessary where such ingredient can constitute only 20 percent or less of the livestock and poultry product portion.

(d) The requirement that the names of meat food products must be further qualified to indicate the amount of powdered bone they contain is replaced with a requirement that their labels declare calcium content as part of nutrition labeling information—or if the meat food product does not bear nutrition labeling, in a prominent statement in immediate conjunction with the ingredients list—where the product contributes 20 mg or more of calcium to a serving, unless the amount that would be declared would not differ from the amount that would be declared if the meat food product contained only hand deboned ingredients or unless the calcium content of a serving of the meat food product would be 20 percent of the U.S. RDA or more if the meat food product contained only hand deboned ingredients.

The final rule is discussed below. The organization of that discussion follows the outline set out in this summary.

Discussion of the Final Rule

1. Product Definition and Standard

(a) Scope of the definition and standard.

The product definition by the name "Mechanically Processed (Species) Product" in 1978 is made by mechanically separating and removing most of the bone from attached skeletal muscle of livestock. While it is possible to use whole carcasses, the raw materials for this type of processing generally are parts of carcasses from which most of the skeletal muscle already has been removed by traditional hand deboning techniques. With the mechanical deboning technology, these bones generally are broken up and pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue. The resulting product differs from the hand deboned product, traditionally used as an ingredient, due to its highly comminuted and spread-like consistency and its content of varying amounts of bone, including bone marrow, and certain minerals as well as muscle tissue.

Several commenters referred to the variety of deboners currently available

for commercial use as well as the characteristics of product made by these machines. One commenter also noted procedures currently in the developmental stage, including liquid separation techniques. Another commenter expressed concern that the present definition could be broad enough to extend to products which it was never intended to cover, as technology increasingly enables industry to removes bones from primal cuts by mechanical means rather than by hand, and recommended that the scope of the regulations be limited to the product intended to be covered.

The Department is aware that technological advances are occurring in the meat processing industry and it wishes to avoid confusion about the scope of the definition and standard in § 319.5 of the regulations (9 CFR 319.5). This regulation does not specify the type of equipment used to separate and remove bone because it is intended to cover the product manufactured by any such machinery that operates on the differing resistance of hard bone and soft tissue to passage through small openings, whether it employs sieves, screens, or other devices and whether or not bones are prebroken before being fed into such equipment. However, the regulation is not intended to apply to whole pieces of muscle which have been removed from livestock bones by mechanical or other means. In view of concern expressed about possible misapplication of this definition and standard to products which it is not intended to cover, the Department is amending the regulation to clarify its scope by inserting the words "finely comminuted" in the description of the product, which now will specify that it extends to:

> * * * Any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses and meeting the other provisions of (9 CFR 319.5(a)).

As the modified language does not change the current scope of the regulation, it is being adopted as part of this final rule.

Several industry commenters challenged the appropriateness of retaining a separate definition and standard for this product, arguing that its characteristics clearly place it within the regulatory definition of "meat." As the Department noted in its proposal, the consistency of this product and its content of bone, including bone marrow, and certain minerals as well as muscle tissue are materially different from those of meat; and these differences have potential consequences for finished product quality and for health and safety. Thus, while the product has many of the characteristics of "meat" and, if properly regulated, can be used as a "meat" ingredient in the formulation of quality meat food products, it is sufficiently different that it cannot be regarded as falling within the category of food traditionally defined as "meat" (9 CFR 301.2(tt)). The product should be separately defined and standardized, and identified by a name that adequately differentiates it from "meat". 46 FR 39274, 39275, 39283. See also *CNI* v. *Butz, supra*; 43 FR 26416, 26420. The comments on the proposal contained no new information to refute this position. In fact, numerous comments attested to the distinctive nature of this product. These comments are summarized in the following sections of this discussion.

(b) Product name.

The Department proposed to amend the definition and standard (9 CFR 319.5(a)) by deleting the term "product" from the product name and by considering terminology such as "mechanically separated", "mechanically deboned", and "mechanically recovered" as an alternative to "mechanically processed" to distinguish the product from "meat". 46 FR 39274, 39283–84. The Department has conluded that "Mechanically Separated (Species)" ("MS(S)") should be adopted as the product name in the amended regulations because this name will provide a more meaningful and concise description of the product's characteristics than "Mechanically Processed (Species) product".

Three hundred and sixty-one comments addressed issues bearing on the name of this product. They were submitted by the full spectrum of individuals and groups commenting on the proposal, with the majority coming from individual consumers and about 25 percent from industry-related individuals and groups. Most of these commenters supported some modification of the name "Mechanically Processed (Species) Product", although a number of the comments from individual consumers expressed general opposition to changing the product name.

Many of the commenters supported the Department's proposal to delete the term "product". Some of these commenters said this should be done because the term "product" is not essential to assuring that the name accurately identifies the product and/or it is confusing.

On the other hand, a few commenters objected to this proposed change in the current product name, taking the position that the term "product" is necessary to convey that this ingredient is different from meat. One of these commenters questioned the basis for the Department's policy reversal from its 1978 conclusion that use of the term "meat" would incorrectly represent that the product consists solely of meat. Relying on Market Research Services' focus group research for this purpose was criticized because the observations of focus group research are limited to the participants and are not statistically valid or representative of the population at large; and as neither tape recordings nor transcripts of the sessions were made available and the verbatim responses to one question are restricted to the sessions in 3 of the 4 cities, one cannot be assured that there was no distortion or manipulation of consumer responses or verify Market Research Services' conclusions. Nevertheless, this commenter asserted that what was provided in Market Research Services' report contradicts the Department's position and demonstrates the necessity of the term "product" to prevent consumer deception.

The Department's proposed departure from its earlier policy on the need for the term "product" was based primarily on its belief that in 1978 the Administrator had failed to consider the name as a whole—as opposed to the single word "meat"—and that the requirement imposed then is inconsistent with the Department's policies and requirements regarding the names of other livestock products. In addition, from a review of Market Research Services' report, it appeared to the Department that inclusion of this term might confuse or mislead consumers and that the source of the problem might be the very inconsistency of requiring "product" in the name of this livestock product, but not others. 46 FR 39274, 39283. In citing this research report, the Department recognized that focus group research does not provide results which are projectable to a larger population and, thus, the findings of such research must be regarded as tentative or indicative of potential trends or attitudes. The Department also recognized that it had not yet completed its evaluation of the report and the conclusions drawn therein by reviewing tapes or transcripts or the sessions. 46 FR 39274, 39281. After completing this evaluation, the Department continues to be concerned that the inclusion of the term "product" in the name may result in inaccurate perceptions about the source and nature of the product. For example, Market Research Services reported that a number of the

participants perceived the term "product" as modifying the species identification (e.g., "beef") to indicate that inferior animal parts such as lips, ears, and hooves have been used in making the product, that it either contains substantial ingredients in addition to meat or does not contain meat at all, or even that it contains artificial ingredients or is fabricated from non-livestock or non-food ingredients.

Most of the commenters addressing the question of product name indicated a preference, or a first and second preference, as to what the product should be called; and a number of them also indicated why they believed other names to be inappropriate. Each of the four options set forth in the proposal—"mechanically processed", "mechanically separated", "mechanically deboned", and "mechanically recovered"—received at least some support in the comments. However, "Mechanically Recovered (Species)" ("MR(S)") was supported only by one commenter and only as a second choice that would be better than "mechanically processed" or "mechanically deboned". Other commenters who addressed this option rejected it, with some saying that, as compared with other options, it would lend itself to potential confusion, would be less understandable or misleading, is not really descriptive, and/or potentially covers a number of functions with no indication from where or what the product is recovered. Moreover, one of the comments stated that under proposed United Kingdom regulations, the product would be regarded as "meat". Thus, the one place in which this terminology has been used appears to be abandoning it.

The other three alternatives each received greater support than MR(S), but each also was the subject of criticism. "Mechanically Deboned Meat" or, as set forth in the proposal, "Mechanically Deboned (Species)" ("MD(S)") was the alternative name most favored in the comments. Many of the industry commenters supporting this alternative based their position on the extensive use of this terminology by industry (domestically and/or internationally) to describe the meat and poultry products manufactured by this technology, with some asserting that such usage has resulted in common or usual name status which should be recognized by USDA. Some stated that this name is self-explanatory, the simplest, more or the most accurate or descriptive, least misleading, and/or that it would be more understandable to consumers or less likely to be confusing or controversial than other alternatives; and Market Reserach Services' work was cited as supporting this position.

Criticism of MD(S) focused on the issue that concerned the Department in its prior rulemaking and its current proposal: that the term "deboned" would incorrectly represent to consumers that the product does not contain bone, including bone marrow. 43 FR 26416, 26420; 46 FR 39274, 39284. One commenter cited Market Research Services' report of focus group participants' reactions as confirming the Department's 1978 conclusion and contended that it is likely "mechanically deboned" evoked more positive responses from the participants because it gives an incorrect and euphemistic image.

A number of commenters supported "Mechanically Separated Meat" or, as set forth in the proposal, "Mechanically Separated (Species)" ("MS(S)") as a first or second choice on the ground that it is more descriptive of the product than other alternatives; and one said that if consumers are aware that one component is meat, most will know meat is being separated from bone. This name also was favored because of its use in several other countries and its adoption by the 10th session of the Codex Alimentarius Committee on Processed Meat and Poultry Products (1978). "Mechanically Processed (Species)" ("MP(S)") was supported by some commenters as being truthful and understandable. MP(S) and MS(S) also were preferred as not having the negative connotations associated with "mechanically deboned" or "mechanically recovered", although a few commenters asserted that because of the controversy surrounding the name MP(S)P, MD(S) should be adopted rather than MP(S).

Criticism of MP(S) and MS(S) came from commenters supporting MD(S) who took the position that "mechanically processed" and "mechanically separated" are less descriptive, having no obvious connection to the separation of meat from bone, or potentially confusing. MP(S) also was criticized as negative and as uninformative or misleading because, for example, most foods are processed at least to some degree and because "processed" has traditionally been used to describe cooked or cured products. MS(S) also criticized as not making clear what is being separated from what.

In addition to addressing the four options set out in the proposal, the comments include some support for alternative terminology. One commenter suggested "mechanically extracted" as a means to alert consumers to a new and different process. Another recommended "mechanically trimmed" as descriptive of the product and not having the negative or misleading connotations of "deboned" or "processed". Two commenters suggested "mechanically boned" as more descriptive and less burdensome than the options in the proposal. Two others favored using just the term "deboned" because, according to one of them, this is most descriptive and, according to the other, the term "mechanically" serves no useful purpose and is misleading. Finally, one commenter recommended that the name of the product be "Tissue from Ground Bone" ("TFGB") in order to provide a clearer, and thus more meaningful, description of the product.

The Department has determined that it should not adopt any of the alternatives that incorporate the word "deboned" or "boned" because such names might mislead consumers. In its proposal, the Department cited its 1978 determination on this issue and expressed its continuing concern that the phrase "mechanically deboned" would erroneously represent that the product differs from meat solely in the manner by which bone has been removed. 46 FR 39274, 39284. Nothing submitted during the comment period has allayed this concern. In fact, its legitimacy has been emphasized by the many commenters who said this product is simply meat that has been separated from the bone by mechanical means. As was noted by a number of commenters, this is not the case: the product also contains bone, including bone marrow.

The Department also still ascribes to its 1978 determination that the name "TFGB" could be misleading as this product contains both meat and bone, including bone marrow, and "TFGB" would incorrectly indicate that it is made wholly from parts of bone. 43 FR 26416, 26420. In addition, the Department has concluded that the name of this product should continue to include the term "mechanically" to indicate the nature of the process used in making the product.

The Department has determined that the name "Mechanically Processed (Species) Product" should be replaced by "Mechanically Separated (Species)" in order to provide a concise and accurate description of the product without confusing or misleading consumers. Based on the factors discussed in the proposal and the comments on this subject, the Department believes that the alternative

it has selected is most likely to achieve this goal. The adoption of this name reflects the Department's conclusion that, as with other livestock-derived ingredients (e.g., "variety meats", "partially defatted pork fatty tissue"), the term "product" is not an essential element of a nonmisleading product name and that its use in this, but not other, product names may result in consumer misperceptions. The adoption of this name also reflects the Department's conclusion that because "mechanically separated" is more specific than "mechanically processed", the new name should be more meaningful to consumers. For example, Market Research Services' report indicates that "mechanically processed" may be confusing to consumers when used on the label of a frankfurter because they believe all such products are processed. Moreover, adoption of this name will make USDA's regulations consistent with those proposed in Canada and with the ongoing work of the Codex Alimentarius Commission and other countries, an advantage not presented by the other options considered.

Finally, the Department recognizes that the ability of any name to communicate in only a few words the nature of a new product is limited. In this regard, a few commenters expressed support for an effort to provide consumers with information about this product. One urged the Department to educate consumers about the product's composition and uses. Another said that the safety aspects of consuming the product need to be addressed. Others were of the view that such an effort would be in the best interest of industry as well as consumers by correcting misconceptions about the product (e.g., that it is responsible for tooth damage).

The Department believes that it is important to inform the public about this new product. Therefore, it will be reviewing its public information program and revising it to incorporate explanatory material on the process used to make MS(S) and the product's characteristics. The Department also believes that industry has a role to play in this effort, and will work with industry members and associations interested in designing their own informational materials. Similarly, the Department is interested in working with other groups which choose to develop information for consumers.

The Department also received a number of comments that went beyond the issues set forth in the proposal. Some of these comments challenged the underlying premise of having any distinctive name for the product, asserting that it is skeletal meat and, as such, the only appropriate name is that of the species from which it was produced (e.g., "beef", "pork"). As has been noted above, MS(S) does not consist solely of skeletal meat and its composition and consistency differ materially from the product defined by regulation as "meat" (9 CFR 301.2(tt)). Therefore, it should be known by its own distinctive name.

Other industry commenters accepted the appropriateness of a distinctive product name, but raised questions about its application to their products. These concerns focused on the scope of the term "species" as used in the product name. The illustrative examples set forth in the proposal to modify the definition and standard (9 CFR 319.5(a)) include "beef", "veal", and "pork". The Department intended this generic description to include product made by applying the mechanical deboning technology to any livestock covered by the FMIA. 21 U.S.C. 601; see also 9 CFR 301.2(rr), (ss), and (ww). Therefore, "species" includes beef, veal, calf, pork, mutton, lamb, goat or chevan, horse, and equine products. In response to concerns expressed by members of the sheep industry, the Department is clarifying this by adding "Mechanically Separated Lamb" to the list of examples in the regulation.

Also, several pork product producers commented that the name should identify product made from certain primal parts such as the ham. One commenter said this should be done because listing "mechanically deboned pork" in the ingredient statements of meat food products such as chopped ham would confuse consumers. The Department did not intend the term "species" to include primal parts of livestock species, nor does it believe that such an expanded use of this term would be appropriate. Primal parts are the distinct wholesale cuts of a carcass that are customarily distributed to retailers (e.g., the round, flank, and brisket for beef and the ham, belly, and shoulder for pork) (see 9 CFR 316.9). Such cuts consist primarily of whole pieces of muscle meat. Bone is included only to the extent that it accompanies such cuts and has not been removed in the dressing process. Thus, it is muscle meat and not any accompanying bone that characterizes primal parts; and, in the Department's view, product made from any accompanying bones does not retain the distinctive characteristics of the cuts themselves.

However, these comments raised issues that concern the Department: the appropriateness of continuing to permit use of this product in meat food products, such as pressed ham, chopped ham, and deviled ham (9 CFR 319.104(f), 319.105, and 319.760), that are represented as having been made from a particular part of the carcass and, if such use continues to be permitted, whether consumers might be confused by ingredient statement declarations of "mechanically separated pork" in such products. Therefore, as discussed below, the Department plans to reconsider certain of its limitations on the use of MS(S). In addition, if the manufacturers of such products can substantiate that the mechanically separated product they are using was made solely from bones which accompany ham meat, the Department would consider permitting finished product labeling to reflect that fact in the following manner: "mechanically separated pork (made from ham bones)".

(c) Bone particle size and bone solids content

The Department did not propose changing the maximum bone particle size or bone solids content limits established in 1978 (9 CFR 319.5(a)). However, it did propose to clarify these requirements by explicitly recognizing that (1) a maximum calcium content of 0.75 percent is used as a measure of a bone solids content of not more than 3 percent and (2) product failing to meet the maximum bone particle size requirement—at least 98 percent of bone particles not exceeding 0.5 millimeter (mm) and no bone particle larger than 0.85 mm—can be used only in producing animal fats. 46 FR 39274, 39284. The Department has decided to adopt these clarifying amendments.

Additionally, in view of the Canadian government's proposal to permit larger bone particles—98 percent less than 0.84 mm and 100 percent less than 2.0 mm, the Department indicated it was open to new information that good manufacturing practice may result in somewhat larger bone particles than currently are permitted; and it requested persons commenting on this issue to submit data on the safety and digestibility of bone particles larger than those now permitted. 46 FR 39274, 39284. As adequate information on which to base a modified requirement was not submitted, the Department is retaining the existing limit. However, it continues to be willing to reexamine this limit on the basis of such information and data.

Bone Particle Size

Sixty-five comments addressed bone particle size issues. Almost all of these comments were submitted by industry-related individuals and groups. Most of those commenting on the bone particle size limit were more concerned with the compliance aspect of this requirement than with the limit itself. Those comments are addressed below in connection with the Department's quality control requirements.

Many of these commenters favored increasing the current bone particle size limit, particularly in light of the Canadian government's proposal to permit somewhat larger bone particles. It was contended that the Canadian proposal reflects the capability of deboning equipment and current good manufacturing practices and that it is premised on a much larger data base than was available when the Department promulgated its requirement, but no information was provided to support this position. It also was contended that bone particles of the sizes set forth in the Canadian proposal pose no health or safety problem, but no supporting information was submitted. Other commenters stated that product made by mechanically deboning poultry carcasses contain larger bone particles and there have not been health or safety problems with that product. Finally, several commenters suggested deleting this requirement entirely, indicating that industry should self-regulate in this area, and one suggested basing the requirement on the species and parts of the carcass used to make the product because bone particle size varies by species and part.

The commenters supporting retention of the existing limit, on the other hand, felt that it is attainable with various types of available equipment and that it is unwise to jeopardize product quality and consumer acceptance merely to accommodate the state of the art in certain types of deboning equipment. Some of those taking this position also indicated that if the limit were increased, bone particles could be detected and a gritty texture and/or dental problems might result.

Despite the assertions of a number of commenters favoring an increase in the bone particle size limit, the Department has determined that such a change should not be made on the basis of the information it now possesses. The Department imposed this regulatory restriction in response to a recommendation of the Panel convened to evaluate health and safety aspects of the use of product made by mechanically deboning livestock carcasses. After considering detailed information on the bone particles produced by a number of different machines from a variety of livestock bones, the Panel concluded that the size of such particles presents no hazard to health and recommended that regulatory maximum be imposed to, in the words of the subcommittee that addresed this question, "limit particle size to those levels presently [i.e., in 1977] associated with good manufacturing practice." "Those levels" were well within the current regulatory maximum. Since that time, the Department has not received any additional information substantiating the absence of safety or digestibility problems with larger bone particle sizes.

Contrary to assertions by several commenters, data reviewed in 1979 regarding the product made by mechanically deboning poultry carcasses with auger-type equipment indicate the bone particles in that product also fall within the existing regulatory limit for product made by mechanically deboning livestock carcasses. However, the Department notes that some commenters reported finding pieces of bone in various poultry products. In any event, determinations about the size of bone particles associated with good manufacturing practice in the production of one of these products are not necessarily applicable to the other; nor are determinations about the safety and digestibility of their bone particles.

The Department also is concerned by comments that product with bone particles in excess of 0.85 mm would be detectable and, thus, adversely affect the quality of products in which MS(S) is used as an ingredient. As the Department noted in its first proposal to regulate this product, if bone were present in such a particle size (or amount) as to be readily apparent to the taste or touch, it would be identifiable as bone and be a reason to consider the product adulterated . 41 FR 17560, 17561. Moreover, the Department has not seen any data refuting its earlier conclusion that the existing limit is readily attainable with available equipment operated in accordance with good manufacturing practice.

As the Department indicated in its proposal, it does not wish to discourage the development of additional types of mechanical deboning equipment and processing procedures, particularly those capable of separating out and removing more bone. 46 FR 39274, 39284, 39288. Such technological developments may well generate data substantiating the absence of problems with somewhat larger bone particles; and the Department remains open to a reconsideration of this aspect of the regulations on the basis of such information.

Bone Solids Content

The 7 comments addressing the Department's retention of a 0.75 percent maximum on calcium content were submitted by industry-related individuals and groups and a university faculty group. These commenters generally accepted the appropriateness of this limit, with some supporting it as consistent with the operation of various types of equipment currently in use in accordance with good manufacturing practice. Only one commenter suggested a different level—1.0 percent—and he gave no reason why the current maximum should be raised. The Department does not know what prompted this suggestion since the data reviewed by the Panel indicate that deboning equipment generally yields a product with a calcium content well below the 0.75 percent maximum and in view of other comments regarding the ability of newer equipment to yield a product with an even lower calcium content.

(d) Fat and protein content

The Department proposed amending the definition and standard (9 CFR 319.5(a)) to include two categories of product: (1) A category which meets the existing fat and protein content requirements for MP(S)P—not more than 30 percent fat and not less than 14 percent protein—and (2) a category "for processing" as to which there are no fat or protein content requirements. 46 FR 39274, 39284–86. The Department has determined that this portion of the proposal should be adopted. This determination rests on its conclusion that when applied to all uses of the product, these fat and protein content requirements are unnecessarily restrictive; but when limited to certain uses, they are a necessary and appropriate method for preserving the quality and integrity of the meat food product supply.

The absence of any significant production of mechanically separated product under the 1978 regulations, the analysis of potential supplies for mechanical deboning by Drs. Bullock and Ward and the Department, and the comments on the proposal have convinced the Department that, in order to expand food supplies significantly by taking advantage of the full range of materials available for mechanical deboning, a second category of product without fat and protein content

requirements should be established. The Department also has concluded that this can be done while continuing to prevent increases in meat food products' fat content and assuring that the public can continue to rely on such products as reasonably good sources of high quality dietary protein. This amendment will permit greater flexibility in product composition to the extent that the compositional requirements for finished meat food products established by various definitions and standards of identity and composition (9 CFR Part 319) and the requirement that MS(S) be produced under a quality control system which maintains adherence to good manufacturing practice (9 CFR 319.5(e)(2)) can be relied upon to assure that the resulting variability does not compromise the integrity of finished meat food products.

One hundred and seven comments addressed this aspect of the Department's proposal. The majority of these comments were submitted by industry-related individuals and groups. A number of individual consumers also commented on this aspect of the proposal, as did several State government officials and agencies and a public interest organization. Most of these commenters objected to the imposition of fat and protein content requirements for any category of the product. However, a number of them said they oppose such requirements either because fat or fat and protein content already is controlled in all finished meat food products in which mechanically separated product may be used as an ingredient or because the proposal would impose such requirements on mechanically separated product used in finished products the fat content of which already is limited by regulation. Neither of these assertions is correct: First, as the Department noted in its proposal, a large proportion of the meat food products consumed in this country, and in which MS(S) may be used as an ingredient, is not subject to regulatory definitions and standards. Even where standards do exist, they do not impose direct limits on finished products' protein content and frequently do not limit their fat content. 46 FR 39274, 39287. Second, the precise objective of the Department in proposing to establish two categories of product was to restrict fat and protein content requirements to MS(S) used as an ingredient in meat food products the total fat content of which is *not* already limited by regulation.

Other commenters specifically opposed the establishment of two categories of product, recommending instead that there continue to be only one category and that it not be subject to any fat or protein content requirements. The basic reasons given for this position were that such requirements are not needed, without precedent, discriminatory, and/or they will not be effective. In addition to these comments questioning the logic and legitimacy of such requirements, the Department received comments asserting that the imposition of any fat and protein content requirements will preclude the deboning of some portions of swine and cattle carcasses or the use of product made from some types of livestock carcasses in at least some meat food products. Some of these commenters did acknowledge that by not imposing fat and protein content requirements on product for processing, the proposal should enable greatly increased production of MS(S); and it should be noted that some did not appear to understand the extent to which the proposed regulations would permit use of MS(S) regardless of its fat or protein content. The proposed approach also was criticized as making the manufacture of MS(S) complex because fat and protein content would have to be monitored.

A number of commenters challenged the retention of compositional requirements for any product made by the mechanical separation and removal process on the ground that such requirements cannot control the fat content of finished meat food products. These commenters' basic point was that because the fat content of only this one ingredient would be limited, it could be combined with fatty hand trimmed ingredients into finished products with a higher fat content. Several commenters asserted these requirements also are inequitable because hand trimmed ingredients and product made by mechanically deboning poultry carcasses are not subject to such limitations and/or they are not needed because this product will have the same composition as the meat it replaces. Some commenters contended that historically the composition of nonstandarized products has been limited by competition and consumer taste, and this approach should be followed here; some concluded that if fat and/or protein content requirements are necessary, they should be applied to finished products, not intermediate ingredients; and one proposed that if two product categories are established, the "better" one (i.e., product meeting fat and protein content requirements) be considered as meat and the other (i.e., product for processing) as a meat byproduct. Finally, it was argued that the concept of "good manufacturing practice" suggested by the Panel as the basis for limiting the fat content of this product should include the conservation by mechanical deboning of product with the same general characteristics as that recovered by hand deboning; and, to the extent the Panel's recommendation was to limit the fat in this product in order to counterbalance other, unlimited sources of fats and oils in the food supply, it was outside the scope of its charge to evaluate the health and safety of mechanically separate product.

The Department must admit that it did not anticipate certain of the challenges by industry to the legitimacy of fat and protein content requirements. While the Department agrees that marketplace forces and consumer preferences and satisfaction are important factors in determining product acceptability and success, it has long been acknowledged that they are not always adequate to control product composition within appropriate parameters. For example, the development 30 years ago of equipment and technology that made it possible to hold large quantities of fat in suspension during cooking and smoking meant that the incorporation of excessive amounts of fat in cooked sausages such as hotdogs—and the resultant, undetectable diminution of protein content—would no longer make such products unmarketable. Therefore, the Department established a regulatory limit on the fat content of these products (see 9 CFR 319.180). The adoption of other technological advances also has diminished consumers' ability to evaluate the characteristics and quality of various products. As a result, the Department has found it necessary to institute compositional and labeling requirements to prevent adulteration and misbranding.

Although such requirements most frequently have been applied to finished products, the establishment of compositional limits for ingredients certainly is not unprecedented. The most obvious example of an ingredient level requirement is the one discussed in the Department's proposal: the maximum on the amount of trimmable fat that may be present in any lot of product used to make various meat food products. 46 FR 39274, 39290. The Department is replacing this limit with a limit on finished product fat content in four of its standards (9 CFR 319.141, 319.143, 319.144, and 319.160) only in order that MS(S) for processing may be used in the formulation of products they cover (fresh pork sausage, breakfast sausage, whole hog sausage, and smoked pork

sausage). Thus, the same type of requirement will continue to be employed where use of MS(S) is not permitted (see 9 CFR 319.313, the standard for beef with gravy and gravy with beef). As one commenter noted, visible lean, as opposed to trimmable fat, also is considered by the Department in determining the acceptability of hand trimmings for use as ingredients in meat food products; and such determinations take into account whether or not the total fat content of such meat food products is limited by regulation, the same criterion used in these amended regulations. As the Department noted in proposing to amend four of the standards utilizing a limit on the trimmable fat of ingredients, that type of control requires a visual evaluation of solid pieces of meat; hence, it cannot be applied to the highly comminuted product produced by mechanical deboning. 46 FR 39274, 39290. Therefore, an analytical limit is more appropriate for this product.

Similarly, while it is true that there are not compositional requirements specifically applicable to product made by mechanically deboning poultry carcasses, that product is subject to the general requirements in the poultry product regulations (9 CFR Part 381). Those regulations differentiate between "poultry meat" and "poultry", with the former term restricted to product without skin or fat (i.e., fatty tissue attached to the skin) and the latter term also encompassing other edible parts, such as skin and fat not in excess of their natural proportions. As skin and fatty tissue are the places in which most of the fat in chickens and turkeys are found, these definitions serve to limit fat content indirectly and to distinguish between classes of poultry products in terms of their relative fat and protein contents. Moreover, they have consequences for product use since many of the standards for finished poultry products include minimum poultry meat requirements. At this time the Department has made no decisions with respect to additional regulatory action regarding product made by mechanically deboning poultry carcasses or as to the appropriateness of regulating that product in the manner that these revised regulations will regulate MS(S). However, it cannot be said that there currently are no constraints on the composition of that product.

In addition to limits on the composition of ingredients, the Department protects the public by regulating the type of ingredients that various meat food products may contain and, where appropriate, assuring that the proportions of ingredients they contain are sufficient to provide the characteristics they are represented as having. See sections 1(m)(8), 1(n) (2), (7), and (9), and 7(c) of the Federal Meat Inspection Act (21 U.S.C. 601(m)(8) and (n) (2), (7), and (9), 607(c)). The focus of interest in such inquiries frequently is the quality and quantity of livestock product components. Thus, in regulating MS(S), the Department's concern is that its use in lieu of other livestock products will be consistent with the characteristics consumers associate with and expect of various meat food products and will not result in a diminution of such products' quality. MS(S) consists largely of muscle tissue, rather than parts of the carcass such as the spleen, liver, and tripe that have traditionally been restricted to use as byproducts. Therefore, the Department has agreed that manufacturers should be able to use this product as a meat ingredient in their processing formulations so long as finished product integrity is protected and that the names of finished products need not always be qualified to indicate its presence. However, this position rests on MS(S) not deviating significantly from certain of the characteristics associated with meat. Hence, the amended regulations retain a protein quality requirement; and they retain fat and protein content requirements to the extent to which other controls have not been shown to provide adequate protection against a lowering of the quality (including the nutritional quality) and expected characteristics of the meat food product supply.

The Department thus continues to ascribe to the position it took when, in 1976, the regulation of product made by mechanically deboning livestock carcasses and parts first was considered: While the Department wishes to facilitate efforts to expand the food supply through advances in technology, its actions must be consistent with its statutory responsibilities. Therefore, any reconsideration of the regulatory requirements must take into account the differences between this product and both meat that is processed only to the extent of cutting or grinding (e.g., steaks and hamburger) and the manufacturing meats traditionally used in formulating processed meat food products. With the technological advances that permit the manufacture of products from portions of carcasses previously not considered part of the meat food product supply comes a greater potential for a diminution of quality and the characteristics associated with the meat food product supply. Although the Department has considered a number of different regulatory provisions to prevent such problems, its basic objectives and approach have remained the same. As the Department stated in its 1976 proposal, it is necessary to establish standards which assure the consumer that the inclusion of new products like MS(S) in formulated meat food products will not dilute the nutritional quality normally and traditionally associated with such products. 41 FR 17560, 17560–61. By maintaining the quality and expected characteristics of such products, these regulatory requirements prevent an erosion of public confidence in the meat food product supply and, hence, protect the agricultural community by preventing damage to the markets for their products, in accordance with the goals of the FMIA. 21 U.S.C. 601, 602.

The judgments about the appropriateness of specific regulatory provisions that are reflected in these amended regulations are based on the information currently available to the Department. The amended regulations incorporate the Department's conclusion that where other regulatory controls provide adequate protection against reductions in product quality, fat and protein content requirements serve primarily to limit the use of MS(S), but not hand trimmings, in the mixtures of livestock ingredients that generally are blended together in the manufacturing process. Therefore, the Department is amending the regulations to provide manufacturers with greater flexibility to incorporate MS(S) in these mixtures and, thus, take greater advantage of market fluctuations to produce economical products.

Moreover, from the information currently available, the Department does not agree with those commenters who asserted that the proposed two product category approach will prevent utilization of the full range of materials available for mechanical deboning. These comments presented no data to demonstrate that the establishment of a category of product for processing would not provide adequate outlets for mechanically separated product, regardless of its fat or protein content; and they disregard the extent to which processors can control the composition of mechanically separated product by techniques such as varying the degree of pretrimming performed before mechanical deboning.

In fact, the available data indicate that the amended regulations would not preclude the deboning of some parts or

types of livestock. For example, Drs. Bullock and Ward estimated the economically feasible 1979 level of beef and pork product production at 351.7 million pounds if, as they recommended, the names of finished meat food products did not have to be qualified and the fat and protein content of product made by mechanical deboning were not restricted. The economically feasible 1979 level without these labeling requirements but with the 30 percent fat content maximum and 14 percent protein content minimum was estimated to be 87.2 million pounds. 46 FR 39274, 39348–49. Thus, according to these analysts, 264.5 million pounds of the potential supply of this product would not have met one or both of these compositional requirements. The Department estimates that approximately 3.1 billion pounds of standardized cooked sausages such as hotdogs and bologna (9 CFR 319.180)—products in which fat content is limited and use of MS(S) is particularly likely—were produced in federally inspected plants in 1979. The livestock (or livestock and poultry) product portion constitutes about 85 percent of these meat food products, or 2.6 billion pounds in 1979. Thus, the estimate by Drs. Bullock and Ward of the potential supply of the product that the amended regulations categorize as product for processing is just over 10 percent of the livestock product portion of these cooked sausages, or only about half of the maximum amount permitted. Product for processing also is permitted in a number of other popular meat food products such as fresh pork sausage (9 CFR 319.141) and fresh beef sausage (9 CFR 319.142), with production of these two products totalling approximately 0.84 billion pounds in federally inspected plants in 1979. In addition to these uses, potential outlets for product for processing, as well as product meeting fat and protein content limits, exist in the export market. Finally, the Department is willing to consider expanding existing outlets for product for processing by establishing limits on the fat content of additional meat food products over time.

The Department also received a comment challenging the proposal from the opposite perspective: a public interest organization criticized the Department's proposal to restrict fat and protein content requirements to one category of product. This commenter asserted that in establishing a category of product as to which there are no fat or protein content requirements, the Department reverses its original 1978 conclusion and rejects the Panel's recommendations. It was argued that the net effect of the proposal will be to increase the amount of animal fats available for use in food products because the greater amounts of fat allowed in product for processing would displace animal fat now used in processed meat food products and that fat would (because of expected lower cost) be used in other foods where vegetable fats are now used. According to the commenter, this was the reason the Panel recommended that the fat content of mechanically separated product, as well as that of finished products in which it is used, be limited. In addition, this commenter took the position that, while construction of a category of product for processing is unwarranted, it also is a mistake not to propose a specific protein standard for this category of product because unless one is spelled out, it can never be legally controlled and because the Department should not rely on the new, almost experimental, quality control systems to prevent dilution during processing; instead, protein standards should be incorporated, at least on an interim basis while factual data can be developed as to whether quality control systems can provide adequate protection.

The Department disagrees with this commenter's interpretation of the Panel's report on fat content. While the Panel subcommittee that addressed this issue acknowledged that the net result of use of mechanically separated product may be to have more animal fat available for use in the American diet, the subcommittee went on to state that it also is to be expected that theoretical net increases will be moderated by the displacement of one meat food product in any given meal by another. (The Panel's report did not discuss potential effects on the vegetable fats used in other foods. It also should be noted that insofar as the raw materials for mechanical deboning already are available for use to produce animal fats, the extent of any such effects is questionable.) Moreover, the Panel rested its recommendations not on this factor, but rather on concern over the general problem of excessive intakes of fat and their effect on health; and its recommendation was that the fat content of mechanically separated product be limited on the basis of good manufacturing practices, not that any particular, single limit be imposed.

As the Department noted when it first proposed a single limit of 30 percent for all mechanically separated product, the Panel "was reluctant to approve a product that would increase the total fat composition of meat products in which it was used." 42 FR 54437, 54439. The Department imposed this single limit as part of its decision to establish only one category of mechanically separated product, rather than follow the multiple class approach of its first proposal (which would have allowed an unlimited amount of the top class of the product to be used in meat food product formulations). That decision rested, among other things, on the absence of limitations on the fat content of a number of meat food products in which mechanically separated product is a suitable ingredient. 41 FR 17560, 17562; 42 FR 54437, 54440. The Department has concluded that its two category approach, with the associated use limits in § 319.6 of the regulations (9 CFR 319.6), will continue to satisfy the concerns raised in the prior rulemaking.

The Department also does not agree with this commenter's position on protein content. The purpose of the proposal to establish a category of product for processing was to permit variability in product composition. The Department did not intend, therefore, to attempt to enforce any particular minimum level of protein content. Instead, its concern was that there be sufficient protection against decreases in the protein content of finished meat food products when product for processing is used as one of the livestock ingredients.

The amended regulations permit use of product for processing only in meat food products which are subject to definitions and standards that limit finished product fat content. Because livestock products are composed essentially of fat, protein, and water, and fat and protein content tend to be inversely related to at least some extent, these limits on fat content operate to some degree as an indirect control on the protein content of such meat food products. As noted by one commenter, the definitions and standards for these meat food products also control the use of added water (see, e.g., 9 CFR 319.145(b)(2) and 319.180(a)), providing another indirect control.

These controls will protect finished product quality so long as the mechanical deboning operation does not, through the introduction of extraneous sources of water, result in the dilution of mechanically separated product. While this possibility exists, the Department is not aware of any significant dilution problem to date, and it has concluded that it can prevent such problems in the future through the plant quality control system approach already in the regulations (9 CFR 319.5(e)(2)).

Production of MS(S) under an approved plant quality control system is a regulatory prerequisite for the approval of labels for all MS(S) and products in which it is used. In order to be approved, such systems must provide the controls necessary to assure the production of complying product in accordance with good manufacturing practice. Such controls include adequate procedures for cooling the product during the manufacturing process without causing dilution with water.

Finally, the Department does not agree with this commenter's criticism of its reliance on a quality control approach. Although the Department's formalized program for plant quality control was instituted on an industry-wide basis less than 2 years ago (45 FR 54310, August 15, 1980), this step was preceded by about 15 years of experience evaluating industry members' use of various methods and systems to control their procedures and products within certain specifications and utilizing the information they generate in assuring compliance with regulatory requirements. Moreover, the potential for product dilution is an area with which the Department and the regulated industry have had a great deal of experience.

Therefore, the Department has concluded that current regulatory controls should be adequate to protect the quality and expected characteristics of meat food products in which product for processing may be used as an ingredient and additional regulatory controls are not warranted. Based on these conclusions, the Department is adopting the portion of its proposal establishing two categories of MS(S) and restricing use of the second category (product for processing) to meat food products that are subject to regulatory definitions and standards which limit finished product fat content (9 CFR 319.5(a) and 319.6(c)).

(e) Protein quality.

The Department's proposal retained the minimum protein quality requirement—a Protein Efficiency Ratio (PER) of 2.5 (9 CFR 319.5(a))—as well as the acceptability of an essential amino acid content of at least 33 percent of total amino acids as evidence of compliance with that requirement (9 CFR 319.5(e)(1)). The Department did, however, propose amendments to (1) permit use of product failing to meet the minimum protein quality requirement only in producing animal fats and (2) clarify the compliance provision by specifying the amino acids included in a calculation of total amino acids. 46 FR 39274, 39286. The Department has concluded that these amendments should be adopted. It has also concluded that two further amendments should be adopted in order to control the costs of measuring compliance with this requirement and to simplify the compliance provision.

Thirty-three comments addressed protein quality issues. Almost all of these comments were submitted by industry-related individuals and groups. Comments from academia and a public interest organization were among the others received. Most of those commenting on the protein quality requirement agreed that it is reasonable and appropriate for a product used as a meat ingredient. However, a number of commenters questioned various aspects of the existing regulatory provisions implementing this requirement. Generally predicating their position on the expectation that the protein quality requirement consistently or almost always will be met, and in some cases on the premise that protein consumption is not a problem in the United States, these commenters focused their concern on the costs associated with these provisions. Their comments fell into two categories: Criticism of not permitting product failing to meet the protein quality requirement to be used for purposes other than producing animal fats (9 CFR 319.5(a)) and criticism of the provisions for assuring compliance with the protein quality requirement (9 CFR 319.5(e)(1) and (2)).

Commenters making the first criticism argued that it would be wasteful to restrict use of noncomplying product to rendering or other inedible uses. They suggested various alternatives. These included not restricting use of the occasional noncomplying lot at all, basing regulatory action on a moving average of a PER of 2.5, permitting use of noncomplying product in meat food products such as soup stocks where its lower protein quality would not affect nutritional quality, and permitting blending to bring noncomplying product into compliance. However, none of these comments objected to the Department's proposal to delete the use of product failing to meet the protein quality requirement as an imitation of the standardized product. Thus, the comments did not evidence any industry interest in the production of "Imitation MS(S)" for use in the formulation of imitation meat food products.

Nor did any of the commenters disagree with the Department's proposal to retain and clarify the amino acid content alternative to the PER assay for demonstrating compliance with the protein quality requirement (although one commenter said that while this alternative measure does give an approximation of protein quality, it does not correlate well with all PER values). Instead, criticism of the compliance provisions was directed at the time and expense they involve, particularly for PER assays and particularly for small businesses. Thus, while a few commenters supported amino acid content measurements as less onerous than PER assays, the need for any protein quality testing was questioned, at least on a long term basis. Some commenters suggested reducing or eliminating the testing requirements in the quality control provision as soon as a broader data base confirms mechanically separated product is a high quality protein source, with one commenter recommending these requirements be expressly limited to an initial period of 12 to 24 months and one recommending that they be replaced by a surveillance system that could soon assure that the protein being recovered is from skeletal meat. Another commenter suggested restricting the livestock parts that can be processed by mechanical deboning as an alternative to testing the product.

While the Department does not anticipate that processors following good manufacturing practices will have difficulties complying with the protein quality requirement and it understands the concerns of these commenters, it does not accept their proposed alternatives. The Department's expectations and concerns already are reflected in its determinations regarding limitations on the use of MS(S) and its decision to rely on an approved plant quality control system as the principal regulatory control, with limited testing to verify compliance with this part of the product standard: A processor's primary responsibility is to prevent problems from arising by controlling the ingoing ingredients and the operation of the deboning equipment. He or she need only analyze a maximum of one lot of MS(S) per month to check the effectiveness of these controls and, once their effectiveness is confirmed over a 3 month period, subsequent analyses need only be performed once every 6 months so long as the product is in compliance. Thus, instead of limiting the livestock parts that may be used as raw materials for mechanical deboning, the selection of appropriate livestock parts (including combinations of different parts) is left to the processor; and instead of requiring continual testing to confirm that the resulting product complies, confirmatory analyses need only be conducted periodically. (Given this testing rate, there is not adequate data to support a moving average approach.)

Should these test results reveal that a processor's primary controls have

proved to be ineffective, however, the Department cannot simply ignor them and permit the tested lot to be used as if it complied. This would be no more appropriate than occasionally permitting more bone in MS(S) than is allowed under the standard or occasionally permitting processors knowingly to formulate other products in violation of the standards which apply to them. The law is clear on this point: A product is misbranded if it is offered for sale under the name of another food or if it purports to be or is represented as a food for which a definition and standard has been prescribed unless it conforms to that definition and standard (21 U.S.C. 601(n) (2) and (7)). "MS(S)" is a product with a minimum PER of 2.5. Product not meeting this provision of the definition and standard cannot be marketed as "MS(S)". Moreover, if the Department were to modify the standard's requirement that product resulting from the mechanical separation and removal process must contain high quality protein in order to be called MS(S) and be used in the formulation of meat food products, it would be diminishing processors' incentive to assure that the products they manufacture comply with this requirement.

The Department is not rejecting the other suggestion put forward in the comments: that processors be permitted to blend product not meeting the protein quality requirement with other, complying product. As indicated above, when a lot of MS(S) fails to meet this requirement, it means that the primary control—the plant's quality control system—has not been effective in assuring compliance. Quality control plans provide for corrective steps to be taken in such situations. If a plant wishes to include among those actions provisions for the reprocessing of the tested lot to bring it into compliance, rather than use the tested lot in producing animal fats, it may do so. Because the tested lot has not been rejected for safety reasons (e.g., presence of a poisonous substance or production under insanitary conditions), blending may be appropriate. Therefore, the Department will consider any such proposal and approve it if, but only if, it comports with all relevant requirements (e.g., 9 CFR 318.18) and assures that the reprocessed product conforms to the definition and standard in all respects (9 CFR 319.5).

The Department's belief in the appropriateness of its existing requirements also is supported by the continuing concern of some about the quality of the protein in this new product as compared with that of meat. As stated by one commenter, this concern reflects an expectation that mechanically separated product will contain a large amount of connective tissue and, consequently, of collagen, an incomplete animal protein lacking in the essential amino acid tryptophan. Citing research it sponsored during the Department's prior rulemaking on this product, this commenter concluded that the use of mechanically separated product would result in nutritional dilution. Two other commenters contended that there is no cause for concern because collagen is discarded by mechanical deboners along with the bone (with one stating that even if collagen were higher, a protein quality requirement would not be needed because mechanically separated product is high in protein quality, it is used in conjunction with meats high in protein quality, and consumption of enough high quality protein is not a problem in the United States). Research also was cited to support the position that the protein quality of mechnically separated product is comparable to that of meat and that it has a PER equal to or greater than 2.5.

No data or information that was not available to the Department in 1978 was submitted on either side of this issue. The Department continues to ascribe to the position that its regulatory requirements can be readily attained and complying product has protein of high quality. 43 FR 26416, 26421. However, the conclusion that problems are not to be anticipated was predicated on the assumption that the product standard will be enforced. Therefore, the Department is retaining the quality control provisions that bear on protein quality (9 CFR 319.5(e)(2)). Moreover, as explained below in the discussion of use limitations (9 CFR 319.6), in any future reconsideration of whether to permit the usage level of MS(S) to exceed 20 percent of the livestock and poultry product portion, the Department plans to pursue further questions regarding possible effects on the tryptophan content of meat food products in which MS(S) is the sole or major livestock ingredient.

In addition, the Department is making two further changes to control the costs of monitoring protein quality and to simplify the compliance provision (9 CFR 319.5(e)(1)). The first of these changes is the deletion of the nonessential amino acid cystine from the calculation of total amino acids. In response to comments contending that verifying compliance with the protein quality requirement would be burdensome, the Department reviewed the procedures needed to determine the percent that essential amino acid content is of total amino acid content. This review indicated that quantitative estimation of cystine is difficult and costly because during the acid hydrolysis step used to prepare protein samples for amino acid analysis, cystine undergoes oxidative degradation, producing a series of products all of which must be totalled to estimate the cystine content of the protein sample. Accurate measurement of the cystine content of a protein requires conversion of all cystine to a single substance (cysteic acid) by oxidative treatment of a separate sample of the protein. This treatment partially destroys many of the other amino acids in the sample, rendering it inappropriate for estimation of nearly all other amino acids. Therefore, the method which accurately measures the other amino acids included in the regulatory provision does not provide an accurate measure of cystine content without an additional sample analysis. As a result, exclusion of cystine from the calculation of total amino acids will cut in half the number of analyses required and thereby reduce significantly the cost of verifying compliance with the protein quality requirement. (A number of private laboratories charge approximately $150 for analyzing a protein sample for all of the amino acids other than cystine that are included in the regulatory provision, and approximately $50 more to analyze an additional sample for cystine content. Thus, this change reduces testing costs by approximately 25 percent.)

As cystine is not an essential amino acid, it is included only in the denominator of the ratio in the provision—total amino acid content—and does not affect the numerator of the ratio—essential amino acid content. The Department has concluded, however, that excluding cystine would, at most, result in a slight increase in the percent that essential amino acid content is of total amino acid content. This determination is based on a review of data on the amino acids present in various proteins in meat and in the samples of mechanically separated beef evaluated by the Panel in 1977. These data confirm that the cystine content of such proteins is low. For example, in myosin and myoglobin, the major skeletal muscle proteins, cystine either is absent or present at a level of about 1 percent of the total amino acids present. Moreover, collagen is devoid of cystine.Therefore, excluding cystine will not mask the presence of high levels of collagen. (Hydroxyproline, proline, and

glycine, which are found in greater amounts in collagen than in muscle proteins, are including in the calculation.) In the samples of mechanically separated beef evaluated by the Panel, the average cystine content was 1.5 to 1.6 percent of the total amino acids present.

The Department also applied the compliance provision to the amino acid data on these samples of mechanically separated beef. When cystine content was included in the calculation, the mean value for essential amino acid content was 40.19 percent of total amino acids (and none of the values fell below the minimum criterion of 33 percent). When cystine content was excluded, the mean value was 40.85 percent. Thus, the deletion of cystine content produced a mean increase of 0.66 percent. Because the relationship between this measure and actual protein quality is an imprecise and indirect one, a mean difference of 0.66 percent does not have any practical impact on the results obtained.

Based on this review, the Department has concluded that the provision need not be further modified to reflect this change. Furthermore, because this change is restricted to the method used for assuring compliance with the regulatory criterion and does not have any substantive effect on the criterion itself, the Department has determined that it can be incorporated as part of this final rule.

The Department also is willing to consider the possibility of reducing costs further by eliminating the periodic testing requirement if and when it is demonstrated that such testing no longer is needed to verify compliance with the protein quality requirement. However, it does not agree with the commenter who asked that an explicit time limit be placed on the periodic testing requirement as part of these amendments, without first evaluating additional data on the protein quality of MS(S).

The Department is actively investigating the protein quality of livestock and poultry products, including the identification of accurate and cost-effective methods for determining protein quality. Depending on the results of that investigation, the Department will evaluate whether the method for protein quality determinations should be modified. During the pendency of the investigation, the Department is willing to reevaluate the need for periodic testing to verify compliance with the protein quality requirement on the basis of additional data on the protein quality of MS(S). Persons interested in the subject are hereby notified that the Department is prepared to cooperate with them in designing the appropriate procedures for collecting and analyzing data on this question.

The second change being adopted by the Department is to simplify the compliance provision by focusing solely on the comparison that is to be made between essential amino acid content and total amino acid content. The first sentence of the provision clearly states the criterion to be met when this comparison is used as evidence of compliance with the protein quality requirement: an essential amino acid content of at least 33 percent of the total amino acids present. To apply this provision, the only additional information needed is the particular amino acids to be considered. Therefore, the Department is restricting the second sentence of this provision to a specification of the 7 essential amino acids to be included in "essential amino acid content" and the 17 amino acids to be included in "the total amino acids present".

(f) Quality control.

The Department proposed modifying the regulatory requirements for quality control systems in establishments producing mechanically separated product (9 CFR 319.5(e)(2)) to (1) incorporate the provisions regarding applications for plant quality control, their evaluation and approval by the Administrator of FSIS, and the conditions and procedures for terminating approval that were promulgated by the Department on August 15, 1980 (see 9 CFR 318.4 (d) (1) and (2), (e), and (g)(2)), (2) permit the use of Chemistry Laboratory Guidebook methods if no AOAC (Association of Official Analytical Chemists) method is available and provide for the submission of alternative methods of analysis to the Administrator of FSIS to determine their acceptability, (3) clarify the quantity of product which may constitute a "lot", and (4) restrict the provisions designed to assure compliance with fat and protein content requirements to product which purports to meet such requirements. 46 FR 39274, 39286–87. The Department has concluded that all of these amendments should be adopted for the reasons stated in the proposal. In addition, the Department is further amending the quality control requirements to clarify that compliance with the bone particle size limit can be assured by methods other than laboratory analysis and to clarify that, in monitoring compliance with the protein quality requirement, either PER assays or amino acid content analysis, but not both, must be performed.

Twenty-three comments addressed quality control issues. All of these comments were submitted by industry-related individuals and groups; and only one of them addressed any of the modifications proposed by the Department. That commenter said the proposal to clarify the quantity of product which may constitute a lot seems adequate for the purpose of this regulation in that it sets a reasonable maximum limit and allows establishments to choose to use a smaller lot size.

After reviewing this and other comments, which are discussed below, the Department determined that the regulatory requirements for quality control systems in establishments producing MS(S) should be amended as proposed for the following reasons: The first amendment incorporates certain of the Department's regulatory provisions for plant quality control in order to facilitate the development and maintenance of appropriate quality control programs for producing MS(S) by providing greater specificity as to the procedures and criteria for assessing the adequacy of such programs. This amendment also will facilitate the integration of plant quality control under this regulation with any other, voluntary plant quality control programs that manufacturers choose to operate. (The information collection requirements regarding plant quality control have been approved by the Office of Management and Budget (OMB). The OMB approval number is 0583–0015.)

The second amendment expands the types of analytical methods that may be used in determining compliance with the product standard. This is being done because official AOAC methods do not exist for all of the analyses required by the regulation and in order to increase the regulation's flexibility by providing for the approval of alternative methods which yield accurate and reliable data. The amended regulation also incorporates citations to current AOAC and chemistry Laboratory Guidebook methods, and it tells the public where it can obtain copies of these methods. (Errors in certain of these citations as they appeared in the proposal have been corrected in the final rule. A notice of any change in these methods will be published in the **Federal Register**.)The third amendment clarifies that, as used in this regulation, a "lot" constitutes the quantity of product designated as such by the establishment from the product produced from a single livestock species in no more than one continuous shift of up to 12 hours. The fourth amendment is necessitated by the Department's

decision to include within the definition and standard a category of product as to which there are no fat or protein content requirements. The absence of such requirements means that chemical analyses to verify the fat and protein content of product for processing are not needed to determine its compliance with the product standard. Therefore, these analyses are limited to product which is represented as containing not more than 30 percent fat and not less than 14 percent protein.

Most of the other comments addressing this portion of the product standard focused on how processors should assure that MS(S) meets the bone particle size limit, the testing needed to verify that MS(S) meets the protein quality minimum, and/or the requirement that a plant quality control system must include methods "to maintain uniformity of the raw ingredients" used in manufacturing MS(S). As noted above, most of those commenting on the bone particle size limit were more concerned with the compliance aspect of this requirement than with the limit itself. These commenters' basic position was that processing establishments should not be required to test for bone particle size on an ongoing basis; instead, compliance should focus on the equipment to be used in manufacturing MS(S). In support of this position, several of them questioned the ability of processors to test accurately for bone particle size, said that enforcement through testing would be difficult and burdensome because such analyses cannot be conveniently accomplished at the processing plant level, and/or argued that there is no need for expensive testing once equipment is approved. It was contended that bone particle size is a function of equipment design and apparently does not vary significantly with other factors such as heat, pressure, or wear. Therefore, some commenters recommended that the Department control the size of the openings in the screens or other equipment used in making the product or that the Department allow use of any equipment—including types which do not employ screens or other straining devices—shown to yield product meeting the bone particle size requirement. In addition, several commenters said that the bone particle size control should be implemented as part of the Department's equipment approval process; and one suggested that this be accomplished through field tests and the submission of test data to support requests for approval, with USDA devising a mechanical and visual method for inspection at the point of production.

As one commenter noted, the Department's first proposal for controlling bone particle size was stated in terms of a limit on the size of the openings in the screens, sieves, or ports through which product resulting from the mechanical separation and removal process is strained. 42 FR 54437, 54441. This provision was included in response to the Panel's recommendation that bone particle size be limited to the levels then associated with good manufacturing practice. 42 FR 54437, 54440. Because the bone particles evaluated by the Panel and found to present no hazards to health had been produced by equipment with openings not exceeding 0.5 mm in diameter, the proposed rule incorporated this dimension as the maximum size for equipment openings. 43 FR 26416, 26422. In the final 1978 rule, the Department replaced this maximum with a limit on the size of the bone particles that resulted from use of such equipment in accordance with the proposed procedures. The purpose of this change was to avoid discouraging the development of equipment that does not employ screens, sieves, or ports by focusing on the size of the bone particles produced rather than the characteristics of the equipment used. 43 FR 26416, 26422.

The Department did not intend this modification of the product definition (9 CFR 319.5(a)) to be interpreted as imposing a requirement that the resulting product must be tested as part of any quality control system approved under § 319.5(e)(2) of the regulations (9 CFR 319.5(e)(2)). The processors responsibility is to assure that the product complies with the bone particle size limit. The most important factor affecting bone particle size is the type of equipment used. Protection against use of inappropriate equipment already is provided by the equipment approval process implemented in § 308.5 of the regulations (9 CFR 308.5): To be used for preparing any edible product or ingredient, equipment must be of such material and construction as, in the judgment of the Administrator of FSIS, will avoid adulteration and misbranding of such product. When equipment is proposed for use in an official establishment, the Administrator specified the information (to be submitted by the establishment operator) that is necessary to determine whether these criteria are met and then evaluates that information to determine the acceptability of the equipment model for its proposed use. (A copy of the listing of equipment that has been evaluated and found acceptable for use in mechanically deboning livestock carcasses can be obtained from Technical Services, Meat and Poultry Inspection Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.)

The role of the quality control system in assuring complying product focuses on the operation of equipment that has been found to be acceptable: Any conditions for use prescribed as a result of evaluation during the equipment approval process must be followed. Use must accord with good manufacturing practice. Other factors that affect bone particle size (e.g., the wearing down of parts, the level of pressure applied) must be controlled. Methods other than laboratory testing should be adequate to verify the effectiveness of these controls. However, as the processor remains responsible for any violation that does occur, he or she may wish to analyze samples of the product, particularly during the initial periods of operation of newer types of equipment. Those interested in reviewing the methodology the Department currently uses in its analyses to verify compliance with the bone particle size limit will find a copy of the procedures in the record of this rulemaking.

In view of the comments on this issue, the Department reviewed the quality control provision and determined that it should be clarified to avoid future misinterpretation by the public. Therefore, it is amending the fourth sentence of § 319.5(e)(2) of the regulations (9 CFR 319.5(e)(2)), which describes the methodological requirements for quality control systems, to include language specifically providing for procedures for assuring compliance in addition to chemical analyses.

Comments on the testing needed to verify that MS(S) meets the protein quality requirement are addressed above in conjunction with the discussion of that requirement. As is indicated there, the Department does not believe that the testing requirement in the quality control provision should be modified at this time, but it plans to reevaluate this requirement in the future. The Department does believe, however, that here too a modification of the language used will prevent misinterpretation of this provision. Under § 319.5(a) of the regulations (9 CFR 319.5(a)), MS(S) must have a minimum PER of 2.5 except as modified by § 319.5(e)(1) (9 CFR 319.5(e)(1)), which accepts an essential amino acid content of at least 33 percent of the total

amino acids present as evidence of compliance with this requirement. While these provisions clearly indicate that either PER assays or amino acid content analyses may be used to verify protein quality, § 319.5(e)(2) of the regulations (9 CFR 319.5(e)(2)) can be read as requiring that both types of testing be performed because that provision refers to analyses to verify content of essential amino acids "and" protein efficiency ratio. To clarify that in monitoring protein quality, either one of these tests, but not both of them, must be performed, the Department is amending the two sentences that refer to such testing to require analysis of "essential amino acid content and/or protein efficiency ratio".

The last criticism of the specific requirements of the quality control provision was made by a few commenters who questioned the requirement that a plant quality control system must include methods to maintain uniformity of the raw ingredients. According to these commenters, this requirement is inappropriate because the raw ingredients used are not uniform; they vary with the species and parts of the livestock carcass and, there is no uniformity to be maintained.

The Department agrees with these commenters that diverse raw materials may be used in making MS(S). However, that very variation is the reason why this requirement is necessary. As indicated above, the Department is relying on an approved plant quality control system to assure compliance with the product standard, with only periodic testing to check the effectiveness of this control. The Department took this approach, rather than requiring continual testing of the product, to keep the costs of production down. In order that the results of the analyses that are conducted can be used in assessing whether or not the processing operation is, in fact, under control, the Department must be certain that the lots of MS(S) tested are comparable to those which are not tested. Therefore, the factors that can affect the characteristics of MS(S) must be controlled by the processor. These factors include such characteristics of the ingoing ingredients as the proportions of different parts of the carcass being used and the extent to which skeletal muscle has been removed by hand trimming before mechanical deboning. Thus, for example, if a processor wishes to make mechanically separated beef from certain parts of choice grade steers on some days and from other parts of utility grade cows on other days, he or she should handle these under the quality control system as different types of MS(S).

In addition to the comments discussed above, several commenters expressed more general concerns about the quality control provision. Some of these comments evidenced confusion about the types of establishments to which this provision applies or whether it applies unequally to processors who manufacture only mechanically separated product as compared with those who manufacture both mechanically separated product and finished meat food products in which it is used as an ingredient; and one argued that the provision is too complex. Others questioned the need for any quality control system in these regulations, with some contending that this requirement discriminates against the red meat industry because no such requirements are imposed on manufacturers of product made by mechanically deboning poultry carcasses.

The Department believes that the scope of this provision is clear: MS(S) must be produced by an establishment under an approved plant quality control system as a prerequisite for the approval of labels for the MS(S) itself or any product in which it is used as an ingredient. Therefore, only establishments manufacturing MS(S) must have such a quality control system. This provision does not apply unequally to different types of processors as it only covers the portion of their operations involving the manufacture of MS(S). The Department also does not agree with the comment that this provision is too complex. MS(S) is a product of advanced technology. To the extent that the provision for the quality control system regarding its production appears to be complex, this reflects the nature of the technological process involved in the manufacture of MS(S).

Finally, the Department continues to believe that the quality control provision is necessary and appropriate to avoid adulteration and misbranding and is not burdensome. It is the result of an extensive rulemaking which concluded that special requirements are needed to assure that establishments formulate this product to comply consistently with the requirements of the product standard and thereby avoid false or misleading labeling. 43 FR 26416, 26422. No new information challenging this conclusion has been brought to the Department's attention. No similar regulatory review of product made by mechanically deboning poultry carcasses has been conducted and, therefore, a comparison with the regulation of that product is inapt. In addition, as Drs. Bullock and Ward noted in their analysis, the current regulations have a small impact on costs of producing this product. Insofar as any of these costs are attributable to the quality control provision, there are countervailing benefits to processors of MS(S): by providing controls and information that maximize the likelihood that product of consistent and uniform quality which complies with regulatory requirements will be manufactured at a predicted cost, quality control helps to minimize a processor's costs.

2. Handling Requirements

The Department did not propose changing the requirements established in 1978 for the handling of material for mechanical deboning and the handling of the product itself (9 CFR 318.18); and it has concluded that no amendments to these requirements are warranted. However, adoption of amendments to the product definition and standard necessitates changes to reflect the new product name and the elimination of "Imitation MP(S)P" as a product to be used in the formulation of imitation meat food products. 46 FR 39274, 39287. Therefore, the Department is amending this regulation by replacing the references to "Mechanically Processed (Species) Product" and "an imitation of such product" with the new product name—"Mechanically Separated (Species)".

Only 2 comments addressed the handling requirements for mechanically separated product. One commenter, an industry member, said that this product, as well as all meat products, should be handled in a manner best designed to assure it is wholesome, sanitary, and unadulterated; but he contended that consumers' interests could be protected without another layer of requirements through the inspection system and existing industry procedures. Another commenter, a veterinarian with a State inspection program, expressed reservations about mechanically separated product, stating that no adequate testing of shelf life and keeping qualities under normal market distribution methods appears to be accomplished.

In its prior rulemaking, the Department evaluated the microbiology of mechanically separated product and the opportunities that it and its production present for bacterial growth and spoilage. The Department concluded that microbiological standards are not approriate and found no evidence of any bacterial hazard so

long as handling accords with good manufacturing practices. However, because of the potential rise in the temperature of this product during the mechanical separation and removal process and the fact that the product consists of small particles having more surface area than most meat food products, the Department concluded that special processing and storage requirements are warranted for the raw materials used to make the product and for the product itself. 43 FR 26416, 26419. The Department has reached similar conclusions in other situations in which the particular characteristics of a livestock product make its general processing requirements inadequate. Thus, it has prescribed treatments for various pork products to destroy trichinae (9 CFR 318.10) and established procedures for hermetically sealed canned products to assure proper cleaning, closure, and heat processing (9 CFR 318.11). The Department has received no additional information on the basis of which to modify its earlier conclusions. Therefore, it continues to believe that these provisions are necessary and appropriate to assure that MS(S) and products in which it is used are wholesome and unadulterated; and it continues to believe that these provisions, in combination with its other regulatory requirements and plant quality control, are adequate for this purpose.

3. Use Limitations

The Department proposed amending the limitations on the use of mechanically separated product (9 CFR 319.6) in accordance with the proposed amendments to the product definition and standard (9 CFR 319.5) and also to encourage the development of machinery capable of producing product with a lower bone content, as follows: (1) Use of product for processing would be restricted to 20 percent of the livestock and poultry product portion of meat food products that are subject to definitions and standards of identity or composition which limit finished product fat content and (2) the 20 percent restriction on the amount of product meeting maximum fat and minimum protein content requirements would be replaced with a set of limits—from 20 percent to 100 percent—based on the product's calcium content. 46 FR 39274, 39287–89. The Department has decided to adopt the portion of the proposal that would permit use of product for processing in meat food products subject to regulatory definitions and standards which limit fat content (9 CFR 319.6(c)). The Department's reasons for restricting use of this category of MS(S) to certain standardized meat food products are discussed above in conjunction with amendments to § 319.5(a) of the regulations (9 CFR 319.5(a)). The Department also has decided to withdraw the portion of the proposal that would have permitted usage levels of MS(S) meeting fat and protein content requirements to increase above the 20 percent level as hard bone content—measured by calcium content—decreases (9 CFR 319.6(b)). This decision is based primarily on the Department's conclusion that, contrary to its belief when the proposal was published, use of MS(S) at higher levels could result in significant increases in the cholesterol content of meat food products, increases that consumers would not expect and could not evaluate without additional information. As use at up to the 20 percent level does not present this problem and this limit is unlikely to constrain production and use of MS(S), the Department has decided to retain the existing restriction and not to engage in further rulemaking at this time. It is, however, amending the regulations to clarify the basis on which the 20 percent restriction is to be calculated (9 CFR 319.6 (b) and (c)).

The Department did not propose changing the existing prohibitions against use of different species of mechanically separated product in meat food products required to be prepared from one species and against its use in certain meat food products, but it did propose amendments to clarify the mandatory nature of these provisions. It also proposed to simplify the regulations be deleting an unnecessary cross reference to the labeling requirements for meat food products containing mechanically separated product. 46 FR 39274, 39287–89. The Department has concluded that these proposed amendments should be adopted and that, in addition, the list of meat food products in which use of MS(S) is prohibited should be amended to clarify its scope (9 CFR 319.6 (a) and (d)).

One hundred and thirty-four comments addressed limitations on the use of mechanically separated product. More than half of these comments were submitted by industry-related individuals and groups. Many individual consumers also commented on this aspect of the proposal, as did a number of professionals and State government officials or agencies and a public interest organization.

Limitations on Product for Processing

The majority of these commenters objected to the imposition of maximum fat and minimum protein content requirements on any category of mechanically separated product and, hence, to distinctions in use limitations based on the proposed two category approach. Insofar as such comments addressed the proposal to restrict use of product for processing to certain standardized meat food products, they are summarized above in the discussion of the Department's decision to establish a category of MS(S) as to which there are no fat or protein content requirements. Insofar as they addressed the proposal to permit usage levels to increase as bone content decreases, they frequently supported replacement of the current 20 percent restriction with a restriction based on calcium content for all mechanically separated product; and some of these comments challenged the Department's retention of the 20 percent restriction for product for processing as being without apparent justification. The Department's response to these comments is included in the following discussion.

Amount of Product Limitation

Most of those commenting on the proposal to replace the 20 percent use level restriction with a set of limits on calcium content supported a calcium content approach, but criticized specific aspects of the proposed provision implementing this approach. A few of these commenters said they support such a change in the basis for the restriction because it should encourage development of better technology, because it is more acceptable than the current regulation, or because the question of product quality with use above the 20 percent level is for the manufacturer and the industry, not the government. The 20 percent restriction also was criticized as without economic justification by a commenter who said it seems logical that the market place would resolve the use level issue as the success of processed products depends on repeat purchases by satisfied consumers, and the current limit might be restrictive and create costs with future technology.

The focus on these commenters' concern with the proposal was the maximum of 0.15 percent calcium for mechnically separated product to be permitted to constitute up to 100 percent of the livestock and poultry product portion of meat food products. This limit was characterized as unrealistic and restrictive; and it was challenged as without justification in that it is based on the allegedly arbitrary 20 percent use level limit in the current regulation. Most commenters criticizing the 0.15 percent proposal recommended that 0.22

percent, 0.25 percent, or a level between 0.20 and 0.25 percent be used instead. The first of these amounts received the most support, with some of the commenters reasoning that this is the same level of calcium that currently is allowed in product made by mechanically deboning turkey and mature chicken carcasses. In addition, a few commenters criticized the proposal to tie a set of maximums on calcium content to different use level limits, suggesting that use just be limited on the basis of calcium content; and a few favored basing the limit on the calcium content of finished products or on their meat portions, with one stating that use of an ingredient level limit would only restrict the carcass parts used. It appears, however, that at least some of those commenting on these issues did not understand the proposed provision. Thus, for example, some of the commenters thought the 0.15 percent maximum would apply to finished products or to their livestock and poultry product portion, rather than to just the mechanically separated livestock product; and others based their recommendations on the erroneous assumption that the Department's objective was to control the calcium content of mechanically separated product or of finished products, as opposed to the livestock bone content of finished products.

Several other commenters supported retention of the 20 percent restriction. These commenters generally based their position on maintaining the character or quality of meat food products in which mechanically separated product is used, with one stating that his company's data and testing show this to be a maximum level and pork sausage quality is not reduced with use of this level. Finally, one commenter took the position that in proposing to allow varying amounts of mechanically separated product depending on its calcium content, the Department reverses its prudent 1978 conclusions and proposes to permit a product that was not analyzed for health and safety by the 1977 Panel. This commenter contended that while the proposed 0.15 percent calcium maximum may deal with the health problems stemming from the greater content of certain metals and other elements in the product, it does not address the greater problems of nucleic acid and protein quality; thus, it presents an imprudent and unacceptable result for groups of consumers with certain health conditions—gout sufferers and other hyperuricemics, who must strictly limit nucleic acid consumption—and for the public at large because products with mechanically separated product used at up to the 100 percent level could be expected (due to its collagen content) to be seriously deficient in the essential amino acid tryptophan, and it is unknown what other health problems could result.

As indicated above, the Department has decided to withdraw its proposal to permit use of MS(S) meeting fat and protein content requirements to increase above 20 percent of the livestock and poultry product portion. The reasons for this decision were not the focus of concern of those favoring the proposed calcium content approach. Therefore, the Department's primary goal in responding to those commenters is to clarify the issues involved in order to avoid further misinterpretation or misunderstanding in any future evaluation or discussion of this subject by reviewing the basis for the proposal and its limited purpose.

The calcium content approach to regulating use of mechanically separated product was developed in response to the PCMA–AMI petition, which advocated this approach as a means of providing a technology-forcing incentive to lower the powdered bone content of mechanically separated product. The only information submitted in support of this request to amend the regulations was the economic analysis of Drs. Bullock and Ward. They took the position that the current 20 percent limit does not appear to be generating social costs at present and is not likely to become an effective constraint on production or use of mechanically separated product. They nevertheless recommended that it be removed because it is without economic justification: consumer satisfaction should be relied on to weed out products containing too much mechanically separated product and the development of potential new products that might be acceptable with higher levels should not be precluded.

The Department accepted the value of encouraging technological developments that would increase the capability of deboning machinery to keep hard bone from passing through the equipment along with soft muscle tissue because a number of the health and safety, as well as quality, issues presented by mechanically separated product are associated with its bone content. The Department did not accept, however, the apparant assumption that consumer satisfaction considerations are the sole basis for the current use level limit. As just noted, this is not the case: among other things, the 20 percent restriction, in combination with the 0.75 percent maximum on the calcium content of MS(S), limits the hard bone content of finished products and, hence, their content of substances which may concentrate in livestock bone (e.g., fluoride and lead). No new information was submitted on this aspect of the restriction. Therefore, the basic premise on which the proposal to permit higher use levels rested was that the livestock bone content of no finished meat food product would be any higher than is permitted under the existing regulations. 46 FR 39274, 39288–89. Of course, this premise also was essential to assuring that the proposed provision would fulfill its underlying objective: the provision would not function as an incentive to develop deboning equipment capable of separating out and removing more bone if manufacturers could use MS(S) at higher levels without a concomitant decrease in bone content.

The regulations employ calcium content as a measure of hard livestock bone content and they permit mechanically separated product with a calcium content of 0.75 percent to constitute no more than 20 percent of the livestock and poultry product portion of any meat food product. The same amount of livestock bone would be present if mechanically separated product with a calcium content of 0.15 percent were used as 100 percent of that portion. Therefore, use of MS(S) at the 100 percent level would be inconsistent with the premise underlying the proposal if its calcium content exceeded 0.15 percent, as recommended by a number of commenters, because it would result in an increase in the bone content of finished meat food products. Thus, for example, if MS(S) containing 0.22 percent calcium were used as 100 percent of the livestock and poultry product portion of a hotdog (which is 85 percent of the finished product), it could contain approximately 50 percent more livestock bone than permitted under the existing regulations or the proposal (i.e., 0.22 percent calcium in 85 percent of the hotdog would contribute 0.187 percent calcium, or up to 0.75 percent hard bone, whereas either 0.75 percent calcium in 17 percent of the hotdog (20 percent of 85 percent) or 0.15 percent calcium in 85 percent of the hotdog would contribute 0.1275 percent calcium, or up to 0.51 percent hard bone).

By the same token, the particular calcium content limits used in the current and proposed regulations reflect determinations about the maximum amount of hard livestock bone and accompanying substances in product made by mechanically deboning livestock carcasses, and not an effort to

control the amount of the essential nutrient calcium that is provided by meat food products. Therefore, it would be inappropriate here to apply this restriction so as to include or reflect the calcium contributed by any ingredient other than MS(S), as also was suggested by some commenters (e.g., product made by mechanically deboning turkey and mature chicken carcasses, which contains only up to 0.235 percent calcium).

In these circumstances, the proposal to permit use at higher levels represented a potential for the future—for the development of acceptable new products and for increased use levels in existing products with improvements in the deboning technology and with the application of that technology to whole livestock carcasses or parts from which most of the skeletal muscle has not first been removed by hand deboning. The Department proposed to provide that potential to the extent that, based on the available information, it appeared that limits on calcium, fat, and protein content could be relied upon to prevent potential health and safety problems and maintain the nutritional quality of finished products. 46 FR 39274, 39287–88. (See also the discussion of the amendment to § 319.5(a) of the regulations (9 CFR 319.5(a)) establishing a category of product for processing.)

Moreover, despite its decision to withdraw the proposal to permit use of MS(S) meeting fat and protein content requirements at higher levels, the Department disagrees with the criticism by one commenter that this proposed amendment is a reversal of its 1978 conclusions and would permit a product not analyzed by the 1977 Panel. First, the Department believes that the proposal was consistent with the Panel's evaluation of the health and safety aspects of the use of mechanically separated product. Insofar as the Panel considered the amount of this product that might be used, the focus of its concern was the potential effects of the product's hard bone content on dietary intake levels of substances (e.g., fluoride and lead) that are found in higher concentrations in the skeletal portion of livestock than in muscle tissue. Thus, the major issue here for the Panel was the extent to which use of mechanically separated product as an ingredient could be accompanied by consumption of hard bone and, hence, increased levels of these substances in the total diet, not the proportion (let alone the absolute amount) of any given meat food product that may consist of mechanically separated product. The proposal would not have permitted any increase in hard bone consumption over the maximum allowed under the existing regulations and, therefore, does not reflect a reversal of the Department's earlier position regarding the need to prevent unsafe increases in dietary intake levels of various substances evaluated by the Panel.

Second, the evidence does not support this commenter's contentions regarding the health problems of use of mechanically separated product for gout sufferers and other hyperuricemic individuals due to MS(S)'s content of bone marrow and, hence, nucleic acids. Nucleic acids—deoxyribonucleic acid (DNA) and ribonucleic acid (RNA)—are complex molecules made up of the purines adenine and guanine plus many units of other compounds (e.g., sugar, phosphate). They are broken down into these components in the body. Purines, which also are found in free form, are further broken down to form uric acid. Because high purine intakes may increase blood and urine uric acid levels, they may be of concern in conditions, such as gout, where there is either a reduced ability to excrete uric acid or an increased endogenous production of uric acid. Thus, the appropriate focus of interest here is purine content. Moreover, the issue is whether the use of mechanically separated product would present an increased risk for these hyperuricemic individuals as compared with the mix of livestock products now used as ingredients in meat food products, not the absolute levels of these substances in mechanically separated product. Livestock products are recognized as sources of nucleic acids and purines.

Because increases in the levels of mechanically separated product might be accompanied by increases in the levels of bone marrow in meat food products and in response to the concern expressed by this commenter in the prior rulemaking regarding the nucleic acid content of bone marrow, the Department evaluated the available data before publishing the proposal and found no reason to believe that use of mechanically separated product in compliance with either the existing or proposed regulations would present an increased risk for gout sufferers or other hyperuricemic individuals. However, in view of the nucleic acid levels reported in a recently published article (P. Arasu, *et al., Journal of Food Science,* 46:1114, 1981) and its desire to obtain additional information on this subject, the Department solicited further data and comments on the relative purine and nucleic acid contents of meat and mechanically separated product (46 FR 39274, 39289); and it collected and analyzed samples of mechanically separated product from all plants producing the product in August 1981. No further data were submitted by the public during the comment period.

In the Department's study, pairs of samples of mechanically separated beef and beef or pairs of samples of mechanically separated veal and veal from four processing plants were analyzed for purine content (adenine, guanine, hypoxanthine, xanthine, and total) and nucleic acid content (DNA, RNA, and total). Consistent with previously available data, the total purine content of mechanically separated product was found to be similar to that of meat. A difference of 10 percent is judged to be of little or no metabolic importance. The mean levels found in mechanically separated beef as compared with beef were well within 10 percent of one another. There was greater variation in the data on mechanically separated veal as compared with veal: the mean could be anywhere in the range between 5 percent lower and 27 percent higher. Even if one assumes the uppermost value of 27 percent higher total purine content, a meat food product could contain mechanically separated veal at up to the 37 percent usage level without being more than 10 percent higher in total purine content than a similar meat food product formulated without mechanically separated veal; and if a meat food product is formulated with mechanically separated veal at the 20 percent level, the potential increase in total purine content would be only 5 percent with the potential difference ranging from 1 percent lower to 5 percent higher). The greater variability, and higher total purine levels, found in livestock products made from veal carcasses is not surprising in view of the young age at which such animals are slaughtered. Rapid cell formation, rapid growth, rapid development, and stress, and hence higher bone marrow and total purine levels, characterize young animals.

In general, any diets that restrict purine intakes are based on total purine content. There should be no difference in the impact on such diets of consuming mechanically separated product as compared with meat. However, in view of the variation in the currently available data on mechanically separated veal and the potential those data indicate for increases in the total purine content of meat food products if mechanically separated veal were the sole or major livestock ingredient used, the relative purine contents of

mechanically separated veal and veal will be an issue in any future reconsideration of the 20 percent use limitation. Persons interested in pursuing such a reconsideration are hereby notified that the Department is prepared to cooperate with them in designing the appropriate procedures for collecting and analyzing data on this question.

In addition, research has shown that two individual purines—adenine and hypoxanthine—are of particular importance in raising blood uric acid levels (Clifford, *et al., Journal of Nutrition,* 106:428–34, 1976). The average combined content of these two purines was lower in mechanically separated product than in meat. Hypoxanthine levels were lower in mechanically separated beef and mechanically separated veal than in beef and veal, respectively. Adenine levels were higher, but by amounts smaller than the differences in hypoxanthine content. The lower hypoxanthine levels should counteract the higher adenine levels in mechanically separated product, with no difference in impact from consumption of mechanically separated product than from consumption of meat. Differences in the proportions of the four individual purines found in mechanically separated beef and mechanically separated veal, on the one hand, and beef and veal, on the other, in part reflect differences in their nucleic acid contents: Levels of nucleic acids were higher in mechanically separated beef and mechanically separated veal than in beef and veal, respectively. However, as indicated above, relative purine levels are the appropriate focus of interest here.

Based on all of the information on this question, the Department has concluded that formulation of meat food products with mechanically separated product does not present an increased risk to gout sufferers and other hyperuricemic individuals, particularly in view of its decision to retain the 20 percent restriction on the amount of mechancially separated product that may be used in meat food product formulations. In this regard it also should be noted that current medical practices do not support view that gout sufferers and other hyperuricemic individuals must strictly limit their consumption of nucleic acids or purines. Drugs have been developed which are so effective in lowering serum urate levels that dietary restriction is seldom employed. Furthermore, if dietary management is used, recommended intake levels would require restricting consumption of all livestock products (as well as many other foods).

The additional analytical work conducted by the Department did, however, raise a different concern. When the proposal was published, the Department believed that the cholesterol content of meat food products formulated with higher levels of mechanically separated product would not differ significantly from that of comparable meat food products formulated without mechanically separated product or with mechanically separated product limited to 20 percent of the livestock and poultry product portion. This belief was based on the findings in the Panel's report and, in particular, the finding that the cholesterol content of product made by mechanically deboning livestock varied within the same range as that of product made by hand deboning. But because the data reviewed by the Panel seemed to indicate potentially greater variability in the cholesterol content of mechanically separated product and were limited in scope, the Department noted its interest in receiving additional information on the relative cholesterol contents of ingredients made by mechanically and hand deboning livestock carcasses and parts. 46 FR 39274, 39285. No information was submitted by the public (although a few commenters did express concern about possible increases in cholesterol content). Recognizing that the Panel subcommittee which addressed this issue had suggested that periodic reevaluation might be desirable and in order to confirm its observation that there was no relationship between cholesterol content and total fat content, the Department reviewed the area.

The same samples of mechanically separated beef, mechanically separated veal, beef, and veal that were analyzed for purines and nucleic acids also were analyzed for cholesterol and fat content. In addition, the published literature on the relationships between cholesterol content and the component parts (i.e., spinal cord, bone marrow, muscle and fatty tissue) of mechanically separated product was reviewed. Evaluation of this information has led the Department to conclude that, based on all the data now available, it can no longer be said that the cholesterol content of product made by mechanically deboning livestock falls within the same range as that of product made by hand deboning. Instead, it appears that to the extent that mechanically separated product is made from materials which contain spinal cord and bone marrow (as opposed to hard bone) in addition to muscle and fatty tissue, its cholesterol content will be greater than the cholesterol content of meat. In the samples analyzed by the Department, the mean cholesterol values for mechanically separated beef and mechanically separated veal were 209 mg and 239 mg per 100 grams, respectively, as compared with mean cholesterol values for beef and veal of 59 mg and 108 mg per 100 grams, respectively. Also, researchers at the University of Wyoming have found cholesterol levels in mechanically separated beef and mechanically separated pork that are higher than the representative values given for beef and pork (Field, R. A., "Mechanically Deboned Red Meat," *Advances in Food Research,* 27:23 80–81, 1980).

So long as mechanically separated product constitutes 20 percent or less of the livestock and poultry product portion, the cholesterol content of finished meat food products formulated with MS(S) will be only slightly higher than that of comparable products formulated without MS(S); and use of MS(S) will not lead to any appreciable increase in dietary cholesterol intakes. If, however, as the Department proposed, higher usage levels were permitted, the magnitude of the differences in cholesterol content could easily become quite striking; and the use of MS(S) could result in significant increases in the cholesterol content of meat food products. For example, it is to be expected that persons who have been advised by their physicans to restrict their intake of cholesterol would have to modify the foods they consume if they included such products in their diets (e.g., by reducing their consumption of other foods of animal origin such as milk, eggs, or cheese). Finally, the information reviewed confirms the earlier observation that cholesterol content and total fat content are not positively correlated. (Thus, restricting the fat content of MS(S) would not serve as a means for limiting its cholesterol content.)

Because the Department did not anticipate this problem when it proposed to permit mechanically separated product to be used at higher levels, the proposal did not deal with the issues these potential differences in composition raise. The Department has decided not to engage in further rulemaking on these issues at this time, in large part because use of MS(S) in compliance with the existing regulatory restriction of 20 percent is unlikely to constrain production and use: at the current stage of product development, formulations that are satisfactory to the

vast majority of processors contain MS(S) at less then the 20 percent level. Moreover, developments in mechanical deboning technology and practices may affect the extent to which higher usage levels would be a cause for concern. For example, it is possible that the cholesterol values found in the samples recently collected by the Department are higher than those found in the samples evaluated by the Panel because the more recent samples were made from raw materials that had a lower proportion of meat to bone or because they had a higher proportion of spinal cord and/or bone marrow. Similarly, MS(S) produced by applying the mechanical deboning technology to whole carcasses or parts from which most of the skeletal muscle has not first been removed by hand deboning might well have a cholesterol content comparable to that of meat of the same species. As production of MS(S) increases, the Department expects that additional information relevant to these issues will be compiled. Persons interested in pursuing the possibilities for a reconsideration of this use limitation are hereby notified that the Department is prepared to cooperate with them in designing the appropriate procedures for collecting and analyzing data on the questions of concern here.

In addition, the public should be aware that in any future reconsideration of this use limitation, the Department plans to pursue further an issue raised by one of the commenters: possible effects on the tryptophan content of meat food products if MS(S) were used as the sole or major part of the livestock and poultry product portion. As indicated above in the discussion of the product definition and standard (9 CFR 319.5), the Department continues to ascribe to its 1978 position on protein quality: the regulatory requirements can be readily attained and complying product has protein of high quality. That assessment was based on the Panel's evaluation of protein quality issues and on an additional evaluation conducted as a result of comments submitted during the prior rulemaking on this product which criticized the Panel for not comparing the amino acid profile of mechanically separated product with that of the hand trimmed meat that it could replace. In response to this concern, the Department made such a comparison and found that, on a gram per gram of nitrogen basis, the amino acid content of mechanically separated product is comparable to values given for beef in "Amino Acids Content of Foods—Home Economics Research Report No. 4" and to more recent values accumulated by the Consumer and Food Economics Institute-Science and Education Administration, USDA. 43 FR 26416, 26421.

In response to this commenter's concerns regarding the proposal to permit use to increase to up to the 100 percent level, the Department reviewed the available information on the relative tryptophan contents of beef and mechancially separated beef. This review confirms the basic conclusions drawn by the Department in 1978. (Thus, for example, because hydroxyproline, proline, and glycine—nonessential amino acids that are found in greater amounts in collagen than in muscle protein—are included in calculating the proportion of total amino acids that are essential amino acids, the presence of collagen in MS(S) will not be masked.) But it also led the Department to conclude that additional information should be obtained before permitting use of MS(S) at higher levels because the data currently available on mechanically separated beef (which were obtained from samples selected to reflect a wide range of PER'S) indicate that as the proportion of mechanically separated beef in a meat food product approaches the 100 percent level, the difference between that product's tryptophan content and the tryptophan content of a product in which beef is the sole livestock ingredient could become significant. The Department expects that the likelihood of such a result would be lower where MS(S) is produced from whole carcasses or parts from which most of the skeletal muscle has not first been removed by hand deboning and that as production of MS(S) increases and the mechanical deboning technology develops, further information on this question will be compiled. (As indicated above, the relative total purine contents of mechanically separated veal and veal also will be an issue in any such proceeding.)

Finally, the Department is amending the regulations to clarify the basis on which the 20 percent restriction is to be calculated. None of the comments addressed the Department's proposal to replace the phrase "meat portion" with "livestock and poultry product portion" (although one commenter misunderstood the proposed phrase as referring to the finished products in which mechanically separated product may be used). This change is being made in order to communicate more clearly the ingredients the phrase is intended to encompass: all ingredients derived from livestock or poultry carcasses, including meat byproducts and various poultry products as well as "meat". 46 FR 39274, 39288.

Meat Food Product Limitations

None of those commenting on use limitations addressed either the proposal to clarify the mandatory nature of the existing prohibitions against use of different species of mechanically separated product in meat food products required to be prepared from one species or against its use in certain meat food products. Nor did they address the proposal to simplify the regulation by deleting an unnecessary sentence cross referencing the labeling requirements for meat food products containing mechanically separated product. The Department is amending the regulations to incorporate these proposed changes to § 319.6 (a) and (d) (9 CFR 319.6 (a) and (d)).

Those commenters who submitted views on these provisions instead addressed the existing prohibitions against certain uses of mechanically separated product, prohibitions that the Department did not propose to change. All but one of these commenters focused on the meat food products in which mechanically separated product is not a permitted ingredient. That commenter supported retention of the provision that meat food products required to be from one species shall not contain mechanically separated product of any other species.

Several commenters criticized the prohibition against use of mechanically separated product in baby, junior, and toddler foods. One of these commenters stated that the more efficient use of this product could be accomplished by changing the exclusion. The others took the position that the product's fluoride content does not justify the exclusion. They contended that, if anything, the additional fluoride provided by mechanically separated product would help to overcome inadeqaute intakes, with some referring to recommendations for supplementation of this essential nutrient to prevent dental caries or for proper bone development and/or to benefits for those in areas where the water supply is not fluoridated. One of these commenters also contended that the major portion of fluoride in this product may not be bioavailable, that consumption from the source would be relatively low, and that the Panel's evaluation of this issue was based on erroneous intake data and overestimated consumption by an order of magnitude (no information or data were submitted to substantiate these contentions). Another group argued that while the appearance of baby teeth

could be affected, health would not be affected and mottling to teeth is an unusual occurrence; and they and a third commenter said that the exclusion is open to question as years of experience with infant foods containing product made by mechanically deboning poultry carcasses have not produced any documented cases of mottling of teeth. Finally, one of these commenters said it would seem mechanically separated product could be used in infant foods if the ingredient statement indicated it is "a source of calcium and fluoride".

Several commenters, on the other hand, stated that they support this prohibition. Two of these commenters rested their position on the product's fluoride content, with one saying use in these foods should not be allowed until better data are available. One favored exclusion of the product from infant foods and other foods for special dietary use. Another commenter gave protecting small children as her reason for why mechanically separated product should not be sold.

The Department has reviewed the comments on the exclusion of mechanically separated product from baby, junior, and toddler foods, the materials referenced in those comments, and the Panel's evaluation of this subject. It has found no reason to reconsider this prohibition on the basis of currently available information. Like other essential nutrients, there is a range within which intakes of fluoride are both adequate and safe and beyond which adverse effects can occur; and this range varies with factors such as age. Permanent mottling of teeth can occur with excessive fluoride intakes during the period when the teeth are being formed—the "crown calcification" period (which lasts from about 4 months to 8 years of age). The decision that mechanically separated product should be excluded from baby, junior, and toddler foods reflects the Department's determination that there is not sufficient information to conclude that the regulatory restrictions on this product (i.e., the 0.75 percent calcium content limit in combination with the 20 percent use level restriction) are adequate to prevent this problem in infants on a nationwide basis. This determination recognizes that infants' fluoride intakes can vary greatly depending, among other factors, on the level of fluoride in their drinking water. For example, several cities in South Carolina appear to have high levels of naturally-occurring fluoride in their drinking water. According to the preliminary findings of a study by the South Carolina Health Department and the Communicable Disease Center, Department of Health and Human Services, fluorosis exists in these areas. Addition of even an extremely small amount of fluoride to the diets of infants in areas such as these through use of mechanically separated product would not be prudent. It also should be noted that, while the Department has at this time made no decisions with respect to what further regulatory action to take regarding product made by mechanically deboning poultry, available data show only slight differences between the fluoride content of poultry meat and that of product made by mechanically deboning poultry other than mature female chickens (fowl); and data from the Department's Meat and Poultry Inspection Program indicate that only about 10 percent of the product made by mechanically deboning poultry was made from mature chickens in 1979.

The exclusion of mechanically separated product from various other meat food products also was challenged by a number of commenters. Some of these commenters advocated a general position, stating that use of mechanically separated product should be permitted in any meat food product in which chopped or ground meat normally would be used, can be used, or can be used in small quantities at functional levels or in natural proportions, or that its use should be permitted in those meat food products in which finely ground or comminuted meat or product made by mechanically deboning poultry can be used. Certain of these commenters gave examples of particular meat food products in which they believe use should be permitted and others focused their concern on the exclusion of mechanically separated product from particular meat food products. Thus, it was contended that use of mechanically separated product in restructured meat food products, sectioned and formed hams and other products, and fabricated steaks and roasts should be evaluated; and one commenter also supported allowing use in meat pies, beef with gravy, and lima beans with ham. Possibilities for cost savings, improved finished product quality, certain advantageous functional characteristics (e.g., good binding) of mechanically separated product manufactured with newer types of equipment, encouraging innovation, optimizing use of protein resources, and offering consumers a wider variety of products were reasons given in support of some of these uses. In addition, one commenter supported allowing use in ground beef, stating that proper labeling ought to be the key; and another supported use in ground beef and/or hamburger, provided they are appropriately labeled, based on his erroneous belief that soy is permitted at up to a 30-percent level in such products (see 9 CFR 319.15 (a) and (b)). Finally, two commenters criticized § 319.15 of the regulations (9 CFR 319.15)—the standard for miscellaneous beef products—as restricting use of lamb and mutton products; and they suggested amending that section to permit use of mechanically separated product in any meat food product which includes finely ground or comminuted meat.

Two commenters disagreed with those calling for a reconsideration of some of these restrictions on the use of mechanically separated product. One of them stated that use of mechanically separated product in meat food products such as hamburger, chopped beef, and chopped steaks would significantly change their texture. He took the position that these products have been standardized for many years and the consumer has come to expect them to be the "better quality" ground beef products, and that inclusion of mechanically separated product would create a price difference between the traditional products and those made with this ingredient and the consumer would be deceived, particularly in advertising, because both products would bear the same name.

After reviewing these comments and the provisions of Part 319 of the regulations (9 CFR Part 319) bearing on the use of MS(S) as an ingredient, the Department still ascribes to the position that MS(S) is not an appropriate ingredient in certain meat food products. As the Department noted when, in 1976, it first considered the regulation of product made by mechanically deboning livestock carcasses and parts, the consumer purchases meat in two principal forms: One form is processed only to the extent of cutting or grinding. The other form is in processed meat food products in which manufacturing meats are mixed with other ingredients of animal and/or vegetable origin to form a new product. 41 FR 17560. The Department has consistently taken the position that product made by mechanically deboning livestock should not be included in meat food products sold in a form that is processed only to the extent of cutting or grinding (e.g., ground beef) or in processed meat food products that are convenience versions of cuts or solid pieces of meat (e.g., corned beef brisket, barbecued pork), but that its use should be permitted in processed meat food products that may

contain comminuted meat as well as other ingredients of animal or animal and vegetable origin. In other words, the Department's position has been and continues to be that its use should be permitted in processed meat food products where inclusion of this finely comminuted product would not be inconsistent with the basic characteristics, such as textural consistency, expected in such meat food products. See 42 FR 54437, 54440 and 43 FR 26416, 26422. Therefore, the Department does not agree with those commenters who suggested that use of mechanically separated product be permitted in products such as ground beef, fabricated steaks and roasts, or any product in which use of ground meat is permitted.

Nor does the Department agree with those commenters who suggested permitting its use in structured or sectioned and formed products such as hams. Such products frequently are associated with a particular cut of meat. To the extent that trimmings removed in the process of sectioning a cut of meat such as a ham are reincorporated in the shaping of the finished product, the product's constituents remain the same and it can retain the characteristics associated with that particular cut. The Department regards this as a distinctly different process than using product made by mechanical deboning as an ingredient. As stated above in response to comments suggesting that the product name identify mechanically separated product made from certain primal parts (9 CFR 319.5(a)), it is muscle meat and not any accompanying bone that characterizes primal parts; and product made from accompanying bones does not retain the distinctive characteristics of the cuts themselves.

In fact, the Department's review of this area has raised concerns about the appropriateness of the regulatory provisions which permit use of MS(S) in meat food products, such as pressed ham, chopped ham, and deviled ham (9 CFR 319.104(f), 319.105, and 319.760), that are represented as having been made from a particular part of the carcass. The Department's first proposal to regulate mechanically separated product would not have permitted it to be used as an ingredient in these meat food products. 41 FR 17560, 17566. While use was permitted in the 1978 regulations because the product's textural consistency would not impair finished quality, the Department now plans to reconsider these provisions in light of the concerns discussed herein.

The Department's review also has indicated that the scope of some of the existing restrictions is unclear. In its prior rulemaking, the Department amended Part 319 of the regulations (9 CFR Part 319), the definitions and standards of identity or composition for meat food products. Mechanically separated product was added to the livestock products named as ingredients permitted in various meat food products where its use was to be allowed. Mechanically separated product was not added to such named ingredients where its use was not to be allowed, leaving the existing restrictions on the livestock ingredients permitted in such products intact. The list of meat food products included in § 319.6 of the regulations (9 CFR 319.6) was intended to reflect the Department's determinations regarding this latter category of meat food products, as well as its decision to prohibit use of mechanically separated product in baby, junior, and toddler foods. However, as currently worded it does not accurately reflect all of the determinations that the Department made in this area. In order to make this provision consistent with exclusions contained in the definitions and standards in the remaining sections of Part 319 of the regulations (9 CFR Part 319) and avoid future misunderstanding, the Department is amending the list of standardized products in § 319.6(d) of the regulations (9 CFR 319.6(d)), by adding the italicized language, to read as follows:

* * * ground beef, hamburger, fabricated steaks (§ 319.15 (a), (b), and (d)), barbecued meats (§ 319.80), roast beef—parboiled and steam roasted (§ 319.81), corned (*cured*) beef cuts §§ 319.100–*319.103*), *certain cured pork products (§§ 319.104(a)–(e) and 319.106), tripe with milk (§ 319.308),* lima beans with ham and similar products (§ 319.310), beef with gravy and gravy with beef (§ 319.313), and meat pies (§ 319.500).

(For similar reasons, the Department also is amending several of the definitions and standards for meat food products in which use of MS(S) is permitted. Those amendments are discussed below.)

As amended, § 319.6(d) of the regulations (9 CFR 319.6(d)) includes all of the standardized meat food products in which the Department determined, as part of its prior rulemaking, that use of mechanically separated product should be precluded. The Department still regards this set of products as inappropriate condidates for use of MS(S) , with one possible exception: meat pies. In view of the interest expressed in the comments, the Department is hereby notifying the public that it is willing to reconsider the exclusion of MS(S) from meat pies upon a petition to amend §§ 319.6(d) and 319.500 of the regulations (9 CFR 319.6(d) and 319.500) because use of MS(S) does not appear to be inconsistent with the basic characteristics of this type of meat food product.

The Department expects that with the adoption of amendments to the regulations for mechanically separated product, production and use of this product will increase significantly. As this happens, the Department may well be confronted with additional questions about the appropriateness of using MS(S) in particular meat food products. Thus, for example, processors may wish to begin using MS(S) in meat food products that are not now included within a specific regulatory definition and standard, but that are similar to meat food products that are already covered by such regulations. These products may differ only in the species of livestock products used as ingredients the relative proportions of livestock products and other ingredients used, or the inclusion of additional ingredients to produce a distinctive flavor or style of product. The Department intends to handle such questions on a product-by-product basis consistent with the principles set forth above and, to the extent appropriate, amend Part 319 of the regulations (9 CFR Part 319) to reflect its determinations. One such question already is before it. The Department has been petitioned regarding regulation of the composition of ground pork, a meat food product that is not now covered by a specific regulatory definition and standard. The Department regards this product as analogous to ground beef, which is covered by a regulatory definition and standard (9 CFR 319.15(a)), with the only difference being the species of lifestock from which the product is made. Therefore, it plans to propose amendments to the regulations that would establish requirements for ground pork that are comparable to the existing requirements for chopped or ground beef an thus would not include MS(S) among the ingredients permitted in ground pork for the same reasons that its use is not permitted in chopped or ground beef.

4. Finished Product Definitions and Standards

Adoption of amendments to the regulations for mechanically separated product necessitates only one change in the definitions and standards of identity or composition for finished meat food products in Part 319 of the regulations (9 CFR Part 319): Replacing the name "Mechanically Processed (Species) Product" with "Mechanically Separated (Species)" in each of the regulations

which states that "MP(S)P" may be used as an ingredient (9 CFR 319.15(c), 319.104(f), 319.105(b)(10), 319.141–319.144, 319.145(a)(1)–(3), 319.180(a)–(c), 319.182, 319.260, 319.261, 319.280, 319.281(a)(1), 319.300–319.302, 319.303(b)(9), 319.304–319.307, 319.311, 319.312, 319.600(a) and (b), 319.760(a), and 319.762). However, in view of its proposal to establish a category of product for processing to be used as an ingredient in meat food products with regulatory limits on their total fat content, the Department proposed an additional change in the definitions and standards for four meat food products in which use of mechanically separated product is permitted: replacing the 50 percent maximum on trimmable fat in the definitions and standards for fresh pork sausage (9 CFR 319.141), breakfast sausage (9 CFR 319.143), whole hog sausage (9 CFR 319.144), and smoked sausage (the smoked version of fresh pork sausage) (9 CFR 319.160), with a 50 percent maximum limit on the analytical fat content of the finished product. 46 FR 39274, 39289–90. The Department has concluded that the proposed amendments should be adopted so that product for processing may be used as an ingredient in these meat food products. The Department also has concluded that certain of the other definitions and standards (9 CFR 319.140, 319.145(a)(3), 319.281, and 319.305) should be amended to clarify that use of MS(S) is permitted.

Two comments addressed the proposal to replace the limit on trimmable fat in four definitions and standards with a limit on the fat content of the finished meat food products that they cover. Both of these comments were submitted by industry members and both supported the proposed amendments, with one commenter stating that fat analyses are preferable to the obsolete trim method as an indication of fat content.

As the Department noted in the proposal, the definitions and standard for fresh pork sausage, breakfast sausage, whole hog sausage, and smoked pork sausage currently state that they may not be made with any lot of product which, in the aggregate, contains more than 50 percent trimmable fat (i.e., fat that can be removed by thorough, practicable trimming and sorting). These controls operate on ingoing ingredients, and not the total fat content of finished products; and they require the visual evaluation of solid pieces of meat, and thus obviously cannot be applied to the finely comminuted product produced by mechanical deboning. Therefore, they do not meet the Department's criteria for meat food products in which product for processing can be used. Those criteria are met once the regulations are amended by replacing the 50 percent trimmable fat limit with a 50 percent maximum on the analytical fat content of the finished product. The Department has concluded that the level in the amended regulations is appropriate for a finished product made with product containing no more than 50 percent trimmable fat in the aggregate of the ingoing ingredients.

The Department also has decided to amend certain other definitions and standards to clarify that MS(S) may be used as an ingredient in the meat food products they cover. As was just noted in the discussion of limitations on the use of MS(S) (9 CFR 319.6(d)), in 1978 the Department amended various definitions and standards that restrict the livestock products permitted as ingredients by adding language to allow use of mechanically separated product. These changes included amendments that specifically allow use of mechanically separated product in each particular type of standardized sausage product covered by the regulations. (References to use of mechanically separated product were added to §§ 319.141–319.145, 319.180, 319.182, and 319.281 of the regulations (9 CFR 319.141–319.145, 319.180, 319.182, and 319.281). No reference was needed in § 319.160 and § 319.181 of the regulations (9 CFR 319.160 and 319.181), which cover distinctive versions of sausage products that are also subject to the provisions of §§ 319.141 and 319.180 of the regulations (9 CFR 319.141 and 319.180), respectively. The intended effect of those changes was to permit use of mechanically separated product in various standardized sausage products, whether or not they are subject to the definitions and standards for particular types of sausage products. This intention may not be clear, however, because use of mechanically separated product is not referred to in § 319.140, the regulations that covers sausage generally (9 CFR 319.140). Therefore, to avoid possible misinterpretation in the future, the Department is clarifying the regulations by adding the following sentence to the end of § 319.140 (9 CFR 319.140):

> Sausage may contain Mechanically Separated (Species) used in accordance with § 319.6.

The Department is amending §§ 319.145(a)(3), 319.281, and 319.305 of the regulations (9 CFR 319.145(a)(3), 319.281, and 319.305), the definitions and standards for certain Italian sausage products, bockwurst, and tamales, respectively, for a similar reason. Each of these regulations covers more than one distinctive version of a type of meat food product. Each was amended in 1978 to provide that mechanically separated product may be used as an ingredient. The Department intended those amendments to result in mechanically separated product being permitted as an ingredient in each of the versions of the meat food products covered by these regulations. In order to clarify this intention, it is amending §§ 319.145(a)(3), 319.281(a)(1), and 319.305 of the regulations (9 CFR 319.145(a)(3), 319.281(a)(1), and 319.305) by moving the second sentence, referring to use of mechanically separated product, to the end of the provision.

5. Labeling

(a) The product.

In 1978 the Department did not see a need for special requirements for the labeling of mechanically separated product itself. With one category of standardized product subject to a unitary use limitation, no particular compliance problems were presented: mechanically separated product either could or could not be used as an ingredient in a particular meat food product; and if its use was permitted, it could constitute no more than 20 percent of the livestock and poultry product portion. Because the proposed amendments to the regulations would have changed this situation by establishing two categories of product, one of which could be used as an ingredient in more meat food products than the other and, at least potentially, at higher levels, the Department proposed the following labeling requirements to assure compliance with the amended use limitations: First, on the label of any mechanically separated product, the name of the product must be followed immediately by the phrase "for processing" unless the establishment is representing that the product contains not less than 14 percent protein and not more than 30 percent fat. Second, such product shall be deemed to have a calcium content of 0.75 percent unless the establishment represents that it has a different calcium content by qualifying the product's name with a phrase to this effect. 46 FR 39274, 39290. The Department has decided that the first of these proposed requirements is necessary in view of the adoption of amended regulations establishing a category of product for processing to be used as an ingredient only in meat food products with regulatory limits on their

total fat content. Therefore, it is amending the regulations to incorporate this requirement (9 CFR 317.2(j)(13)(i)). The Department has decided to withdraw the second of these proposed requirements as unnecessary in view of the withdrawal of the portion of the proposal that would have permitted usage levels of mechanically separated product meeting fat and protein content requirements to increase above 20 percent of the livestock and poultry product portion.

Three comments from industry addressed the proposal to establish special labeling requirements for mechanically separated product itself. While these commenters objected to the imposition of fat and protein content requirements on any category of mechanically separated product and, hence, to distinctions in use limitations based on the proposed two category approach, the concern here was that if the Department adopted this approach, the regulations make it clear that the phrase "for processing" is required only on the label of the mechanically separated product itself and not in the ingredient statements on finished meat food product labels.

The Department notes that the provision of the regulations incorporating this requirement (9 CFR 317.2(j)(13)(i)) specifically states that it applies to "the label of any 'Mechanically Separated (Species)' described in § 319.5(a)" of the regulations, *not* to the labels of meat food products in which MS(S) is used as an ingredient (compare 9 CFR 317.2(j)(13)(ii)). As this provision also indicates, § 319.5(a) of the regulations (9 CFR 319.5(a)) defines this product by the name "Mechanically Separated (Species)"; and, in accordance with § 317.2(c) (1) and (2) and (f)(2) of the regulations (9 CFR 317.2(c) (1) and (2) and (f)(2)), it is the name specified in the product standard that must be shown in the list of ingredients on the labels of meat food products, as further discussed below.

(b)–(d) Finished meat food products.

Ingredient Statement Listing

The Department continues to believe that mechanically separated product cannot be regarded as falling within the category of food traditionally defined as "meat" and that it should be defined as a distinctive, standardized ingredient. Therefore, it did not propose changing the requirement that the product must be declared, by the name specified in its definition and standard, in the ingredient statements of meat food products in which it is used. See *CNI v. Butz, supra;* 43 FR 26416, 26420–21; 46 FR 39274, 39283, 39290–91; 9 CFR 317.2(c) (1) and (2) and (f)(1). However, because the general labeling regulations already require a separate declaration of mechanically separated product (9 CFR 317.2(c) (1) and (2) and (f)(1)), repeating this requirement in the product-specific regulation (9 CFR 317.2(j)(13)) is unnecessary. Consequently, the Department proposed to delete the redundant reference to ingredient statement declarations in § 317.2(j)(13) of the regulations (9 CFR 317.2(j)(13)). 46 FR 39274, 39290–91. The Department has determined that this proposed amendment should be adopted.

No comments addressed this proposed amendment, but 141 comments addressed the ingredient statement requirement itself. The majority of these comments were submitted by industry-related individuals and groups. Many individuals also commented on this requirement, as did several State government officials and agencies.

Most of these commenters either accepted or affirmatively supported the requirement that mechanically separated product must be listed, by name, in the ingredient statements of meat food products in which it is used. Among the reasons given for their position were that this is consistent with all of the major Federal food statutes, the recommendation of the Panel, and the decision in *CNI v. Butz, supra,* and/or with the way other ingredients are declared. A number of commenters disagreed, however. These commenters generally took the position that this product is meat and no further identification, designation, or explanation is needed on finished product labels except, according to some, information on calcium content (in certain situations) because any added calcium in such products is the distinguishing characteristic involved here. Some of them also argued that this requirement should be removed because mechanically separated product is fit for human consumption or is wholesome and nutritious, because this would help to assure consumer acceptance or overcome adverse publicity about the product, and/or because the poultry and fish industries do not have to make such declarations; and one commenter contended that this requirement will result in the need for a number of labels to reflect different orders of predominance. In addition, a few commenters suggested that the requirement need not be applied where mechanically separated product is used at the 20 percent level because the calcium content is not nutritionally significant at this level. And a few took the position that the requirement need not be applied to whole hog sausage labels because it is only natural that mechanically separated product flow right along with the rest of the carcass and/or the product name indicates all primal cuts are deboned and this should include mechanically separated product.

As is indicated above in the discussion of the product definition and standard (9 CFR 319.5), MS(S) does not consist solely of muscle tissue; it also contains bone, including bone marrow. The Department has determined material differences in composition and consistency place MS(S) outside the scope of the product defined by regulation as "meat" (9 CFR 301.2(tt)) and that its characteristics are such that it should be defined as a distinctive, standardized product. Therefore, this product must be declared on finished product labels by the name specified in its definition and standard. It is this distinctive character and separate regulatory standard that are the basis for the ingredient declaration requirement, and not the product's wholesomeness or fitness for consumption or the level or particular meat food product in which it is included as an ingredient. Furthermore, any concerns about consumer acceptance of this product, or about other products as to which the Department has not made such determinations, cannot be addressed by disregarding the Department's obligations to assure that the labels of meat food products containing MS(S) apprise the public of its presence. See 21 U.S.C. 601(n) (7) and (9) and 607(b); 9 CFR 317.2(c) (1) and (2) and (f)(1).

Supplementary Labeling Information

The Department proposed the following changes in the requirements for labeling in addition to a separate listing of MS(S) in ingredient statements: (1) the requirement that the names of all finished meat food products containing mechanically separated product must be qualified to indicate its presence would be deleted; however the need to retain the requirement for such a qualifier in particular situations would be considered on the basis of information submitted in the rulemaking. (2) The requirement that the names of all finished meat food products containing mechanically separated product must be qualified to indicate their powdered bone content would be replaced with a requirement that their labels declare calcium whenever the amount so declared would be different than the amount that would be declared if a particular finished product contained only hand deboned ingredients; and

alternative options that would serve the needs of calcium-sensitive individuals would be considered on the basis of information submitted in the rulemaking 46 FR 39274, 29290–94. The Department has reviewed and reevaluated the supplementary labeling requirements in light of the comments on the proposal, the provisions of the amended regulations, its current labeling policies, information on the use of calcium-restricted diets in managing health problems, and the information accompanying the PCMA–AMI petition. It has concluded that the qualifying phrases required in 1978 are not necessary to prevent misbranding of finished products containing MS(S) when MS(S) is used in accordance with the amended regulations and that, by modifying the requirements, it can reduce their burden and avoid unwarranted and possibly derogatory implications about meat food products containing mechanically separated product while continuing to assure that such products are accurately and adequately labeled. Therefore, the Department is amending § 317.2(j)(13) of the regulations (9 CFR 317.2(j)(13)) as follows: (1) The requirement that finished product names must be qualified to indicate the presence of mechanically separated product is deleted. (2) the requirement that finished product names must be further qualified to indicate their maximum powdered bone content is replaced with a requirement that information must be provided on such products' calcium content where there is a meaningful increase in the total calcium content of a meat food product that would otherwise be acceptable in the diets of persons on calcium-restricted diets. (That is, the meat food product's calcium content must be stated whenever MS(S) contributes 20 mg or more of calcium to a serving of the product unless the amount so declared would not be different than the amount that would be declared if the product contained only hand deboned ingredients or unless the calcium content of the product would be 20 percent of the U.S. RDA or more per serving if it contained only hand deboned ingredients (9 CFR 317.2(j)(13)(ii)).)

Five hundred and fifty-two comments addressed issues bearing on requirements for supplementary labeling information (i.e., information in addition to a separate listing of mechanically separated product in the ingredient statement). These comments can be divided into two general groups: (1) Comments that favor eliminating requirements that the names of meat food products containing mechanically separated product must be accompanied by qualifying phrases and/or replacing powdered bone content declarations with a calcium content declaration approach and (2) comments that oppose eliminating one or both of the qualifying phrases required by the 1978 regulations or eliminating information regarding the presence of bone on the label.

About 70 percent of the comments fall into the first group. The majority of these comments were submitted by individuals. This group also includes numerous comments from industry members and groups, as well as several from professionals and State government officials and agencies. A few of these commenters restricted their criticism to any requirement that the presence of mechanically separated product must be indicated other than in the ingredient statement or that powdered bone content must be declared. The remainder advocated the elimination of all requirements for qualifying phrases. The qualifying phrases required by the 1978 regulations were characterized as negative, disparaging, derogatory, unnecessary, inappropriate, and/or onerous by these commenters. These phrases were criticized as giving undue prominence to a single ingredient which is virtually indistinguishable from or very similar to meat and as confusing and misleading to consumers, with research conducted by Market Research Service and for the Gerber Products Company cited in support of this position.

Those specifically addressing the qualifying phrase indicating the presence of mechanically separated product generally took the position that the appropriate place for this information is in the ingredient statement. Some of them said that there is no legitimate reason for indicating its presence elsewhere and/or that eliminating this requirement would minimize negative attitudes. Finally, a few commenters stated that if the ingredient statement is to serve a useful purpose, it must be relied on as the place that consumers interested in knowing what is in products will look. These commenters expressed concern that the recent trend toward qualifying phrases minimizes the importance of the ingredient statement almost to the extent that consumers are discouraged from looking at it.

Those specifically addressing the powdered bone content declaration generally supported replacing it with a calcium content approach. Some of them said that this approach is a sufficient and acceptable means of informing those for whom calcium may be a problem, that it would be more useful to consumers, and/or that unlike the powdered bone content declaration it would not confuse consumers and would avoid erroneous implications of inferiority or mistaken concerns about the presence of hard pieces of bone. And one said that if powdered bone labeling is required, the same reasoning would require "blood residue", "blood vessels", "nerves", etc, to be stated on the label.

The argument that without qualifying phrases, the economies and efficiencies available from mechanical deboning will not be passed through to consumers also was criticized in a comment which contended that the wide range of meat food products now offered at very different prices shows the marketplace has proved efficient in assigning premium prices to premium products and passing through economies to the consumer. In addition, a number of commenters attributed the low levels of production and use of mechanically separated product since 1978 to the qualifying phrase requirements. They contended that with this labeling, meat food products would be unmarketable or would be erroneously perceived as inferior or as decharacterized and/or that this labeling has resulted in the waste of a valuable food resource. This situation was contrasted with that of products containing ingredients made by mechanically deboning poultry; and eliminating these qualifying phrases was supported as putting the red meat industry in a comparable and competitive position with other industries using the mechanical deboning technology.

A majority of the comments in the first group also addressed the proposal to replace information on meat food products' powdered bone content with information on their calcium content and to consider alternative options for serving the needs of calcium-sensitive individuals. Almost all of these commenters supported a calcium content approach as the appropriate method for dealing with the issues involved. Several of these commenters endorsed requiring calcium content or nutrition labeling declarations generally or as proposed. However, most of them criticized specific aspects of the proposed provisions implementing the calcium content approach, most frequently for resulting in calcium content information being required on the labels of too many meat food products. Their recommendations varied, and in certain cases reflected confusion about when the proposal

would and would not require calcium content to be declared; but they tended to advocate restricting calcium content information to where the amount present either in the finished meat food product or the mechanically separated ingredient is significant or nutritionally significant (a situation that a few of them thought would occur only occasionally). Those who quantified the concept of significance most often suggested 10 percent of the U.S. Recommended Daily Allowance (U.S. RDA) or 10 percent of the Recommended Dietary Allowance (RDA) per serving as the minimum level or minimum difference below which a label declaration of calcium content should not be required. (Exceeding the average content of hand deboned meat, a contribution of 2 percent or 15 percent of the U.S. RDA, and use of mechanically separated product above the 20 percent level also were suggested as criteria for determining whether or not a label declaration of calcium content is required.) The 10 percent of the U.S. RDA per serving position was supported by some as being consistent with the level set in the nutrition labeling regulations of the Food and Drug Administration (FDA) (21 CFR 101.9(c)(7)(v)); and a few comments also cited a 1974 proposal for a threshold for nutrient claims in food advertising by the Federal Trade Commission (39 FR 39841; notice of proposed termination and availability of staff revisions, 45 FR 23705). According to several of these commenters, mechanically separated product is only a moderate source of calcium; therefore, labels should not imply that meat food products containing it are excellent sources when such claims are not allowed for other products unless they contain at least 10 percent of the U.S. RDA per serving. It also was contended that below a significant level, the information is not needed and requiring it will clutter labels and result in processors having to maintain numerous labels for a single product, when such information is not required on other meat food products with higher calcium contents; and removing the requirement below the 10 percent per serving level was advanced as a way of encouraging the development of technology capable of producing mechanically separated product with a lower calcium content.

In addition, exemptions from any calcium content declaration requirement were requested by a few commenters who felt such a requirement would create problems for those manufacturing meat food products containing other ingredients high in calcium. While the basis for this concern is not entirely clear, these commenters apparently misunderstood the proposed labeling as tying the amount of calcium declared to the mechanically separated ingredient and, thus, implying a higher use level of MS(S) when other ingredients contribute calcium. Finally, a few commenters opposed requiring calcium content declarations as unnecessary regulation and in order to save industry and consumers money or because mechanically separated product has been determined to be safe and wholesome, and calcium is an essential nutrient in which the average diet is likely to be somewhat deficient.

As regards the alternative statement proposed for use where nutrition labeling information is not provided, a few commenters took the position that "A——— serving contains ——% of the U.S. RDA of calcium" would be sufficient and the words "of this product" are superfluous. Opposition to requiring full nutrition labeling also was expressed. Very little comment was received regarding the alternative approaches discussed in the proposal. Two commenters supported restricting supplementary labeling information to a parenthetical statement in the ingredient statement of the fact that mechanically separated product is a calcium-containing ingredient. A few commenters specifically opposed such an approach, saying that it would be undesirable because mechanically separated product contains nutrients other than calcium or that information should be presented on finished meat food product content; and one said that it would be confusing to put nutrition information in ingredient statements. In addition, a few commenters specifically supported an information program to meet the needs of those on calcium-restricted diets as a supplement to labeling information. No additional information was submitted on the nature and treatment of the population segment for whom mechanically separated product's calcium content may pose a problem other than a statement by one commenter that recent statistics indicate less than 1 percent of our population must limit calcium intake.

About 30 percent of the comments addressing supplementary labeling information fall into the second group—opposition to the elimination of one or both of the qualifying phrases required by the 1978 regulations or to not providing information regarding the presence of bone on the label. Most of these comments were submitted by individuals. This group also includes comments from a public interest organization and several professionals and State government officials or agencies. The basic position taken by most of these commenters was that the 1978 regulations should not be changed to provide less, or less prominent, information to consumers. Those few who did advocate changes made suggestions for additional labeling information, including declaration of the powdered bone content in the ingredient statement, the parts of the animal included in the product, and the amounts of calcium, fluoride, strontium 90, fat, and/or cholesterol.

Some of these commenters regarded the proposal as designed to serve the needs or convenience of industry rather than consumers and as making it more difficult for them to avoid a product that they believe should not be marketed, that they regard as unsafe, and/or that they do not want to purchase. Frequently they focused their remarks either on where information regarding the presence of mechanically separated product should appear or on the type of information that should be provided regarding bone content.

Those commenters specifically addressing the qualifying phrase indicating the presence of mechanically separated product favored this requirement because consumers have a right to know that mechanically separated product has been used or because this phrase clearly informs consumers of what they are buying. Providing this information solely in the ingredient statement was criticized as requiring the consumer to search for what actually is used and burying the information in fine print that is not normally noticed by consumers. One commenter who identified herself as someone who should avoid calcium objected to not having a prominent declaration of mechanically separated product. In addition, one commenter described the proposal to delete this requirement as applying an inventive regulatory standard which completely contradicts the Department's longstanding policy governing the substitution of a different or unusual product for a portion of the meat block. According to this commenter, not requiring specific nomenclature changes or qualifiers when a portion of the meat block is removed and an unexpected product is added also results in deliberate deception of the consumer, conflicts with the order in *CNI v. Butz* by ignoring the finding that a product in which mechanically separated product is substituted could not carry the conventional product name, and constitutes adulteration in contravention

of the Federal Meat Inspection Act (21 U.S.C. 601(m)(8)) because quality and value dilution would be concealed, especially where products contain more than insignificant amounts of mechanically separated product. The last of these conclusions was based on the argument that (1) mechanically separated product routinely contains a large amount of connective tissue, which lacks the essential amino acid tryptophan, and with use at up to the 100 percent level, products could be expected to be seriously deficient in tryptophan; (2) mechanically separated product has up to 60 times more lead, fluoride, cadmium, and other elements of questionable safety than meat and a product with "less" of these elements is preferable to one with "more"; and (3) products containing mechanically separated product are less expensive to produce, yet without nomenclature qualifiers, the likelihood is great that consumers could not distinguish between products with and without this ingredient and could thus be overcharged. This commenter's remarks regarding use in more than insignificant amounts and at up to the 100 percent level and another commenter's view that presence should most definitely be noted next to the finished product name if mechanically separated product is contained in a dominant amount (e.g., 51 percent) where the only submissions which suggested a basis for retaining this requirement for particular, but not all, uses of mechanically separated product. See 46 FR 39274, 39292.

Those commenters specifically addressing bone content labeling generally asserted that consumers have a right to know what is in the products they buy, including information on powdered bone content. Replacing this information with a calcium content declaration was criticized as disguising the bone content and as deceptive because bone contains other substances (e.g., fluoride, lead), calcium is regarded as a valuable nutrient, or calcium from mechanically separated product should not be grouped with calcium from sources such as milk solids. A few of these commenters accepted the calcium content approach so long as information on the amount or the presence of bone continues to be provided (e.g., by a declaration that the calcium is "from bone"); and some of those commenters regarded the bone content declaration as indicating a potential hazard to health. In addition, one commenter opposed the proposal as dangerous for calcium hyperabsorbers and as resulting in a potentially more serious problem for gout sufferers and other hyperuricemic individuals. According to this commenter, in every likelihood, calcium hyperabsorbers who have already chosen a particular brand of products, and who are aware of the calcium content of those products, will not detect a new calcium declaration within the nutrition label or added in a separate place because most consumers do not reread ingredient or nutrition labels once they have become comfortable with a particular brand; so health problems could develop. This commenter also asserted that the proposal does not provide gout sufferers and other hyperuricemic individuals with the information they need because calcium is not the same as bone, bone brings bone marrow to finished products, bone marrow contains nucleic acid, and gout suffers and other hyperuricemic persons must strictly limit consumption of nucleic acids; and contended that the Department is eliminating this important health protection before it is crystal clear that these people would not be at risk from the consumption of mechanically separated product, despite the admonition of the Court in *CNI v. Butz.*

The diversity of views expressed in these comments illustrates that, as the Department observed in publishing the proposal, the resolution of questions regarding the need for supplementary labeling information and the form any such information should take was controversial in 1978 and continues to be so today. Decisions in this area require difficult factual and policy determinations in which the Department must exercise its judgment, based on its accumulated experience, about the appropriate role of such information, if any, in preventing misbranding of products, as defined in the FMIA (21 U.S.C. 601(n)). 46 FR 39274, 39290–91. Requiring supplementary labeling information is one of a number of regulatory tools that the Department may utilize to achieve this goal.

In reaching conclusions about whether this regulatory tool should be used here and if so, how, the Department has carefully reviewed the comments and the information currently available in the context of the other regulatory controls it has imposed to prevent the use of mechanically separated product from resulting in misbranding as well as adulteration. 21 U.S.C. 601 (m) and (n). Thus, the Department has, among other things, utilized its authority to prescribe definitions and standards of identity or composition (21 U.S.C. 607(c)) to establish requirements for the processing and characteristics of MS(S) (9 CFR 319.5) and for its use as an ingredient (9 CFR Part 319); and it has established requirements for the handling of MS(S) and the materials from which it may be made (9 CFR 318.18). These requirements not only assure that meat food products in which MS(S) is used as up to 20 percent of the livestock and poultry product portion are wholesome and safe, they also protect the quality (including the nutritional quality) and expected characteristics of such products. And, in particular, they reflect determinations that it is appropriate to include mechanically separated product among the livestock ingredients permitted in certain meat food products already subject to regulatory definitions and standards. 21 U.S.C. 601(m)(8) and (n)(2), (7), and (9). The Department also has required that the labels of all meat food products in which MS(S) is an ingredient bear the name of the species of the product used, in accordance with the definitions and standards for MS(S) and various finished meat food products and other regulatory requirements (9 CFR 317.2(c) (1) and (2) and (f)(1), 319.5(a), and Part 319). 21 U.S.C. 601(n) (7) and (9).

With these regulatory controls in place, the issue in this rulemaking is whether the Department should continue to require that the labels of meat food products containing mechanically separated product as 20 percent or less of the livestock and poultry product portion bear two qualifying phrases, or require alternative supplementary information, in order to assure that their labels are not otherwise misleading. 21 U.S.C. 601(n) (1) and (12). This issue is narrower in scope than many commenters suggested. For example, the issue here is not the consumer's right to know that mechanically separated product has been used in formulating a meat food product. The ingredient statement already provides that information. Moreover, the Department does not agree that listing MS(S) in the ingredient statement fails clearly to inform consumers of what they are buying. In fact, this listing includes such information in the one place that is specifically and explicitly designated for this purpose. The ingredient statement is the very place consumers should look, not ignore, if they are interested in the contents of the foods they purchase, in seeking out or avoiding any particular ingredients, or in distinguishing between brands of meat food products on the basis of their ingredient contents. Thus, the Department is concerned by commenters who indicate that they may

not be relying on ingredient statements for this purpose.

The issue in this rulemaking also is not the need for supplementary labeling information to apprise consumers that the formulations of meat food products they are accustomed to buying has changed. Such changes are reflected by modifications in the ingredient statement (and sometimes in other label information (e.g., nutrition labeling) that is affected). Thus, for example, if a manufacturer of chili con carne (9 CFR 319.300) chooses to replace up to 25 percent of the skeletal muscle trimmings it has been using with head, cheek, and/or heart meat, the change will be reflected by including head, cheek, and/or heart meat in the ingredient statement, as will a decision to include nonfat dry milk as up to 8 percent of the product. Because use of these new ingredients is consistent with the definition and standard for the product, its name will stay the same. However, where a manufacturer chooses to alter the basic identify of the product significantly by including beans and reducing the livestock product portion commensurately, the result will be a different meat food product with its own name—chili con carne with beans (9 CFR 319.301).

As manufacturers may modify the formulations of their products over time, particularly the formulations of products that have not been standardized, those interested in evaluating the contents of processed meat food products (e.g., in order to make interbrand value comparisons or to avoid or restrict consumption of particular ingredients) should consult ingredient statement information on a continuing basis, as opposed to relying solely on the fact that they have purchased a brand before. The legitimate concern of persons with health problems which involve dietary managemet is that they be able to determine when formulations are changed in ways that affect the acceptability of meat food products in their diets. The Department's requirements assure that the information necessary to make such determination is provided when mechanically separated product is used as an ingredient.

The ability to make such determinations also was the focus of concern in *CNI v. Butz, supra.* Noting that the question of misbranding under section 1(n)(1) of the FMIA (21 U.S.C. 601(n)(1)) had not been as fully argued, the Court said it appeared that the Department's 1976 interim regulation, which would have allowed the identical label to be used on a meat food product with and without mechanically separated product, permitted misbranding since the calcium content of a product would be higher if mechanically separated product were used; and this could prove especially harmful to persons on calcium-restricted diets. (The Court used the possibility that "all beef franks" could contain mechanically separated product to illustrate the potential it saw for misleading the public. The Department agrees that such a characterization could be misleading in this instance and in others. Therefore, it does not permit cooked sausages, including franks, to be labeled with terms that indicate they do not contain nonmeat ingredients or are prepared only from meat (9 CFR 319.180(f)).)

Furthermore, the Department does not agree that its proposal contradicts a longstanding policy under which the "meat block" of meat food products is basically immutable unless product names are changed or accompanied by qualifying phrases. In actuality, the "meat block" is the portion of a meat food product that consists of livestock, or livestock and poultry, products; and the make-up of this portion can vary greatly from meat food product to meat food product and also from brand to brand of a given meat food product. In addition to skeletal muscle, it may include other meat ingredients (e.g., muscle found in the tongue or heart) (9 CFR 301.2(tt)), meat byproducts (e.g., tripe, spleen) (9 CFR 301.2(uu)), poultry meat or poultry (9 CFR 381.118), and/or poultry byproducts (9 CFR 381.1(c)). The degree of variation in the types, amounts, and proportions of these products depends primarily on the extent to which the Department has restricted meat food product formulations in order to prevent misbranding and adulteration and on the formulation decisions of individual manufacturers.

For example, the Department has established a definition and standard for liver sausage (9 CFR 319.182) that permits the use of a broad range of livestock products—such as cured pork, beef, and veal; beef and pork byproducts; mechanically separated product; pork skin; and pork fat—but only in addition to a minimum liver content requirement of 30 percent. The individual manufacturer determines which of these optional ingredients to use and in what proportions, as well as whether to include only the minimum required amount of liver or more. As neither the presence nor the amount of any of the optional ingredients can be expected (and mechancially separated product cannot replace the minimum liver content), inclusion of MS(S) in the formulation would not substitute for any particular ingredient. In this rulemaking the Department has asked why, when MS(S) is used as one of the livestock products, its presence should be noted in a qualifying phrase on the label of this meat food product, when the use of a broad range of other livestock products does not result in such a requirement. Other meat food products present similar situations, including the potential for even greater variability in the types and amount of livestock and poultry ingredients used in formulating nonstandardized meat food products—particularly in the proportion that is "meat"—which are marketed under the same name and without qualifying phrases to indicate the presence of certain livestock products (e.g., byproducts). Moreover, inclusion of MS(S) in the formulations of these meat food products could, among other things, result in an increase in the size of the livestock and poultry product portion, or in a partial replacement of nonlivestock ingredients such as chicken or cereal.

These examples are not cited to deny the appropriateness of ever requiring that the names of meat food products be changed or accompanied by qualifying phrases when certain ingredients are used or are used at certain levels. Instead, the point is that the Department's approach to this question has been to consider the facts of each situation and make its determination in light of the information available and its contemporary labeling policies. The issue frequently arises in the context of a proceeding to establish or amend a standard of identity or composition when, in addition to determining whether the inclusion of different amounts of various ingredients is appropriate at all in a particular type of meat food product, the Department considers whether any of the possible ingredient combinations affect product identity sufficiently to result in distinctive versions of that type of product.

Thus, in the case of cooked sausages such as hotdogs and bologna, the Department has determined there are two distinctive versions possible—one in which different byproducts can make up the predominant portion of the livestock and poultry product portion and one in which they may not be used (compare 9 CFR 319.180(b) with 319.180(a)). The supplemental phrase "with byproducts" or "with variety meats" is required to distinguish these two versions (9 CFR 319.180(d)). Yet, as just indicated, the Department has never taken the position that the use of

byproducts *per se* automatically results in the need for a qualifying phrase, even where such use may mean that one brand of a meat food product has less meat than another brand of the same product and, therefore, is less expensive to produce. Moreover, the Department's decision that cooked sausages such as hotdogs and bologna can contain poultry meat as up to 15 percent of the total ingredients, excluding water, without any finished product name qualifier (9 CFR 319.180(a)), even though this change would result in a reduction in the proportion of livestock meat ingredients used, illustrates that the Department has not automatically required supplementary labeling whenever there is a departure from traditional formulations or the inclusion of ingredients in the "meat block" which differ from those that usually have been used.

As this discussion and the proposal indicate, in determining whether to delete the requirement that the names of all meat food products must be qualified to indicate the presence of mechanically separated product, the fundamental question is whether inclusion of mechanically separated product as an ingredient—regardless of the meat food product or usage level involved—always significantly alters the basic identity of the finished product. The Department has determined that such a finding is not warranted, even if, as the Administrator concluded in the prior rulemaking, mechanically separated product is regarded as unexpected and unique. 43 FR 26416, 26420. The mere fact that an ingredient is new means that its presence in at least some existing products may not be expected by at least some consumers. However, this does not mean that its inclusion always alter a meat food product's identity sufficiently that its presence always should be noted in a product name qualifier. Such a *per se* approach simply is not appropriate or even feasible in an era when advances in food technology regularly result in the modification of existing product formulations to include new forms of ingredients, or even totally new ingredients. The mechanical deboning technology has made possible the introduction of a new form of livestock product. The unique properties of this product distinguish it from the livestock product "meat" produced by traditional hand deboning techniques (9 CFR 301.2(tt)); but the properties of different types of meat (e.g., "beef" vs. "veal", "beef" vs. "beef cheek") and various byproducts (e.g., "beef tripe" vs. "partially defatted beef fatty tissue") also distinguish other livestock products from one another. The Department regards distinctive properties or newness as an inadequate basis for a conclusion that all finished product names should be qualified.

In addition, while mechanically separated product does not fall within the category of food traditionally defined as "meat", it does consist largely of muscle tissue and shares many of the characteristics of "meet" when manufactured and used in accordance with the regulatory requirements established by the Department. As discussed above, these requirements protect the wholesomeness, safety, and quality of meat food products containing MS(S) as one of the livestock product ingredients. Among other things, they assure that MS(S) has protein of high quality and that its powdered bone content affects neither the safety nor acceptability of finished products. They also reflect an evaluation of whether or not it is appropriate to allow use of MS(S) in meeting up to 20 percent of the livestock or livestock and/or poultry ingredient requirements—including meat requirements—established for various standardized meat food products.

In the context of these regulatory requirements, the Department has determined that the mere presence of MS(S) does not significantly alter the basic identity of meat food products, let alone make them inferior to all other, similar products in which MS(S) is not used. Members of the public who do not want to purchase meat food products with MS(S), or want to purchase them only at lower prices than other products, can do so on the basis of ingredient statement declarations. This enables them to exercise their preferences in the marketplace, as they do with respect to other ingredients. The Department does, of course, hope that such decisions are not based on misperceptions about the product. As a number of commenters remarked and as this and the Department's earlier rulemaking demonstrate, health and safety aspects of the use of mechanically separated product have been thoroughly reviewed and the Department will continue to evaluate new data as they become available. Therefore, the Department is concerned by comments which indicate that the results of this process either are not understood, not accepted, or simply ignored. For example, as the Panel reported in 1977, cadmium concentrates in the liver and kidneys, not skeletal tissue, and was not even found at an analytically detectable level in mechanically separated product. There is no evidence that selenium concentrates in bone and the upper levels found in mechanically separated product were either lower than or similar to those reported for beef and pork. The amount of lead that might be added to the diet by mechanically separated product is difficult to measure (since the products that could be replaced have variable lead contents), but it would, in any event, be toxicologically insignificant. And the amount of fluoride (an essential nutrient) that could potentially be added to the daily diet of a teenager consuming mechanically separated product with a 90th percentile fluoride concentration would be less than half the amount that researchers have found in 6 ounces of a soft drink.

The Department noted in the proposal its concern that the additional declaration of mechanically separated product in a qualifying phrase might contribute to misperceptions about the characteristics and quality of finished meat food products. 46 FR 39274, 39291. A number of the comments confirmed the concern that consumers may draw unwarranted conclusions from the labeling required in 1978. In addition, in the consumer focus group sessions conducted by Market Research Services, some participants who were shown a simulated label for a chili product felt that it contained a fairly large amount of mechanically processed beef product (MPBP) and began to wonder what was wrong with MPBP that would require its being labeled in such large letters. A number of these participants felt that there must be something wrong with MPBP if the government requires this type of labeling; and more than half felt it was unnecessary to emphasize MPBP in a qualifying phrase if there is nothing wrong with it, but it should be emphasized if the product is not safe or nutritious or if it denotes an inferior finished product.

The proposal also raised the possibility of retaining the requirement for a qualifying phrase indicating the presence of mechanically separated product in particular situations if the comments provided a basis for concluding that certain uses of mechanically separated product do alter the basic identity of meat food products significantly. 46 FR 39274, 39292. Neither the comments nor the Department's own evaluation has provided a basis for such a requirement where MS(S) can constitute only 20 percent or less of the livestock and poultry product portion. In fact, retention of the 20 percent restriction assures that MS(S) will not be the major portion of any meat food

product. In addition, other information indicates that MS(S) is likely to be used at below this maximum level. In their survey of meat packers and processors who have commercially produced or experimented with mechanically separated pork or beef, Drs. Bullock and Ward found that recommended formulations with mechanically separated pork were in the 5 to 15 percent range and most using mechanically separated beef included it at the 10 to 15 percent level. Drs. Bullock and Ward concluded that the usage level would be 5 to 10 percent of the meat block in most processed products (although it might be as high as 100 percent in some products if this were permitted by the regulations). The comments also evidenced industry interest in using mechanically separated product in small or functional amounts for technical purposes (e.g., as a binder) in various meat food products. In other words, MS(S) usually will be a relatively minor livestock product ingredient. To give its presence more labeling prominence than other livestock products used in the formulation is a disproportionate emphasis on a single ingredient.

The Department's determination that the labels of meat food products are not misleading without this qualifying phrase deals only with the use of MS(S) in accordance with the amended regulations. In other words, the Department is not by its action agreeing with those commenters who took the position that additional, qualifying label information never is necessary or appropriate. Therefore, future reconsideration of the limitations on use of MS(S) will involve not only the appropriateness of permitting expanded use, but also whether such use should be accompanied by a qualifying phrase indicating the presence of MS(S). In a future inquiry of this type, the Department will be particularly interested in the implications of expanded use for meat food products that include a species designation as part of their names. The Department's regulations already require that "meat" and the names of particular kinds of meat (e.g., "beef", "lamb") not be used in such a manner as to be false or misleading (9 CFR 317.8(b)(2)). The public should be aware that the Department considers it to be misleading to use this type of terminology in the name of a meat food product which does not contain "meat" or the kind of meat indicated.

The Department also has determined that the labels of meat food products containing MS(S) are not misleading without a qualifying phrase indicating their maximum powdered bone content. However, unless supplementary labeling information is provided where there is a meaningful increase in the total calcium content of meat food products that would otherwise be acceptable in the diets of persons on calcium-restricted diets, such persons could be misled. This supplementary labeling issue arises because the mechanical deboning technology lets some hard bone pass through the equipment along with the soft tissue and, consequently, MS(S) has a higher calcium content than the livestock products traditionally used as ingredients in meat food products. As already discussed, other regulations are designed to assure that meat food products containing MS(S) with the maximum amount of hard bone and accompanying calcium which could be present are wholesome and safe. In fact, a slight benefit might be expected to result from the presence of additional calcium, especially for persons whose customary intake of this essential nutrient falls below the Recommended Daily Allowance. However, intakes below that level may be required for a small group of Americans. These persons are likely to be under medical supervision that includes dietary management to restrict their consumption of calcium-containing foods. Therefore, the Department's concern here is that such persons could be misled if they are not informed about those increases in meat food products' calcium content which should be taken into account in planning their diets.

This concern distinguishes the second qualifying phrase from the other labeling required in 1978, which was designed with the general population in mind. In reevaluating the second qualifying phrase, the question with respect to the general population is restricted to a consideration of whether this labeling can have unintended consequences on how meat food products containing MS(S) are perceived and evaluated. To the extent that there may be such unintended consequences, the question becomes whether these effects can be avoided while continuing to be responsive to the needs of the limited segment of the population for which this supplementary information is intended. In other words, the Department's objective here is to assure that persons on calcium-restricted diets have adequate information while not misinforming the general population.

The method selected in 1978 to reach this objective was labeling information on the component of MS(S) which results in increased calcium content—powdered bone—presented in a qualifying phrase stating the maximum amount of the component that the regulations permit MS(S) to contribute to the finished meat food product. By proposing to replace this declaration with a calcium content approach, the Department was not, as some commenters thought, attempting to disguise the bone content or ignore the other substances in bone. Instead it was proposing to replace an indirect method of informing persons on calcium-restricted diets—those for whom this information is intended—with label information that is more useful because it directly addresses the content question of concern to them.

By adopting the calcium content approach, the Department also is providing information that is more consistent with the other types of content information on food labels: ingredient content, nutrient content, and quantity of contents information. Powdered bone content falls into none of these categories. It is a physical component of an ingredient—MS(S). In no other instance has the Department gone beyond the individual ingredients in a food (including the ingredients in a food used as an ingredient in another food) and required that their physical components be declared. In addition, this is the only instance in which the Department has required a quantitative declaration that may consistently and significantly overstate the amount actually present. Furthermore, adoption of a calcium content approach does not, as one commenter alleged, eliminate important health protection for gout sufferers and other hyperuricemic individuals. As discussed above in connection with the limitations on use of MS(S) (9 CFR 319.6), the Department has concluded that the formulation of meat food products with mechanically separated product used in accordance with the regulations does not present an increased risk to these people. It also should be noted that the Department never intended the second qualifying phrase, which declares powdered or hard bone content, to be misused by these people, or anyone else, as a statement of bone marrow content; and the amended regulations will continue to provide adequate identification of mechanically separated product to enable these people to avoid the product if they so choose. See 43 FR 26416, 26419.

Finally, the Department has concluded that the calcium content approach is preferable because it will respond to the needs of calcium-sensitive individuals without having unwarranted, negative

effects on the general population's evaluation of meat food products containing MS(S). As the Department noted in the proposal, the second qualifying phrase required in 1978 may misinform the general population about the characteristics of such meat food products. 46 FR 39274, 39294. When Market Research Services asked focus group participants to record their initial reactions to frankfurter labeling which included a statement that the product "contains up to 0.51 percent powdered bone" (i.e., to write down what it told them about the product), many of the respondents commented on this declaration, frequently negatively, and some misread the figure as 51 percent of thought that powdered bone was a separately added ingredient. As reported by Market Research Services, even after a discussion of the labeling, many of the participants felt that bone was added to the frankfurter, rather than associated with the machanically separated ingredient, and they did not associate bone content with calcium content. Some of the comments also indicate that a powdered bone content declaration might be misunderstood to mean that bones have been ground up and used as an ingredient in meat food products such as hotdogs or luncheon meats or might be misinterpreted as a warning. In promulgating this requirement, it was not the Department's intention to disparage unfairly meat food products made with mechanically separated product. 43 FR 26416, 26420. Becaue the amended regulation provides information which is more consistent with the other types of content information on food label and which is relevant and useful for both persons on calcium-restricted diets and the general population, it is less likely to confuse the public.

The remaining questions in this area involve the implementation of the calcium content approach: on which finished meat food product labels should supplementary information on calcium content be provided and how should such information be presented. The Department has concluded that the proposed provision basically incorporates the appropriate answers to these questions. However, after reviewing the comments and information on the use of calcium-restricted diets in managing health problems, the Department has decided that the proposed provision should be modified somewhat. Under the amended provision (9 CFR 317.2(j)(13)(ii)), the amount of calcium, expressed as a percentage of the U.S. Recommended Daily Allowance (U.S. RDA) in a serving, must be stated on the label of a meat food product containing MS(S) whenever MS(S) contributes 20 mg or more of calcium to a serving unless the amount to be declared would not differ from the amount that would be declared if the meat food product contained only hand deboned ingredients or unless the calcium content of the meat food product would be 20 percent of the U.S. RDA or more per serving if the meat food product contained only hand deboned ingredients.

The Department agrees with those commenters who took the position that it is not necessary to declare calcium content on the labels of all meat food products containing MS(S) and that labels should not imply that such products are better sources of calcium than they actually are. The Department does not agree, however, with a number of the commenters' recommendations regarding the level below which a calcium content declaration should not be required. In particular, the Department disagrees with suggestions that 10 percent of the U.S. RDA per serving should be used as a cut-off because that is the level FDA employs in regulating claims that a food is a significant or superior source of a nutrient (21 CFR 101.9(c)(7)(v)). The focus of concern in this rulemaking is not the appropriate minimum amount that should be required before a food is promoted to the general population on the basis of its value as a nutrient source. In that situation, the concern is that the public not be misled into thinking a food makes a greater nutrient contribution than it actually does. Here the concern is quite different: making sure that a population segment with particular health problems is not misled into thinking a food makes a smaller calcium contribution than it actually does. Put another way, FDA's regulation is designed to prevent claims from being made in the absence of nuturitional significance; the Department's regulation is designed to assure content information is not omitted when increases occur that should be taken into account in planning calcium-restricted diets. Thus, these commenters, like a number of those who opposed replacement of the powdered bone content declaration, failed to focus on the needs of the special audience for which this information is intended. They presented no evidence as to whether or not persons on calcium-restricted diets would be misled if the labels of meat food products containing less than 10 percent of the U.S. RDA, or more than 10 percent of the U.S. RDA, of calcium in a serving did not provide calcium content information.

The Department has concluded that persons on calcium-restricted diets could be misled if the labels of all of these meat food products were exempted from the calcium content declaration requirement. While the U.S. RDA for calcium is 1000 mg (1 g), persons on calcium-restricted diets are counselled to limit their calcium intakes to 600 or even 400 mg per day. (More severely restricted diets sometimes are used in hospital settings for people suffering from an acute condition or undergoing a diagnostic procedure, but generally only for a few days.) Thus, for these individuals, 10 percent of the U.S. RDA—100 mg—is about 17 to 25 percent of their daily intake. The calcium contribution of foods providing less than this amount is relevant to them; in fact, persons on calcium-restricted diets rely primarily on foods providing less than 10 percent of the U.S. RDA per serving in planning their diets.

The Department also has concluded that providing information on the labels of meat food products containing less than 10 percent of the U.S. RDA in a serving will not mislead either persons on calcium-restricted diets or the general population into thinking that such products contain more calcium than they actually do so long as this information is presented in the form of a quantitative declaration. FDA's nutrition labeling regulations provide for the declaration of the amounts of nutrients for which U.S. RDA's have been established in 2 percent increments up to and including the 10 percent of U.S. RDA level, with nutrients present in amounts less than 2 percent indicated by a zero or by an asterisked statement which explains that less than 2 percent of the U.S. RDA is present. These nutrients frequently are declared at levels below 10 percent of the U.S. RDA as part of a nutrition labeling profile of the food (see 21 CFR 101.9(c)).

The Department regards nutrition labeling as the most appropriate place for the information required by this regulation. Therefore, the regulation requires that the calcium content declaration appear as part of any nutrition labeling that a meat food product bears. However, as many meat food products do not bear nutrition labeling and the Department continues to ascribe to its 1978 conclusion that the issue of when nutrition labeling should be required is broader than the subject of this rulemaking (43 FR 26416, 26421), the regulation provides for an alternative declaration: If a meat food product bears no nutrition labeling

information, the calcium content declaration will appear in immediate conjunction with the ingredients list as part of a prominent statement which includes the serving size (i.e., the quantity of food) used in determining the amount present; for example, "A 2 ounce serving contains 4% of the U.S. RDA of calcium". (The alternative statement in the proposed provision has been shortened by deletion of the words "in this product" in response to comments that they are superfluous; the Department agrees that the statement is adequate without these words.) This exception to the general rule that nutrient information should appear in the context of a nutrition labeling profile is similar to the exception that FDA permits for sodium content information (21 CFR 101.9(a)).

Because it presents the amount of calcium in a prescribed format, the alternative declaration should not imply that the labeled product is a better calcium source than it actually is. The Department agrees, however, that such implications would be a problem if the amount of calcium were not stated. This is a major reason why the Department is not adopting one of the options raised as an alternative in the proposal: a parenthetical declaration, in the ingredient statement, of the fact that mechanically separated product is a calcium-containing ingredient. 46 FR 39274, 39294. In addition, incorporating nutrient information into a single ingredient listing in the ingredient statement of a meat food product which may well include other calcium-containing ingredients is inconsistent with the way nutrient information generally is presented and could be confusing.

As proposed and adopted, the regulation references the procedures and rules for determining and expressing the amount of calcium that are used by FDA in its nutrition labeling program (21 CFR 101.9 (b)(1), (c)(7) (i) and (iv), and (e)). The Department has concluded that these portions of FDA's nutrition labeling requirements are appropriate for the meat food products covered by its regulations. Among other things, these FDA regulations establish the increment levels for expressing calcium content: 2 percent increments up to and including the 10 percent of the U.S. RDA level, 5 percent increments above 10 percent and up to and including the 50 percent of the U.S. RDA level, and 10 percent increments above the 50 percent of the U.S. RDA level (with 1 gram (1000 mg) of calcium being equal to 100 percent of the U.S. RDA) (21 CFR 101.9(c)(7)). The proposal relied on these 2, 5, and 10 percent of the U.S. RDA increment levels to define the scope of exceptions to the calcium content declaration requirement: A label need not bear a statement of calcium content when the amount to be declared would not differ from the amount that would be declared if the meat food product were made solely with hand deboned ingredients. When such a meat food product contains up to 10 percent of the U.S. RDA, increments of 2 percent of the U.S. RDA—or 20 mg of calcium—mean that relatively small calcium increases will result in calcium content being stated; but when such a meat food product contains greater amounts of calcium, increments of 5 or 10 percent of the U.S. RDA mean that greater increases will be necessary before calcium content must be stated. 46 FR 39274, 39293.

The Department continues to regard this proposed exception to the calcium content declaration requirement as appropriate and, therefore, has incorporated it in the amended regulation. However, the Department has determined that two other, similar modifications of the requirement can and should be added to control the costs of the requirement while assurring that calcium content information is not omitted when there are meaningful increases in meat food products' calcium content that should be taken into account in planning calcium-restricted diets. Therefore, the amended regulations do not require a calcium content declaration where MS(S) contributes less than 20 mg of calcium to a serving of a meat food product or where the calcium content of a meat food product would be 20 percent of the U.S. RDA or more per serving if such product contained only hand deboned ingredients.

The Department expected that the use of 2 percent per serving as the minimum amount to be declared as a percentage of the U.S. RDA would mean that calcium content need not be stated where small amounts of mechanically separated product are used in a meat food product that otherwise contains almost no calcium. While in theory this expectation is correct, in practice relying on the 2 percent per serving increment level for this purpose could result in a great deal of uncertainty. Manufacturers of meat food products who use mechanically separated product in small amounts still would have to monitor the composition of all of the other ingredients they use to assure that they contain "almost no" calcium. Even slight variations in the calcium content of these other ingredients could make the difference between whether or not a calcium content declaration is required. Moreover, as many ingredients contain low levels of calcium, calcium content declarations might well be required even where a very small amount of mechanically separated product is used. For example, if the other ingredients in a meat food product contributed 14 mg of calcium (1.4 percent of the U.S. RDA) to a serving, a declaration would be required if 1 gram of mechanically separated product with the maximum calcium content of 7.5 mg (0.75 percent of the U.S. RDA) were used; but if the other ingredients contributed 11 mg, it would not be.

To rectify these problems, the Department is limiting the requirement to situations in which MS(S) contributes 20 mg or more—i.e., 2 percent of the U.S. RDA or more—of calcium to a serving of a meat food product. FDA uses 2 percent of the U.S. RDA not only as the minimum measurable difference to be stated in nutrition labeling (21 CFR 101.9(c)(7)(i)), but also in determining whether a food contains a nutrient in a measurable amount or any reduction in the content of a nutrient in its imitation labeling regulation (21 CFR 101.3(e)(4)). The Department has determined that it is not necessary to require a calcium content declaration where the MS(S) used in a serving of a meat food product results in an increase of less than this amount of calcium.

Moreover, incorporation of this exemption will facilitate compliance with the regulation by enabling manufacturers of meat food products in which MS(S) is used at low levels to determine with certainty that a calcium content declaration is not required either solely on the basis of the amount of MS(S) used in their formulations or on the basis of that information plus information on the calcium content of the MS(S) ingredient. For example, the livestock (or livestock and poultry) product portion of a hotdog with a 56.8 gram—2 ounce—serving size is about 85 percent of the total meat food product, or 48.28 grams. If mechanically separated product were used as 5 percent of this portion, it would constitute 4.25 percent, or 2.414 grams, of the total product; and its maximum calcium contribution (7.5 mg per gram) would be 18.11 mg, which does not have to be declared. Finally, this modification may encourage the development of technology capable of producing MS(S) with a lower bone content since the lower the bone content, the greater the amount of MS(S) that can be used without making a 20 mg contribution to a meat food product's calcium content.

As indicated above, the Department also expected that where meat food products made solely with hand deboned ingredients contain substantial amounts of calcium, the use of 5 and 10 percent increment levels would mean that calcium content need not be declared if use of the mechanical deboning technology resulted in only a relatively minor increase in calcium content; and it noted that a further exemption from the calcium content declaration requirement should be considered where the calcium content of meat food products is high enough to make them inappropriate for persons on calcium-restricted diets even without the inclusion of ingredients made by mechanical deboning. 46 FR 39274, 39292–93. Here, as well, the Department has concluded that the proposal relied too heavily on the increment levels to accomplish its objective and that in practice this would result in too much uncertainty for meat food product manufacturers. For example, because pizza with sausage (9 CFR 319.600(b)) is made with cheese, it contains a substantial amount of calcuim—about 25 percent of the U.S. RDA in a 6 ounce serving—without any calcium contribution from the sausage. In addition, cooked sausage can constitute as little as 12 percent and dry sausage as little as 10 percent of the total product. It is, therefore, unlikely that use of the mechanical deboning technology in formulating the sausage part of this product would result in a large enough increase in calcium content to trigger a calcium content declaration; but there could be marginal situations in which a declaration of 30 percent of the U.S. RDA per serving would be required under the proposed provision.

The Department has determined that this result is not necessary to prevent the labels of meat food products such as pizza with sausage from misleading persons on calcium-restricted diets. Because these products already are regarded as high calcium foods, their inclusion in low calcium diets is unlikely; so any potential increase in their calcium content would not affect calcium intakes of persons at risk. To assure that calcium content declarations are not required in such situations, the Department is exempting the labels of meat food products that would have a calcium content of 20 percent of the U.S. RDA or more per serving if they contained only hand deboned ingredients. As with the exemption included in the proposal, in determining whether or not calcium content must be stated, the meat food product in question must be compared with one that contains no ingredients produced by mechanical deboning, thereby taking into account the potential calcium contribution of product produced by mechanically deboning poultry carcasses. The Department has concluded that it would be inappropriate to base these exemptions on comparisons with products containing other ingredients made by mechanical deboning because unexpected increases in the calcium content of meat food products results from use of the mechanical deboning technology.

In its amended form, the regulation takes into account the fact that the calcium contributed by MS(S) can vary widely across a broad range of meat food products with very different ingredients. It recognizes the diluting effect that can occur when MS(S) is mixed with other ingredients and does not require quantitative information on calcium content when there is not a meaningful increase in the calcium content of meat food products that would otherwise be acceptable for persons on calcium-restricted diets.

While this is the only requirement in the regulations that may necessitate chemical analyses of finished products made with ingredients manufactured by mechanical deboning (other requirements necessitating chemical analyses are controlled at the ingredient manufacturing level), the Department has determined that the costs of complying with this requirement are not unreasonable and should not discourage meat food product manufacturers from using MS(S). In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), the Department has considered the impact of the regulatory changes on small entities and the possibility that alternative requirements may substantially accomplish its objectives while minimizing this impact. (The Department's analysis of these issues is included in its Regulatory Impact Analysis.)

As discussed above, the Department has determined that one of the options considered as an alternative to quantitative information—a parenthetical statement in the ingredient statement of the fact that MS(S) is a calcium-containing ingredient—should not be adopted. The Department also has determined that, on the basis of currently available information, it cannot conclude that the other option considered as an alternative—an informational campaign about the calcium-containing characteristic of mechanically separated product—will, by itself, substantially achieve the objective of assuring that the labels of meat food products containing MS(S) do not mislead persons on calcium-restricted diets. The Department does believe, however, that such a program has an important role to play in meeting the needs of these persons. Therefore, it will work with and take steps to inform and educate health professionals involved in the treatment of this group.

Other Comments

In addition to the views summarized above in the discussion of the final rule, the Department received numerous comments that expressed general views about the use of mechanically separated product. Many commenters supported use of mechanically separated product as acceptable and/or advantageous from a health and safety perspective. The extensive review and evaluation of this product and the 1977 Panel report were said to show that mechanically separated product and its constituents and composition present no problems and that the product is comparable to meat. Government control of factors such as handling and sanitation also was cited as assuring a safe, wholesome, and nutritious product. Some commenters advocated use of mechanically separated product as an additional source of food or protein and/or for its contribution of needed additional amounts of other essential nutrients—calcium and iron. Use of mechanically separated product also was supported as consistent with the production of meat food products with sensory characteristics (e.g., taste, appearance, texture) comparable to or, sometimes, better than those now produced. Some of these commenters expressed concern that the public has been misinformed about the characteristics of mechanically separated product; for example, that people expect the product to contain chips or pieces of bone when this actually is more likely to be a problem with hand trimmed meat.

A number of other commenters opposed use of mechanically separated product or indicated their desire not to consume it based on health and safety and/or quality concerns. Damage to teeth, the problems of persons on calcium-restricted diets and gout sufferors, protecting children, the inferiority of the product to meat, and the belief that the product is impure, contains substances that may be hazardous, or adulterates were given as reasons for this position.

Use of mechanically separated product also was supported by many commenters as a way to increase

productivity, improve or optimize resource utilization, reduce the current waste or inefficient use (e.g., for rendering or animal feed) of materials suitable for mechanical deboning, and/or increase the utilization of lower quality cuts of meat. A number of economic benefits for various groups and the American public at large were predicted to result from the production of mechanically separated product and the consequent increases in carcass yields and food supplies. These included increases in employment, the return to animal producers on their investment, and competition in domestic and international markets; providing a new source of product for export and a means of reducing meat imports; and reducing the cost of producing meat food products and reducing or slowing the rise in the prices paid by consumers. Other commenters agreed that the cost of producing meat food products would or could decrease, but doubted that this would be reflected in lower prices for consumers (e.g., due to the cost of the deboning equipment).

Finally, a number of commenters addresed the Department's approach to the regulation of this product. The proposal was supported as decreasing overregulation and as making the regulatory treatment of product made by mechanically deboning livestock more consistent with that of similar products made by mechanically deboning poultry and fish. Differences in the regulatory treatment of these products were criticized as without foundation, discriminating against the red meat industry, and confusing to importing countries. Applying the same requirements to products made by mechanically deboning livestock and poultry carcasses was advocated, as was merging these products into a single classification. Consistency in the standards applied by different countries also was advocated, as was permitting meat food products for export to be formulated and labeled to meet the requirements of the countries to which they are being sent where these differ from the ones established by the Department.

As a number of these views also were expressed in comments relating to specific provisions of the regulations, they already have been discussed. Economic aspects of the regulations, as promulgated in 1978 and as amended herein, are discussed in greater detail in the Department's Regulatory Impact Analysis.

The Department agrees that it is important to take advantage of all safe amd wholesome sources of food. This final rule is designed to help achieve that goal while continuing to fulfill the Department's statutory responsibility to protect the public against adulterated and misbranded products. The final rule rests on rulemaking proceedings in which health and safety as well as quality aspects of the use of mechanically separated product have been thoroughly assessed. It incorporates regulatory requirements and restrictions that the Department has determined to be appropriate as a result of those proceedings. While various regulatory provisions have been considered during the proceedings, the Department's objectives have remained the same. At each stage of this process, the Department has had to exercise its judgment based on the information available at the time; and it has indicated that additional information may warrant further action regarding the regulation of this product.

As noted in the discussion of the final rule, this continues to be the case. Thus, for example, the Department continues to be willing to reexamine the maximum bone particle size limit on the basis of data substantiating that good manufacturing practice may result in somewhat larger bone particles which do not present safety or digestibility problems; and it expects that additional questions about the appropriateness of using MS(S) in particular meat food products will arise and be handled on a product-by-product basis. Similarly, the development of potential outlets for MS(S) in the export market may well raise questions in the future. While the Department understands the desire for consistency in the standards applied by different countries, it cannot anticipate the requirements that other countries may develop over time, nor assure that those requirements will be consistent with one another. Moreover, as each country's requirements reflect the law developed to meet the needs of its population, it is quite likely that such requirements will differ, at least to some extent. The Department generally regulates product prepared for export in the same manner as product prepared for domestic consumption, but it does permit deviations from United States requirements where such action is consistent with its statutory responsibilities.

Regulatory Impact Analysis

As indicated above, this action has been reviewed under USDA procedures established to implement Executive Order 12291. In compliance with section 2 of that order, the Department's review is reported in its Regulatory Impact Analysis (RIA), which is available upon request and summarized herein.

The objectives of the RIA are as follows: First, to determine whether or not there is substantial information regarding the necessity and potential consequences of the regulatory changes. Second, to determine whether or not the potential benefits to society resulting from the regulatory changes outweigh the costs of such changes. Third, on the basis of an analysis of alternative ways of satisfying the objectives of the regulatory changes, to determine whether or not the amendments will tend to maximize the net benefits to society. The Department's analysis indicates that each of these questions should be answered in the affirmative.

The following outline describes the steps that the Department took in reaching these conclusions:

1. The objectives of the changes were set forth along with their justification. The causes of the problems which the amendments are designed to address and the methods by which they would correct these problems were analyzed.

2. Three alternatives were analyzed: the 1978 regulations, the amended regulations, and "no regulatory action" (i.e., rescinding the 1978 regulations).

3. In analyzing the changes and possible alternatives, the costs and benefits of the current regulations were compared with the potential costs and benefits that could result from changing these regulations. The direct and indirect costs to be borne both by consumers and various segments of industry were explored and compared with the direct and indirect benefits to such groups. Costs and benefits were quantified in monetary terms where possible and where this could not be done, they were described in detail. The RIA includes an explanation of the types of benefits anticipated and the mechanism by which the changes are expected to result in these benefits. In addition, it responds to comments submitted by the public on the Department's preliminary analysis of these issues.

The RIA also satisfies the analysis requirements of the Regulatory Flexibility Act (Pub. L. 96–354), which deals with the impact of regulations on small entities. The objective of this portion of the analysis is to consider the impact of the regulatory changes on small entities and the appropriateness of tailoring regulatory requirements to the sizes and types of businesses involved. The Department's analysis in this area indicates that the costs that small businesses entering the mechanically separated product market will face

under the amended regulations basically are the costs of entering any new market; and, thus, while such costs will be relatively greater for small than for large businesses, this is not the result of the regulations *per se*.

The PCMA–AMI attributed the limited production of mechanically separated product since 1978 to "unreasonably restrictive compositional requirements and misleading labeling requirements": (1) Mechanically separated product must contain not less than 14 percent protein and not more than 30 percent fat. (2) The labels of meat food products containing mechanically separated product must bear qualifying phrases indicating its presence and their maximum powdered bone content; and they must identify the product by the name "Mechanically Processed (Species) Product". In support of this position the petitioners submitted a report on a series of consumer focus group sessions and an analysis of the economic impacts of the 1978 regulations by Bullock and Ward. Bullock and Ward agreed that the 1978 regulations have had the unintended effect of making it uneconomical to use an efficiency-improving technology. They found these regulations to have a small impact on the costs of producing mechanically separated product, but a large impact on the potential supply. The economic costs of the 1978 regulations were attributed to the labeling requirements for products containing mechanically separated product and to the fat and protein content requirements for the product. Bullock and Ward concluded that requiring the meat food product label to contain information on calcium content would generate the same benefits as the 1978 regulations without the social costs associated with them. Bullock and Ward also concluded that the 20-percent restriction on the usage level of mechanically separated product does not appear to be generating social costs at the present time and and will not likely restrict the total output of the product (although they recommended that this restriction be removed as without economic justification and in order to preclude development of potential new products that might be acceptable).

In view of these arguments and the information in the Bullock and Ward analysis, the Department analyzed the three alternatives set forth above (see steps 2 and 3). The following table and text summarizes the Department's conclusions regarding each of these alternatives. They are based on data for 1979.

ECONOMIC IMPACTS OF THE ALTERNATIVES [1]

Alternative	Economic benefits	Economic costs	Net economic benefits
	In millions of dollars		
The 1978 Regulations	0	([3])	.....
The Amended Regulations	495.0	[2] 1.9	493.1
No Regulatory Action	495.0	0	495.0

[1] Estimates are based on projected levels of production of mechanically separated beef and mechanically separated pork. Lamb and calf carcasses and parts also can provide raw materials for mechanical deboning, but only in amounts that are very small in comparison with potential production from cattle and hog carcasses.

[2] Direct costs were not estimated due to the low levels of mechanically separated product produced since promulgation of the 1978 regulations. Indirect costs of $495 million are equal to the projected economic benefits of the amended regulations.

[3] These economic costs reflect estimates of the testing component of quality control costs. No attempt was made to estimate the aggregate costs relating to reporting or management of a quality control system and labeling due to lack of available data. These costs are not considered to be a major component of direct economic costs.

The 1978 Regulations

The regulations promulgated in 1978 generated indirect economic costs (such as foregoing market opportunities and productivity losses) that are equal to the economic value of the technology not realized because of the existence of these regulations. The Department estimate these costs to be about $495 million. This estimated was obtained by multiplying an average retail price for meat by the amount of mechanically separated product likely to be produced and then subtracting out raw material and processing costs and profit. (Bullock and Ward did not include profit in their estimate and, therefore, estimated higher costs.) There are no substantial direct economic costs or benefits generated under these regulations as the levels of production of mechanically separated product have been so low.

The Amended Regulations

The economic benefits of the amended regulations are the benefits that will result from the production which is estimated to have been foregone because of the 1978 regulations. Therefore, the economic benefits of the amended regulations are the same as the indirect economic costs generated by the 1978 regulations: $495 million.

Bullock and Ward estimated the economically feasible 1979 level of production at 351.7 million pounds without the finished product labeling and fat and protein content requirements described above. The Department has concluded that potential production under the amended regulations would have been the same as that estimated by Bullock and Ward because (1) the names of finished products containing MS(S) need not be accompanied by qualifying phrases and (2) retaining fat and protein content requirements for MS(S) used in meat food products without regulatory limits on their total fat content will not constrain the potential supply of MS(S). (The Department also does not expect the 20 percent restriction on the amount of MS(S) that may be used to constrain the potential supply of MS(S). This is consistent with the findings of Bullock and Ward.)

Use of the mechanical deboning technology also is expected both to increase and decrease the value of carcasses. On the one hand, the value of a carcass would be increased as several pounds of MS(S) can be recovered that would otherwise have been sold for lower value uses. On the other hand, widespread use of the technology would increase the total supply of ingredients for making processed meat food products. This increased supply is expected to cause the prices of processed meat food products to fall. As their prices fall, it is expected that these products will capture part of the market for table cuts. As the demand for table cuts falls in response to lower prices for processed meat food products, prices for table cuts also should fall, resulting in a decrease in the value of carcasses. The net impact on the value of carcasses depends on the magnitude of these price movements. The effect of increased supplies could more than offset the increased value of carcasses and result in a net lowering of live animal prices and a lowering of net farm income.

In such a situation, processors would benefit from being able to use less expensive ingredients and consumers would benefit from lower retail prices. Livestock producers, however, would receive lower livestock prices and, therefore, income would be transferred from producers to processors and consumers. Consumers are expected to receive most of this transfer due to the competitive nature of the food processing industry. The Department estimated the income transfer at $493 million, using the Bullock and Ward estimate of 1979 potential production. That would represent a 0.3 percent decrease in total farm revenue, based on the Department's estimate of farm revenue in 1979. This conclusion was challenged by a few of those commenting on the proposal, and a statement by Bullock and Ward was submitted which suggested that the negative impact on livestock prices and net farm income which they calculated would not be as great as estimated or could even disappear because there should be a price incentive to replace some imported beef with mechanically separated beef.

The Department agrees that MS(S) might replace some of the imported meat now used in various meat food products due to the substantially lower expected price of MS(S). No attempt has been made however, to predict the extent to which this will occur because the current levels of production of mechanically separated product are so low that the market has not been established to the point where a reasonable estimate can be made. (In their statement, Bullock and Ward said it does not seem unreasonable that perhaps as much as 10 percent of imported beef could be replaced by mechanically separated beef in processed products.) To the extent that production of MS(S) is offset by a decrease in imported meat, the increase in the supply of ingredients for use in processed meat food products would not be as great and, hence, the negative impact on livestock prices and net farm income would be less than estimated, or could even disappear, and would be replaced by a loss to foreign exporters in the form of decreased sales. Net economic gains would still result as processors benefit from using less expensive ingredients and consumers benefit from the savings passed on to them.

The direct economic costs under the amended regulations relate to compliance with the requirements that MS(S) be produced under a plant quality control system and that the labels of meat food products containing MS(S) declare its presence in their ingredient statements and, with exceptions, declare their calcium content. The Department has concluded that the costs of complying with these requirements are very small compared with the economic value of increased production and use of MS(S) and that they are not unreasonable and should not discourage production or use of MS(S) as an ingredient in meat food products. These conclusions are consistent with the finding by Bullock and Ward that the 1978 regulations have only a small impact on production costs and their assumption that the contents portion of meat food products labels will bear enough information to allow individuals who must restrict their calcium intake to avoid consuming too much mechanically separated product.

The Department estimated the aggregate yearly quality control testing costs for producing 351.7 million pounds of mechanically separated product to be $1.9 million, or 0.38 percent of $495 million, the estimated value of the product at this level of production. (These costs are somewhat lower than the costs under 1978 regulations as a result of amendments to the quality control provision.) Reporting and administrative costs of plant quality control were not estimated due to the lack of data, but they are considered not to be a major component of direct economic costs. Moreover, institution of plant quality control should be accompanied by countervailing benefits: by providing controls and information that maximize the likelihood that product of consistent and uniform quality which complies with regulatory requirements will be manufactured at a predicted cost, quality control helps to minimize costs. Finally, the plant quality control required in the amended regulations may be integrated with other, voluntary plant quality control programs or with a total quality control system.

There also will be costs associated with changing the labels of meat food products in which MS(S) is used. As very few products currently are being formulated with mechanically separated product, these costs are not the result of amending the regulations. Moreover, the Department regards the costs of changing labels to include MS(S) in the ingredient statement as costs that are incurred whenever a manufacturer decides to modify its product formulation to include a different ingredient.

Finally, the Department evaluated the costs of requiring that calcium content be declared where there is a meaningful increase in the total calcium content of meat food products containing MS(S) which would otherwise be acceptable for persons on calcium-restricted diets. It is difficult to estimate these costs because the frequency with which meat food products' calcium content may have to be analyzed and the costs of such analyses will vary a great deal and because manufacturers will control these costs to some extent through their formulation decisions.

A number of private laboratories charge $15 to $25 to test for calcium content. (In-house testing costs are lower.) If such analyses were conducted once a month at an average cost of $20 per test, the annual expenditure would be approximately $240. However, in a number of instances, manufacturers should be able to determine the calcium content of meat food products, or determine that a calcium content declaration is not required, from information on the ingredients used. Manufacturers also can use this information in making their formulation decisions. In addition, the Bullock and Ward analysis of the levels at which many manufacturers are likely to use mechanically separated product and the likely production of mechanically separated product with less than the maximum amount of calcium permitted mean that MS(S) probably will contribute less than 20 mg of calcium per serving to a number of meat food products in which it is used. Nor will additional costs be incurred where calcium content information already is provided as part of nutrition labeling.

The Department also does not regard the costs of incorporating calcium content information in meat food product labels that do not bear nutrition information as a major component of direct economic costs. The alternative statement included in the regulations can be included with the changes that manufacturers regularly make for marketing purposes or to reflect modifications in their formulations.

No Regulatory Action

The no regulatory action alternative (i.e., rescinding the 1978 regulations) would not be consistent with the Department's statutory responsibilities. If such action could be taken, the economic benefits of this alternative would be the same as those that are projected under the amended regulations because the amended regulatory requirements will not constrain the potential supply of MS(S) or the production or marketing of meat food products in which MS(S) is used. (This conclusion is consistent with the findings of Bullock and Ward regarding various regulatory requirements and the production of and demand for the product.) However, as the economic costs of no regulatory action would be somewhat less, net economic benefits would be somewhat greater.

Legal Memorandum Regarding USDA Authority to Promulgate This Rule

Pursuant to section 4(a) of Executive Order 12291, issued on February 17, 1981, the Office of the General Counsel of this Department has reviewed the above referenced rule and determined that its promulgation is clearly within the authority delegated by law to the Secretary and is consistent with the Congressional intent of the Federal Meat Inspection Act, as amended, 21 U.S.C. 601 *et seq.*

Under the Act, the Secretary is required to cause inspection of meat and meat food products and take other actions to assure that they are wholesome, not adulterated or misbranded, and properly marked, labeled and packaged. Section 21 of the Act, 21 U.S.C. 621, requires the Secretary

to appoint inspectors to examine meat and meat food products and sanitary conditions of establishments in which they are produced to assure that they are not adulterated. Section 21 also authorizes the Secretary to "* * * make such rules and regulations as are necessary for the efficient execution of the provisions of this Act * * *." Section 7 of the Act, 21 U.S.C. 607, gives the Secretary authority to prescribe definitions and standards of identity or composition for articles subject to the Act whenever he determines such action is necessary for the protection of the public. Consistent with these provisions and the intent of Congress, as expressed in Section 2 of the Act, 21 U.S.C. 602, this rule aids in the economical expansion of the nation's food supply while protecting the health and welfare of the consuming public.

Final Rule

List of Subjects

9 CFR Part 317

Mechanically Separated (Species), Food labeling.

9 CFR Part 318

Mechanically Separated (Species), Preparation of products.

9 CFR Part 319

Mechanically Separated (Species), Meat and meat food products, Standards of identity or composition, Quality control, Food labeling.

On the basis of the foregoing, the Federal meat inspection regulations (Parts 317, 318, and 319) are revised as follows:

1. The authority citation for Parts 317, 318, and 319 reads as follows:

Authority.—34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 607, 621.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

2. Section 317.2(j)(13) (9 CFR 317.2(j)(13)) is revised to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(j) * * *

(13)(i) On the label of any "Mechanically Separated (Species)" described in § 319.5(a) of this subchapter, the name of such product shall be followed immediately by the phrase "for processing" unless such product has a protein content of not less than 14 percent and a fat content of not more than 30 percent.

(ii) When any "Mechanically Separated (Species)" described in § 319.5 of this subchapter is used as an ingredient in the preparation of a meat food product and such "Mechanically Separated (Species)" contributes 20 mg or more of calcium to a serving of such meat food product, the label of such meat food product shall state the calcium content of such meat food product, determined and expressed as the percentage of the U.S. Recommended Daily Allowance (U.S. RDA) in a serving in accordance with 21 CFR 101.9(b)(1), (c)(7) (i) and (iv), and (e), as part of any nutrition information included on such label, or if such meat food product does not bear nutrition labeling information, as part of a prominent statement in immediate conjunction with the list of ingredients, as follows: "A ——— serving contains ——% of the U.S. RDA of calcium", with the blanks to be filled in, respectively, with the quantity of such product that constitutes a serving and the amount of calcium provided by such serving: *Provided*, That, calcium content need not be stated where (*a*) the percent of the U.S. RDA of calcium to be declared would not differ from the percent of the U.S. RDA that would be declared if the meat food product contained only hand deboned ingredients or (*b*) the calcium content of a serving of the meat food product would be 20 percent of the U.S. RDA or more if the meat food product contained only hand deboned ingredients.

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

§ 318.18 [Amended]

3. Section 318.18 (9 CFR 318.18) is amended by replacing the words " 'Mechanically Processed (Species) Product' or into an imitation of such product" in the first sentence with the words " 'Mechanically Separated (Species)' " and by replacing the words " 'Mechanically Processed (Species) Product' or an imitation of such product" in the second sentence with the words " 'Mechanically Separated (Species)' ".

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

4. Section 319.5(a) and (e) (1) and (2) (9 CFR 319.5 (a) and (e) (1) and (2)) are revised to read as follows:

§ 319.5 Mechanically Separated (Species).

(a) Mechanically Separated (Species) is any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses and meeting the other provisions of this paragraph. Examples of such product are "Mechanically Separated Beef", "Mechanically Separated Veal", "Mechanically Separated Pork", and "Mechanically Separated Lamb". At least 98 percent of the bone particles present in such product shall have a maximum size no greater than 0.5 millimeter in their greatest dimension and there shall be no bone particles larger than 0.85 millimeter in their greatest dimension. The product resulting from the separating process shall not have a calcium content exceeding 0.75 percent, as a measure of a bone solids content of not more than 3 percent, and shall have a minimum PER of 2.5 (except as modified in paragraph (e)(1) of this section). Such product also shall have a protein content of not less than 14 percent and a fat content of not more than 30 percent, or it shall be deemed to be product for processing. Such product failing to meet the bone particle size, calcium, or PER requirements of this paragraph shall only be used in producing animal fats. Where such product meets the bone particle size, calcium, and PER requirements of this paragraph, it may also be used in the formulation of meat food products in accordance with § 319.6.

* * * * *

(e)(1) An essential amino acid content of at least 33 percent of the total amino acids presents in "Mechanically Separated (Species)" shall be accepted as evidence of compliance with the protein quality requirement set forth in paragraph (a) of this section. For purposes of this paragraph, essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present include isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content.

(2) A prerequisite for label approval for products consisting of or containing "Mechanically Separated (Species)" is that such "Mechanically Separated (Species)" shall have been produced by an establishment under an approved plant quality control system. The Administrator shall receive, evaluate, and approve requests for plant quality control in accordance with § 318.4(d)(1) and (2) and (e) of this subchapter. Such a plant quality control system shall provide the controls and information necessary to assure that the product will

meet the requirements described in § 319.5(a) and to enable establishment personnel and program employees to monitor the system for effectiveness. The system shall include a written description of the methods used by the establishment to maintain uniformity of the raw ingredients used in manufacturing product, to control the handling and processing of the raw ingredients and the finished product, and shall contain provisions for chemical analyses of the product and other procedures to determine and assure compliance with standards for the product. For purposes of this paragraph, a lot shall consist of the "Mechanically Separated (Species)" designated as such by the operator of the establishment or his or her agent from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. All units of any lot must be available for inspection by program employees. Analysis of a sample of at least 1 pound from each lot to verify contents of fat, protein, and calcium in "Mechanically Separated (Species)" shall be performed by the operator of the establishment or his or her agent to assure that finished product will meet the requirements in § 319.5(a), except that such analyses with respect to fat, protein, and calcium content shall be required to be performed with respect to only one randomly selected lot of every five lots if the preceding ten analyses and all such analyses performed by the Department during the preceding ten analyses period establish compliance with the requirements of § 319.5(a), and that no analyses with respect to fat or protein content shall be required where the finished product is represented as product for processing. An analysis of a sample of at least 1 pound to verify essential amino acid content and/or protein efficiency ratio in "Mechnaically Separated (Species)" shall be performed by the operator of the establishment or his or her agent at the rate of at least one per month during production to assure that finished product will meet the requirements of § 319.5(a), except that such analyses with respect to essential amino acid content and/or protein efficiency ratio shall be required to be performed only once every 6 months if the preceding three analyses and all such analyses performed by the Department during the preceding three analyses period establish compliance with the requirements of § 319.5(a). Finished product samples shall be analyzed in accordance with "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th ed., 1980, sections 24.005 (page 376), 24.006–24.008 (page 376), 24.027 (page 379), and 43.212–43.216 (page 774–75) and the "2nd Supplement to the 13th Edition" (J. AOAC, Vol. 64, No. 2, 1981), section 24.B01–24.B03 (pages 509–10), which are incorporated by reference, or if no AOAC method is available, in accordance with the "Chemistry Laboratory Guidebook," U.S. Department of Agriculture, Washington, D.C., sections 6.009–6.009F (pages 6–31 through 6–34) and 6.010–6.010D (pages 6–35 through 6–41). Alternative methods of analysis may be submitted to the Administrator to determine their acceptability based upon their accuracy, repeatability, reproducibility, and lowest level of reliable measurement, as demonstrated by at least 3 laboratories. (Copies of the AOAC methods may be obtained from: AOAC, 1111 N. 19th Street, Arlington, VA 22209. Copies of the Chemistry Laboratory Guidebook may be obtained from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. This incorporation by reference was approved by the Director of the Federal Register on December 30, 1981 and March 15, 1982. These materials are incorporated as they exist on the date of the approval. A notice of any change in the sections of the AOAC methods or the Chemistry Laboratory Guidebook cited herein will be published in the Federal Register.) The plant quality control system shall be subject to periodic review, and the approval of such system may be terminated in accordance with § 318.4(g)(2) of this subchapter.

5. Section 319.6 (9 CFR. 319.6) is revised and reorganized to read as follows:

§ 319.6 Limitations with respect to use of Mechanically Separated (Species).

(a) Meat food products required to be prepared from one species shall not contain Mechanically Separated (Species) of any other species.

(b) Mechanically Separated (Species) described in § 319.5 that has a protein content of not less than 14 percent and a fat content of not more than 30 percent may constitute up to 20 percent of the livestock and poultry product portion of any meat food product except those listed in paragraph (d) of this section.

(c) Mechanically Separated (Species) for processing described in § 319.5 may constitute up to 20 percent of the livestock and poultry product portion of any meat food product that is subject to a definition and standard of identity or composition in Part 319 which establishes a maximum limit on the fat content of such meat food product except those listed in paragraph (d) of this section.

(d) Mechanically Separated (Species) and Mechanically Separated (Species) for processing described in § 319.5 shall not be used in baby, junior, or toddler foods, ground beef, hamburger, fabricated steaks (§ 319.15 (a), (b), and (d)), barbecued meats (§ 319.80), roast beef-parboiled and steam roasted (§ 319.81), corned (cured) beef cuts (§§ 319.100–319.103) certain cured pork products (§§ 319.104 (a)–(e) and 319.106), tripe with milk (§ 319.308), lima beans with ham and similar products (§ 319.310), beef with gravy and gravy with beef (§ 319.313), and meat pies (§ 319.500).

6. Section 319.140 (9 CFR 319.140) is amended by adding the following sentence at the end of that section:

§ 319.140 Sausage.

* * * Sausage may contain Mechanically Separated (Species) used in accordance with § 319.6.

§§ 319.15, 319.104, 319.105, 319.141–319.145, 319.180, 319.182, 319.260, 319.261, 319.280, 319.281, 319.300–319.307, 319.311, 319.312, 319.600, 319.760, 319.762 [Amended]

7. Sections 319.15(c) *Beef patties,* 319.104(f) *Pressed ham, spiced ham, and similar products,* 319.105(b)(10) Chopped ham, 319.141 Fresh pork sausage, 319.142 Fresh beef sausage, 319.143 Breakfast sausage, 319.144 Whole hog sausage, 319.145(a) (1)–(3) Italian sausage products, 319.180 (a)–(c) Frankfurter, frank, furter, hotdog, wiener, vienna, bologna, garlic bologna, knockwurst, and smilar products, § 319.182 Liver sausage and braunschweiger, § 319.260 Luncheon meat, § 319.261 Meat loaf, § 319.280 Scrapple, § 319.281(a)(1) Bockwurst, § 319.300 Chili con carne, § 319.301 Chili con carne with beans, § 319.302 Hash, § 319.303(b)(9) Corned beef hash, § 319.304 Meat stews, § 319.305 Tamales, § 319.306 Spaghetti with meatballs and sauce, spaghetti with meat and sauce, and similar products, § 319.307 Spaghetti sauce with meat, § 319.311 Chow mein vegetables with meat and chop suey vegetables with meat, § 319.312 Pork with barbecue sauce and beef with barbecue sauce, § 319.600 (a) and (b) Pizza, § 319.760(a) Deviled ham, deviled tongue, and similar products, and § 319.762 Ham spread, tongue spread and similar products (9 CFR 319.15(c), 319.104(f), 319.105(b)(10), 319.141–319.144, 319.145(a) (1)–(3), 319.180(a)–(c), 319.182, 319.260, 319.261, 319.280, 319.281(a)(1), 319.300–319.302, 319.303(b)(9), 319.304–

319.307, 319.311, 319.312, 319.600 (a) and (b), 319.760(a), and 319.762) are amended by replacing the term "Mechanically Processed (Species) Product" with the term "Mechanically Separated (Species)".

8. Section 319.141 (9 CFR 319.141) is further amended by revising the second sentence as follows:

§ 319.141 Fresh pork sausage.

* * * The finished product shall not contain more than 50 percent fat.* * *

9. Section 319.143 (9 CFR 319.143) is further amended by revising the second sentence as follows:

§ 319.143 Breakfast sausage.

* * * The finished product shall not contain more than 50 percent fat.* * *

10. Section 319.144 (9 CFR 319.144) is further amended by revising the second sentence as follows:

§ 319.144 Whole hog sausage.

* * * The finished product shall not contain more than 50 percent fat. * * *

§ 319.145 [Amended]

11. Paragraph (a)(3) of § 319.145 (9 CFR 319.145) is further amended by moving the second sentence to the end of the paragraph.

12. Section 319.160 (9 CFR 319.160) is amended by revising the third sentence as follows:

§ 319.160 Smoked pork sausage.

* * * The finished product shall not contain more than 50 percent fat. * * *

§ 319.281 [Amended]

13. Paragraph (a)(1) of § 319.281 (9 CFR 319.281) is further amended by moving the second sentence to the end of the paragraph.

§ 319.305 [Amended]

14. Section 319.305 (9 CFR 319.305) is further amended by moving the second sentence to the end of the section.

Done at Washington, D.C., on June 22, 1982.

C. W. McMillan,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 82-17197 Filed 6-28-82; 8:45 am]

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federal register

Tuesday
June 29, 1982

Part III

Environmental Protection Agency

Inorganic Chemicals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 415

[WH-FRL 2080-6]

Inorganic Chemicals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation limits the discharge of pollutants into navigable waters and into publicly owned treatment works by existing and potential new sources that manufacture certain inorganic chemicals.

The Clean Water Act and a consent decree require EPA to issue this regulation.

The purpose of this regulation is to specify effluent limitations for "best practicable technology", "best available technology", "best conventional technology", and "new source performance standards" for direct dischargers and to establish pretreatment standards for indirect dischargers.

DATES: In accordance with 40 CFR 100.01 (45 FR 26048), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on July 13, 1982. These regulations shall become effective (August 12, 1982).

Under Section 509(b)(1) of the Clean Water Act judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The basis for this regulation is detailed in four major documents. See Supplementary Information under "XVI Availability of technical information" for a description of each document.

Technical information may be obtained by writing to Dr. Thomas E. Fielding, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., Washington, D.C. 20460, or through calling (202) 426-2582. Copies of the technical documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-6000). The economic analysis may also be obtained from the National Technical Information Service.

The Record will be available for public review three weeks after the effective date in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding, (202) 426-2582.

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I. Legal Authority

This regulation is being promulgated under the authority of Sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217), also called the "Act". It is also being promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.*, v. *Train*, 9 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979.

II. Scope of This Rulemaking

The inorganic chemicals manufacturing industry is included within the U.S. Department of Commerce, Bureau of the Census, Standard Industrial Classification (SIC) 281, Industrial Inorganic Chemicals. The final regulation applies to parts of subgroups 2812, Alkalies and Chlorine; 2813, Industrial Gases; 2816, Inorganic Pigments; and 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified.

The most important pollutants or pollutant parameters found in inorganic industry wastewaters are: (a) toxic pollutants (chromium, nickel, lead, mercury, copper, cadmium, zinc, and cyanide); (b) conventional pollutants (TSS and pH); and (c) nonconventional pollutants (COD, fluoride, iron, and ammonia). EPA's 1973 to 1976 round of rulemaking emphasized the achievement of best practicable technology currently available (BPT) by July 1, 1977. In general, BPT represents the average of the best existing performances of well-known technologies for control of familiar (i.e., "classical") pollutants.

In contrast, this round of rulemaking aims for the achievement by July 1, 1984, of the best available technology economically achievable (BAT) that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, BAT represents the best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

EPA is promulgating BPT, BCT, BAT, NSPS, and PSNS for the following 6 subparts:

- subpart V (Titanium Dioxide)
- subpart AH (Chrome Pigments)
- subpart AJ (Copper Sulfate)
- subpart AP (Hydrogen Cyanide)
- subpart AU (Nickel Sulfate)
- subpart BB (Sodium Bisulfite)

BPT, BAT, NSPS, and PSNS for the following 2 subparts:

- subpart F (Chlor-Alkali Diaphragm Cell Process)
- subpart H (Hydrofluoric Acid)

BCT, BAT, NSPS, and PSNS for the following 2 subparts:
- subpart F (Chlor-Alkali Mercury Cell Process)
- subpart Q (Sodium Dichromate)

and BPT, BCT, BAT, and NSPS for the following subpart:
- subpart W (Aluminum Fluoride)

PSES are being promulgated for the following subparts:
- subpart F (Chlor-Alkali Diaphragm Cell Process)
- subpart AH (Chrome Pigments)
- subpart AJ (Copper Sulfate)
- subpart AU (Nickel Sulfate)

Technical amendments consisting of non-substantive format changes are being promulgated for the remaining subparts. At the request of the industry, EPA is reconsidering the BAT limitations in the Calcium Chloride (subpart D), Sodium Chloride-Brine Mining Process (subpart P), and Sodium Sulfite (subpart T) subparts. We intend to address separately the issues raised pertaining to these subparts in the near future.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). To implement the Act, EPA was to issue effluent standards, pretreatment standards, and new source performance standards for industry dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a court-approved "Settlement Agreement". This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines, and pretreatment standards for 65 "priority" pollutants and classes of pollutants, for 21 major industries. See *Natural Resources Defense Council, Inc* v. *Train*, 9 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979).

Many of the basic elements of this Settlement Agreement program were incorporated into the Clean Water Act of 1977. Like the Agreement, the Act stressed control of toxic pollutants, including the 65 "priority" pollutants. In addition, to strengthen the toxic control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, the EPA program is to set a number of different kinds of effluent limitations. These are discussed in detail in the proposed regulation and Development Document. The following is a brief summary:

1. Best Practicable Control Technology (BPT). BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory.

In establishing BPT limitations, we consider the total cost of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, and non-water-quality environmental impacts (including energy requirements). We balance the total cost of applying the technology against the effluent reduction.

2. Best Available Technology (BAT). BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and non-water-quality environmental impacts. The Administrator retains considerable discretion in assigning the weight to be accorded these factors.

3. Best Conventional Pollutant Control Technology (BCT). The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biological oxygen demanding pollutants (BOD5), total suspended solids (TSS), fecal coliform and pH], and any additional pollutants defined by the Administrator as "conventional" [oil and grease, 44 FR 44501, July 30, 1979].

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required).

4. New Source Performance Standards (NSPS). NSPS are based on the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

5. Pretreatment Standards for Existing Sources (PSES). PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of well-operated publicly owned treatment works (POTW) with secondary treatment installed. They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires pretreatment for toxic pollutants that pass through the POTW in amounts that would violate direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. EPA has generally determined that there is pass through of pollutants if the percent of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The general pretreatment regulations, which served as the framework for the categorical pretreatment regulations are found at 40 CFR Part 403 (43 FR 27736 June 26, 1978; 46 *FR* 9462 January 28, 1981).

We are promulgating PSES for the Chlor-Alkali(Diaphragm Cell) and Chrome Pigments subcategories and we are amending the existing PSES for the Copper Sulfate and Nickel Sulfate

subcategories. We are excluding the Chlor-Alkali (Mercury Cell), Hydrofluoric Acid, Sodium Dichromate, Titanium Dioxide, Hydrogen Cyanide, and Sodium Bisulfite subcategories from national categorical PSES under the provisions of Paragraph 8(b) of the Settlement Agreement because the toxic pollutants in discharges to POTWs from sources in those subcategories are below treatable levels or are so insignificant as not to justify developing pretreatment standards. We are not promulgating PSES for the Aluminum Fluoride subcategory because a well-operated POTW with secondary treatment installed achieves better percent removal of toxic pollutants than is provided by the BAT model treatment system for this subcategory.

6. Pretreatment Standards for New Sources (PSNS). Like PSES, PSNS are to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of the POTW. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Methodology and Data Gathering Efforts

The data gathering efforts and methodology used in developing the proposed regulations were summarized in the "Preamble to the Proposed Inorganic Chemicals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards" (45 FR 49450, July 24, 1980). The *Development Document for Effluent Guidelines, New Source Performance Standards, and Pretreatment Standards for the Inorganic Chemicals Manufacturing Point Source Category* greatly expands and details this summary, and includes the use of new data we acquired since July 1980. This new data includes:

(1) a contractor's report prepared in July 1980 entitled *Treatability Studies for the Inorganic Chemicals Manufacturing Point Source Category, EPA 440/1-80/103*, (2) *Treatability Manual, Volume III—Technologies for Control/Removal of Pollutants*, EPA 600/8-80-042c, and (3) public comments on the draft development document, the proposed rule, and the treatability studies. The treatability studies were issued approximately the same time as the draft development document, but the results of the treatability studies were not available in time to affect the proposed rules.

Each of those sources affected the final regulation. After receiving information from the treatability studies, we reevaluated treatment technologies for particular subcategories, which, in turn, led to changes in the technological basis for parts of the regulation. The information in the treatability manual added data to existing treatability information for the final development document. On the basis of industry comments, we decided not to regulate several toxic metals which are adequately controlled by the technologies on which other limitations are based. The comments were also the basis for changes in the control technology option for BAT in certain subcategories.

V. Control Treatment Options and Technology Basis for Final Regulations

A. Control Treatment Options

The control and treatment technologies that we investigated for use in this industry are enumerated below. Not all apply to all subcategories. Options 1 through 8 are the basis for this regulation. We investigated options 9 through 13 but rejected them because of high capital and operating costs, lack of use in the industry, or lack of performance data.

Option 1—Equalization, alkaline precipitation, and settling or clarification to remove toxic and other metals and fluorides.

Option 2—Addition of dual-media filtration to Option 1 to remove additional precipitated toxic metals.

Option 3—Sulfide precipitation to precipitate additional mercury, lead, copper, silver, cadmium, and arsenic.

Option 4—Use of coagulants to improve the settling or filtering of the metal precipitates generated in Options 1, 2, and 3.

Option 5—Sulfur dioxide, ferrous iron, or sulfide reduction to reduce hexavalent chromium to trivalent chromium in preparation for alkaline precipitation.

Option 6—Air oxidation to reduce COD, to oxidize ferrous to ferric iron to make it settleable, and to coprecipitate additional toxic metals.

Option 7—Alkaline chlorination, which raises pH to 10–11 and adds chlorine gas, to convert toxic cyanide to the less toxic cyanate.

Option 8—Dechlorination, which uses thermal, chemical, or catalytic decomposition to destroy free chlorine.

Option 9—Breakpoint chlorination, which adds more chlorine to Option 7 to convert cyanate to carbon dioxide and ammonia.

Option 10—Carbon adsorption, which uses beds of granular activated carbon to remove metals and/or organic materials.

Option 11—Xanthate precipitation, which uses a starch or cellulose xanthate to precipitate toxic metals.

Option 12—Ion exchange, which uses ion exchange resin beds to remove toxic metals from the waste stream.

Option 13—Membrane processes (ultrafiltration and reverse osmosis) in which a waste stream is directed under pressure through a membrane to remove inorganic pollutants from the wastes.

B. Technology Basis for Final Regulations

We are promulgating substantive changes to existing regulations for the 10 subcategories detailed below. Two of the subcategories are segmented, and specific regulations are promulgated for each segment. The Chlor-Alkali subcategory is divided into two segments: mercury cell plants and diaphragm cell plants. The Titanium Dioxide subcategory is divided into three segments; chloride process plants, sulfate process plants, and chloride-ilmenite process plants.

1. Chlor-Alkali (Subpart F). Chlorine and its coproduct caustic soda (alkali) are produced by the electrolysis of a sodium or potassium chloride solution using either the mercury cell or diaphragm cell process, or both. The processes differ in cell design and in the quantity and quality of wastewater generated. Because of these differences, we consider them separately under the Chlor-Alkali subcategory.

(a) Mercury Cell Segment. (i) Background. The mercury cell process uses mercury to form the cathode of the electrolytic cell. This segment of the industry now has 25 plants, 23 of which are direct dischargers and two are indirect dischargers.

The process wastewater flow rate of a model mercury cell chlor-alkali plant is 2.1 m3/kkg. Mercury cell plant wastewater is derived from several sources: brine mud, cell room wastes, chlorine condensate, spent sulfuric acid, tail gas scrubber liquid, caustic filter washdown, and hydrogen condensate. The toxic pollutants in these wastewaters include antimony, arsenic, cadmium, chromium, copper, lead, mercury, nickel, silver, thallium and zinc.

(ii) Final Limits. The BPT limitations for the Chlor-Alkali (Mercury Cell) subcategory are now in effect, 40 CFR 415.62(a). We are not promulgating any

changes to the BPT regulation for this segment of the industry. The technology basis for the existing BPT is Option 3 for mercury-laden streams and Option 1 for brine muds. This treatment scheme involves sulfide precipitation and filtration of mercury-laden streams and neutralization and settling of brine muds. Of the 23 direct dischargers, 22 now have BPT technology installed. The remaining plant has treatment technology installed, but it is not the same as BPT technology and does not perform as well. The pollutants regulated under BPT are TSS, mercury, and pH.

While EPA has not yet proposed or promulgated a revised BCT methodology in response to the *American Paper Institute* v. *EPA* decision mentioned earlier, EPA is promulgating BCT limitations for this subcategory. These limits are identical to those for BPT. EPA is not promulgating any more stringent limitations since we have identified no technology option which would remove significant additional amounts of conventional pollutants. The dechlorination technology added to BPT for BAT does not remove additional conventional pollutants. As BPT is the minimal level of control required by law, no possible application of the BCT cost tests could result in BCT limitations lower than those promulgated today. Accordingly, there is no need to wait until EPA revises the BCT methodology before promulgating BCT limitations.

We are promulgating BAT limitations based on the technology basis for BPT plus Option 6 (dechlorination). While the technology basis for BPT and BAT limitations is the same for removal of mercury, the BAT limitation on mercury is more stringent. The more stringent limitation is based on recently submitted industry data. All plants meeting the BPT limitations can also meet the BAT limitations. The more stringent limitations, therefore, do not result in additional costs. Dechlorination is known to be in place at two plants in this segment of the industry. The chlorine limitations are based on long-term monitoring data. Dechlorination will remove 2.4 million pounds per year of chlorine from the effluent at an annual cost of $1.8 million per year. We considered adding Option 10 (carbon adsorption) but did not because of its high cost and questionable performance in this industry. Pollutants regulated under BAT limitations are mercury and total residual chlorine.

We have previously promulgated NSPS (39 *FR* 9616, March 12, 1974) which were equal to BPT. However, we are now amending those standards and setting NSPS equal to the new BAT limitations. Pollutants regulated under NSPS are TSS, mercury, total residual chlorine, and pH.

We are promulgating PSNS that are equal to NSPS limitations on mercury because the direct discharge NSPS standard provides better removal of mercury than is achieved by a well-operated POTW with secondary treatment installed and hence mercury will pass through the POTW in the absence of pretreatment. Dechlorination is unnecessary because POTW influent often is chlorinated. For the reasons stated below, we are excluding the subcategory from categorical PSES.

(iii) Changes from Proposal. We have deleted limitations for all toxic metals except mercury because the technology necessary to comply with the effluent limitations and standards established for mercury effectively controls the other toxic metal pollutants present in the untreated wastewater. We have also revised the limitations for chlorine based on new industry data and comment, and the limitations are now less stringent.

We proposed categorical PSES equal to BAT for toxic metals for this subcategory. However, we are not promulgating PSES for this subcategory. Instead, the subcategory is excluded from categorical PSES under the provisions of paragraph 8(b) of the Settlement Agreement because the discharge of total toxic metals to POTWs from the two existing sources combined is below treatable levels and amounts to only 40 pounds per year.

(b) Diaphragm Cell Segment. (i) Background. The diaphragm cell segment of the industry now has 36 plants, 35 of which are direct dischargers and 1 is an indirect discharger.

The diaphragm cell contains a porous asbestos diaphragm separating the anode from the cathode. In the past, the predominant material used for anodes was graphite, with lead providing an electrical contact and support. In recent years, many graphite anodes have been replaced by stabilized metal anodes of titanium with a platinum or ruthenium oxide coating. The advantages of using metal anodes instead of graphite anodes are increased power efficiency of the cells, longer anode life, and a reduction in potential pollutant loads of lead and chlordinated organics.

The process wastewater flow rate for a model diaphragm cell chlor-alkali plant is 8.8 m3/kkg. The wastewater is derived from cell room wastes, chlorine cooling condensate, spent sulfuric acid, tail gas scrubber liquid, filter backwashes, hydrogen condensate, and barometric condensers. The toxic pollutants in these wastewaters include antimony, aresnic, cadimium, choromium, copper, lead, nickel, silver, thallium, and zinc.

(ii) Final Limits. BPT limitations for the Chlor-alkali (Diaphragm Cell) subcategory are now in effect, 40 CFR 415.62(b). However, we are revising the BPT limitations because new data demonstrates that the flow in this segment is 8.8 m3/kkg, not the 3.3 m3/kkg previously used. The new lead limit is based on an analysis of long-term self-monitoring data at one plant that uses graphite anodes. The TSS limit is based on achieving 35 mg/1 by settling the effluent. The technology basis for BPT is equalization, alkaline precipitation, and settling. All plants in the subcategory have installed BPT technology or have installed metal anodes and meet the limitations without treatment. Pollutants regulated under the BPT limitations are TSS, copper, lead, nickel, and pH. EPA has determined that the BAT technology for this subcategory is capable of removing significant amounts of conventional pollutants. However, EPA has not yet proposed or promulgated a revised BCT methodology in response to the *American Paper Institute* v. *EPA* decision mentioned earlier. Thus, it is not now possible to apply the BCT cost test to this technology option. Accordingly, EPA is deferring a decision on the appropriate BCT limitations until EPA proposes the revised BCT methodology.

We are promulgating BAT limitations based on Options 2 and 8, which add dual-media filtration and dechlorination to BPT technology. Total residual chlorine limits are based on long-term monitoring data from the chlorine mercury cell subcategory. Two plants are known to have dechlorination treatment systems. The lead, nickel, and copper limits are based on published treatability data and data on industrial wastewater treatment system performance. Three of four plants that use metal anodes now meet the limitations for lead. One plant that was sampled meets the limitations for nickel. For all plants in this segment, BAT will remove an additional 240,000 pounds per year of toxic metals and 7.0 million pounds per year of residual chlorine at an annual cost of $5.5 million per year. Pollutants regulated by the BAT limitations are copper, lead, nickel, and total residual chlorine.

We are promulgating NSPS that are equal to BAT limitations with the additional exclusion of lead in cell

construction. The limitations are based on published treatability data. The limitations for lead can be met by the use of metal anodes which new plants would probably use anyway because they are more efficient. Pollutants regulated under NSPS are TSS, lead, total residual chlorine, and pH.

We are promulgating PSES that are equal to BPT limitations and PSNS that are equal to NSPS except for dechlorination, which is unnecessary because POTW influent often is chlorinated. Pretreatment is necessary because the direct discharge standards provide better removal of lead, copper, and nickel than is achieved by a well-operated POTW with secondary treatment installed and hence these pollutants would pass through a POTW in the absence of pretreatment. PSES are being set equal to BPT, because the POTW achieves equal or greater removal of the toxic metals remaining after application of BPT (PSES) technology than is achieved by the filtration required by BAT.

(iii) Changes from Proposal. We have deleted limitations on all toxic metals except copper, lead, and nickel, because the technology necessary to comply with the effluent limitations and standards established for copper, lead, and nickel effectively controls the other toxic metal pollutants present in the untreated wastewater. We have revised the limitations for chlorine, copper, lead, and nickel based on new industry data and the results of our treatability study, and the limitations are now less stringent. We have deferred establishing BCT limitations pending development of a new BCT cost test.

PSES were proposed equal to BAT. PSES are now set equal to BPT, because the POTW achieves equal or greater removal of the toxic metals remaining after application of BPT (PSES) technology than is achieved by the filtration required by BAT. Thus, a filter is not required for PSES because there is no pass-through. See 46 FR 9462 (January 28, 1981).

2. Hydrofluoric Acid (Subpart H) (a) Background. Hydrofluoric acid, or hydrogen fluoride (HF), is produced as both anhydrous and aqueous products.

Fluorspar, mainly calcium fluoride (CaF_2), and sulfuric acid are the raw materials used for the manufacture of HF. The fluorspar and sulfuric acid react to form HF. This subcategory now has nine direct dischargers. There are no indirect dischargers.

The process wastewater flow rate for a model hydrofluoric acid plant is 96 m3/kkg. Hydrofluoric acid plant wastewater sources include gypsum solids treatment wastes, drip acid, noncontact cooling water, scrubber wastewater distillation wastes, and the treatment of other solid waste sources. The toxic pollutants in these wastewaters include antimony, arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, thallium, and zinc.

(b) Final Limits. We are promulgating BPT limitations based on Option 1, which involves equalization, lime precipitation, and clarification or settling plus reuse of at least 43 percent of the effluent for kiln residue slurrying. All nine plants in the industry have installed this technology. The BPT limitations for TSS and fluoride are based on long-term data from one plant that does not reuse treated wastewater. Five plants are meeting BPT limits, according to long-term self-monitoring data. Limitations for toxic metals are based on averaged effluent sampling data unless the observed pollutant concentration is below the treatability level cited in the literature. In such cases, the lowest applicable treatability level is used. Pollutants limited by the BPT limitations are TSS, fluoride, nickel, zinc, and pH. We are deferring promulgation of BCT for the reasons described in Section V.B.1.(b)(ii) above.

We are promulgating BAT limitations based on Option 1 plus reuse of at least 65 percent of the effluent for kiln residue slurring. This level of treatment includes BPT plus recycle to remove additional toxic metals and fluorides. This technology will remove an additional 35,000 pounds per year of toxic metals at an annual cost of $514,000 per year. The limitation for fluoride is based on long-term monitoring data from one plant that reuses 83 percent of the treated effluent. For toxic metals, the limitations are based on the reduced flow achieved by recycle. After conducting additional treatability studies, we concluded that adding dual-media filtration after alkaline precipitation and settling is not particularly effective in reducing final TSS, total fluoride and toxic metal concentrations. Hence we did not select Option 2 (addition of dual-media filtration) for BAT or NSPS.

We considered using treatment Option 3 (addition of sulfide precipitation) but did not because of the lack of performance data. We also considered using a variation of Option 2 that would substitute soda ash in the lime precipitation step and allow 90 percent recycle of effluent. We rejected this option because of its high cost. Pollutants regulated under BAT limitations are fluoride, nickel, and zinc.

We are promulgating NSPS equal to BAT. Pollutants limited by NSPS are TSS, flouoride, nickel, zinc, and pH.

We are promulgating PSNS that are equal to NSPS because NSPS provides better removal of nickel and zinc than is achieved by a well-operated POTW with secondary treatment installed and therefore these pollutants would pass through a POTW in the absence of pretreatment. Pollutants limited by PSNS are fluoride, nickel, and zinc. For the reasons described below we are excluding this subcategory from categorical PSES.

(c) Changes from Proposal. We have deleted limitations for all toxic metals except nickel and zinc because the technology necessary to comply with the effluent limitations and standards established for nickel and zinc effectively control the other toxic metal pollutants present in untreated wastewater. We have revised the limitations on fluoride, nickel, and zinc based on new industry data and the results of our treatability study, and they are now less stringent. We have deferred establishing BCT limitations pending development of a new BCT cost test.

We proposed PSES equal to BAT for this subcategory. However, there are no indirect dischargers in the subcategory, and we are excluding the subcategory from categorical PSES under the provisions of paragraph 8(b) of the Settlement Agreement.

3. Titanium Dioxide (Subpart V). Titanium dioxide (TiO_2) is manufactured by a chloride process, a sulfate process, and a chloride-ilmenite process. This subcategory is subdivided into three segments, one for each process, because of the difference in raw materials used, wastewater flows, and raw waste characteristics.

(a) Sulfate Process Segment. (i) Background. This subcategory now has four plants, all of which are direct dischargers. One plant discharges a portion of its waste to a municipal system.

Ilmenite is a low-grade titanium ore with a TiO_2 content varying from 45 to 60 percent. Ilmenite ore or slag containing titanium from iron production generally comprises the raw materials used for production of titanium dioxide by the sulfate process.

The process wastewater flow rate for a model plant using the TiO_2 sulfate process is 475 m3/kkg. The process wastewater comes from digester sludge, copperas, strong acid waste, weak acid waste, scrubber waste, and wet milling waste. The toxic pollutants in these wastewaters are antimony, arsenic, cadmium, chromium, copper, lead, nickel, selenium, thallium, and zinc.

(ii) Final Limits. We are promulgating BPT limitations based on Option 1, which involves limestone precipitation, clarification, lime precipitation, and settling. One of the four plants in this segment of the industry now has BPT technology, and we based BPT limitations on this plant's performance and treatability data. BPT treatment will remove 330,000 pounds per year of toxic metals, 21,000 tons per year of TSS, and neutralize 48,000 tons per year of acid at an annual cost of $8.8 million. Pollutants regulated under BPT limitations are TSS, chromium, nickel, and pH.

We are promulgating BAT limitations that are equal to BPT because additional treatment is too costly for existing plants. Toxic and nonconventional pollutants regulated under BAT are the same as for BPT. While EPA has not yet proposed or promulgated a revised BCT methodology in response to the *American Paper Institute* v. *EPA* decision mentioned earlier, EPA is promulgating BCT limitations for this subcategory. These limits are identical to those for BPT because the only technology option that removes significant amounts of conventional pollutants is not economically achievable. See the discussion of BAT under "Changes from Proposal" below. Removal of significant additional amounts of conventional pollutants can be achieved in this subcategory only if iron is also removed.

As BPT is the minimal level of control required by law, no possible application of the BCT cost tests could result in BCT limitations lower than those promulgated today. Accordingly, there is no need to wait until EPA revises the BCT methodology before promulgating BCT limitations.

We are promulgating NSPS and PSNS based on Option 1 plus Option 6, which adds oxidation of ferrous iron to ferric iron to improve settling and toxic metal removal. In addition to the toxic pollutants regulated under BPT, for the reasons described below we are regulating the non-conventional pollutant iron under NSPS and PSNS. We are also regulating TSS and pH under NSPS. We considered requiring a 55 percent waste recycle through the substitution of soda ash precipitation, but rejected it because its performance has not been demonstrated. PSNS are necessary because NSPS provides better removal of chromium, nickel, and iron than is achieved by a well-operated POTW with secondary treatment installed and therefore chromium, nickel, and iron would pass through the POTW in the absence of pretreatment. This subcategory is excluded from categorical PSES for the reasons described below.

(iii) Changes from Proposal. We have deleted limitations on all toxic metals except chromium and nickel because the technology necessary to comply with the effluent limitations and standards established for chromium and nickel effectively controls the other toxic metal pollutants present in the untreated wastewater.

We decided not to regulate the non-conventional pollutant iron under BPT and BAT because of the increased cost of the treatment when iron is controlled and because the gypsum solids produced by the treatment with iron removal can be reused only if dissolved iron is not controlled. One plant has developed a market for reuse of the gypsum. We estimate that requiring iron removal at existing plants would increase treatment costs by up to 40 percent and generate large quantities of waste solids for disposal. Control of toxic metal pollutants will be adequate at existing plants even without an iron removal step.

We have revised the limitations on TSS, chromium, and nickel based on long-term performance data from a plant using the model treatment technology without iron removal, and they are now less stringent. An iron removal step added to BPT/BAT technology is retained for NSPS/PSNS because the additional treatment provides better removal of toxic metals, and the more stringent standards are unlikely to pose a significant barrier to entry. New sulfate process plants are unlikely because the two alternate processes are more economical. However, if a company did want to construct a new sulfate-process plant, a process change involving the recycle and reuse of the strong acid wastewater would likely be adopted. This process change would reduce production costs, and would also reduce the amount of strong acid wastewater treated and discharged by 70 to 90 percent. Reducing the flow of the strong acid wastewater reduces treatment costs substantially and also substantially reduces the amount of gypsum solids produced by treatment. With the smaller amount of gypsum solids produced, disposal of the solids as waste is competitive with sale of the solids for reuse, when cost of sales is considered. At least one company using the sulfate process is actively developing the recycle/reuse technology. One other company using the chloride-ilmenite process has recently built a new plant that discharges 50 percent less total wastewater than comparable plants.

We proposed PSES equal to BAT for this subcategory. However, the only wastewater discharged to the POTW from the one existing indirect discharger is a small portion of the weak acid stream. Based on data provided in response to Section 308 request, it is unlikely that this wastewater contains any toxic metals at treatable levels. Therefore, we are excluding this subcategory from categorical PSES under the provisions of paragraph 8(b).

(b) Chloride-Ilmenite Process Segment. (i) Background. This subcategory now has three plants, all of which are direct dischargers.

The direct use of ilmenite ore for the manufacture of titanium dioxide pigments requires the application of either the sulfate process or the one-step ore beneficiation/chlorination process which we call the chloride-ilmenite process. Processes that involve a separate ore beneficiation step (either on-site or at the ore source) which result in an upgraded or a synthetic rutile product to be used as feed material for a chloride process are not considered chloride-ilmenite processes. A separate ore beneficiation process would be regulated under the Ore Mining and Dressing Category, and the manufacture of TiO_2 from an upgraded ilmenite or synthetic rutile would be in the same classification as a chloride process using natural rutile ore.

The process wastewater flow rate for a model plant using the titanium dioxide chloride-ilmenite process is 120 m3/kkg. The sources of wastewater include chlorination process waste, product finishing waste, and dilute acid waste. The toxic pollutants in this wastewater include antimony, arsenic, cadmium, chromium, copper, lead, nickel, selenium, thallium, and zinc.

(ii) Final Limits. We are promulgating BPT limitations based on Option 1, which involves limestone precipitation, primary clarification, lime precipitation, and settling. Selection of this option is based on the similarity of the toxic pollutants in these wastes to those in the titanium dioxide sulfate process wastes. We used flow data from existing plants using the chloride-ilmenite process and performance data from a plant using the sulfate process to establish the limitations. All three plants in this segment of the industry are achieving results comparable to BPT limitations. Pollutants regulated under final BPT limitations are TSS, chromium, nickel, and pH.

We are promulgating BAT limitations that are equal to BPT limitations because additional treatment is too costly for existing plants. Pollutants

regulated under BAT limitations are chromium and nickel. We are promulgating BCT limitations that are equal to BPT limitations for the reasons described in Section V.B.3.(a)(ii) above.

We are promulgating NSPS based on Options 1, 2, and 6. These options add iron removal, a dual-media filter, and a reduced wastewater flow level that is achievable only in newly constructed plants. One recently constructed plant is operating at this reduced flow. Pollutants regulated under NSPS are TSS, iron, chromium, nickel, and pH.

We are promulgating PSNS that are equal to NSPS because these standards provide better removal of iron, chromium and nickel than is achieved by a well-operated POTW with secondary treatment installed and therefore iron, chromium and nickel would pass through a POTW in the absence of pretreatment. Pollutants regulated under PSNS are iron, chromium, and nickel. For the reasons described below we are excluding this subcategory from categorical PSES.

(iii) Changes from Proposal. Since the limitations for the chloride-ilmenite process are based on data for the sulfate process, we made the same type of changes for the chloride-ilmenite process as were described previously for the sulfate process. We proposed PSES equal to BAT. However, since there are no indirect dischargers in this subcategory, we are excluding this subcategory from categorical PSES under the provisions of paragraph 8(b) of the Settlement Agreement.

(c) Chloride Process Segment. (i) Background. Six plants currently use the chloride process, all of which are direct dischargers.

In the chloride process, the raw materials used are rutile or upgraded ilmenite ore; both are relatively pure materials with a high titanium and low iron content. For upgrading ilmenite ($FeTiO_3$), a beneficiation process removes part or all of the iron. The wastes from the chloride process using direct, one-step beneficiation of ilmenite in titanium dioxide production are different from those produced using high-grade titanium ore (rutile or upgraded ilmenite).

The process wastewater flow rate for a model plant using the TiO_2 chloride process is 100 m3/kkg. The process wastewater sources include wastes from cooling chlorinator gas, chlorinator process tail gas scrubber waste, distillation bottoms, oxidation tail gas scrubber waste, and finishing operations waste. The toxic pollutants in these wastewaters include chromium, lead, nickel, and zinc.

(ii) Final Limits. We are promulgating BPT limitations based on Option 1, which involves equalization, alkaline precipitation, and settling or clarification. All six plants in this segment of the industry now have installed BPT techology. Limitations are based on sampling data and long-term data from a plant that is meeting the limits. Pollutants regulated by the BPT limitations are TSS, chromium, and pH.

For the reasons discussed in paragraph (iii) below, we are promulgating BAT limitations that are equal to BPT limitations. We are promulgating BCT limitations equal to BPT limitations for TSS for the reasons described in Section V.B.3.(a)(ii) above.

We are promulgating NSPS and PSNS based on Option 2. Limitations for this level of treatment are based on published treatability data for filtration of precipitated wastes. Pollutants limited by NSPS regulations are TSS, iron, chromium, and pH. Pollutants regulated by PSNS are iron and chromium. These pollutants are regulated because NSPS provides better removal of iron and chromium than is achieved by a well-operated POTW with secondary treatment installed and therefore iron and chromium would pass through the POTW in the absence of pretreatment.

The Agency also considered adding Option 3 (sulfide precipitation) but did not do so because that option does not effectively remove chromium from the wastewater. We are excluding this subcategory from categorical PSES for the reasons described below.

(iii) Changes from Proposal. We decided to delete the limitations on iron for existing sources because of the increased cost of treatment when iron is controlled and because two plants operate both the chloride process and the sulfate process and send wastewater from both processes to the same treatment facility. In order for these two plants to treat the chloride process wastewater to remove iron, they would either also have to treat the sulfate process wastewater to remove iron or undertake a massive reconstruction of the treatment facility. Such a reconstruction or removal of iron in the sulfate process would wipe out the recycle benefits and treatment cost reduction associated with the final BPT/BAT limitations for the sulfate process, and would probably result in the closure of the two sulfate process lines, with attendant increase in unemployment. Control of toxic metal pollutants will be adequate at existing plants even without an iron removal step. We have revised the limitations on TSS and chromium because of the change in treatment system and they are now less stringent.

For NSPS, we have revised the limitations on TSS, iron and chromium, based on new data; the iron and TSS limitations are more stringent while the chromium limitation is less stringent. NSPS are based on the addition of an iron removal step to BPT/BAT treatment. New plants can achieve significant reductions in wastewater flow, thus reducing overall treatment costs, even with the inclusion of the iron-removal step.

We proposed PSES equal to BAT for this subcategory. However, since there are no indirect dischargers in this subcategory, we are not promulgating PSES but are instead excluding this subcategory from categorical PSES under the provisions of paragraph 8(b) of the Settlement Agreement.

4. Aluminum Fluoride (Subpart W) (a) Background. The subcategory now has 5 plants, all of which are direct dischargers.

This regulation applies only to the dry process for the manufacture of aluminum fluoride, in which partially dehydrated alumina hydrate is reacted with hydrofluoric acid gas.

The process wastewater flow rate for a model aluminum fluoride plant is 11.9 m3/kkg. The process wastewater comes from noncontact cooling water, floor and equipment washings, scrubber wastewater, and solid waste handling. The toxic pollutants in this wastewater include arsenic, selenium, chromium, copper, lead, mercury, nickel, zinc, cadmium, antimony, and beryllium.

(b) Final Limits. We are promulgating BPT limitations based on treatment Option 1, which includes equalization, lime precipitation, and settling. All plants in this subcategory now have BPT technology. Limitations for TSS and fluoride are based on the similarity of the wastes to those in the Hydrofluoric Acid subcategory. Limitations for chromium and nickel are based on published treatability data. Pollutants regulated under BPT limitations are TSS, fluoride, chromium, nickel, and pH.

We are promulgating BAT limitations that are equal to the BPT limitations because additional treatment is too costly. The limitation for fluoride is based on the similarity of wastes to those of the Hydrofluoric Acid Subcategory. The limitations for chromium and nickel are based on published treatability data. After conducting additional treatability studies we concluded that adding dual-media filtration after alkaline precipitation and settling is not particularly effective in reducing total

fluoride or toxic metal concentrations. Hence, we did not select Option 2 (addition of dual-media filtration) for BAT. Pollutants regulated under BAT limitations are fluoride, nickel, and chromium. While EPA has not yet proposed or promulgated a revised BCT methodology in response to the *American Paper Institute* v. *EPA* decision mentioned earlier, EPA is promulgating BCT limitations for this subcategory. These limits are identical to those for BPT. EPA is not promulgating any more stringent limitations since we have identified no technology option which would remove significant additional amounts of conventional pollutants. As BPT is the minimal level of control required by law, no possible application of the BCT cost tests could result in BCT limitations lower than those promulgated today. Accordingly, there is no need to wait until EPA revises the BCT methodology before promulgating BCT limitations.

We are promulgating NSPS that are equal to BAT/BPT limitations. Pollutants regulated under NSPS are TSS, fluoride, chromium, nickel, and pH.

We are not promulgating PSES and PSNS because a well-operated POTW with secondary treatment installed provides equal or better removal of chromium and nickel than is achieved by BAT for this subcategory, and therefore there is no pass through of these toxic pollutants. There are no indirect dischargers in this subcategory.

We considered using Option 3 (sulfide precipitation) and requiring the use of soda ash to increase recycle. However, we rejected these options because they remove only small additional amounts of toxic pollutants in this subcategory.

(c) Changes from Proposal. The proposed regulations specified Option 2 for BAT. We have since established that adding dual-media filtration is ineffective in removing total fluoride or toxic metals. Therefore, the technology basis for BAT is Option 1 in this final rule. BAT limitations will now be equal to BPT in this subcategory. We are not promulgating PSES and PSNS for Aluminum Fluoride in this final rule, because a POTW provides equal or better removal of chromium and nickel (the only toxic pollutants regulated under BAT for this subcategory) than is achieved by BAT for this subcategory. Therefore, there is no pass through of these toxic pollutants in the Aluminum Fluoride subcategory.

5. Chrome Pigments (Subpart AH). (a) Background. This subcategory has 12 plants, 4 of which are direct dischargers and 8 are indirect dischargers.

The following products are regulated in this subcategory:

Anhydrous chrome oxide is almost pure chromium oxide (Cr_2O_3) and the commercial grade consists of a minimum of 98.5 percent Cr_2O_3. It is prepared by calcination of sodium dichromate with sulfur or carbon.

Hydrous chromium oxide ($Cr_2O_3.2H_2O$ or $Cr_2O(OH)_4$), also known as chromium hydrate and Guigets Green, is a brilliant blue green. It is made by reacting sodium dichromate with boric acid.

Chrome yellow is made by reacting sodium dichromate, caustic soda, and lead nitrate, forming lead chromate.

Molybdenum orange is made by the coprecipitation of lead chromate ($PbCrO_4$) and lead molybdate ($PbMoO_4$).

Chrome greens are a coprecipitate of chrome yellow and iron blues. Iron blues are manufactured by reacting an aqueous solution of iron sulfate and ammonium sulfate with sodium ferrocyanide. The precipitate formed is separated and oxidized with sodium chlorate or sodium chromate to form iron blues ($FeNH_4.Fe(CN)_6$). Chrome green is produced by mechanically mixing chrome yellow and iron blue pigments in water.

Zinc yellow, also called zinc chromate, has the approximate composition 4ZnO.K2O.4CrO3.3H2O. It is made by reacting zinc oxide, hydrochloric acid, sodium dichromate, and potassium chloride.

The process wastewater flow rate for a model plant that produces chrome pigments is 105 m3/kkg. Some variation in the wastewater sources may occur depending on the particular type of chrome pigment being produced. The sources generally include filter backwash, equipment washdown, and scrubber discharges. The toxic pollutants in this wastewater are antimony, cadmium, chromium, copper, lead, nickel, zinc, mercury, and cyanide.

(b) Final Limits. We are promulgating BPT limitations based on treatment Option 2 plus Option 5. This treatment requires reductions of hexavalent chromium followed by alkaline precipitation, clarification, and filtration. Of the four direct dischargers in this subcategory, one now has installed BPT technology. This plant represents a significant portion of the subcategory production, and its performance is the basis for the limitations. One other direct discharger, with a different treatment system, meets the promulgated BPT/BAT limitations. Other plants have no treatment or inadequate treatment of their wastes. This technology will remove 2,400,000 pounds per year of toxic metals from the effluent of direct and indirect dischargers, at an annual cost of $7.8 million.

Pollutants regulated under BPT limitations are TSS, chromium, lead, zinc, and pH.

We are promulgating BAT limitations equal to BPT limitations, because the cost of additional treatment is too high in relation to the additional removal that could be achieved. Chromium, which is the primary toxic metal pollutant, is not affected by the next higher level of treatment considered, sulfide precipitation. Pollutants regulated under BAT limitations are chromium, lead, and zinc. We are promulgating BCT limitations that are equal to BPT limitations for the reasons described in Sections V.B.4.(b) above.

We are promulgating NSPS equal to BPT limitations for those reasons mentioned above in regard to BAT. Pollutants regulated under NSPS, are TSS, chromium, lead, zinc, and pH.

We are promulgating PSES and PSNS that are equal to BPT/BAT limitations because BPT provides better removal of chromium, lead, and zinc than is achieved by a POTW, and, therefore, without pretreatment these toxic pollutants would pass through a well-operated POTW with secondary treatment installed. In particular, 1.4 million pounds per year of hexavalent chromium would pass through in the absence of pretreatment. The pretreatment regulations promulgated today will remove over 1.3 million pounds of hexavalent chromium per year. Pollutants regulated under PSES and PSNS are chromium, lead, and zinc. Chrome Pigments plants discharging annually less than 210,000 m^3 per year (55 million gallons per year) to a POTW are excluded from these categorical pretreatment standards and would be subject only to the general pretreatment standards in 40 CFR Part 403, for the reasons given in Section VI.

(c) Changes from Proposal. We have deleted limitations on all toxic metals except chromium, lead, and zinc because the technology necessary to comply with the limitations and standards established for chromium, lead, and zinc effectively controls the other toxic metal pollutants present in the untreated wastewater. Based on new industry data and our treatability study, we have revised the limitation for TSS, chromium, and zinc; the limitations for TSS are more stringent while the limitations for chromium and zinc are less stringent.

We are excluding small plants discharging less than 210,000 m^3 process wastewater per year to POTW from compliance with these PSES. They will be subject only to the general pretreatment standards in 40 CFR Part

403. Plants discharging less than 210,000 m^3 process wastewater per year produce less than 2000 kkg per year chrome pigments. There would be very significant economic impacts on this segment of the industry if it was required to comply with these PSES. See Section VI.

6. Hydrogen Cyanide (Subpart AP). (a) Background. This subcategory has 7 plants, 6 of which are direct dischargers and 1 is an indirect discharger. All plants in this subcategory now have BPT technology.

The Hydrogen Cyanide subcategory is confined to plants using the Andrussow process, in which air, ammonia, and methane are reacted to produce hydrogen cyanide. The raw materials are reacted to produce hydrogen cyanide and water at elevated temperatures.

The process wastewater flow rate for a model hydrogen cyanide plant is 57 m3/kkg. Plant wastewater comes from distillation bottoms, scrubber streams, and equipment washing. The only toxic pollutant in this wastewater is cyanide.

(b) Final Limits. We are promulgating BPT limitations based on Option 7, which uses alkaline chlorination to destroy cyanide amenable to chlorination, followed by clarification. The limitations are based on long-term data. Because one plant uses refrigeration to recirculate cooling water and thus reduce flow, we considered the low flow option. However, we rejected that method because it is energy intensive and doubles the treatment cost. Pollutants regulated under BPT limitations are TSS, cyanide A, total cyanide, and pH.

We are promulgating BAT limitations based on the addition of Option 8, dechlorination, to BPT technology. The dechlorination technology will remove 1.4 million pounds per year of chlorine at an annual cost of $0.97 million. The chlorine limitations are based on the process wastewater flow rate for a model hydrogen cyanide plant and performance data from chloralkali industry plants which practice dechlorination. Pollutants regulated under BAT limitations are cyanide A, total cyanide, and total residual chlorine. We are promulgating BCT limitations that are equal to BPT limitations for the reasons described in Section V.B.1.(a)(ii) above.

We are promulgating NSPS that are equal to BAT limitations. Pollutants regulated under NSPS are TSS, cyanide A, total cyanide, total residual chlorine, and pH.

We are promulgating PSNS that are equal to BPT limitations for cyanide A and total cyanide because BPT provides better removal of cyanide A and total cyanide than is achieved by a well-operated POTW with secondary treatment installed and, therefore, these pollutants would pass through a POTW in the absence of pretreatment. Dechlorination is not needed because POTW influent often is chlorinated. Pollutants regulated under PSNS are cyanide A and total cyanide. We are not promulgating categorical PSES for this subcategory for the reasons described below.

(c) Changes from Proposal. We have revised the limitations on TSS, cyanide A, and chlorine based on new industry data, and they are now less stringent. Industry commented that the alkaline chlorination treatment to control cyanide amenable to chlorination does not control ammonia. We agree with this comment and have deleted limitations on ammonia in this final rule. No other economically achievable technologies were identified to control ammonia in this subcategory. We proposed PSES equal to BPT limitations for this subcategory. This subcategory is excluded from categorical PSES in this final rule under the provisions of paragraph 8(b) of the Settlement Agreement because the concentrations of toxic pollutants in the effluent to POTW from the one existing indirect discharger are below treatable levels.

7. Sodium Dichromate (Subpart Q). (a) Background. This subcategory has 3 plants, all of which are direct dischargers.

The starting materials for the preparation of sodium dichromate are chromite ore, limestone, and soda ash. When these materials are reacted, sodium chromate is formed, which is reacted with sulfuric acid to produce sodium dichromate.

The process wastewater flow rate for a model plant that produces sodium dichromate is 8.5 m3/kkg. Plant wastewater sources include spent ore treatment, cooling tower blowdown, and boiler blowdown. The toxic pollutants in this wastewater are chromium, copper, nickel, silver, zinc, selenium, and arsenic.

(b) Final Limits. BPT limitations for this subcategory are now in effect (40 CFR 415.172). The technology basis for the existing BPT limitations is ferrous iron reduction of hexavalent chromium, followed by alkaline precipitation of metals and clarification. All three plants in this subcategory now have BPT technology. Pollutants regulated under BPT limitations are TSS, total chromium, hexavalent chromium, nickel, and pH.

We are promulgating BAT limitations equal to BPT because the cost of additional removal is too high. Pollutants regulated under BAT limitations are total chromium, hexavalent chromium, and nickel. We are promulgating BCT limitations equal to BPT for the reasons described in Section V.B.4.(b) above.

NSPS are now in effect for this subcategory (40 CFR 415.175). We have decided to amend the NSPS standards to set the TSS limitation equal to BPT, because additional technology does not remove significant additional amounts of a TSS. Pollutants regulated under NSPS are TSS, total chromium, hexavalent chromium, nickel, and pH.

We are not promulgating categorical PSES for this subcategory for the reasons described below.

PSNS regulations are now in effect, 40 CFR 415.176. Pollutants regulated under PSNS are total chromium, hexavalent chromium, and nickel. We are not amending these standards.

(c) Changes from Proposal. The proposed BAT regulation was based on Option 2 plus Option 5, that is, a filter was to be used to "polish" the effluent from clarification. The final BAT regulation is based on Option 1 plus Option 5 and therefore BAT limitations are equal to the BPT limitations, because the cost of the additional treatment provided by Option 2 is too high. We added limitations for nickel to the BPT limitations because it provides a means of controlling the group of toxic metals removed at slightly higher pH than chromium. We included limitations for nickel under BAT at the time of proposal. The BPT limitations for nickel are also based on Option 1 plus Option 5. We proposed PSES equal to BAT. However, since there are no indirect dischargers in this subcategory, we are not promulgating PSES but are instead excluding this subcategory from categorical PSES under the provisions of paragraph 8(b) of the Settlement Agreement.

8. Copper Sulfate (Subpart AJ). (a) Background. Of the 16 plants, 10 report they have no discharge of copper sulfate process wastewater, 5 are direct dischargers, and 1 is an indirect discharger.

Copper sulfate is produced by reacting copper with sulfuric acid, air, and water. Various forms of copper feed material are used, from pure copper to copper slag. The purity of raw materials significantly affects the quality and quantity of raw waste generated.

If pure copper is used as a raw material, there is little or no wastewater. If impure copper feed is used, a wastewater containing significant amounts of metal impurities is generated.

The process wastewater flow rate for a model plant that produces copper sulfate is 0.94 m3/kkg. Plant wastewater sources include washdown water, mother liquor purges, and sludge treatment. The toxic pollutants in this wastewater are antimony, arsenic, cadmium, copper, lead, nickel, zinc, chromium, and selenium.

(b) Final Limits. BPT limitations for this subcategory are now in effect (40 CFR 415.362). The BPT limitations are based on Option 2 technology, which is alkaline precipitation plus filtration. All the direct dischargers now have BPT technology.

The BPT regulations now in effect have different limitations for pure and impure raw material processes. In the final BPT limitations, we omit the separate limitations for pure raw material processes because both processes are adequately covered by the existing BPT limitations for impure raw material processes. Also, we did not set different limits for these processes in the promulgated BCT and BAT limitations and NSPS, PSES, and PSNS, since both processes are adequately covered by one regulation.

We are promulgating BAT limitations equal to BPT limitations because the cost of additional treatment is too high. Pollutants regulated under BAT limitations are copper, nickel, and selenium. We considered control Option 3 (sulfide precipitation), but rejected it because it removes only a small additional amount of toxic metals in this subcategory. We are promulgating BCT limitations that are equal to BPT limitations for the reasons described in Section V.B.4.(b) above.

We are promulgating NSPS equal to BPT/BAT limitations. Pollutants regulated under NSPS are TSS, copper, nickel, selenium, and pH.

PSES based on BPT technology are now in effect for this subcategory (40 CFR 415.374). In the final rule, however, we are amending the PSES limitations to make them equal to the BPT/BAT effluent concentrations for copper, nickel, and selenium. We are also promulgating PSNS that are equal to BPT/BAT limitations. Pretreatment standards are necessary because BPT/BAT provides better removal of copper, nickel, and selenium than is achieved by a well-operated POTW with secondary treatment installed, and, therefore, these pollutants would pass through a POTW in the absence of pretreatment. Pollutants regulated under PSES and PSNS are copper, nickel, and selenium.

(c) Changes from Proposals. We have deleted limitations for all toxic metals except copper, nickel, and selenium because the technology necessary to comply with the effluent limitations and standards established for copper, nickel, and selenium effectively controls the other toxic metals present in the untreated wastewater.

We proposed BAT limitations based on BPT technology, but with more stringent limitations because information indicated that the BPT technology performed better than had been indicated in our 1973–74 study, and therefore we believed the more stringent limitations could be met at no additional cost. However, industry comment stated that the more stringent limits would require additional treatment and therefore additional cost. We believe our treatability study shows that the more stringent limits can be met with existing treatment, but we have been unable to identify a copper sulfate plant treating copper sulfate wastewater separate from all other wastewaters that does meet the proposed BAT limits with existing treatment. Hence, considering the small daily volume of wastewater discharged from this industry, we have revised the proposed BAT limitations, and they are now equal to BPT. We have also revised the PSES, NSPS, and PSNS to equal BPT, for the same reason.

9. Nickel Sulfate (Subpart AU). (a) Background. This subcategory has 11 plants, 5 of which are direct dischargers and 6 are indirect dischargers.

Nickel sulfate is produced by reacting various forms of nickel with sulfuric acid. Two different types of raw materials are used to produce nickel sulfate. Pure nickel or nickel oxide powder may be used as a pure material source, while spent nickel catalysts, nickel plating solutions or residues are impure sources.

The process wastewater flow rate for a model plant that produces nickel sulfate is 0.68 m3/kkg. Plant wastewater sources include treated filter sludge and backwash. The toxic pollutants in this wastewater are antimony, arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, thallium and zinc.

(b) Final Limits. BPT limitations for this subcategory are now in effect (40 CFR 415.472). The technology basis for the existing BPT limitations is Option 2 (alkaline precipitation plus dual-media filtration). All five direct discharge plants in this subcategory have installed BPT. Pollutants regulated under the existing BPT limitations are TSS, nickel, and pH.

In the existing BPT limitations, pure and impure raw material processes are regulated separately. In this final rule, the separate limitations for pure raw material are omitted, since both processes are adequately covered by one regulation. We are also not setting different limits for these processes in BCT and BAT limitations and NSPS, PSES and PSNS.

We are promulgating BAT limitations and NSPS, PSES, and PSNS based on BPT technology, but the limitations are more stringent because additional data from this study show better performance than that on which the existing BPT limitations were based. The data base available when the existing BPT limitations were promulgated was extremely limited. Much more data is available now. All plants currently meeting BPT limitations can meet the BAT limitations with their existing treatment facilities, and therefore the more stringent BAT limitations do not require additional costs. Pretreatment standards are necessary because BAT provides better removal of copper and nickel than is achieved by a well-operated POTW with secondary treatment installed and, therefore, these pollutants would pass through a POTW in the absence of pretreatment. The pollutants regulated under the BAT limitation and PSES and PSNS are copper and nickel. Pollutants regulated under NSPS are the same with the addition of TSS and pH limits equal to those in the promulgated BPT regulations. We are promulgating BCT limitations that are equal to BPT limitations for the reasons described in Section V.B.4.(b) above.

We considered Option 3 (sulfide precipitation), but rejected it because the treatment removed only small additional amounts of nickel in this subcategory.

PSES that are based on BPT technology are now in effect (40 CFR 415.474). However, while the technology basis remains the same, we are amending the PSES limits to equal BAT. Again, only the performance requirements and not their technology basis are changed.

(c) Changes from Proposal. We have deleted limitations on all toxic metals except nickel and copper because the technology necessary to comply with the effluent limitations and standards established for nickel and copper effectively controls the other toxic metal pollutants present in the untreated wastewater. Based on new data from industry and our treatability study, we have revised the BAT limitations on copper and nickel; the limitation on copper is now more stringent while the limitation on nickel is now less stringent.

10. Sodium Bisulfite (Subpart BB). (a) Background. This subcategory has 7

plants, 6 of which are direct dischargers and 1 is an indirect discharger.

Sodium bisulfite is produced by reacting sodium carbonate (soda ash) with sulfur dioxide and water. This reaction produces a slurry of sodium bisulfite crystals, which can be sold, but which is usually processed to form anhydrous sodium metabisulfite. This process requires thickening, centrifuging, drying, and packaging.

The process wastewater flow rate for a model plant producing sodium bisulfite is 1.5 m3/kkg. The principal wastewater sources are filter backwash and equipment washdown. The toxic pollutants in this wastewater are arsenic, copper, zinc, cadmium, chromium, lead, mercury, nickel, antimony, thallium, and silver.

(b) Final Limits. We are promulgating BPT limitations based on Option 1 plus Option 6, which include hydroxide precipitation of metals plus batch aeration and settling. The six direct dischargers in this subcategory have installed BPT technology. The basis for the limitations for TSS and COD is the *Treatability Study* (EPA 440/1–80/103). The basis for the limitations for zinc and chromium is industry data on wastewater treatment system performance. Pollutants regulated under BPT limitations are TSS, COD, chromium, zinc, and pH. We are promulgating BCT limitations that are equal to BPT limitations for the reasons described in Section V.B.4.(b) above.

We are promulgating BAT limitations, NSPS and PSNS equal to BPT limitations. Pollutants regulated under BAT limitations are COD, chromium and zinc. Pollutants regulated under NSPS are TSS, COD, chromium, zinc and pH. Pretreatment is necessary because NSPS treatment provides better removal of chromium than is achieved by a well-operated POTW, with secondary treatment installed, and, therefore, chromium would pass through a POTW in the absence of pretreatment. The pollutant regulated under PSNS is chromium. We are not promulgating categorical PSES or this subcategory for the reasons described below.

We considered adding treatment such as chlorination, sulfide precipitation, and filtration but rejected those options because of their high cost in removing additional toxic metals.

(c) Changes from Proposal. We have deleted limitations on all toxic metals except chromium and zinc because the technology necessary to comply with the effluent limitations and standards for chromium and zinc effectively controls the other toxic metal pollutants present in the untreated wastewater. Based on new industry data and the results of our treatability study, we have revised the limitations on TSS, chromium, and zinc, and they are now less stringent. The COD limitations have also been adjusted slightly, based on the new data.

The proposed PSES and PSNS for the Sodium Bisulfite subcategory included limitations for COD and the toxic pollutants chromium, copper, lead, nickel, and zinc. In this final rule, we are promulgating PSNS that regulate only chromium, because only for chromium does BAT for this subcategory provide better removal than is achieved by a well-operated POTW with secondary treatment installed. Therefore, in the Sodium Bisulfite subcategory, only chromium would pass through a POTW in the absence of pretreatment. We are not promulgating PSES for this subcategory but instead are excluding the subcategory from categorical PSES under the provisions of paragraph 8(b) of the Settlement Agreement. The total toxic metal discharge from the one existing indirect discharger to POTW is 120 pounds per year, which is so insignificant as not to justify developing a national standard.

11. Sodium Hydrosulfite (Formate Process) (Subpart BE). We proposed BPT, BCT, and BAT limitations and NSPS, PSES, and PSNS for this subcategory. The proposed regulation basically added control of selected toxic metal pollutants to existing treatment practiced in the industry. We have reviewed the basis for the proposed regulation and we concluded that the total current treated discharge load of only 0.42 pounds per day total toxic metals from all plants in the subcategory is too insignificant to justify developing a national regulation. Accordingly, we have excluded this subcategory from national regulation development under Paragraph 8(a)(iv) of the Settlement Agreement.

VI. Costs and Economic Impacts

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of "major rules", defined as rules which impose an annual cost on the economy of $100 million or more or meet other economic impact criteria. EPA does not consider this final regulation to be a major rule. This rulemaking satisfies the requirements of the Executive Order for a non-major rule.

The economic impact assessment is presented in *Economic Impact Analysis of Pollution Control Technologies For Segments of the Inorganic Chemicals Manufacturing Industry*, EPA 440/2–81–023. Copies of the analysis can be obtained by contacting the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161 (703/487–4600). The analysis details the investment and annual costs for the industry as a whole and for model plants in each subcategory covered by the regulation. The analysis also assesses the impact of effluent control costs in terms of price changes, profitability changes, plant closures, production changes, employment effects, and balance of trade effects. The analysis addresses the combined impact of the effluent limitations and the Interim Status Standards of the Resource Conservation and Recovery Act (RCRA–ISS) for segments of the industry that will incur both sets of compliance costs.

EPA has identified 144 plants that manufacture the chemicals covered by this regulation. Total investment for BPT, BAT and PSES is estimated to be $28.9 million, with annualized costs of $26.2 million (including depreciation and interest). These costs are expressed in 1981 dollars, and were updated from 1978 dollars using the Department of Commerce Composite Index for Construction Costs. A maximum of two potential production line closures are projected as a result of this regulation. In terms of unemployment, the potential line closures could affect approximately 60 employees—less than one percent of total employment for the regulated industry.

EPA evaluated the impacts of the pollution control costs for 13 segments of the inorganic chemicals industry using a model plant approach. The industry segments correspond to the product and, in some cases, the manufacturing process. Model plants were developed by product, process, and production size. The methodology involved calculating price and profitability impacts for each model plant. The profitability analysis assumes that the industry is unable to pass through any of the pollution control costs in the form of higher prices, and increased costs are fully absorbed. Changes in the return on investment (ROI) and internal rate of return (IRR) were calculated under this assumption. For each industry segment, plant or line closure projections were based on maximum possible price increase, profitability decline, capital availability, and other relevant factors. In summary, EPA concludes that the economic impacts of the additional water pollution controls likely to be incurred by this regulation are not significant and are justified in light of the benefits associated with compliance with the limitations and standards.

BPT/BAT: In five subcategories (Aluminum Fluoride, Copper Sulfate, Nickel Sulfate, Sodium Bisulfite, and Sodium Dichromate), and Titanium Dioxide-Chloride Process segment of the Titanium Dioxide subcategory, BAT technology is equivalent to BPT technology, and BPT is in place and operating for all direct dischargers. In the Titanium Dioxide-Chloride Ilmenite Process segment, all plants are achieving removal levels equivalent to BAT limitations. Thus, there will be no incremental costs over BPT required for compliance with BAT in five subcategories and two segments of a sixth subcategory. In the remaining four subcategories (Chlor-Alkali, Chrome Pigments, Hydrogen Cyanide, and Hydrogen Fluoride), and in the Titanium Dioxide-Sulfate Process segment of the Titanium Dioxide Subcategory, 77 plants will incur investment costs up to $18.9 million and annualized costs up to $18.6 million.

PSES: The total annualized costs of compliance with PSES limitations required for the 6 indirect dischargers not pretreating wastewater are approximately $7.6 million. Total investment costs are approximately $9.9 million. These costs affect two subcategories (Chlor-Alkali Diaphragm Cell and Chrome Pigments). In only the Chrome Pigments subcategory, discussed below, will profitability decline significantly.

NSPS/PSNS: Regulations for new sources are not expected to significantly discourage entry or result in any differential economic impacts on new plants. The pollution control investment required to install a treatment technology is the same for new and existing producers in the industry. Therefore, new plants will not be operating at a cost disadvantage relative to current manufacturers.

Chrome Pigments: For this subcategory, BPT, BCT, BAT, and PSES limitations are the same. Four of the twelve plants producing chrome pigments are direct dischargers and are subject to BPT/BAT regulations. Two of the direct dischargers have sufficient pollution control technology installed and will incur no incremental costs for compliance with BAT regulations. The other two direct dischargers will incur capital investment costs of $1.9 million with total annualized costs of $1.1 million, but our analysis indicates that both plants will continue production of chrome pigments at those plants.

Under the proposed regulations, all eight indirect dischargers would have been subject to the categorical pretreatment standards. However, we are now excluding from compliance with categorical PSES existing plants that discharge less than 210,000 m^3 per year of chrome pigments process wastewater to POTWs. (General pretreatment standards remain applicable). This exclusion effectively applies to small indirect dischargers producing less than 2,000 kkg per year of chrome pigments and is necessary in order to avoid excessive economic impacts on this segment of the industry. Without the exclusion, the analysis of compliance costs for this subcategory indicates significant financial impacts for these smaller plants. The estimated price increase needed to recover pollution control costs for the smallest model plant is 14.0 percent. The profitability decline for this model exceeds 100 percent of baseline profitability. Plants corresponding to the small model plant are the least profitable and are currently operating at marginal levels. Another significant factor for these small manufacturers is the potential difficulty of securing the capital needed to invest in pollution control equipment.

Three plants, which were predicted to close under the proposed regulation, will not be subject to PSES. These three plants, if they were subject to PSES, would have incurred capital investment costs of $2.1 million and annualized costs of $0.9 million. The remaining five indirect dischargers are subject to pretreatment standards. Capital investment costs for the five indirect dischargers incurring costs are approximately $8.7 million, with total annualized costs of $6.8 million.

Two of the five indirect dischargers who will be subject to the regulations are medium-sized plants discharging more than 210,000 m^3 per year to POTWs. These two plants may decide to close their chrome pigments production operations rather than construct wastewater treatment facilities to comply with the PSES. If so, up to 60 employees could be affected. However, at both of these plants, chrome pigments production accounts for less than 10 percent of the total facility production. Therefore, it is probable that the 60 employees could be transferred to other production operations at the facilities, with no increase in unemployment.

The Agency was unable to identify any technologies less costly than the one chosen which would remove significant amounts of toxic pollutants. The small plant cut-off was the only option available to avoid the severe economic impact on the three small producers.

Regulatory Flexibility Analysis: Public Law 96-354 requires that a Regulatory Flexibility Analysis (RFA) be prepared for regulations proposed after January 1, 1981 that have a significant impact on a substantial number of small entities. Although this regulation was proposed in July 1980, an RFA is included as part of the economic impact analysis. Many of the provisions of the RFA have been addressed in detail in other sections of this preamble.

The economic impact analysis (discussed above) outlines the costs and economic impacts for each subcategory covered by the regulation. The small entities in each subcategory were defined as those plants corresponding to the small model plant size, which represents small plant production levels within each subcategory. Sixty-nine plants covered by the regulations were identified as small. The possible impacts on small plants and the alternatives the Agency considered are discussed above and in the economic analysis.

VII. Non-Water-Quality Environmental Impacts

Eliminating or reducing one form of pollution may cause other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water-quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, we considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. This regulation was circulated to and reviewed by EPA personnel responsible for non-water-quality programs. While it is difficult to balance pollution problems against each other and against energy use, we believe that this regulation will best serve often competing national goals.

The following non-water-quality environmental impacts (including energy requirements) are associated with the final regulation. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

Imposition of BPT and BAT limitations and NSPS, PSES, and PSNS will not create any substantial air pollution problems. Some acid vapor and dust releases may occur as a result of proposed NSPS for the Hydrofluoric Acid subcategory. These can be prevented with available technology. We included the cost of this technology in the cost analysis.

B. Solid Waste

A substantial amount of solid waste has been generated under the existing limitations and standards. The largest amount of solid waste is generated by BPT treatment. Less than 500 pounds per day (dry basis) will be produced by implementation of BAT limitations and PSES and PSNS. The largest amount of solid waste will come from the implementation of BPT for the Titanium Dioxide subcategory. Plants in this subcategory will generate 4,720 tons per day of solid wastes, compared with approximately 900 tons/day for existing BPT limitations in other subcategories. A process has been developed for converting the solid wastes (gypsum) from the titanium dioxide (sulfate process) to a useful product and one plant has developed a market for the solid waste.

Regulations recently promulgated by EPA under Section 3001 of the resource Conservation and Recovery Act (RCRA) list as hazardous a number of solid wastes resulting from the production of inorganic chemicals. These include wastes from the Chrome Pigments subcategory (40 CFR Part 26, 45 FR 33084 (May 19, 1980)) and the Chlor-Alkali subcategory (45 FR 47832 (July 16, 1980)). Other inorganic chemical wastes may be hazardous because they exhibit one or more of EPA's hazardous characteristics identified in 40 CFR Part 261. If a waste is identified or listed as hazardous, it is subject to handling, transportation, treatment, storage, and disposal requirements under Sections 3002–3005 of RCRA and EPA regulations promulgated under RCRA. See 40 CFR Parts 261–267.

Compliance with these requirements involves costs in addition to the costs for compliance with the effluent limitations established by this regulation. The specific standards necessary to estimate these costs have been established, and costs for compliance with RCRA–ISS requirements are specifically considered in the economic impact analysis for this regulation.

C. Consumptive Water Loss

Treatment and control technologies that require extensive recycling and reuse of water may require cooling mechanisms. Evaporative cooling mechanisms can cause water loss and contribute to water scarcity problems—a primary concern in arid and semi-arid regions. This regulation assumes some recycling, thus assuming some cooling mechanisms may be required which could create additional consumptive water loss. However, the quantity of water involved is not significant, and most of the industry is located in coastal areas or areas with sufficient water resources. Moreover, we concluded that the pollution reduction benefits of recycle technologies outweigh their impact on consumptive water loss.

D. Energy Requirements

We estimate that the achievement of BPT effluent limitations and PSES will increase electrical energy consumption by approximately 410 million kilowatt-hours per year. Implementing BAT limitations will consume another 2 million kilowatt-hours. Achievement of BPT and BAT effluent limitations will require a typical direct discharger to increase total energy consumption by less than one percent of the energy now consumed in production purposes.

VIII. Pollutants and Subcategories Not Regulated

The Settlement Agreement contains provisions authorizing the exclusion from regulation, in certain circumstances, of toxic pollutants and industry categories and subcategories. These provisions have been rewritten in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979, 12 ERC 1833.

A. Exclusion of Pollutants

Paragraph 8(a)(iii) of the Settlement Agreement authorizes the Administrator to exclude the following toxic pollutants from regulation: (a) Those not detectable by Section 304(h) analytical methods or other state-of-the-art methods; (b) those present in amounts too small to be effectively reduced by available technologies; (c) those present only in trace amounts and neither causing nor likely to cause toxic effects; (d) those detected in the effluent from only a small number of sources within a subcategory and uniquely related to those sources; and (e) those that will be effectively controlled by the technologies on which other effluent limitations and standards are based. The toxic pollutants excluded from regulation in all subcategories, under paragraph 8(a)(iii) of the Settlement Agreement, are listed in Appendix B of this Notice.

We are also excluding certain toxic pollutants from particular subcategories. Since the date of the proposed regulation (July 24, 1980), we excluded additional pollutants from particular subcategories under paragraph 8(a)(iii) of the Settlement Agreement. Justification for these additional exclusions is based on the review of more reliable industry data and the results of treatability studies showing that these pollutants will be effectively controlled by the technologies on which other effluent limitations and standards are based. These pollutants and the reason for their exclusion under paragraph 8(a)(iii) are listed in Appendix C of this Notice.

In addition to the pollutants excluded under the Settlement Agreement, we are excluding asbestos from this regulation at this time because no standardized 304(h) analytical method for asbestos in water is available.

B. Exclusion of Subcategories

Paragraph 8(a)(i) of the Settlement Agreement authorizes the Administrator to exclude from regulation industry categories or subcategories for which equal or more stringent limitations are already provided by existing effluent limitations and standards. Also, paragraph 8(a)(iv) of the Settlement Agreement authorizes the exclusion of subcategories in which the amount and toxicity of each pollutant in the discharge does not justify developing national regulations.

Paragraph 8(b) of the Settlement Agreement authorizes the Administrator to exclude from regulation under the pretreatment standards a subcategory if (i) 95 percent or more of all point sources in the subcategory introduce into POTWs only pollutants which are susceptible to treatment by the POTW and which do not interfere with, do not pass through, or are not otherwise incompatible with such treatment works; or (ii) the toxicity and amount of the incompatible pollutants introduced by such point sources into POTWs is so insignificant as not to justify developing a pretreatment regulation. The subcategories excluded under paragraphs 8(a)(1), 8(a)(iv), and 8(b) of the Settlement Agreement are listed in Appendix D of this Notice.

In addition to the subcategories excluded under the Settlement Agreement, many subcategories of the Inorganic Chemicals Manufacturing Point Source Category are being deferred. The subcategories under Phase II of the Inorganic Chemicals Manufacturing Point Source Category are listed in Appendix E of this notice. The phase I regulation promulgated today covers 85 percent of the discharges containing toxic pollutants from the Inorganic Chemicals Industry.

IX. Responses to Major Comments

In this section, we will respond to those issues raised in a large number of the comments received and affecting essentially all subcategories. A

summary of the comments received and our detailed responses to all comments are included in a report "Responses to Public Comments, Proposed Inorganic Chemicals Manufacturing Effluent Guidelines and Standards", which is a part of the public record for this regulation.

A. Toxic Metals To Be Limited In Final Regulation

In the proposed regulations toxic metals selected for proposed limitations included all those for which the maximum concentration observed in screening or verification sampling was above the level of treatability. Many commenters recommended the limitation of only one or two of the dominant toxic metals because this will control all other toxic metals and reduce analytical cost. We agree with this comment. Chemical treatment for removal of a metal from a waste stream will also affect and remove all metals in that waste stream with a different percent removal for individual metals. The design, construction and operation of a wastewater treatment system to preferentially remove a single metal from a wastewater stream which contains several metals is just not feasible. Since the source of metals in this industry is primarily the ore, it is not possible to bypass the regulations by substituting a metal that is not limited for one that is limited.

Accordingly, since the date of proposal we excluded additional pollutants from particular subcategories under paragraph 8(a)(iii) of the Settlement Agreement. The pollutants are present in the untreated wastewater at relatively low concentrations and, as demonstrated by review of industry data and the treatability study, will be effectively controlled by the technology necessary to comply with the effluent limitations and standards established for the pollutants present in untreated wastewater at high concentrations. These pollutants are listed in Appendix C of this notice.

B. Numerical Values of Specific Toxic Metal Pollutant Limitations

In the proposed regulations many of the specific toxic metal pollutant limitations were derived from literature data, and the lower end of the range of literature values was generally selected as the maximum thirty-day average limitation. Many commenters stated that the lower end of the range of literature values was not representative of the maximum thirty-day average performance expected from a treatment facility, and provided additional data for our consideration.

We agree with this comment, and are very appreciative of the additional data provided, which has greatly expanded the data base available. Based on this new data, and the results of our treatability study, we have changed many of the numerical values of specific pollutant limitations in this final rule. In general, they are now less stringent. The new data has led to more accurate numerical averages, and more accurate variability factors for use in establishing limitations.

X. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMPs). EPA intends to develop BMPs that are (a) applicable to all industrial sites; (b) applicable to a designated industrial category; and (c) offer guidance to permit authorities in establishing BMPs required by unique circumstances for a given plant.

Although EPA is not proposing them at this time, we are considering development of BMPs specific to the Inorganic Chemicals Industry. The industry has numerous problem areas including leaks and spills, storm water runoff, and groundwater infiltration from storage areas and on-site solid waste disposal. Most subcategories have problems in some or all of these areas. Sections 11–25 of the development document describe possible BMPs for each regulated subcategory. This information can guide the permitting agency in developing case-by-case BMPs for NPDES permits.

Future BMPs may require dikes, curbs, or other measures to contain leaks and spills, as well as the treatment of toxic pollutants in these wastes.

XI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion", is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because techology based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's excercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra*, and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F. 2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

We determined that both upset the bypass provisions should be included in NPDES permits and have promulgated Consolidated Permit regulations that include upset and bypass permit provisions (See 40 CFR 122.60, 45 FR 33290 (May 19, 1980)). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the Inorganic Chemicals Industry will be entitled to upset and bypass provisions in NPDES permits, this final regulation does not address these issues.

XII. Variances and Modifications

Upon the promulgation of this regulation, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the Inorganic Chemicals Industry. In addition, on promulgation, the pretreatment limitations are directly applicable to any indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co* v. *Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–76 industry regulations, it is now included in the NPDES regulations and will not be included in the inorganic chemicals or other industry regulations. See the NPDES regulations at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation are also subject to EPA's "fundamentally different factors" variance. BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines.

The economic modification section (301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants (Section 301(1) precludes the Administrator from modifying BAT requirements for any pollutants which are on the toxic pollutant list under section 307(a)(1) of the Act) for dischargers who file a permit application after July 1, 1977, upon a showing that such modified requirements will (1) represent the maximum use of technology within the economic capability of the owner or operator and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) such modified requirements will not result in any additional requirements on any other point or non-point source; and

(c) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. Initial applications must be filed with the Regional Administrator and, in those States that participate in the NPDES program, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline, and whether the permittee is applying for the 301(c) or 301(g) modification or both. Applicants interested in applying for both must do so in their initial application. For further details, see 43 FR 40859, September 13, 1978.

The nonconventional pollutants limited under BAT in this regulation are chemical oxygen demand (COD), fluoride, and residual chlorine. No regulations establishing criteria for 301(c) and 301(g) determinations have been proposed or promulgated, but the Agency recently announced in the April 12, 1982 Regulatory Agenda plans to propose such regulations by December, 1982 (47 FR 15702). All dischargers who file an initial application within 270 days will be sent a copy of the substantive requirements for 301(c) and 301(g) determinations once they are promulgated. Modification determinations will be considered at the time the NPDES permit is being reissued. Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR 403.7, 403.13; 43 FR 27736 (June 26, 1978)).

Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7. NSPS are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *E. I. du Pont de Nemours and Co.* v. *Train*, supra.

XIII. Relationship to NPDES Permits

The BPT limitations and NSPS in this regulation will be applied to individual inorganic chemicals manufacturers through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such pollutant on a case-by-case basis when limitations are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. We emphasize that although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. We have exercised and intend to exercise that discretion in a manner that recognizes and promotes good-faith compliance efforts and conserves enforcement resources for those who fail to make good-faith efforts to comply with the Act.

XIV. Public Participation

Numerous agencies and groups have participated during the development of these effluent guidelines and standards. Following the publication of the proposed rules on July 24, 1980 in the Federal Register, we provided the development document supporting the proposed rules to industry, Government agencies, and the public sector for comments. Two workshops were held on the Inorganic Chemicals BAT Rulemaking in Philadelphia, PA, and Dallas, TX, on October 7, and October 9, 1980, respectively. On October 15, 1980, in Washington, D.C., a public hearing was held on the proposed pretreatment standards.

The following organizations responded with comments: The Chlorine Institute, Inc.; N.L. Industries; Freeport Minerals Company; Virginia Chemicals, Inc.; Olin Chemicals Inc.; PPG Industries; Office of the President, Council on Wage and Price Stability; Dow Chemical U.S.A.; Chemical Manufacturers Association; Gulf and Western; U.S. Department of Commerce, General Council; Rohm & Haas Company; Allied Chemical Corporation; Kaiser Aluminum and Chemical Corporation; Brunswick Pulp & Paper Company; Diamond Shamrock; Texas Department of Water Resources; South Carolina Department of Health and

Environmental Control; Weyerhaeuser Company; American Cyanamid Company; New York State Department of Environmental Conservation; Hooker Chemicals and Plastics Corporation; Babcock & Wilcox; Vulcan Materials Company; Georgia Pacific Corporation; E.I. du Pont de Nemours & Company; Pennwalt Corporation; FMC Corporation; Monsanto Corporation; Hamilton Standard; Linden Chemicals and Plastics, Inc.; and SCM Chemical/Metallurgical Division.

Fifty-four letters with comments have been received. These letters included 27 addressing the Chlor-Alkali subcategory, 12 addressing Titanium Dioxide, 3 addressing Hydrofluoric Acid, 2 each addressing Hydrogen Cyanide, Chrome Pigments, Aluminum Fluoride, Copper Sulfate, and Sodium Bisulfite, and 1 each addressing Sodium Hydrosulfite, and Sodium Dichromate. Seven letters addressed general topics only. Several letters addressed multiple topics. Nine letters contained effluent data and 2 contained economic data. Eight of the 11 subcategories for which limitations and standards were proposed received 2 or fewer comment letters.

All comments received have been carefully considered, and appropriate changes in the regulation have been made whenever available data and information supported those changes. Major issues raised by the comments are addressed under the relevant section within the body of this preamble. A summary of the comments received and our detailed responses to all comments are included in a report "Responses to Public Comments, Proposed Inorganic Chemical Manufacturing Effluent Guidelines and Standards," which is a part of the public record for this regulation. This report, along with the rest of the public record, will be available for public review three weeks after the effective date in EPA's Public Information Reference Unit, Room 2004 (Rear), (EPA Library), 401 M Street, SW., Washington, D.C.

XV. Small Business Administration (SBA) Financial Assistance

The Agency is continuing to encourage small manufacturers to use Small Business Administration (SBA) financing as needed for pollution control equipment. Three basic programs are in effect: the Guaranteed Pollution Control Bond Program, the Section 503 Program, and the Regular Guarantee Program. All the SBA loan programs are only open to businesses with net assets less than $6 million, with an average annual after-tax income of less than $2 million, and with fewer than 250 employees.

The guaranteed pollution control bond is a full faith and credit instrument with a tax free feature, making it the most favorable of the programs. Although all 1981 funds have already been committed, the SBA is attempting to obtain additional funding for this program. The program applies to projects that cost from $150,000 to $2,000,000.

The Section 503 Program, as amended in July 1980, allows for long-term loans to small and medium-sized businesses. These loans are made by SBA-approved local development companies, which for the first time are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Though SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Programs contact your district or local SBA Office. The coordinator at EPA headquarters is Ms. Frances Desselle who may be reached at (202) 426-7874.

For further information and specifics on the Guaranteed Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235-2902.

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: June 16, 1982.

Anne M. Gorsuch,

Administrator.

XVI. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants.* EPA's technical conclusions are detailed in *Development Document for Effluent Guidelines, New Source Performance Standards and Pretreatment Standards for the Inorganic Chemicals Manufacturing Point Source Category* EPA 440/1-82-007. The Agency's economic analysis is presented in *Economic Impact Analysis of Pollution Control Technologies for Segments of the Inorganic Chemicals Manufacturing Industry,* EPA 440/2-81-023. A contractor's report on treatability studies is presented in *Treatability Studies for the Inorganic Chemical Manufacturing Point Source Category (EPA 440/1-80/103).* A summary of the public comments received on the proposed regulation is presented in a report "Responses to Public Comments, Proposed Inorganic Chemicals Manufacturing Effluent Guidelines and Standards", which is a part of the public record for this regulation.

Technical information may be obtained by writing to Dr. Thomas E. Fielding, Effluent Guidelines Division (WH-552), EPA, 401 M Street, SW., Washington, D.C. 20460, or through calling (202) 426-2582. Copies of the technical documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-6000). The economic analysis may also be obtained from the National Technical Information Service.

The Record will be available for public review three weeks after the effective date in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

XVII. Appendixes

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act

Agency—The U.S. Environmental Protection Agency

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act

BMPs—Best management practices under Section 304(e) of the Act

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act

Clean Water Act—The Federal Water Pollution Control Act Amendmants of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217)

Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States

Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works

NPDES permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act

NSPS—New source performance standards under Section 306 of the Act

POTW—Publicly owned treatment works

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act

PSNS—Pretreatment standards for new sources of indirect discharges under Section 307(b) and (c) of the Act

RCRA—Resource Conservation and Recovery Act (Public Law 94–580) of 1976, Amendments to Solid Waste Disposal Act

Appendix B—Toxic Pollutants Excluded in All Subcategories

(1) Toxic Pollutants Not Detected in Wastewaters:

Acenaphthene
Acrolein
Acrylonitrile
Benzidine
1,2,4-Trichlorobenzene
Hexachlorobenzene
1,1-Dichloroethane
Chlorethane
Bis(2-chloroethyl) ether
2-Chloroethyl vinyl ether (mixed)
2-Chloronaphthalene
2,4,6-Trichlorophenol
Parachlorometa cresol
2-Chlorophenol
1,3-Dichlorobenzene
1,4-Dichlorobenzene
3,3-Dichlorobenzidine
1,2-Trans-dichloroethylene
2.4-Dichlorophenol
1,2-Dichloropropane
2,4-Dimethylphenol
2,4-Dinitrotoluene
1,2-Diphenylhydrazine
4-Chlorophenyl phenyl ether
4-Bromophenyl phenyl ether
Bis(2-Chloroethoxy) methane
Methyl chloride (chloromethane)
Methyl bromide (bromomethane)
Bromoform (tribromomethane)
Hexachlorobutadiene
Hexachlorocyclopentadiene
Isophorone
2-Nitrophenol
4,6-Dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
N-nitrosodi-n-propylamine
Di-n-octyl phthalate
Benzo(k)fluoranthane (11,12-benzo-fluroanthene)
Acenaphthylene
Benzo(ghi)perylene(1.12-benzoperylene)
Dibenzo(a,h)anthracene(1,2,5,6-dibenzanthracene)
Indeno(1,2,3-cd)pyrene(2,3-o-phenylenepyrene)
Vinyl chloride (chloroethylene)
Aldrin
Dieldrin
Chlordane (technical mixture & metabolites)
4,4'-DDT
4,4'-DDE (p,p'-DDX)
4,4'DDD (p,p'-TDE)
A-endosulfan-Alpha
B-endosulfan-Beta
Endosulfan sulfate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide
Hexachlorocyclohexane
A-BHC-Alpha
B-BHC-Beta
R-BHC-(lindane)-Gamma
G-BHC-Delta
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
PCB-1221 (Arochlor 1221)
PCB-1232 (Arochlor 1232)
PCB-1248 (Arochlor 1248)
PCB-1016 (Arochlor 1016)
Toxaphene

Note.—2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) was not measured because of the hazard in laboratory analysis associated with handling TCDD standards.

(2) Toxic Pollutants in Effluents Below the Level of Treatability:

Benezene—Present in one case at a higher level only in a raw waste, not in the BPT effluent
Carbon Tetrachloride
Chlorobenzene
1,2-Dichloroethane
1,1,1-Trichloroethane—Present in one case at a higher level only in a raw waste, not in the BPT effluent
Hexachloroethane
1,1,2-Trichloroethane
Choloroform—Present in three cases at higher levels only in raw wastes, not in the BPT effluents
1,1,2,2-Tetrachloroethane
1,2-Dichlorobenzene
1,1-Dichloroethylene
2,6-Dinitrotoluene
Ethylbenzene—Present in one case at a higher level only in a raw waste, not in the BPT effluent
Fluoroethane
Bis(2-chloroisopropyl) ether
Methylene chloride—Present in four cases at higher levels only in raw wastes, not in the BPT effluents
Dichlorobromomethane
Chlorodibromomethane
Naphthalene—Present in one case at a higher level only in raw waste, not in the BPT effluent
Nitrophenol
Phenol
Bis(2-Ethylhexyl phthalate)
Butyl benzyl phthalate
Di-n-butyl phthalate
Diethyl phthalate
Benzo(a) anthracene
Benzo(a) pyrene
3,4-Benzofluoroethane
Chrysene
Anthracene
Fluorene
Phenanthrene
Pyrene
Tetrachloroethylene
Toluene—Present in one case at a higher level only in raw waste, not in the BPT effluent
Trichloroethylene
Thallium
Beryllium
Antimony
Arsenic
Cadmium
Silver

(3) Toxic Pollutants Found in One or Two Plants Where Such Pollutants Are Unique to These Plants:

Nitrobenzene—Present at a single plant as a result of organic products manufactured on the plant site
2,4-Nitrophenol—Present at a single site as a result of organic products manufactured on the plant site
Dichloropropylene—Present at one plant site in the raw waste at the treatability level but not in the treated effluent
Pentachlorophenol—Present at one plant where it was used as a weed killer near a waste treatment lagoon. This practice was discontinued as a result of this finding

Appendix C—Toxic Pollutants Excluded in Particular Subcategories

Under Paragraph 8(a)(iii) of the Settlement Agreement, EPA is excluding certain toxic pollutants from regulation in particular subcategories, for one or all of the following reasons:

(a) The pollutant is not detectable in the effluent with the use of analytical methods approved pursuant to 304(h) of the Act or other state of the art methods.

(b) The pollutant is present only in trace amounts and is neither causing nor likely to cause toxic effects.

(c) The pollutant is present in amounts too small to be effectively reduced by technologies known to the Administrator.

(d) The pollutant will be effectively controlled by the technologies upon which are based other effluent limitations and guidelines, standards of performance or pretreatment standards.

The reason(s) for each of the following exclusions is keyed to the above list.

Chlor-Alkali Subcategory (Subpart F)

Antimony-c	Cyanide-a
Arsenic-d	Selenium-a
Cadmium-d	Silver-d
Chromium-d	

The pollutants limited are mercury at mercury cell plants, and copper, lead, and nickel at diaphragm cell plants.

Hydrofluroic Acid Subcategory (Subpart H)

Antimony-d	Cyanide-a
Arsenic-c,d	Lead-d
Cadmium-a	Mercury-d
Chromium-d	Selenium-a
Copper-d	Silver-a

The pollutants limited are nickel and zinc.

Titanium Dioxide Subcategory (Subpart V)

Antimony-d	Mercury-a
Arsenic-d	Selenium-a
Cadmium-d	Silver-a
Copper-d	Zinc-d
Lead-d	

The pollutants limited are chromium and nickle.

Aluminum Fluoride Subcategory (Subpart W)

Antimony-c	Lead-d
Arsenic-c,d	Mercury-c
Cadmium-c	Selenium-c
Copper-c,d	Silver-a
Cyanide-a	Zinc-c

The pollutants limited are chromium and nickle.

Chrome Pigments Subcategory (Subpart AH)

Antimony-d	Mercury-d
Arsenic-a	Nickel-d
Cadmium-d	Selenium-a
Copper-d	Silver-a

The pollutants limited are chromium lead and zinc.

Hydrogen Cyanide Subcategory

(Subpart AP)

Antimony-a	Lead-a
Arsenic-a	Mercury-a
Cadmium-a	Selenium-a
Chromium-a	Silver-a
Copper-a	

The only toxic pollutant found at significant levels in this subcategory was cyanide.

Sodium Dichromate Subcategory (Subpart Q)

Antimony-a	Lead-a
Arsenic-a	Mercury-a
Cadmium-a	Selenium-a
Copper-c,d	Silver-a
Cyanide-a	Zinc-d

The pollutants limited are chromium and nickel.

Copper Sulfate Subcategory (Subpart AJ)

Antimony-d	Lead-d
Arsenic-d	Mercury-a
Cadmium-d	Silver-a
Chromium-d	Zinc-d
Cyanide-a	

The pollutants limited are copper, nickel, and selenium.

Nickel Sulfate Subcategory (Subpart AU)

Antimony-d	Lead-d
Arsenic-c	Mercury-a
Cadmium-d	Selenium-c
Chromium-d	Silver-a
Cyanide-a	Zinc-d

The pollutants limited are copper and nickel.

Sodium Bisulfite Subcategory (Subpart BB)

Antimony-c	Lead-d
Arsenic-c	Mercury-c
Cadmium-d	Nickel-d
Copper-d	Selenium-a
Cyanide-a	Silver-a

The pollutants limited are chromium and zinc.

Appendix D—Subcategories Excluded

The following subcategories are excluded under Paragraph 8(a)(i) of the Settlement Agreement because existing BPT or BAT limitations prohibit discharge of process wastewater pollutants for direct dischargers in these subcategories.

Bromine (Subpart AC)
Calcium Oxide (Subpart E)
Chromic Acid (Subpart AI)
Calcium Hydroxide (Subpart AE)
Fluorine (Subpart AN)
Hydrogen (Subpart AO)
Iodine (Subpart AQ)
Potassium Chloride (Subpart AX)
Stannic Oxide (Subpart BH)
Zinc Sulfate (Subpart BK)
Calcium Carbide (Subpart C)
Potassium Metal (Subpart K)
Sodium Bicarbonate (Subpart N)
Borax (Subpart AA)
Ferric Chloride (Subpart AL)
Lead Monoxide (Subpart AR)
Sodium Fluoride (Subpart BC)
Potassium Sulfate (Subpart M)
Calcium Chloride (Subpart D)
Sodium Chloride (Subpart P)
Sodium Sulfite (Subpart T)
Aluminum Sulfate (Subpart B)
Potassium Dichromate (Subpart L)

The following subcategories are excluded under Paragraph 8(a)iv) of the Settlement Agreement because the amount and the toxicity of each pollutant observed in samples collected from plants in each subcategory does not justify developing national regulations:

Ammonium Chloride (Subpart X)
Ammonium Hydroxide (Subpart Y)
Barium Carbonate (Subpart Z)
Calcium Carbonate (Subpart AD)
Carbon Dioxide (Subpart AF)
Carbon Monoxide/Hydrogen (Subpart AG)
Hydrochloric Acid (Subpart G)
Hydrogen Peroxide (Organic Process) (Subpart I)
Nitric Acid (strong) (Subpart AV)
Oxygen and Nitrogen (Subpart AW)
Potassium Iodide (Subpart AV)
Sodium Hydrosulfide (Subpart BD)
Sodium Metal (Subpart R)
Sodium Silicate (Subpart S)
Sodium Thiosulfate (Subpart BG)
Sulfur Dioxide (Subpart BG)
Sulfuric Acid (Subpart U)
Nitric Acid (Subpart J)
Sodium Hydrosulfite (Subpart BE)

The following subcategories are excluded under Paragraph 8(a)(iv) of the Revised Settlement Agreement because these subcategories consist of only one plant or one known discharger.

Zinc Oxide (Subpart BJ)
Lithium Carbonate (Subpart AS)
Manganese Sulfate (Subpart AT)
Sodium Carbonate (Subpart O)
Boric Acid (Subpart AB)
Hydrogen Peroxide (Electrolytic Process) (Subpart I)
Cuprous Oxide (Subpart AK)
Potassium Permanganate (Subpart AZ)
Ferrous Sulfate (Subpart AM)

The following subcategories are excluded from categorical pretreatment regulations for existing sources under paragraph 8(b) of the Revised Settlement Agreement because there are no existing indirect dischargers:

Hydrofluoric Acid (Subpart H)
Sodium Dichromate and Sodium Sulfate (Subpart Q)
Titanium Dioxide (Chloride Process) (Subpart V)
Titanium Dioxide (Chloride/Ilmenite Process) (Subpart V)

The following subcategories are excluded from categorical pretreatment regulations for existing sources under paragraph 8(b) of the Revised Settlement Agreement because the concentrations of toxic pollutants in effluent to POTW from existing sources are below treatable levels.

Chlor-Alkali (Mercury Cells) (Subpart F)
Titanium Dioxide (Sulfate Process) (Subpart V)
Hydrogen Cyanide (Subpart AP)

The following subcategory is excluded from categorical pretreatment regulations for existing sources under paragraph 8(b)(ii) of the Revised Settlement Agreement because the amount and toxicity of incompatible pollutants in effluent to POTW from existing sources is too insignificant to justify developing a pretreatment regulation:

Sodium Bisulfite (Subpart BB)

Appendix E—Subcategories To Be Deferred To Phase II Study

- Beryllium Oxide (2819)
- Chromium Sulfate (2819)
- Chromium Oxide (2819)
- Copper Chloride (2819)
- Copper Iodide (2819)
- Lead Silicate (2819)
- Lead Arsenate (2819)
- Mercury Chloride (2819)
- Mercury Oxide (2819)
- Nickel Ammonium Sulfate (2819)
- Nickel Carbonate (2819)
- Nickel Chloride (2819)
- Nickel Fluoroborate (2819)
- Nickel Nitrate (2819)
- Potassium Cyanide (2819)
- Silver Bromide (2819)
- Silver Chloride (2819)
- Silver Carbonate (2819)
- Silver Cyanide (2819)
- Silver Iodide (2819)
- Silver Oxide (2819)
- Sodium Antimoniate (2819)
- Sodium Cyanide (2819)
- Zinc Chloride (2819)
- Zinc Sulfide (2819)
- White Lead Pigment ($Pb(OH)_2 + PbCO_3$) (2816)
- Lead Dioxide, Brown (PbO_2) (2816)
- Lead Dioxide, Red (Pb_3O_4) (2816)
- Potassium Carbonate (2812)
- Gases, Industrial Compressed Liquid or Solid (2813)
- Nitrous Oxide (2813)
- Barium Sulfate (2816)
- Barytes Pigments (2816)
- Iron Colors (2816)
- Iron Oxide, Black (2816)
- Iron Oxide, Magnetic (2816)
- Iron Oxide, Yellow (2816)
- Ochers (2816)
- Satin White Pigment (2816)
- Siennas (2816)
- Ultramarine Pigment (2816)
- Umbers (2816)
- Whiting (2816)
- Aluminum Compounds (2819)
- Aluminum Hydroxide (2819)
- Aluminum Oxide (2819)
- Alums (2819)
- Ammonia Alum (2819)
- Ammonium Molybdate (2819)
- Ammonium Compounds (2819)
- Ammonium Perchlorate (2819)
- Ammonium Thiosulfate (2819)
- Barium Compounds (2819)
- Bleaching Powder (2819)
- Boron Compounds (not produced at mines) (2819)
- Borosilicate (2819)
- Brine (2819)
- Calcium Hypochlorite (2819)
- Calcium Compounds (inorg) (2819)
- Cerium Salts (2819)
- Chlorosulfuric Acid (2819)
- Cobalt Chloride (2819)
- Cobalt 60 (radioactive) (2819)
- Cobalt Sulfate (2819)
- Fissionable Materials Production (2819)
- Heavy Water (2819)
- Hydrated Alumina Silicate Powder (2819)
- Hydrogen Sulfide (2819)
- Hydrophosphites (2819)
- Indium Chloride (2819)

- Inorganic Acids (except HN03 or H3P04) (2819)
- Iodides (2819)
- Isotopes Radioactive (2819)
- Lithium Compounds (2819)
- Luminus Compounds (radium) (2819)
- Magnesium Compounds (inorg) (2819)
- Manganese Dioxide (powder synthetic) (2819)
- Nuclear Cores, Inorganic (2819)
- Nuclear Fuel Reactor Cases, Inorganic (2819)
- Nuclear Fuel Scrap Re-Processing (2819)
- Oleum (fuming sulfuric acid) (2819)
- Oxidation Catalyst from Porcelain (2819)
- Perchloric Acid (2819)
- Peroxides, Inorganic (2819)
- Potash Alum (2819)
- Potassium Aluminum Sulfate (2819)
- Potassium Bromide (2819)
- Potassium Chlorate (2819)
- Potassium Compounds Inorganic (except KOH and K2CO3) (2819)
- Potassium Hypochlorate (2819)
- Potassium Nitrate and Sulfate (2819)
- Radium Chloride (2819)
- Radium Luminous Compounds (2819)
- Rare Earth Metal Salts (2819)
- Reagent Grade Chemicals (inorganics refined from technical grades) (2819)
- Salts of Rare Earth Metals (2819)
- Silica Amorpus (2819)
- Silica Gel (2819)
- Soda Alum (2819)
- Sodium Chlorate (2819)
- Sodium Compounds, Inorganic (2819)
- Stannic and Stannous Chloride (2819)
- Strontium Carbonate (precipitated and oxide) (2819)
- Strontium Nitrate (2819)
- Potash Magnesia (2819)
- Sulfides and Sulfites (2819)
- Sulfocyanides (2819)
- Sulfur Chloride (2819)
- Sulfur Hexafluoride (2819)
- Sulfur (recovered or refined including sour natural gas) (2819)
- Thiocyanates, Inorganic (2819)
- Tin Compounds, Inorganic (2819)
- Uranium Slag, Radioactive (2819)
- Sodium Hydrosulfite (Zinc Process)
- Silver Nitrate (2819)
- Sodium Silicofluroide (2819)
- Aluminum Chloride (2819)

The following subcategories involve only indirect discharges:
Bromine (Subpart AC)
Calcium Oxide (Subpart E)
Chromic Acid (Subpart AI)
Calcium Hydroxide (Subpart AE)
Fluorine (Subpart AN)
Hydrogen (Subpart AO)
Iodine (Subpart AQ)
Potassium Chloride (Subpart AX)
Stannic Oxide (Subpart BH)
Zinc Sulfate (Subpart BK)
Calcium Carbide (Subpart C)
Potassium Metal (Subpart K)
Sodium Bicarbonate (Subpart N)
Borax (Subpart AA)
Ferric Chloride (Subpart AL)
Lead Monoxide (Subpart AR)
Sodium Fluoride (Subpart BC)
Potassium Sulfate (Subpart M)
Calcium Chloride (Subpart D)
Sodium Chloride (Subpart P)
Sodium Sulfite (Subpart T)
Aluminum Sulfate (Subpart B)
Potassium Dichromate (Subpart L)

List of Subjects in 40 CFR Part 415

Inorganic chemicals Water pollution control, Waste treatment and disposal.

EPA has amended 40 CFR Chapter I by revising Part 415 to read as follows:

PART 415—INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY

Subpart A—Aluminum Chloride Production Subcategory

Sec.

415.10 Applicability; description of the aluminum chloride production subcategory.
415.11 Specialized definitions. [Reserved]
415.12 [Reserved]
415.13 [Reserved]
415.14 Pretreatment standards for existing sources (PSES).
415.15 [Reserved]

Subpart B—Aluminum Sulfate Production Subcategory

415.20 Applicability; description of the aluminum sulfate production subcategory.
415.21 Specialized definitions. [Reserved]
415.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.24 Pretreatment standards for existing sources (PSES).
415.25 New source performance standards (NSPS).
415.26 Pretreatment standards for new sources (PSNS).

Subpart C—Calcium Carbide Production Subcategory

415.30 Applicability; description of the calcium carbide production subcategory.
415.31 Specialized definitions. [Reserved]
415.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.34 [Reserved]
415.35 New source performance standards (NSPS).
415.36 Pretreatment standards for new sources (PSNS).

Subpart D—Calcium Chloride Production Subcategory

415.40 Applicability; decription of the calcium chloride production subcategory.
415.41 Specialized definitions.
415.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.44 [Reserved]
415.45 New source performance standards (NSPS).
415.46 Pretreatment standards for new sources (PSNS).

Subpart E—Calcium Oxide Production Subcategory

415.50 Applicability; description of the calcium oxide production subcategory.
415.51 Specialized definitions [Reserved]
415.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.54 [Reserved]
415.55 New source performance standards (NSPS).
415.56 Pretreatment standards for new sources (PSNS).

Subpart F—Chlor-alkali Subcategory (Chlorine and Sodium or Potassium Hydroxide Production)

415.60 Applicability; description of the chlorine and sodium or potassium hydroxide production subcategory.
415.61 Specialized definitions.
415.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.64 Pretreatment standards for existing sources (PSES).
415.65 New source performance standards (NSPS).
415.66 Pretreatment standards for new sources (PSNS).
415.67 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart G—Hydrochloric Acid Production Subcategory [Reserved]

Subpart H—Hydrofluoric Acid Production Subcategory

415.80 Applicability; description of the hydrofluoric acid production subcategory.
415.81 Specialized definitions. [Reserved]

415.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.83 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.84 [Reserved]
415.85 New source performance standards (NSPS).
415.86 Pretreatment standards for new sources (PSNS).
415.87 [Reserved]

Subpart I—Hydrogen Peroxide Production Subcategory

415.90 Applicability; description of the hydrogen peroxide production subcategory.
415.91 Specialized definitions.
415.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart J—Nitric Acid Production Subcategory [Reserved]

Subpart K—Potassium Metal Production Subcategory

415.110 Applicability; description of the potassium metal production subcategory.
415.111 Specialized definitions. [Reserved]
415.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.113 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.114 [Reserved]
415.115 New source performance standards (NSPS).
415.116 Pretreatment standards for new sources (PSNS).

Subpart L—Potassium Dichromate Production Subcategory

415.120 Applicability; description of the potassium dichromate production subcategory.
415.121 Specialized definitions. [Reserved]
415.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.123 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.124 Pretreatment standards for existing sources (PSES).
415.125 New source performance standards (NSPS).
415.126 Pretreatment standards for new sources (PSNS).

Subpart M—Potassium Sulfate Production Subcategory

415.130 Applicability; description of the potassium sulfate production subcategory.
415.131 Specialized definitions. [Reserved]
415.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.133 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.134 [Reserved]
415.135 New source performance standards (NSPS).
415.136 Pretreatment standards for new sources (PSNS).

Subpart N—Sodium Bicarbonate Production Subcategory

415.140 Applicability; description of the sodium bicarbonate production subcategory.
415.141 Specialized definitions. [Reserved]
415.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.143 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.144 [Reserved]
415.145 New source performance standards (NSPS).
415.146 Pretreatment standards for new sources (PSNS).

Subpart O—Sodium Carbonate Production Subcategory [Reserved]

Subpart P—Sodium Chloride Production Subcategory

415.160 Applicability; description of the sodium chloride production subcategory.
415.161 Specialized definitions.
415.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.163 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.164 [Reserved]
415.165 New source performance standards (NSPS).
415.166 Pretreatment standards for new sources (PSNS).

Subpart Q—Sodium Dichromate and Sodium Sulfate Production Subcategory

415.170 Applicability; description of the sodium dichromate and sodium sulfate production subcategory.
415.171 Specialized definitions.
415.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.173 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.174 [Reserved]
415.175 New source performance standards (NSPS).
415.176 Pretreatment standards for new sources (PSNS).
415.177 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart R—Sodium Metal Production Subcategory [Reserved]

Subpart S—Sodium Silicate Production Subcategory [Reserved]

Subpart T—Sodium Sulfite Production Subcategory

415.200 Applicability; description of the sodium sulfite production subcategory.
415.201 Specialized definitions.
415.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.203 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.204 [Reserved]
415.205 New source performance standards (NSPS).
415.206 Pretreatment standards for new sources (PSNS).

Subpart U—Sulfuric Acid Production Subcategory [Reserved]

Subpart V—Titanium Dioxide Production Subcategory

415.220 Applicability; description of the titanium dioxide production subcategory.
415.221 Specialized definitions.
415.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.224 [Reserved]
415.225 New source performance standards (NSPS).
415.226 Pretreatment standards for new sources (PSNS).
415.227 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart W—Aluminum Fluoride Production Subcategory

415.230 Applicability; description of the aluminum fluoride production subcategory.
415.231 Specialized definitions.
415.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.233 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.234 [Reserved]
415.235 New Source performance standards (NSPS).
415.236 [Reserved]
415.237 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart X—Ammonium Chloride Production Subcategory

415.240 Applicability; description of the ammonium chloride production subcategory.
415.241 Specialized definitions.
415.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart Y—Ammonium Hydroxide Production Subcategory—[Reserved]

Subpart Z—Barium Carbonate Production Subcategory—[Reserved]

Subpart AA—Borax Production Subcategory

415.270 Applicability; description of the borax production subcategory.
415.271 Specialized definitions. [Reserved]
415.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AB—Boric Acid Production Subcategory

415.280 Applicability; description of the boric acid production subcategory.
415.281 Specialized definitions.
415.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AC—Bromine Production Subcategory

415.290 Applicability; description of the bromine production subcategory.
415.291 Specialized definitions. [Reserved]
415.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AD—Calcium Carbonate Production Subcategory

415.300 Applicability; description of the calcium carbonate production subcategory.
415.301 Specialized definitions.
415.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AE—Calcium Hydroxide Production Subcategory

415.310 Applicability; description of the calcium hydroxide production subcategory.
415.311 Specialized definitions.
415.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AF—Carbon Dioxide Production Subcategory [Reserved]

Subpart AG—Carbon Monoxide and By-product Hydrogen Production Subcategory

415.330 Applicability; description of the carbon monoxide and by-product hydrogen production subcategory.
415.331 Specialized definitions.
415.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AH—Chrome Pigments Production Subcategory

415.340 Applicability; description of the chrome pigments production subcategory.
415.341 Specialized definitions.
415.342 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.343 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.344 Pretreatment standards for existing sources (PSES).
415.345 New source performance standards (NSPS).
415.346 Pretreatment standards for new sources (PSNS).
415.347 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart AI—Chromic Acid Production Subcategory

415.350 Applicability; description of the chromic acid production subcategory.
415.351 Specialized definitions. [Reserved]
415.352 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AJ—Copper Sulfate Production Subcategory

415.360 Applicability; description of the copper sulfate production subcategory.
415.361 Specialized definitions.
415.362 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.363 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.364 Pretreatment standards for existing sources (PSES).
415.365 New source performance standards (NSPS).
415.366 Pretreatment standards for new sources (PSNS).
415.367 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart AK—Cuprous Oxide Production Subcategory—[Reserved]

Subpart AL—Ferric Chloride Production Subcategory

415.380 Applicability; description of the ferric chloride production subcategory.
415.381 Specialized definitions.
415.382 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.383 [Reserved]
415.384 Pretreatment standards for existing sources (PSES).

Subpart AM—Ferrous Sulfate Production Subcategory—[Reserved]

Subpart AN—Fluorine Production Subcategory

415.400 Applicability; description of the fluorine production subcategory.
415.401 Specialized definitions.
415.402 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AO—Hydrogen Production Subcategory

415.410 Applicability; description of the hydrogen production subcategory.
415.411 Specialized definitions.
415.412 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AP—Hydrogen Cyanide Production Subcategory

415.420 Applicability; description of the hydrogen cyanide production subcategory.
415.421 Specialized definitions.

415.422 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.423 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.424 [Reserved]
415.425 New source performance standards (NSPS).
415.426 Pretreatment standards for new sources (PSNS).
415.427 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart AQ—Iodine Production Subcategory

415.430 Applicability; description of the iodine production subcategory.
415.431 Specialized definitions.
415.432 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AR—Lead Monoxide Production Subcategory

415.440 Applicability; description of the lead monoxide production subcategory.
415.441 Specialized definitions.
415.442 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.443 [Reserved]
415.444 Pretreatment standards for existing sources (PSES).

Subpart AS—Lithium Carbonate Production Subcategory

415.450 Applicability; description of the lithium carbonate production subcategory.
415.451 Specialized definitions.
415.452 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AT—Manganese Sulfate Production Subcategory—[Reserved]

Subpart AU—Nickel Sulfate Production Subcategory

415.470 Applicability; description of the nickel sulfate production subcategory.
415.471 Specialized definitions.
415.472 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.473 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.474 Pretreatment standards for existing sources (PSES).
415.475 New source performance standards (NSPS).
415.476 Pretreatment standards for new sources (PSNS).
415.477 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart AV—Strong Nitric Acid Production Subcategory—[Reserved]

Subpart AW—Oxygen and Nitrogen Production Subcategory

415.490 Applicability; description of the oxygen and nitrogen production subcategory.
415.491 Specialized definitions. [Reserved]
415.492 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AX—Potassium Chloride Production Subcategory

415.500 Applicability; description of the potassium chloride production subcategory.
415.501 Specialized definitions. [Reserved]
415.502 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AY—Potassium Iodide Production Subcategory

415.510 Applicability; description of the potassium iodide production subcategory.
415.511 Specialized definitions.
415.512 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart AZ—Potassium Permanganate Production Subcategory—[Reserved]

Subpart BA—Silver Nitrate Production Subcategory

415.530 Applicability; description of the silver nitrate production subcategory.
415.531 Specialized definitions.
415.532 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.533 [Reserved]
415.534 Pretreatment standards for existing sources (PSES).

Subpart BB—Sodium Bisulfite Production Subcategory

415.540 Applicability; description of the sodium bisulfite production subcategory.
415.541 Specialized definitions.
415.542 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.543 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
415.544 [Reserved]
415.545 New source performance standards (NSPS).
415.546 Pretreatment standards for new sources (PSNS).
415.547 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart BC—Sodium Fluoride Production Subcategory

415.550 Applicability; description of the sodium fluoride production subcategory.
415.551 Specialized definitions.
415.552 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
415.553 [Reserved]
415.554 Pretreatment standards for existing sources (PSES).

Subpart BD—Sodium Hydrosulfide Production Subcategory—[Reserved]

Subpart BE—Sodium Hydrosulfide Production Subcategory—[Reserved]

Subpart BF—Sodium Silicofluoride Production Subcategory—[Reserved]

Subpart BG—Sodium Thiosulfate Production Subcategory—[Reserved]

Subpart BH—Stannic Oxide Production Subcategory

415.600 Applicability; description of the stannic oxide production subcategory.
415.601 Specialized definitions.
415.602 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart BI—Sulfur Dioxide Production Subcategory—[Reserved]

Subpart BJ—Zinc Oxide Production Subcategory—[Reserved]

Subpart BK—Zinc Sulfate Production Subcategory

415.630 Applicability; description of the zinc sulfate production subcategory.
415.631 Specialized definitions.
415.632 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

Subpart A—Aluminum Chloride Production Subcategory

§ 415.10 Applicability; description of the aluminum chloride production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of aluminum chloride.

§ 415.11 Specialized definitions. [Reserved]

§ 415.12 [Reserved]

§ 415.13 [Reserved]

§ 415.14 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART A—ALUMINUM CHLORIDE

Pollutant or pollutant property	PSES limitations
pH	Within the range 5.0 to 10.0.

§ 415.15 [Reserved]

Subpart B—Aluminum Sulfate Production Subcategory

§ 415.20 Applicability; description of the aluminum sulfate production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of aluminum sulfate.

§ 415.21 Specialized definitions. [Reserved]

§ 415.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Subject to the provisions of paragraphs (b), (c) and (d) of this section, there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed and operated so as to contain the precipitation from the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 10-year, 24-hour rainfall event, when such event occurs.

(c) During any calendar month there may be discharged from a process wastewater impoundment either a volume of process wastewater equal to the difference between the precipitation for that month that falls within the impoundment and the evaporation for that month, or if greater, a volume of process wastewater equal to the difference between the mean precipitation for that month that falls within the impoundment and the mean evaporation for that month as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located (or as otherwise determined if no monthly data have been established by the National Climatic Center).

(d) Any process wastewater discharged pursuant to paragraph (c) of this section shall comply with each of the following requirements:

SUBPART B—ALUMINUM SULFATE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l	
TSS	50	25
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Subject to the provisions of paragraph (b) of this section there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed, and operated so as to contain the precipitation from the 25-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 25-year, 24-hour rainfall event, when such event occurs.

§ 415.24 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART B—ALUMINUM SULFATE

Pollutant or pollutant property	PSES limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Zinc	5.0	2.5

§ 415.25 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) Subject to the provisions of paragraph (b) of this section there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed, and operated so as to contain the precipitation from the 25-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 25-year, 24-hour rainfall event, when such event occurs.

§ 415.26 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as the new source performance standards specified in § 415.25.

Subpart C—Calcium Carbide Production Subcategory

§ 415.30 Applicability; description of the calcium carbide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of calcium carbide in uncovered furnaces.

§ 415.31 Specialized definitions. [Reserved]

§ 415.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technolgy economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.34 [Reserved]

§ 415.35 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.36 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart D—Calcium Chloride Production Subcategory

§ 415.40 Applicability; description of the calcium chloride production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of calcium chloride by the brine extraction process.

§ 415.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean calcium chloride.

§ 415.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART D—CALCIUM CHLORIDE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.016	0.0082
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.44 [Reserved]

§ 415.45 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.46 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart E—Calcium Oxide Production Subcategory

§ 415.50 Applicability; description of the calcium oxide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of calcium oxide.

§ 415.51 Specialized definitions. [Reserved]

§ 415.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Subject to the provisions of paragraphs (b), (c), and (d) of this section, there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed and operated so as to contain the precipitation from the 10-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the

volume of precipitation that falls within the impoundment in excess of that attributable to the 10-year, 24-hour rainfall event, when such event occurs.

(c) During any calendar month there may be discharged from a process wastewater impoundment either a volume of process wastewater equal to the difference between the precipitation for that month that falls within the impoundment and the evaporation for that month, or, if greater, a volume of process wastewater equal to the difference between the mean precipitation for that month that falls within the impoundment and the mean evaporation for that month as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located (or as otherwise determined if no monthly data have been established by the National Climatic Center).

(d) Any process wastewater discharged pursuant to paragraph (c) of this section shall comply with each of the following requirements:

SUBPART E—CALCIUM OXIDE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
TSS	50	25
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Subject to the provisions of paragraph (b) of this section there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed, and operated so as to contain the precipitation from the 25-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 25-year, 24-hour rainfall event, when such event occurs.

§ 415.54 [Reserved]

§ 415.55 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) Subject to the provisions of paragraph (b) of this section there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed, and operated so as to contain the precipitation from the 25-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 25-year, 24-hour rainfall event, when such event occurs.

§ 415.56 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as the new source performance standards specified in § 415.55.

Subpart F—Chlor-alkali Subcategory (Chlorine and Sodium or Potassium Hydroxide Production)

§ 415.60 Applicability; description of the chlorine and sodium or potassium hydroxide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of chlorine and sodium or potassium hydroxide by the diaphragm cell process and by the mercury cell process.

§ 415.61 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean chlorine.

(c) The term "mercury" shall mean the total mercury present in the process wastewater stream exiting the mercury treatment system.

(d) The term "lead" shall mean total lead.

§ 415.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart and using the mercury cell process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART F—CHLOR-ALKALI MERCURY CELLS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.64	0.32
Mercury (T)	.00028	.00014
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart and using the diaphragm cell process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART F—CHLOR-ALKALI DIAPHRAGM CELLS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 lb) of product	
TSS	1.1	0.51
Copper (T)	0.018	0.0070
Lead (T)	0.026	0.010
Nickel (T)	0.014	0.0056
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart and using the

mercury cell process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART F—CHLOR-ALKALI-MERCURY CELLS

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Mercury (T)	0.00023	0.00010.
Total Residual Chlorine	0.0032	0.0019

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the diaphragm cell process must achieve the following effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART F—CHLOR-ALKALI-DIAPHRAGM CELLS

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Copper (T)	0.012	0.0049
Lead (T)	0.0059	0.0024
Nickel (T)	0.0097	0.0037
Total Residual Chlorine	0.013	0.0079

§ 415.64 Pretreatment standards for existing sources (PSES).

(a) [Reserved]

(b) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart and using the diaphragm cell process, which introduces pollutants into a publicly owned treatment works, must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART F—CHLOR-ALKALI-DIAPHRAGM CELLS

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
Copper (T)	2.1	0.80
Lead (T)	2.9	1.1
Nickel (T)	1.6	0.64

In cases when POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for Copper (T), Lead(T) and Nickel (T) are the same as specified in §415.62(b).

§415.65 New source performance standards (NSPS).

(a) Any new source subject to this subpart and using the mercury cell process must achieve the following new source performance standards (NSPS):

SUBPART F—CHLOR-ALKALI-MERCURY CELLS

Pollutant or pollutant property	NSPS limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kq/kkg (or pounds per 1,000 lb) of product	
TSS	0.64	0.32
Mercury (T)	0.00023	0.00010
Total Residual Chlorine	0.0032	0.0019
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any new source subject to this subpart and using the diaphragm cell process must achieve the following new source performance standards (NSPS):

SUBPART F—CHLOR-ALKALI-DIAPHRAGM CELLS

Pollutant or pollutant property	NSPS limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kq/kkg (or pounds per 1,000 lb) of product	
TSS	1.1	0.51
Lead (T)	0.0047	0.0019
Total Residual Chlorine	0.013	0.0079
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.66 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart and using the mercury cell process, which introduces pollutants into a publicly owned treatment works, must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.64(a).

(b) Except as provided in 40 CFR 403.7, any new source subject to this subpart and using the diaphragm cell process, which introduces pollutants into a publicly owned treatment works, must compy with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

SUBPART F-DIAPHRAGM CELLS

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
Lead(T)	0.53	0.21

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for Lead(T) are the same as specified in § 415.65(b).

§ 415.67 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the mercury cell process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.62(a).

(b) [Reserved]

Subpart G—Hydrochloric Acid Production Subcategory [Reserved]

Subpart H—Hydrofluoric Acid Production Subcategory

§ 415.80 Applicability; description of the hydrofluoric acid production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of hydrofluoric acid.

§ 415.81 Specialized definitions. [Reserved]

§ 415.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART H—HYDROFLUORIC ACID

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	11.0	5.3
Fluoride (T)	6.1	2.9
Nickel (T)	k0.036	0.011
Zinc (T)	0.12	0.036
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.83 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART H—HYDROFLUORIC ACID

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Fluoride (T)	3.4	1.6
Nickel (T)	0.020	0.0060
Zinc (T)	0.072	0.022

§ 415.84 [Reserved]

§ 415.85 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

SUBPART H—HYDROFLUORIC ACID

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	6.0	3.0
Fluoride (T)	3.4	1.6
Nickel (T)	0.020	0.0060
Zinc (T)	0.072	0.022
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.86 Pretreatment standards for new sources (PSNS).

Except as provided for in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in §415.84.

§ 415.87 [Reserved]

Subpart I—Hydrogen Peroxide Production Subcategory

§ 415.90 Applicability; description of the hydrogen peroxide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of hydrogen peroxide by the electrolytic process and by the oxidation of alkyl hydroanthraquinones.

§ 415.91 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean hydrogen peroxide as a one hundred percent hydrogen peroxide solution.

(c) The term "Cyanide A" shall mean those cyanides amenable to chlorination and is determined by the methods specified in 40 CFR 136.3.

(d) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated non-process wastewater, as defined below.

(e) The term "process wastewater pollutants" means pollutants present in process wastewater.

(f) The term "contaminated nonprocess wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and manufacturing hydrogen peroxide by the oxidation of alkyl hydroanthraquinones must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART I—HYDROGEN PEROXIDE ORGANIC PROCESS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.80	0.40
TOC	0.44	0.22
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and manufacturing hydrogen peroxide by the electrolytic process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART I—HYDROGEN PEROXIDE ELECTROLYTE PROCESS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.0050	0.0025
Cyanide A	0.00040	0.00020
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart J—Nitric Acid Production Subcategory [Reserved]

Subpart K—Potassium Metal Production Subcategory

§ 415.110 Applicability; description of the potassium metal production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of potassium metal.

§ 415.111 Specialized definitions. [Reserved]

§ 415.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.113 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.114 [Reserved]

§ 415.115 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.116 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart L—Potassium Dichromate Production Subcategory

§ 415.120 Applicability; description of the potassium dichromate production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants resulting from the production of potassium dichromate into treatment works which are publicly owned.

§ 415.121 Specialized definitions. [Reserved]

§ 415.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.123 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.124 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART L—POTASSIUM DICHROMATE

Pollutant or pollutant property	PSES limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Hexavalent chromium	0.25	0.090
Total chromium	3.0	1.0

§ 415.125 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.126 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart M—Potassium Sulfate Production Subcategory

§ 415.130 Applicability; description of the potassium sulfate production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of potassium sulfate.

§ 415.131 Specialized definitions. [Reserved]

§ 415.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) Subject to the provisions of paragraphs (b), (c), and (d) of this section, there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed and operated so as to contain the precipitation from the 10-year, 24-hour rainfall event as established by the National Climatic

Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 10-year, 24-hour rainfall event, when such event occurs.

(c) During any calendar month there may be discharged from a process wastewater impoundment either a volume of process wastewater equal to the difference between the precipitation for that month that falls within the impoundment and the evaporation for that month, or, if greater, a volume of process wastewater equal to the difference between the mean precipitation for that month that falls within the impoundment and the mean evaporation for that month as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located (or as otherwise determined if no monthly data have been established by the National Climatic Center).

(d) Any process wastewater discharged pursuant to paragraph (c) of this section shall comply with each of the following requirements:

SUBPART M—POTASSIUM SULFATE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
TSS	50	25
ph	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.133 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Subject to the provisions of paragraph (b) of this section there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed, and operated so as to contain the precipitation from the 25–year, 24–hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 25-year, 24-hour rainfall event, when such event occurs.

§ 415.134 [Reserved]

§ 415.135 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) Subject to the provisions of paragraph (b) of this section there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed, and operated so as to contain the precipitation from the 25-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 25-year, 24-hour rainfall event, when such event occurs.

§ 415.136 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as the new source performance standards specified in § 415.135.

Subpart N—Sodium Bicarbonate Production Subcategory

§ 415.140 Applicability; description of the sodium bicarbonate production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of sodium bicarbonate.

§ 415.141 Specialized definitions. [Reserved]

§ 415.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.143 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology econmically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.144 [Reserved]

§ 415.145 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.146 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart O—Sodium Carbonate Production Subcategory [Reserved]

Subpart P—Sodium Chloride Production Subcategory

§ 415.160 Applicability; description of the sodium chloride production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of sodium chloride by the solution brine-mining process and by the solar evaporation process.

§ 415.161 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and

methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean sodium chloride.

(c) The term "bitterns" shall mean the saturated brine solution remaining after precipitation of sodium chloride in the solar evaporation process.

§ 415.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the solar evaporation process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except that unused bitterns may be returned to the body of water from which the process brine solution was originally withdrawn, provided no additional pollutants are added to the bitterns during the production of sodium chloride.

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the solution brine mining process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART P—SODIUM CHLORIDE BRINE MINING PROCESS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb.) of product	
TSS	0.34	0.17
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

§ 415.163 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the solar evaporation process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters, except that unused bitterns may be returned to the body of water from which the process brine solution was originally withdrawn, provided no additional pollutants are added to the bitterns during the production of sodium chloride.

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the solution brine-mining process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.164 [Reserved]

§ 415.165 New source performance standards (NSPS).

(a) Any new source subject to this subpart and using the solar evaporation process must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters, except that unused bitterns may be returned to the body of water from which the process brine solution was originally withdrawn, provided no additional pollutants are added to the bitterns during the production of sodium chloride.

(b) Any new source subject to this subpart and using the solution brine-mining process must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.166 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as the new source performance standards specified in § 415.165.

Subpart Q—Sodium Dichromate and Sodium Sulfate Production Subcategory

§ 415.170 Applicability; description of the sodium dichromate and sodium sulfate production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of sodium dichromate and by-product sodium sulfate.

§ 415.171 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean sodium dichromate.

(c) The term "Cr(T)" shall mean total chromium.

(d) The term "Cr(+6)" shall mean hexavalent chromium.

§ 415.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART Q—SODIUM DICHROMATE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.44	0.22
Hexavalent Chromium	0.00090	0.00050
Chromium (T)	0.0088	0.0044
Nickel (T)	0.0068	0.0034
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.173 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for Chromium (T),

Hexavalent Chromium, and Nickel (T) are the same as specified in § 415.172.

§ 415.174 [Reserved]

§ 415.175 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations are the same as specified in § 415.172.

§ 415.176 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.174.

§ 415.177 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.172.

Subpart R—Sodium Metal Production Subcategory [Reserved]

Subpart S—Sodium Silicate Production Subcategory [Reserved]

Subpart T—Sodium Sulfite Production Subcategory

§ 415.200 Applicability; description of the sodium sulfite production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of sodium sulfite by reacting sulfur dioxide with sodium carbonate.

§ 415.201 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean sodium sulfite.

§ 415.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART T—SODIUM SULFITE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.032	0.016
COD	3.4	1.7
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.203 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) Subject to the provisions of paragraph (b) of this section there shall be no discharge of process wastewater pollutants into navigable waters.

(b) A process wastewater impoundment which is designed, constructed, and operated so as to contain the precipitation from the 25-year, 24-hour rainfall event as established by the National Climatic Center, National Oceanic and Atmospheric Administration for the area in which such impoundment is located may discharge that volume of process wastewater which is equivalent to the volume of precipitation that falls within the impoundment in excess of that attributable to the 25-year, 24-hour rainfall event, when such event occurs.

§ 415.204 [Reserved]

§ 415.205 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutant to navigable waters.

§ 415.206 Pretreatment standards for new sources (PSNS).

Except as provided in § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as the new source performance standards specified in § 415.205.

Subpart U—Sulfuric Acid Production Subcategory [Reserved]

Subpart V—Titanium Dioxide Production Subcategory

§ 415.220 Applicability; description of the titanium dioxide production subcategory.

This subpart applies to discharges to waters of the United States and introduction of pollutants into publicly owned treatment works resulting from the production of titanium dioxide by the sulfate process, the chloride process, and the simultaneous beneficiation-chlorination (chloride-ilmenite) process.

§ 415.221 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean titanium dioxide.

§ 415.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing titanium dioxide by the sulfate process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART V—TITANIUM DIOXIDE-SULFATE PROCESS

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	140	38
Chromium (T)	0.48	0.21

SUBPART V—TITANIUM DIOXIDE-SULFATE PROCESS—Continued

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nickel (T)	0.029	0.014
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Except as provided for in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing titanium dioxide by the chloride process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART V—TITANIUM DIOXIDE-CHLORIDE PROCESS

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	23	6.4
Chromium (T)	0.057	0.030
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(c) Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart and producing titanium dioxide by the simultaneous beneficiation-chlorination (chloride/ilmenite) process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART V—TITANIUM DIOXIDE-CHLORIDE-ILMENITE PROCESS

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	35	9.6
Chromium (T)	0.12	0.053
Nickel (T)	0.072	0.035
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing titanium dioxide by the sulfate process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations are the same for Chromium(T) and Nickel(T) as specified in § 415.222(a).

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing titanium dioxide by the chloride process must achieve the following effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for Chromium(T) are the same as specified in § 415.222(b).

(c) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and producing titanium dioxide by the simultaneous beneficiation-chlorination (chloride-ilmenite) process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for Chromium(T) and Nickel(T) are the same as specified in § 415.222(c).

§ 415.224 [Reserved]

§ 415.225 New source performance standards (NSPS).

(a) Any new source subject to this subpart producing titanium dioxide by the sulfate process must achieve the following new source performance standards (NSPS):

SUBPART V—TITANIUM DIOXIDE-SULFATE PROCESS

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	110	30
Iron (T)	4.1	1.2
Chromium (T)	0.27	0.14
Nickel (T)	0.18	0.095
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Any new source subject to this subpart producing titanium dioxide by the chloride process must achieve the following new source performance standards (NSPS):

SUBPART V—TITANIUM DIOXIDE-CHLORIDE PROCESS

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	14	4.0
Iron (T)	0.52	0.16
Chromium (T)	0.023	0.012
ph	(1)	(1)

[1] Within the range 6.0 to 9.0.

(c) Any new source subject to this subpart producing titanium dioxide by the simultaneous beneficiation-chlorination (chloride-ilmenite) process must achieve the following new source performance standards (NSPS):

SUBPART V—TITANIUM DIOXIDE-CHLORIDE-ILMENITE PROCESS

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	8.4	2.4
Iron (T)	0.32	0.096
Chromium (T)	0.014	0.0072
Nickel (T)	0.020	0.010
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.226 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart and producing titanium dioxide by the sulfate process which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

SUBPART V—TITANIUM DIOXIDE—SULFATE PROCESS

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
Iron (T)	6.5	2.5
Chromium (T)	0.57	0.30

SUBPART V—TITANIUM DIOXIDE—SULFATE PROCESS—Continued

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nickel (T)	0.38	0.20

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for Iron(T), Chromium(T), and Nickel(T) are the same as specified in § 415.225(a).

(b) Except as provided in 40 CFR 403.7, any new source subject to this subpart and producing titanium dioxide by the chloride process which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

SUBPART V—TITANIUM DIOXIDE-CHLORIDE PROCESS

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
Iron (T)	5.3	1.6
Chromium (T)	0.23	0.12

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as guidance: The limitations for Iron(T) and Chromium(T) are the same as specified in § 415.255(b).

(c) Except as provided in § 403.7, any new source subject to this subpart and producing titanium dioxide by the simultaneous beneficiation-chlorination (chloride-ilmenite) process which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

SUBPART V—TITANIUM DIOXIDE-CHLORIDE-ILMENITE PROCESS

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Iron (T)	5.3	1.6
Chromium (T)	0.23	0.12

SUBPART V—TITANIUM DIOXIDE-CHLORIDE-ILMENITE PROCESS—Continued

Pollutant or pollutant property	PSNS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Nickel (T)	0.33	0.17

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for Iron (T), Chromium (T), and Nickel (T) are the same as specified in § 415.225(c).

§ 415.227 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.172.

Subpart W—Aluminum Fluoride Production Subcategory

§ 415.230 Applicability; description of the aluminum fluoride production subcategory.

This subpart applies to discharges to waters of the United States and introduction of pollutants into publicy owned treatment works resulting from the production of aluminum fluoride.

§ 415.231 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" means aluminum fluoride produced by the dry process in which partially dehydrated alumina hydrate is reacted with hydrofluoric acid gas.

§ 415.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART W—ALUMINUM FLUORIDE

BPT effluent limitations	Pollutant or pollutant property	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	2.4	1.2
Flouride (T)	1.3	0.63
Chromium (T)	0.015	0.0045
Nicket (T)	0.0079	0.0024
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.233 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for Fluoride(T), Chromium(T), and Nickel(T) are the same as specified in § 415.232.

§ 415.234 [Reserved]

§ 415.235 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations are the same as specified in § 415.232.

§ 415.236 [Reserved]

§ 415.237 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.232.

Subpart X—Ammonium Chloride Production Subcategory

§ 415.240 Applicability; description of the ammonium chloride production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of ammonium chloride by

the reaction of anhydrous ammonia with hydrogen chloride gas and by the recovery process from Solvay process wastes.

§ 415.241 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean ammonium chloride.

(c) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated nonprocess wastewater, as defined below.

(d) The term "process wastewater pollutants" means pollutants present in process wastewater.

(e) The term "contaminated nonprocess wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart and reacting anhydrous ammonia with hydrogen chloride gas must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

(b) Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart and using the recovery process from Solvay process wastes must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART X—AMMONIUM CHLORIDE SOLVAY PROCESS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Ammonia (as N)	8.8	4.4
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart Y—Ammonium Hydroxide Production Subcategory [Reserved]

Subpart Z—Barium Carbonate Production Subcategory [Reserved]

Subpart AA—Borax Production Subcategory

§ 415.270 Applicability; description of the borax production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of borax by the ore-mining process and by the Trona process.

§ 415.271 Specialized definitions. [Reserved]

§ 415.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except that residual brine and depleted liquor may be returned to the body of water from which the process brine solution was originally withdrawn.

Subpart AB—Boric Acid Production Subcategory

§ 415.280 Applicability; description of the boric acid production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of boric acid from ore-mined borax and from borax produced by the Trona process.

§ 415.281 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean boric acid.

§ 415.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using borax produced by the Trona process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except that residual brine and depleted liquor may be returned to the body of water from which the process brine solution was originally withdrawn.

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using remined borax must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AB—BORIC ACID MINED BORAX PROCESS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Arsenic	0.0028	0.0014
TSS	0.14	0.07
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart AC—Bromine Production Subcategory

§ 415.290 Applicability; description of the bromine production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of bromine by the brine-mining process and by the Trona process.

§ 415.291 Specialized definitions. [Reserved]

§ 415.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except that residual brine and depleted liquor may be returned to the body of water from which the process brine solution was originally withdrawn.

Subpart AD—Calcium Carbonate Production Subcategory

§ 415.300 Applicability; description of the calcium carbonate production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of calcium carbonate by the milk of lime process and by the recovery process from Solvay process wastes.

§ 415.301 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean calcium carbonate.

§ 415.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the milk of lime process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AD—CALCIUM CARBONATE MILK OF LIME PROCESS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.56	0.28
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the recovery process from Solvay process wastes, must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AD—CALCIUM CARBONATE SOLVAY RECOVERY PROCESS

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	1.16	0.58
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart AE—Calcium Hydroxide Production Subcategory

§ 415.310 Applicability; description of the calcium hydroxide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of calcium hydroxide by the lime slaking process.

§ 415.311 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated nonprocess wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated nonprocess wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: *Provided,* that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart AF—Carbon Dioxide Production Subcategory [Reserved]

Subpart AG—Carbon Monoxide and By-Product Hydrogen Production Subcategory

§ 415.330 Applicability; description of the carbon monoxide and by-product hydrogen production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of carbon monoxide and by-product hydrogen by the reforming process.

§ 415.331 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean carbon monoxide plus hydrogen.

(c) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated nonprocess wastewater, as defined below.

(d) The term "process wastewater pollutants" means pollutants present in process wastewater.

(e) The term "contaminated nonprocess wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are

repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AG—CARBON MONOXIDE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
COD	0.50	0.25
TSS	0.12	0.060
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart AH—Chrome Pigments Production Subcategory

§ 415.340 Applicability; description of the chrome pigments production subcategory.

This subpart applies to discharges to waters of the United States and introduction of pollutants into publicly owned treatment works resulting from the production of chrome pigments.

§ 415.341 Specialized definitions.

For the purposes of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "chrome pigments" means chrome yellow, chrome orange, molybdate chrome orange, anhydrous and hydrous chromium oxide, chrome green, and zinc yellow.

(c) The term "product" means chrome pigments.

§ 415.342 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AH—CHROME PIGMENTS

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	9.1	3.8
Chromium (T)	0.31	0.13
Lead (T)	0.36	0.15
Zinc (T)	0.31	0.13
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.343 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for Chromium(T), Lead(T), and Zinc(T) are the same as specified in § 415.342.

§ 415.344 Pretreatment standards for existing sources (PSES).

(a) Existing sources which annually introduce less than 210,000 cubic meters per year (55 million gallons per year) of chrome pigments process wastewater into a publicly owned treatment works are subject only to the standards specified in 40 CFR Part 403.

(b) Except as provided in 40 CFR 403.7 and 403.13 and paragraph (a) of this section, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART AH—CHROME PIGMENTS

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Chromium (T)	2.9	1.2
Lead (T)	3.4	1.4
Zinc (T)	2.9	1.2

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for Chromium(T), Lead(T), and Zinc(T) are the same as specified in § 415.342

415.345 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations are the same as specified in § 415.342.

§ 415.346 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same for TSS and pH as specified in § 415.344.

§ 415.347 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same as specified in § 415.342.

Subpart AI—Chromic Acid Production Subcategory

§ 415.350 Applicability; description of the chromic acid production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of chromic acid in facilities which also manufacture sodium dichromate.

§ 415.351 Specialized definitions. [Reserved]

§ 415.352 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except as provided for in § 415.172.

Subpart AJ—Copper Sulfate Production Subcategory

§ 415.360 Applicability; description of the copper sulfate production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of copper sulfate.

§ 415.361 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean copper sulfate.

§ 415.362 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AJ—COPPER SULFATE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.069	0.023
Copper (T)	0.0030	0.0010
Nickel (T)	0.0060	0.0020
Selenium (T)	0.0015	0.00050
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

§ 415.363 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations for Copper(T), Nickel(T), and Selenium(T) are the same as specified in § 415.362.

§ 415.364 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART AJ—COPPER SULFATE

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Copper (T)	3.2	1.1
Nickel (T)	6.4	2.1
Selenium (T)	1.6	0.53

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for Cooper (T), Nickel (T), and Selenium (T) are the same as specified in § 415.362.

§ 415.365 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations are the same as specified in § 415.362.

§ 415.366 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.364.

§ 415.367 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.362.

Subpart AK—Cuprous Oxide Production Subcategory [Reserved]

Subpart AL—Ferric Chloride Production Subcategory

§ 415.380 Applicability; description of the ferric chloride production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of ferric chloride from pickle liquor.

§ 415.381 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated nonprocess wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated nonprocess wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.382 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.383 [Reserved]

§ 415.384 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART AL—FERRIC CHLORIDE

Pollutant or pollutant property	PSES limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Total Chromium	3.0	1.0
Hexavalent Chromium	0.25	0.09
Copper (T)	1.0	0.50
Nickel (T)	2.0	1.0
Zinc (T)	5.0	2.5

Subpart AM—Ferrous Sulfate Production Subcategory [Reserved]

Subpart AN—Fluorine Production Subcategory

§ 415.400 Applicability; description of the fluorine production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of fluorine by the liquid hydrofluoric acid electrolysis process.

§ 415.401 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated non-process wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated nonprocess wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers, and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.402 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart AO—Hydrogen Production Subcategory

§ 415.410 Applicability; description of the hydrogen production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of hydrogen as a refinery by-product.

§ 415.411 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated nonprocess wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated nonprocess wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.412 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except as provided for in Part 419 of this chapter (39 FR 16560).

Subpart AP—Hydrogen Cyanide Production Subcategory

§ 415.420 Applicability; description of the hydrogen cyanide production subcategory.

This subpart applies to discharges to waters of the United States and introduction of pollutants into publicly owned treatment works resulting from the production of hydrogen cyanide by the Andrussow process.

§ 415.421 Specialized definitions.

For the purposes of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" means hydrogen cyanide.

(c) The term "Cyanide A" means those cyanides amenable to chlorination and is determined by the methods specified in 40 CFR § 136.3.

§ 415.422 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AP—HYDROGEN CYANIDE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	8.6	3.2
Cyanide A	0.10	0.021
Total Cyanide	0.65	0.23
pH	(1)	(1)

[1] Within the range 6.0 to 10.5.

§ 415.423 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART AP—HYDROGEN CYANIDE

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Cyanide A	0.10	0.021
Total Cyanide	0.65	0.23
Total Residual Chlorine	0.086	0.051

§ 415.424 [Reserved]

§ 415.425 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

SUBPART AP—HYDROGEN CYANIDE

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	8.6	3.2
Cyanide A	0.10	0.021
Total Cyanide	0.65	0.23
Total Residual Chlorine	0.086	0.051
Ph	(1)	(1)

[1] Within the range 6.0 to 10.5.

§ 415.426 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.424.

§ 415.427 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.422.

Subpart AQ—Iodine Production Subcategory

§ 415.430 Applicability; description of the iodine production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of iodine.

§ 415.431 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated non-process wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated non-process wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure or process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.432 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart AR—Lead Monoxide Production Subcategory

§ 415.440 Applicability; description of the lead monoxide production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into treatment works which are publicly owned resulting from the production of lead monoxide.

§ 415.441 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include

contaminated non-process wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated non-process wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure or process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment; Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact one it has occurred.

§ 415.442 Effluent limitations guidelines respresenting the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.443 [Reserved]

§ 415.444 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 40 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART AR—LEAD MONOXIDE

Pollutant or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
Lead	2.0	1.0

Subpart AS—Lithium Carbonate Production Subcategory

§ 415.450 Applicability; description of the lithium carbonate production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of lithium carbonate by the Trona process and from spodumene ore.

§ 415.451 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean lithium carbonate.

§ 415.452 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using the Trona process must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best praticable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except that residual brine and depleted liquor may be returned to the body of water from which the process brine solution was originally withdrawn.

(b) Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart and using spodumene ore must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AS—LITHIUM CARBONATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 pounds) of product	
TSS	2.7	0.90
	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart AT—Manganese Sulfate Production Subcategory [Reserved]

Subpart AU—Nickel Sulfate Production Subcategory

§ 415.470 Applicability; description of the nickel sulfate subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from the production of nickle sulfate from pure and impure raw materials.

§ 415.471 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean nickel sulfate.

§ 415.472 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AU—NICKEL SULFATE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Nickel (T)	0.0060	0.0020
TSS	0.096	0.032
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.473 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to the subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

SUBPART AU—NICKEL SULFATE

Pollutant or pollutant property	Bat effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 pound) of product	
Copper (T)	0.00074	0.00024
Nickel (T)	0.00074	0.00024

§ 415.474 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART AU—NICKEL SULFATE

Pollutant or pollutant property	PSES Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
Copper (T)	1.1	0.36
Nickel (T)	1.1	0.36

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as an alternate: The limitations for copper (T) and nickel (T) are the same as specified in § 415.473.

§ 415.475 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

SUBPART AU—NICKEL SULFATE

Pollutant or pollutant property	NSPS effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per/ 1,000 pound) of product	
TSS	0.096	0.032
Copper (T)	0.00074	0.00024
Nickel (T)	0.00074	0.00024
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415/476 Pretreatment standard for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.474.

§ 415.477 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 415.472.

Subpart AV—Strong Nitric Acid Production Subcategory—[Reserved]

Subpart AW—Oxygen and Nitrogen Production Subcategory

§ 415.490 Applicability; description of the oxygen and nitrogen production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of oxygen and nitrogen by air liquification.

§ 415.491 Specialized definitions. [Reserved]

§ 415.492 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AW—OXYGEN AND NITROGEN

Pollution or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Oil and grease	0.0020	0.0010
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart AX—Potassium Chloride Production Subcategory

§ 415.500 Applicability; description of the potassium chloride production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of potassium chloride by the Trona process and by the mining process.

§ 415.501 Specialized definitions. [Reserved]

§ 415.502 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters, except that residual brine and depleted liquor may be returned to the body of water from which the process brine solution was originally withdrawn.

Subpart AY—Potassium Iodide Production Subcategory

§ 415.510 Applicability; description of the potassium iodide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of potassium iodide.

§ 415.511 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this Chapter shall apply to this subpart.

(b) The term "product" shall mean potassium iodide.

§ 415.512 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART AY—POTASSIUM IODIDE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.090	0.030
Sulfide	0.015	0.0050
Iron	0.015	0.0050
Barium	0.0090	0.0030
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

Subpart AZ—Potassium Permanganate Production Subcategory—[Reserved]

Subpart BA—Silver Nitrate Production Subcategory

§ 415.530 Applicability; description of the silver nitrate production subcategory

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from the production of silver nitrate.

§ 415.531 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" shall mean silver nitrate.

(c) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated non-process wastewater, as defined below.

(d) The term "process wastewater pollutants" means pollutants present in process wastewater.

(e) The term "contaminated non-process wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.532 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART BA—SILVER NITRATE

Pollutant or pollutant property	BPT limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
Silver	0.0090	0.0030
TSS	0.069	0.023
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.533 [Reserved]

§ 415.534 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART BA—SILVER NITRATE

Pollution or pollutant property	PSES limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligram per liter (mg/l)	
Silver	1.0	0.5

Subpart BB—Sodium Bisulfite Production Subcategory

§ 415.540 Applicability; description of the sodium bisulfite production subcategory.

This subpart applies to discharges to waters of the United States and introduction of pollutants into publicly owned treatment works resulting from the production of sodium bisulfite.

§ 415.541 Specialized definitions.

For the purposes of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "product" means sodium bisulfite.

§ 415.542 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART BB—SODIUM BISULFITE

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (or pounds per 1,000 lb) of product	
TSS	0.32	0.080
COD	3.8	0.95
Chromium (T)	0.0020	0.00063
Zinc (T)	0.0051	0.0015
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

§ 415.543 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): The limitations on COD, Chromium(T), and Zinc(T) are the same as specified in § 415.542.

§ 415.544 [Reserved]

§ 415.545 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): The limitations are the same as specified in § 415.542.

§ 415.546 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a

pulbicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): The limitations are the same as specified in § 415.544.

§ 415.547 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32 any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): The limitations are the same for TSS and pH as specified in § 414.542.

Subpart BC—Sodium Fluoride Production Subcategory

§ 415.550 Applicability; description of the sodium fluoride production subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from the production of sodium fluoride by the anhydrous neutralization process and by the silico fluoride process.

§ 415.551 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated non-process wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated non-process wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control, such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.552 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control techology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 415.553 [Reserved]

§ 415.554 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 493.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

SUBPART BC—SODIUM FLUORIDE

Pollution or pollutant property	PSES effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/l)	
Fluoride	50	25

Subpart BD—Sodium Hydrosulfide Production Subcategory [Reserved]

Subpart BE—Sodium Hydrosulfite Production Subcategory [Reserved]

Subpart BF—Sodium Silicofluoride Production Subcategory [Reserved]

Subpart BG—Sodium Thiosulfate Production Subcategory [Reserved]

Subpart BH—Stannic Oxide Production Subcategory

§ 415.600 Applicability; description of the stannic oxide production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of stannic oxide by the reaction of tin metal with air or oxygen.

§ 415.601 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated nonprocess wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated non-process wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, byproduct or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.602 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart BI—Sulfur Dioxide Production Subcategory [Reserved]

Subpart BJ—Zinc Oxide Production Subcategory [Reserved]

Subpart BK—Zinc Sulfate Production Subcategory

§ 415.630 Applicability; description of the zinc sulfate production subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of zinc sulfate.

§ 415.631 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process wastewater" does not include contaminated non-process wastewater, as defined below.

(c) The term "process wastewater pollutants" means pollutants present in process wastewater.

(d) The term "contaminated non-process wastewater" shall mean any water which, during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) rainfall runoff; (2) accidental spills; (3) accidental leaks caused by the failure of process equipment, which are repaired within the shortest reasonable time not to exceed 24 hours after discovery; and (4) discharges from safety showers and related personal safety equipment: Provided, that all reasonable measures have been taken (i) to prevent, reduce and control such contact to the maximum extent feasible; and (ii) to mitigate the effects of such contact once it has occurred.

§ 415.632 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

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Part IV

Department of Health and Human Services

Food and Drug Administration

Boil Ointment Drug Products for Over-the-Counter Human Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 82N-0054]

Boil Ointment Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would classify boil ointment drug products for over-the-counter (OTC) human use as not generally recognized as safe and effective and as being misbranded. This notice is based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by September 27, 1982 and reply comments by October 27, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on December 14, 1980 a report on OTC boil ointment drug products from the Advisory Review Panel on OTC Miscellaneous External Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed order containing: (1) The monograph recommended by the Panel, which establishes conditions under which OTC boil ointment drug products are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify such conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The Panel's recommendations on OTC boil ointment drug products contain no Category I or Category III conditions, and FDA is issuing the Panel's recommendations proposing Category II classification of OTC boil ointment drug products.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations that the ingredients in OTC boil ointment drug products be classified as Category II. If the agency proposes to adopt the Panel's recommendations, a regulation declaring these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) will be proposed for inclusion in Part 310, Subpart E (21 CFR Part 310, Subpart E). The agency is including, in this advance notice of proposed rulemaking, a regulation based upon the Panel's recommendations in order to obtain full public comment at this time.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a notice of proposed rulemaking on OTC boil ointment drug products. The agency's position on OTC boil ointment drug products will be stated initially when that notice of proposed rulemaking is published in the **Federal Register.** In the notice of proposed rulemaking, the agency also will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the notice of proposed rulemaking is published. At that time FDA also will consider whether the proposed rule has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742).

The agency invites public comment regarding any impact that this rulemaking would have on OTC boil ointment drug products. Types of impact may include, but are not limited to, the following: increased costs due to relabeling, repackaging, or reformulating; removal of unsafe or ineffective products from the OTC market; and testing, if any. Comments regarding the impact of this rulemaking on OTC boil ointment drug products should be accompanied by appropriate documentation.

If FDA proposes to adopt the Panel's recommendations, the agency will propose that boil ointment drug products be eliminated from the OTC market, effective 6 months after the date of publication of a final rule in the **Federal Register**, regardless of whether further testing is undertaken to justify their future use.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC boil ointment drug products submitted for consideration by the Panel. All this information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after July 29, 1982, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510) (address above).

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1982 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous external drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31697). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of

disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient.' ") In the Federal Register of August 27, 1975 (40 FR 38179) a notice supplemented the initial notice with a detailed, but not necessarily all-inclusive, list of ingredients in miscellaneous external drug products to be considered in the OTC drug review. The list, which included boil ointment active ingredients, was provided to give guidance on the kinds of active ingredients for which data should be submitted. The notices of November 16, 1973, and August 27, 1975, informed OTC drug product manufacturers of the opportunity to submit data to the review at that time and of the applicability of the monographs from the OTC drug review to all OTC drug products.

Under § 330.10(a) (1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these miscellaneous extenal drug products:

William E. Lotterhos, M.D., Chairman
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976)
George C. Cypress, M.D. (resigned November 1978)
Yelva L. Lynfield, M.D. (appointed October 1977)
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester J. Rossi, D.P.M.
J. Robert Hewson, M.D. (appointed September 1978)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union, served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1978. Both were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., have provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Authur Auer until September 1978, followed by John T. McElroy, J.D. Thomas D. DeCillis, R.Ph., served as Panel Administrator until April 1976, followed by Michael D. Kennedy until January 1978, followed by John T. McElroy, J.D. Joseph Hussion, R.Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for OTC boil ointment drug products in this document. The Panel's findings on other categories of miscellaneous external drug products are being published periodically in the Federal Register.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topic in this document were held on February 27 and 28, April 3 and 4, December 11 and 12, 1977; April 16 and 17, 1978; October 5 and 6, November 7 and 8, and December 14, 1980.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above).

No individuals requested to appear before the Panel to discuss OTC boil ointment drug products, nor was any individual requested to appear by the Panel.

The Panel has thoroughly reviewed the literature and data submissions, and has considered all pertinent information submitted through December 14, 1980 in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations in § 330.10, the Panel classified OTC boil ointment drug products with respect to the following three categories:

Category I. Conditions under which OTC boil ointment drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC boil ointment drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel considered 24 active ingredients in boil ointment drug products and classified all ingredients in Category II.

In an attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, the agency compiled a list of ingredients recognized, either through historical use or use in marketed products, as active ingredients contained in boil ointment products. Notices were published in the Federal Register of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients or any other ingredients used in OTC boil ointment drug products.

A. Submissions of Data and Information

Pursuant to the above notices, the following submissions were received:

Firms and Marketed Products

Bowman Pharmaceuticals, Inc., Canton, OH 44702—Bowman Drawing Paste
Commerce Drug Co., Inc., Farmingdale, NY 11735—Boil-Ease
Press Chemical and Pharmaceutical Laboratories, Inc., Columbus, OH 43206—Epsal Ointment

B. Ingredients

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Benzocaine
Camphor
Ichthammol
Juniper tar (oil of cade)
Magnesium sulfate
Phenol
Rosin
Thymol

2. *Other ingredients.* The following list contains ingredients which appeared in the call-for-data notice published in the Federal Register of August 27, 1975 (40 FR 38179) and were not contained in marketed products submitted to the Panel.

Aminoacridine hydrochloride
Bismuth subnitrate
Cholesterol
Extract of ergot
Hexachlorophene
Isobutyl para-aminobenzoate
Lanolin
Menthol
Mercurous chloride
Methyl salicylate
Oil of sassafras
Oxyguinoline sulfate
Petrolatum
Pine tar
Rosin cerate
Zinc oxide

C. Classification of Ingredients

The Panel did not specifically review any of the ingredients in paragraph B. above. The Panel, however, recommends that all of these ingredients or any other ingredients contained in products labeled as boil ointments be placed in Category II. This recommendation is based on the Panel's conclusion that self-treatment of boils is not desirable because improper treatment or a delay in receiving proper professional treatment may cause the infection to spread. (See paragraph E. below—General Discussion.)

D. Referenced OTC Volumes

The "OTC Volumes" cited in this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All of the information included in these volumes, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on public display after July 29, 1982. In the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

E. General Discussion

A boil or furuncle can be defined as an abscess or pyogenic infection of a sweat gland or hair follicle, usually caused by *Staphylococcus aureus* (Refs. 1 and 2).

Most adults are continously exposed to staphylococci, but overt infection is infrequent. Approximately 5 percent of the population has one symptomatic staphylococcal infection per year, but these infections are usually minor (Ref. 3). The nasal reservoir appears to be the major source for dissemination of *S. aureus* and infection. Occasionally lesions of sporotrichosis or skin infiltration with neoplastic cells will resemble boils caused by staphylococcal infection. These lesions can be differentiated from boils by the failure to demonstrate staphylococci by culture or by a gram stain, by culturing *Sporothrix schenckii*, or by demonstrating leukemic or other neoplastic cells on biopsy (Ref. 3). Certain anaerobic bacteria may play a more important role in chronic skin ulcers, decubiti (bed sores), or soft tissue abscesses around the neck or perineal area (Ref. 3).

Some small boils recede without specific therapy. Sometimes moist heat allows a boil to point and drain spontaneously (Refs. 2 and 4). When boils become localized and show fluctuance (central softening indicating pus formation), incision and drainage by a doctor will hasten healing (Refs. 3 and 5). The use of systemic antimicrobial therapy is indicated for boils associated with a surrounding redness or those associated with fever, or located on the upper lip, nose, cheeks, or forehead (Refs. 2 and 5). Because there is a marked variability in the susceptibility of staphylococci to the commonly utilized antimicrobial agents, the responsible organism should be isolated and tested for susceptibility to antibiotics (Ref. 3).

Three submissions were received by the Panel (Refs. 6, 7, and 8). One of these submissions contained a brief statement on the effectiveness of a saturated solution of magnesium sulfate in a hydrophilic ointment base and described the product as "a drawing ointment for pimples, blackheads, boils, and carbuncles" (Ref. 8). The Panel concludes that drawing salves to treat boils do not have any merit. Self-treatment of boils is not in the best interest of the consumer because improper treatment or a delay in receiving proper professional treatment for boils may cause the infection to spread. Therefore, the Panel concludes that any product containing an ingredient listed in paragraph B. above, or any other product labeled for use as an OTC boil treatment, is Category II.

References

(1) "Dorland's Illustrated Medical Dictionary," W. B. Saunders Co., Philadelphia, p. 624, 1979.

(2) Arndt, K. A., "Manual of Dermatologic Therapeutics", 2d Ed., Little, Brown, and Co., Boston, pp. 25–31, 1978.

(3) Hoeprich, P. D., editor, "Infectious Diseases," 2d Ed., Harper and Row, Hagerstown, MD, pp. 785–793, 1977.

(4) "Determatologic Disorders," *in* "The Merck Manual," 13th Ed., edited by R. Berkow, Merck, Sharp, and Dohme Research Laboratories, Rahway, NJ, p. 1577, 1977.

(5) Domonkos, A. N., "Andrews' Diseases of the Skin," 6th Ed., W. B. Saunders Co., Philadelphia, pp. 273–274, 1971.

(6) OTC Volume 160005.

(7) OTC Volume 160182.

(8) OTC Volume 160214.

List of Subjects in 21 CFR Part 310

New drugs.

PART 310—NEW DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended in Part 310 by adding to Subpart E new § 310.531, to read as follows:

§ 310.531 Drug products containing active ingredients offered over-the-counter (OTC) for external use as boil ointments.

Aminoacridine hydrochloride, benzocaine, bismuth subnitrate, camphor, cholesterol, extract of ergot, hexachlorophene, ichthammol, isobutyl *para*-aminobenzoate, juniper tar (oil of cade), lanolin, magnesium sulfate, menthol, mercurous chloride, methyl salicylate, oil of sassafras, oxyquinoline sulfate, petrolatum, phenol, pine tar, rosin, rosin cerate, thymol, and zinc oxide have been present as ingredients in drug products for external use as boil ointments. There is a lack of adequate data to establish the safety and effectiveness of these, or any other, ingredients for OTC external use as boil ointments. therefore, any OTC drug product containing ingredients offered for external use as a boil ointment cannot be considered generally recognized as safe and effective.

(b) Any OTC drug product that is labled, represented, or promoted for external use as a boil ointment is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is regarded as a new drug within the meaning of section 201(p) of the act for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD–1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted OTC as a boil ointment for external use is safe and effective for the purpose intended.

(d) After the effective date of the final regulation, any such drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Interested persons may, on or before July 29, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62,, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance

notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before October 27, 1982. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 14, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: June 21, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-17481 Filed 6-28-82; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
June 29, 1982

Part V

Department of Health and Human Services

Food and Drug Administration

Pediculicide Drug Products for Over-the-Counter Human Use; Establishment of a Monograph; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0201]

Pediculicide Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would establish conditions under which over-the-counter (OTC) pediculicide drug products are generally recognized as safe and effective and not misbranded.) Pediculicide drug products are used for the treatment of head, pubic (crab), and/or body lice.) This notice is based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by September 27, 1982, and reply comments by October 27, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305) Food and Drug Adminsitration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on December 15, 1980 a report on OTC pediculicide drug products from the Advisory Review Panel on OTC Miscellaneous External Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed order containing: (1) The monograph recommended by the Panel, which establishes conditions under which OTC pediculicide drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drug's not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a tentative final monograph for OTC pediculicide drug products as a notice of proposed rulemaking. Under the OTC review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency's position on OTC pediculicide drug products will be stated initially when the tentative final monograph is published in the **Federal Register** as a notice of proposed rulemaking. In that notice of proposed rulemaking, the agency also will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the tentative final monograph is published. At that time FDA also will consider whether the monograph has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979, 44 FR 71742).

The agency invites public comment regarding any impact that this rulemaking would have on OTC pediculicide drug products. Types of impact may include, but are not limited to, the following: Increased costs due to relabeling, repackaging, or reformulating; removal of unsafe or ineffective products form the OTC market; and testing, if any. Comments regarding the impact of this rulemaking on OTC pediculicide drug products should be accompanied by appropriate documentation.

Historically, the agency has regarded aerosol products containing pyrethrins for use on humans to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)), and these products can only be marketed after FDA has approved a new drug application for a specific product. Currently, there are no approved new drug applications for such products. Consequently, the Panel did not review the data (OTC Volume 160403) on an aerosol pediculicide product marketed in France. The marketer was referred to the appropriate offices within FDA for assistance. Anyone interested in marketing such an aerosol product should contact the Office of New Drug Evaluation, Division of Anti-Infective Drug Products (HFD-140) or the Division of Drug Labeling Compliance, OTC Compliance Branch (HFD-312).

The agency has permitted the OTC marketing of nonaerosol pediculicide drug products containing pyrethrins, pending a final monograph developed under the OTC drug review process, provided that the labeling includes certain warnings and cautions that the product (1) should not be used by persons sensitized to ragweed, (2) should not be inhaled, (3) should not be swallowed, (4) should not be used near the eyes, and (5) should not be allowed to come in contact with mucous membranes. The agency invites public comment on the appropriateness of including aerosol pediculicide drug products containing pyrethrins in this monograph and on the appropriate warnings that should be required for such products.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC pediculicide drug products submitted for consideration by the Panel. All the submitted information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after July 29, 1982, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510) (address above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838

(D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 6 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions which would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce. Further, any OTC drug products subject to this monograph which are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to voluntarily comply with the monograph at the earliest possible date.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OCT miscellaneous external drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31697). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "active ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient.' ") In the **Federal Register** of August 27, 1975 (40 FR 38179), a notice supplemented the original notice with a detailed, but not necessarily all-inclusive, list of ingredients in miscellaneous external drug products. This list, which included parasiticide (pediculicide) ingredients, was provided to give guidance on the kinds of active ingredients for which data should be submitted. The notices of November 16, 1973, and August 27, 1975, informed OTC drug product manufacturers of their opportunity to submit data to the review at that time and of the applicability of the monographs from the OTC drug review to all OTC drug products.

Under § 330.10(a) (1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these OTC miscellaneous external drug products:

William E. Lotterhos, M.D., chairman
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976)
George C. Cypress, M.D. (resigned November 1978)
Yelva L. Lynfield, M.D. (appointed October 1977)
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester J. Rossi, D.P.M.
J. Robert Hewson, M.D. (appointed September 1978)

Representatives of consumer an industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1978. Both were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., have provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Arthur Auer until September 1978, followed by John T. McElroy, J.D. Thomas D. DeCillis, R.Ph., served as Panel Administrator until April 1976, followed by Michael D. Kennedy until January 1978, followed by John T. McElroy, J.D. Joseph Hussion, R.Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for OTC pediculicide drug products in this document. The Panel's findings on other categories of miscellaneous extenal drug products are being published periodically in the **Federal Register.**

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topic in this document were held on April 20 and 21, June 27 and 28, August 15 and 16, September 28 and 29, November 9 and 10, 1975; February 20 and 21, April 2 and 3, May 16 and 17, June 11 and 12, July 11 and 12, 1976; June 11 and 12, August 11 and 12, September 17 and 18, 1978; October 28 and 29, 1979; January 27 and 28, April 20 and 21, June 22, and 23, August 3 and 4, October 5 and 6, November 7 and 8, and December 14 and 15, 1980.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above).

The following individuals were given an opportunity to appear before the Panel, either at their own request or at

the request of the Panel, to express their views on pediculicide drug products:

M. Kaminsky, Ph. D.
Renate Kimbrough, M.D.
Robert Menzer, Ph. D.
M. W. Rosenthal, Ph. D.
David Taplin, M.D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent information submitted through December 15, 1980 in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations set forth in § 330.10, the Panel reviewed OTC pediculicide drug products with respect to the following three categories:

Category I. Conditions under which OTC pediculicide drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC pediculicide drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel reviewed 17 ingredients in pediculicide drug products and classified 2 ingredients in Category I as a combination, 13 ingredients in Category II, and no ingredients in Category III. Two ingredients were classified as inactive.

I. Submission of Data and Information

In an attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, the agency compiled a list of ingredients recognized, either through historical use or in marketed products, as parasiticide (pediculicide) active ingredients. The following inredients were identified: alkaloids of sabadilla, aqueous coconut oil soap, benzocaine, benzyl benzoate, dichlorodiphenyl trichloroethane, isobornyl thiocyanoacetate, petroleum distillate, picrotoxin, piperonyl butoxide, pyrethrins, sublimed sulfur, and thiocyanoacetate. Notices were published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients or any other ingredients used in OTC parasiticide (pediculicide) drug products.

A. Submissions

Pursuant to the above notices, the following submissions were received:

Firms	Marketed products
Block Drug Co., Inc., Jersey City, NJ 07302.	Dolax.
Commerce Drug Co., Farmingdale, NY 11735.	Barc.
Laboratoires Applipharm, Marseille, France.	PARA-2.
Norcliff Thayer, Inc., Tuckahoe, NY 10707.	A-200 Pyrinate.
Pfizer Pharmaceuticals, New York, NY 10017.	Rid.
Related submissions were received from:	
Fairfield America Corporation, Middleport, NY 14105.	Pediculosis control.
FMC Corporation, Middleport, NY 14105 ..	Pediculosis control.

Data were also submitted by FDA's Division of Drug Experience reporting an adverse reaction associated with the use of lindane in treating pediculosis. Because no safety and effectiveness data were submitted for lindane, and because the Panel believes that lindane should be used only under the advice and supervision of a doctor, the Panel did not consider the use of lindane in this document.

B. Ingredients Reviewed by the Panel

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Benzyl alcohol
Deodorized kerosene
Dioctyl sodium sulfosuccinate
Isobornyl; thiocyanoacetate
Petroleum distillate
Piperonyl butoxide
Propylene glycol
Pyrethrins

2. *Other ingredients reviewed by the Panel.*

Alkaloids of sabadilla
Aqueous coconut oil soap
Benzocaine
Benzyl benzoate
Copper oleate
Dichlorodiphenyl trichloroethane (DDT)
Picrotoxin
Sublimed sulfur
Thiocyanoacetate

C. Classification of Ingredients

1. *Active ingredients.*

Piperonyl butoxide
Pyrethrins
Isobornyl thiocyanoacetate

2. *Inactive ingredients*

Deodorized kerosene
Petroleum distillate

3. *Other ingredients.* The Panel was neither able to locate nor is it aware of any data demonstrating the safety and effectiveness of the following ingredients when used as OTC pediculicide active ingredients. The Panel, therefore, classifies these ingredients as Category II for this use, and they will not be discussed further in this document.

Alkaloids of sabadilla
Aqueous coconut oil soap
Benzocaine
Benzyl alcohol
Benzyl benzoate
Copper oleate
Dichlorodiphenyl trichloroethane (DDT)
Dioctyl sodium sulfosuccinate
Picrotoxin
Propylene glycol
Sublimed sulfur
Thiocyanoacetate

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All the information included in these volumes, except for those deletions which are made in accordance with confidentiality provisions set forth in § 330.10(a)(2), will be put on public display after July 29, 1982, in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Discussion

The Panel notes that the call-for-data notices published in the **Federal Register** requested data and information on "parasiticides." The Panel believes that the term "pediculicide" is a more accurate description of the pharmacologic category of these drugs. Therefore, throughout this document, the panel will refer to these products as pediculicides.

Pediculosis is a skin infestation caused by blood-sucking lice. Three varieties of lice attact man: *Pediculus humanus capitit* (head louse), *Pediculus humanus corporis* (body louse), and *Phthirus pubis* (pubic or crab louse).

There are no recent data on the incidence or prevalence or pediculosis in the United States, although outbreaks have been reported in elementary, middle, and high schools, "hippie communities," and institutions (Ref. 1). There has been a sharp increase in the frequency of head lice and pubic lice in the United States in all socioeconomic classes. The Center for Disease Control (CDC) has found that head louse infestations are as common in children with short hair as those with long hair; however, infestation is more common among females. Blacks are infested much less ferquently (Ref. 1).

Adult and nymphal lice (a stage of development just prior to adult) are

hematophagous (blood feeding). As they feed, saliva is introduced into the site of puncture, causing an erythematous papule (small, raised, reddended area) within hours. The papules itch, and as a consequence of scratching, secondary bacterial infection may occur.

On microscopic examination, swelling, infiltration with lymphocytes, and the extravasation (discharge) of erythrocytes are found. A residual pigmentation of the skin from bleeding and scratching is characteristic of lesions from long continued infestations, particularly with crab lice.

Both the head louse and the crab louse attach their shiny, operculate (having a lid) eggs (nits) to hairs. The head louse usually attaches to head hairs, and the crab louse usually attaches to pubic and perianal hairs, although they sometimes are found in other locations. The body louse, more often associated with people living under congested conditions, lays its eggs in the seams of clothing.

Head lice, which measure approximately 1 to 2 millimeters (mm) long, may be visible; but frequently only the nits are seen, most commonly on hair behind the ears or on the nape of the neck about one-fourth inch from the scalp (Ref. 1). One must be careful not to confuse hairspray globules or other extraneous debris with nits (Refs. 1 and 2). Intense itching of the scalp is common with head lice, and affected hairs may become lusterless and dry. Because of scratching, secondary complications of impetigo and furunculosis (a sequential occurrence of boils) are fairly common (Ref. 2). Pustular eczema may occur.

Head lice are readily spread from head to head when there is close contact, by means of hats and scarfs hung close together in schools and public places, through the fitting of headgear in stores, and the common use of hats, scarfs, combs, and brushes. When hair from a person with lice is shed, nits may be attached. Bed linen may also be a source of transmission.

Sources of head lice transmission such as scarfs, hats, coats, and bed linen should be disinfected by machine washing in hot water and drying, using the hot cycle of a dryer for at least 20 minutes. Personal articles of clothing that cannot be washed may be disinfected by dry-cleaning or by sealing them in a plastic bag for a period of about 2 weeks (Ref. 3). Personal combs and brushes may be disinfected by soaking in hot water (above 130° F) for 5 to 10 minutes. Thorough vacuuming of rooms inhabited by infected patients is recommended (Ref. 3).

Except in extreme infestations, long-haired persons with head lice need not be shorn, because modern pediculicidal preparations are efficient.

Pediculicides will not dissolve the cement that binds the nits to the hairs. Persistence of dead nits on hair shafts after treatment is common and should not be taken as evidence of infestation. Dead and empty nits will remain attached to the hairs and be unsightly as well as confusing to those who cannot distinguish between live and dead nits; therefore, it may be desirable to remove them by combing with a fine-toothed comb (Ref. 2).

The crab louse is morphologically (structurally) distinct from other species of lice and can survive away from the human host for only about 24 hours. The crab louse is about 1 mm long, is oval in shape, and has greatly enlarged second and third pairs of legs with large claws that give it a crab-like appearance (Ref. 3). Crab lice cause pale, bluish gray blotches at the site of the bites, resulting in slight discomfort to intolerable itching that may lead to scratching and secondary infections (Ref. 4). Crab lice may be spread through sexual contact, by bedding and toilet seats, and through the shared use of towels and articles of clothing. Any sexual partners of a patient with crab lice should be treated simultaneously (Refs. 4 and 5), and personal articles of clothing should be disinfected by the same procedure as outlined for head lice (Ref. 5). Unlike head lice, the occurrence of crab lice is equally common both in black and white individuals (Ref. 4).

Body lice live chiefly in the seams of clothing, particularly where there is close contact between garment and wearer, such as the waistline and armpits (Ref. 5). The lice move to the skin to feed and then return to the seams of the clothing. The bites cause general itching, reddish blotches, urticarial wheals (raised, itchy, reddened area), and excoriated papules (a solid circumscribed elevation of abraded, scratched skin) (Ref. 5). A pigmented thickening of the skin with parallel linear scratch marks from continued rubbing and scratching is often observed (Ref. 2).

Body lice can survive longer off the host (4 to 10 days) than head lice; the eggs also survive longer off the host (up to 30 days). The body louse has been found to transmit louse-borne typhus, relapsing fever, and trench fever (Ref. 3). Personal articles of clothing should be disinfected by the same procedure as outlined for head lice except that sealing clothing in a plastic bag is not recommended for body lice because the nits from these lice can remain dormant for a period of up to 30 days (Ref. 3).

References

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(2) Arndt, K. A., "Manual of Dermatologic Therapeutics with Essentials of Diagnosis," Little, Brown, and Co., Boston, pp. 127–135, 1978.

(3) Juranek, D. D., "Pediculicides and Scabicides," *in* "Handbook of Drug Therapy," edited by R. R. Miller and D. J. Greenblatt, Elsevier North Holland, Inc., New York, pp. 248–259, 1979.

(4) Felman, Y. M., and J. A. Nikitas, "Sexually Transmitted Diseases; Pediculosis Pubis," *CUTIS; Cutaneous Medicine for the Practitioner*, 25:482–489, 1980.

(5) Orkin, M., E. Epstein, and H. I. Maibach, "Treatment of Today's Scabies and Pediculosis," *Journal of the American Medical Association*, 236:1136–1139, 1976.

III. Categorization of Data

A. Category I Conditions

The following are Category I conditions under which drug products used as pediculicides are generally recognized as safe and effective and are not misbranded.

1. *Category I ingredients.* The following ingredients are discussed as a combination with respect to their action as a pediculicide and not as single ingredients:

Pyrethrins with piperonyl butoxide. The Panel concludes that the combination of pyrethrins with piperonyl butoxide is safe and effective for OTC use as a pediculicide drug product.

Pyrethrins when used as a pediculicide are generally formulated with an adjuvant. An adjuvant is an active ingredient that is used to increase the pharmacologic or toxic effect of another active ingredient. The action of an adjuvant is said to be additive when the adjuvant produces its effect by acting on the same site as the active ingredient. An adjuvant is said to be a synergist when it acts through a different biological mechanism than the active ingredient. An example of a synergistic adjuvant used in toxicologic formulations is the addition of piperonyl butoxide to pyrethrins. The piperonyl butoxide will enhance the insecticidal activity of the pyrethrins (Ref. 1) by inhibiting the oxidative breakdown of the pyrethrins by the insect's detoxification system. This increases the amount of time the pyrethrins can exert their toxic effect on the insect (Refs. 2, 3, and 4).

Piperonyl butoxide, first introduced in 1947 by Wachs (Ref. 3), is a pale yellow, oily liquid. It is odorless, stable, noncorrosive, and has a slightly bitter taste. Piperonyl butoxide is soluble in organic solvents, such as petroleum oil.

The pyrethrins are fast-acting insecticides obtained from the flowers of the commercially grown plant *Chrysanthemum cinerariaefolium* (Ref. 2). The pyrethrins are esters that are formed by the combination of two acids, chrysanthemic acid and pyrethric acid, and three alcohols, pyrethrolone, cinerolone, and jasmolone. Two fractions are formed during the combination. The pyrethrins I fraction, or the esters of chrysanthemic acid, are pyrethrin I, cinerin I, and jasmolin I. The esters of pyrethric acid, known as the pyrethrins II fraction, are pyrethrin II, cinerin II, and jasmolin II (Ref. 5). The pyrethrin content ranges from 0.7 percent (flowers from Dalmatia) to as high as 3 percent (flowers from Kenya). The active constituents reach their highest concentration in mature flower heads (Ref. 6).

Pyrethrins are brown, viscous, liquid oleoresins. They have a high boiling point and are insoluble in water. Pyrethrins are rapidly oxidized, inactivated in air, and lose some of their insecticidal activity when exposed to light (Ref. 6).

Much of the pyrethrum flowers are produced in Kenya and Tanzania. The pyrethrum flowers are dried, ground, and extracted with hexane or isohexane. The crude oleoresin (mixture of resins and essential oils) is obtained when the solvent is evaporated. Rather than shipping the flowers in bulk, extraction and refining are done prior to shipment (Ref. 7).

Two methods are used in obtaining the crude oleoresin. One method, the batch system, is percolation with petroleum ether. The second method, a series of liquid-liquid extractions with petroleum ether, is a continuous flow system. In both systems, the petroleum ether is vaporized, distilled, recovered, and used again. The oleoresin containing the pyrethrins is left behind. In some areas, the crude oleoresin is separated by centrifugal force to remove some of the heavier solids. In other areas, the oleoresin is standardized with a petroleum solvent, such as deodorized kerosene, to a 25-percent solution. The pyrethrum concentrations may vary from 25 percent to 35 percent (Ref. 7).

The reduction and refinement of the crude oleoresin containing the pyrethrins produces a light-colored, relatively nonstaining extract (Ref. 7). Several methods have been formulated and patented.

Moore (Ref. 7) states that a refining process, based on a solvent system, was developed. The crude, pyrethrin-containing extract is mixed with 95 percent aqueous methyl alcohol. The aqueous alcohol layer is drawn off, and the alcohol layer is then removed by distillation at a temperature below 75° C. The residue is then suspended in a low-boiling, saturated, aliphatic hydrocarbon. The mixture is filtered, and the hydrocarbon removed by distillation. The final pyrethrin residue is dissolved in an organic solvent, such as kerosene or refined kerosene.

Moore (Ref. 7) also states that a solvent extraction process for the refinement of the pyrethrum extract or oleoresin has been patented. The oleoresin is mixed with an equal weight of anhydrous methanol. The methanol extract is cooled to a temperature below 15° C. This will cause the waxy residue to precipitate. The waxy residue is treated with methanol to recover any pyrethrins that may have been abosorbed by the wax. The dewaxed methanol solutions are decolorized with carbon, and the methanol is distilled off the solutions. Inactive solids are removed when the residue is placed in a hydrocarbon solution. The hydrocarbon solution is concentrated to the standardized form or extract by distillation.

The above two processes have a high recovery of pyrethrins, about 95 percent. Due to the low temperature used in each method, the possibility that the molecular structure of the pyrethrins will change is decreased (Ref. 7).

Moore (Ref. 7) also cites the process patented by Ward for making a refined extract directly from the pyrethrum flowers. The undried flowers are extracted with aqueous methanol (5 percent to 40 percent water, by weight) followed by a liquid-liquid partition extraction with a hydrocarbon solvent. This process works equally well with dried flowers. A light-colored, refined extract is produced. A distillation step is used to concentrate the extract to a standardized form. Recovery of the pyrethrins is about 92 percent. Other methods also exist, i.e., Cooper, Goldberg, and Haney processes, but the percent of pyrethrins recovered is not as great (Ref. 7).

a. *Safety.* Side effects from pyrethrins are uncommon. Contact dermatitis is the most frequent. In allergic individuals, asthma and rhinitis may be produced. Poisoning from pyrethrins may have several signs and symptoms. Pyrethrin insecticides when injected or inhaled are capable of causing nausea, vomiting, muscular paralysis, and even death, but severe poisoning from pyrethrins is rare. More often, the reactions are due to other ingredients in pyrethrin preparations, such as the petroleum solvent (Ref. 8).

Pyrethrin compounds are poorly absorbed through the intact skin, but once absorbed are rapidly broken down in mammals. The fatal oral dose for man has been estimated to be 50 grams (g) per 70 kilograms (kg) (Ref. 1).

Piperonyl butoxide is also poorly absorbed through the skin (Ref. 3). The oral LD_{50} for piperonyl butoxide in rabbits is 2.5 g to 5 g/kg (Ref. 8).

A study (Ref. 9) was conducted to determine the 14-day LD_{50} value of two pyrethrin-piperonyl butoxide formulations (0.33 percent pyrethrins and 4 percent piperonyl butoxide in a gel vehicle, and 0.17 percent pyrethrins and 2 percent piperonyl butoxide in a liquid vehicle). Eighty rats were divided into two groups, and each group was further divided into four subgroups. The rats were fasted for 18 hours, but were allowed to drink water prior to dosing. One group received the liquid test material, while the other group used the pyrethrin-piperonyl butoxide gel. Each subgroup received a different dose of pyrethrins and piperonyl butoxide, amounting to 3.2, 4.0, 5.0, and 6.3 g/kg, respectively. The LD_{50} value for the liquid and the gel were similar. The LD_{50} for the 0.33 percent pyrethrin and 4 percent piperonyl butoxide formulation was reported to be from 3.90 to 5.07 g/kg, while the LD_{50} for the 0.17 percent pyrethrin and 2 percent piperonyl butoxide formulation was found to be 3.69 to 5.13 g/kg. Death of more than 50 percent of the rats was seen after dosage levels of 5 g/kg and above.

The potential of a commercial product containing 0.17 percent pyrethrin and 2 percent piperonyl butoxide to produce eye irritation was studied in monkeys (Ref. 9). Six monkeys were used in the study. The procedure called for instillation of 0.1 milliliter (mL) of the test material into the right eye of each monkey. The left eye was used as the control. The eyes were examined 1, 2, 3, 4, and 7 days after application of the test material. The results showed that the right eyes had signs of redness and a discharge, although there was no effect on the iris or cornea. It was concluded from these results that the test material was slightly irritating.

Twelve albino rabbits were used to test a marketed product (0.17 percent pyrethrins and 2 percent piperonyl butoxide) against a placebo for eye irritation (Ref. 10). Both eyes of each rabbit were examined before testing to assure that the eyes were free of defects or irritation. A measured amount (0.1

mL) of the test material was placed in the right eyes of six of the rabbits, and the same quantity of the placebo was placed in the right eyes of the other six rabbits. The left eye of each rabbit served as an untreated control. The eyes were examined after 2, 4, 48, and 72 hours for any changes. Both the pyrethrins and the placebo produced some irritation. The degree of irritation was similar; a discharge and redness occurred.

Zucker (Ref. 11) studied 106 patients who were allergic to ragweed or who had shown positive intradermal (within the skin) tests to unrefined pyrethrum extracts. Of 77 patients who showed a 2+ or stronger response to ragweed on a scale of 0 to 4+, 33 of the 77 patients (43 percent) also showed cross-sensitization to pyrethrum. Skin tests with refined pyrethrins showed 4 out of 106 patients (3.8 percent) had a definite positive reaction. Fourteen patients were given inhalation tests using the complete spray, and with direct exposure, seven showed no reaction. When further tested with pyrethrins, only two patients showed side effects, such as nose or throat discomfort (itching of dryness) and eye irritation. One of those patients failed to have a reaction when the exposure was again repeated. The allergic antigen (substance that stimulates production of specific antibody) was either absent or else was present in insignificant amounts in the refined pyrethrins used in this study.

A study (Ref. 12) was done to determine whether a product containing 0.3 percent pyrethrin and 3 percent piperonyl butoxide caused sensitivity in patients with known allergies to ragweed. Fifty patients were scratch tested for sensitivity to ragweed-protein fraction and patch tested for sensitivity to the ragweed-oleoresin fraction. A response of 2+ or more on a scale of 0 to 4+ or was the criterion used for sensitivity on both tests. Twelve patients were ragweed-sensitive on the patch test alone; 36 were senstive on the scratch test alone; and 2 were sensitive to both tests. Eight patients showed sensitivity to the unrefined pyrethrins and/or chrysanthemum flowers. These 50 patients were then scratch tested and patch tested with the undiluted product. No reactions were reported. Cross-sensitization to pyrethrins was absent in patients sensitive to the protein or oleoresin fractions of ragweed.

The irritation potential of a product containing 0.17 percent pyrethrin and 2 percent piperonyl butoxide was studied in rabbits (Ref. 9). Twelve rabbit were used. Six rabbits received two applications of a test material, while the other six rabbits had two applications of 0.33 percent pyrethrin and 4 percent piperonly butoxide. One application was done on intact skin, and the second application was done to an area in which the top layer had been rubbed off or abraded. A sample of 0.5 mL of test material was used with each application. Each area was covered by surgical gauze held in place by a plastic wrap, which prevented loss of the sample. The test material remained on the skin for 24 hours; then the plastic and gauze were removed and the area was cleaned.

Observations were made at 24 and 72 hours after the application of the test material. Slight redness and swelling were seen on both the intact and abraded skin areas 24 hours after the application of the pyrethrin. The skin sites appeared normal 48 hours later. The two pyrethrin and piperonyl butoxide formulations tested were not considered primary irritants.

A primary skin irritation study was performed on six closely clipped albino rabbits using a combination of 0.3 percent pyrethrin and 3.0 piperonyl butoxide (Ref. 13). There were two test sites for each rabbit, one on intact and one on abraded skin. The abrasions were minor cuts through the upper layer of skin, and 0.5 mL of test material was placed beneath a surgical gauze square. To keep the gauze in place, the animals were then wrapped with plastic sheeting secured with adhesive tape. The tape, plastic, and gauze were removed after 24 hours.

Signs of skin irritation were recorded at 24 and 72 hours after application. After 24 hours, results showed that on the abraded skin, four out of six rabbit had a slight redness and only two out of six showed signs of swelling. Observations of the intact skin revealed that two out of six rabbits exhibited a slight swelling and/or redness. No swelling or redness was present 72 hours after application of the pyrethrin to either intact or abraded skin.

Twenty children infested with head lice were selected for a study designed to determine the safety of a pyrethrin formulation (Ref. 14). The children ranged in age from 6 to 14 years. Children with ragweed allergies or skin problems were excluded. Each patient received three 10-minute applications of 0.3 percent pyrethrin formulated with 0.3 percent piperonyl butoxide. The time between each application was 1 week. Two ounces of the test material was left applied to each child's head. The test material was rubbed in so as to wet the hair and was left on for 10 minutes. The hair was washed with a mild shampoo and combed after each application.

Nine of 20 patients had side effects of swelling or redness of the skin. Four of nine had these signs prior to treatment, but the severity of the swelling and redness did not increase after application of the pyrethrin formulation. The swelling and redness disappeared after 3 days. In the other five children, the swelling and redness of the skin lasted only 30 to 75 minutes and were barely perceptible. All adult lice and nits were gone by the second application of the pyrethrin-piperonyl butoxide formulation. The side effects that were reported were mild and lasted a short time.

Two pyrethrin-piperonyl butoxide formulations, one a liquid containing 0.17 percent pyrethrin and 2 percent piperonyl butoxide and the other a gel containing 0.33 percent pyrethrin and 4 percent piperonyl butoxide, were studied in a group of 102 white females, with an age range of 20 to 50 years, to determine sensitization potential of the drug (Ref. 9). The back of each individual was thoroughly cleaned with 70 percent aqueous isopropyl alcohol. Next, a ½-inch square of white blotting paper completely soaked with the pyrethrin material was applied to the back and covered with an adhesive. The patch remained in contract with the skin for 48 hours. After the patch was removed, observations were made for any reactions. The procedure was repeated 10 times. Before each application, the skin was examined for any delayed responses.

Two weeks after the tenth application, a final patch was placed on the back of each individual. The patch remained in contact with the skin for 48 hours, at which time the skin was observed for irritation. A total of 1,116 patch applications of the liquid and 1,116 patch applications of the gel were made to the skin of 102 individuals (a total of 2,232 patches of both of the test materials) (Ref. 9). No immediate or delayed skin reactions were seen in any subject.

The Panel has reviewed conflicting reports on the allergenicity of ragweed-sensitive individuals to pyrethrin formulations. Because there is no standard extraction method of refining pyrethrins, the sensitive component may be present in one formulation and absent in another. Therefore, the Panel recommends the following warning for pediculicides containing pyrethrins: "Use with caution on persons allergic to ragweed."

b. *Effectiveness.* The insecticidal action of pyrethrins has not been

associated with the inhibition of any specific enzyme system or the disruption of a particular biochemical pathway. Neuropharmacological studies indicate that the primary mode of action probably involves the disruption of ion transport at nerve membranes (Ref. 2). Piperonyl butoxide enhances the effectiveness of pyrethrin by inhibiting enzymatic destruction in the insect.

Several in vitro studies were performed to determine the efficacy of two pyrethrin formulations with respect to time (Ref. 15). One study utilized a modified patch test in which square patches of dark corduroy were covered with 0.5 g of test material (either 0.17 percent pyrethrin and 2 percent piperonyl butoxide or 0.33 percent pyrethrin and 4 percent piperonyl butoxide). The lice were transferred to clean dark cotton corduroy patches, placed in clean 250 mL beakers, and incubated for 48 hours (at 82° F, relative humidity 80 percent). Death counts were taken, and lice were classified as dead, moribund (unable to crawl one body length), or alive. Moribund counts were added to dead counts.

When the study was conducted using 0.17 percent pyrethrin and 2 percent piperonyl butoxide, a 4-minute rinse (using water applied by a wash bottle) was done. Five trials and one control were done. The control patch was treated with 0.5 g of water and a 4-minute rinse. Death counts were taken at 24 and 48 hours.

For the 0.33 percent pyrethrin and 4 percent piperonyl butoxide formulation, six trials were run. In these trials, the lice were dipped in the test material and shaken every 10 seconds for a 2-minute period. Death counts were taken at 10 and 20 minutes, and 2, 24, and 48 hours after exposure. The lice in the other three trials were not rinsed before they were incubated. Death counts were taken at 10 and 30 minutes, and 2, 24, and 48 hours after exposure.

One test, a modified dip test, was done using the 0.17-percent pyrethrin and 2-percent piperonyl butoxide. Three different schedules were used. For each schedule, five male and five female lice was placed in a vial with a screen on the open end. The ends were placed into the pyrethrin liquid for a varied amount of time. For the first trial, the immersion time was 30 minutes with no rinse. The second trial had a 30-minute immersion time with a 2-minute rinse. During the third trial, the vials were submerged for 10 minutes with a 2-minute rinse. All the death counts were taken immediately and repeated after 30 minutes, and 2, 5, and 15 hours after exposure. The control lice were submerged in water for 10 minutes, rinsed for 2 minutes, and placed on corduroy patches.

The results illustrate in vitro efficacy of pyrethrins with piperonyl butoxide against lice. The 10-minute exposure followed by the 2-minute rinse killed 90 percent of the lice, while the 10-minute exposure followed by a 30-minute rinse killed all the lice.

The exposure of lice to 0.33 percent pyrethrin and 4 percent piperonyl butoxide for the 10-minute period effected a 97- to 100-percent mortality rate, and the 10-minute exposure with 2-minute rinse killed from 92 to 100 percent of the lice. The death rate of the control ranged from 5 to 10 percent.

Two formulations of a material, a liquid and a gel, were tested against human body lice (Ref. 9). The gel contained 0.33 percent pyrethrin and 4 percent piperonyl butoxide, while the liquid contained 0.17 percent pyrethrin and 2 percent piperonyl butoxide (Ref. 9). Ten dark cotton corduroy patches were used for the test. On five patches, 0.5 g of the gel was applied and on the other five patches, 0.5 g of the liquid material was applied. The patches were placed in clean 250 mL beakers. Ten male and 10 female lice were placed on top of each patch. The beakers were put into an incubator (at 80° F, relative humidity 80 percent) for 24 hours. Each beaker was then examined. The lice were classified as dead, moribund, or alive. The controls were corduroy patches treated with 0.5 g of water.

The results showed that both pyrethrin formulations were effective. All the adult lice were either dead or moribund after treatment with pyrethrin. No adult lice were found dead or moribund on the control patches.

Two similar studies were done to determine the safety and efficacy of a single application of 0.3 percent pyrethrin and 3.0 percent piperonyl butoxide (Refs. 16 and 17). Thirty adults infested with public lice were used for each study. None of the patients in either study were sensitive to ragweed or had any other skin problems. Prior to application of any test material, the number of adult or nymphal lice and nits were recorded. The degree of redness, swelling, and itching also was noted.

In both studies, 2 ounces (oz) of the test material was applied to dry pubic hair, rubbed in to thoroughly wet the hair and the skin, and left on for 10 minutes. The pubic area was then washed with a gentle soap.

Lindane was used as the positive control in both studies. One study used lindane lotion, which was rubbed in and left on for 12 hours. The second study used lindane shampoo. After application of the shampoo to dry pubic hair, the hair was wet with warm water and rubbed to produce a lather, which was left on for 4 minutes. In both studies, the pubic area was washed with a gentle soap.

In both studies, a fine-toothed comb was run through the patient's hair. The patient's hair and skin were inspected again for any lice or nits that remained. Any redness or swelling of the skin also was recorded. The patients returned 1 week later for a follow-up examination. At this time, the presence or absence of lice, nymphs, or nits, was recorded. The occurrence of any side effects was also recorded.

One study reported four patients (two pyrethrin-treated patients and two lindane shampoo-treated patients) with slight redness. The duration of redness was 5 to 15 minutes. No side effects were reported in the other study. The patients with swelling and/or redness prior to treatment did not report any increase in severity.

The results of each study were similar. One week after treatment, all lice seen prior to treatment were gone. In one study, three nits were found, but were not viable. In the other study, all nits were gone. All itching that had been reported earlier had stopped.

Twenty-six children, both male and female, were infested with head lice and were selected for a study designed to determine the safety and efficacy of a pyrethrin formulation (Ref. 18). None of the children were known to be sensitive to ragweed or have any other skin problems. Each child received treatment once a week for 3 weeks. The hair and scalp were inspected prior to treatment to count the number of adult lice, nymphs, and nits.

Thirteen children were treated with 2 oz of 0.3 percent pyrethrin and 3.0 percent piperonyl butoxide. The formulation was rubbed in to wet the hair and scalp and was left on for 10 minutes. Then the hair was washed with a mild shampoo. The other 13 children used 2 ounces of lindane shampoo. It was rubbed in to a rich lather, left on for 4 minutes, and then washed out. A fine-toothed comb was used on each patient's hair. The patient's hair and scalp were inspected again to see if any lice or nits still remained and if there were any side effects, such as redness or swelling.

The patients returned 1 week later for a second application of either pyrethrin or lindane. The patients then returned a week later for the third and final application.

One child in the pyrethrin group had a very slight swelling following treatment.

Four children in the lindane group also had a very slight swelling following treatment. In the lindane group, two had mildly abraded skin prior to treatment and two had no skin abrasions prior to treatment. The swelling experienced in both the pyrethrin and the lindane group was mild and transitory. There were three additional children in the pyrethrin group and five in the lindane group who showed swelling and/or redness following treatment. However, because the severity of swelling and/or redness after treatment was the same as that before treatment, these symptoms following treatment were not considered side effects.

Out of 26 children, 19 completed the study. After the first application of the pyrethrin compound, and before the second application, 4 out of 10 children were not infested with lice compared with 0 out of 9 children who were treated with lindane. After the second application and, before the third application, 8 out of 10 children treated with the pyrethrin compound were not infested with lice, whereas 3 out of 9 children using lindane did not have lice. Immediately following the third treatment, all children in the pyrethrin group were free of lice, and eight out of nine children using lindane were free from lice.

A study was conducted to determine the effectiveness of 0.3 percent pyrethrin and 3.0 percent piperonyl butoxide (Ref. 19). For this study, the public health nurse visited the homes of all children with reported cases of head lice infestation. The cases were verified, and the families were provided with the pyrethrin compound along with information on how to disinfect their belongings and decrease the transmission of lice. Each patient received a second visit from the nurse. A total of 248 children ranging in age from 6 months to 12 years participated in the study and were treated. The average time from diagnosis and return to school was 2.9 days. The symptoms associated with lice infections were redness and itching, which disappeared in a majority of the cases following the pyrethrin-piperonyl butoxide treatment. Only six children reported any side effects, which included itching and redness. All lice were killed.

However, the Panel could find no conclusive clinical evidence that the combination of pyrethrins and piperonyl butoxide is completely effective in exterminating all viable forms of lice (i.e., adult lice, nymphs, and nits) in one application. One in vitro study (Ref. 10) designed to show ovicidal (capable of killing eggs) effectiveness of different pyrethrin-piperonyl butoxide products reported a range between 19.6 to 33.6 percent nits killed (Refs. 10 and 20). The Panel, therefore, recommends that labeling state that a second treatment must be made in 7 to 10 days to kill any newly hatched lice.

c. *Dosage.* Based on the available data, the Panel concludes that a combination of pyrethrin (0.17 to 0.33 percent) with piperonyl butoxide (2 to 4 percent) is safe and effective for use as an OTC pediculicide.

d. *Labeling.* The Panel recommends Category I labeling for pediculicide active ingredients. (See part III. paragraph A.2. below—*Category I labeling.)*

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(18) Robinson, D. H., "RID vs, Kwell in Head Lice Infestations," draft of unpublished study, included in OTC Volume 160227.

(19) Billstein, S., and P. Laone, "Demographic Study of Head Lice Infestations in Sacramento County School Children," *International Journal of Dermatology,* 18:301–304, 1979.

(20) OTC Volume 16JPAI, section 1.7.

2. *Category I labeling.* The Panel recommends the following Category I labeling for OTC pediculicide drug products:

a. *Indications.* "For the treatment of head, pubic (crab), and body lice."

b. *Directions.* "Apply to affected area until hair is thoroughtly wet with product. Allow product to remain on area for 10 minutes but no longer. Wash area thoroughtly with warm water and soap or shampoo. A fine-toothed comb may be used to help remove dead lice or their eggs (nits from hair. A second treatment must be made in 7 to 10 days to kill any newly hatched lice."

c. *Other required statements*—(1) "*HEAD LICE:* Head lice live on the scalp and lay small white eggs (nits) on the hair shaft close to the scalp. The nits are most easily found on the nape of the neck or behind the ears. All personal headgear, scarfs, coats, and bed linen should be disinfected by machine washing in hot water and drying, using the hot cycle of a dryer for at least 20 minutes. Personal articles of clothing or bedding that cannot be washed may be dry-cleaned or sealed in a plastic bag for a period of about 2 weeks. Personal combs and brushes may be disinfected by soaking in hot water (above 130° F) for 5 to 10 minutes. Thorough vacuuming of rooms inhabited by infested patients is recommended."

(2) *"PUBIC (CRAB) LICE:* Pubic lice may be transmitted by sexual contact; therefore, sexual partners should be treated simultaneously to avoid reinfestation. The lice are very small and look almost like brown or grey dots on the skin. Pubic lice usually cause intense itching and lay small white eggs (nits) on the hair shaft generally close to the skin surface. In hairy individuals, pubic lice may be present on the short hairs of the thighs and trunks, underarms, and occasionally on the beard and mustache. Underwear should be disinfected by machine washing in hot water; than drying, using the hot cycle for at least 29 minutes."

(3) "BODY LICE: Body lice and their eggs are generally found in the seams of clothing, particularly in the waistline and armpit area. They move to the skin to feed, then return to the seams of the clothing where they lay their eggs. Clothing worn and not laundered before

treatment should be disinfected by the same procedure as outlined for head lice, except that sealing clothing in a plastic bag is not recommended for body lice because the nits (eggs) from these lice can remain dormant for a period of up to 30 days."

d. *Warnings.* (1) "Use with caution on persons allergic to ragweed."

(2) "Do not use near eyes or permit contact with mucous membranes. If product should get into the eyes, immediately flush with water."

(3) "If skin irritation or infection is present or develops, discontinue use and consult a doctor."

B. Category II Conditions

These are conditions under which active ingredients used as pediculicides are not generally recognized as safe and effective or are misbranded.

1. *Category II ingredient—Isobornyl thiocyanoacetate.* The Panel concludes that isobornyl thiocyanoacetate is not safe becaue there are no human data available to demonstrate safety when used as an OTC pediculicide. The Panel further concludes that there is insufficient evidence to prove it is effective as a pediculicide.

Isobornyl thiocyanoacetate is a yellow, oily liquid with a terpene-like odor and a molecular weight of 253.36 (Refs. 1 and 2). It is very soluble in alcohol, benzene, chloroform, and ether, but practically insoluble in water. It is used as the technical grade, which contains 82 percent or more of isobornyl thiocyanoacetate with other terpenes (Ref. 2). It is a primary irritant and should not be applied near the eyes or on mucous membranes (Refs. 1, 2, and 3).

Isobornyl thiocyanoacetate has been used as an OTC pediculicide to eradicate crab, head, and body lice. It is available as a 4.1-percent liquid and cream (Ref. 4). Treatment involves external application of approximately 30 to 60 mL or g worked into a lather and allowed to remain on for 10 minutes before a subsequent wash with soap and water.

a. *Safety.* A chronic animal toxicity study showed that white rats tolerated up to 0.6 mg/kg daily for 6 months (Ref. 2). Studies involving oral toxicity in rats (LD_{50}), rabbit eye irritation, rabbit skin irritation, and guinea pig sensitization potential were stated to be in progress in January 1974, but have not been submitted (Ref. 4). No human safety data were submitted.

b. *Effectiveness.* Liquid preparations of 4.1 percent isobornyl thiocyanoacetate have been compared with a combination product of 0.165 percent pyrethrins and 2.0 percent piperonyl butoxide in the knockdown (rendering the lice unable to crawl) of lice. The 4.1-percent isobornyl thiocyanoacetate was effective under the test conditions, although not as effective as the comparison preparation (Ref. 4). The tests against adult lice were conducted using a modified patch/beaker test (Ref. 4). This test method uses dark cotton corduroy cloth cut into 4-centimeter (cm) square pieces.

The compounds are then applied to each patch at the rate of 0.5 g per patch. The liquid is applied with a dropping pipette to ensure even distribution of the compound over the 16-cm square area. The patches are then placed individually into clean 250 mL beakers. Into each beaker, 20 adult lice are introduced on top of the patch. The beakers containing the lice are then transferred to an incubator set at 27° C. After 1 hour of exposure, the lice in each beaker are examined for mortality. At the end of 24 hours, the lice in each beaker are again examined for mortality. The lice are classified as dead, moribund, or alive. Moribund lice are added to the dead counts when calculating the percent mortality.

Each treatment consisted of 4 replicates. Each replicate contained 20 adult lice. In addition, two replicates were run as controls using patches treated with 0.5 g of water. Another two replicates were run with dry, untreated patches.

The isobornyl thiocyanoacetate liquid produced a 76.25-percent knockdown after 1 hour of exposure and complete mortality after 24 hours of exposure. The pyrethrins with piperonyl butoxide produced complete knockdown after 1 hour and complete mortality after 24 hours of exposure (Ref. 4).

c. *Evaluation.* The Panel concludes that isobornyl thiocyanoacetate cannot be generally recognized as safe and effective for OTC use as a pediculicide due to a lack of data and classifies this ingredient as Category II.

References

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(4) OTC Volume 160011.

2. *Category II labeling.* The Panel has examined the submitted labeling claims for OTC pediculicide drug products and has classified the following claims as Category II:

a. Unqualified claims that the product is "ovicidal." Available data report the ovicidal activity of pyrethrin formulations to range from 19.6 to 33.6 percent nits killed, which is insufficient to warrant use of an ovacidal claim (Refs. 1 and 2).

b. Claims stating that the product may be reapplied in less than 7 days. Data demonstrated that pyrethrin formulations kill lice upon application, but have low ovicidal activity (Ref. 1). The unaffected ova (nits) will hatch in 7 to 10 days at which time a second application of the product is warranted.

References

(1) OTC Volume 160400.

(2) OTC Volume 16MPAI, section 1.9.

C. Category III Conditions

None.

List of Subjects in 21 CFR Part 358

OTC drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p) 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended by adding in Part 358, new Subpart G, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart G—Pediculicide Drug Products

Sec.

358.601 Scope.
358.603 Definitions.
358.610 Pediculicide active ingredients.
358.650 Labeling of pediculicide drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); (5 U.S.C. 553, 554, 702, 703, 704).

Subpart G—Pediculicide Drug Products

§ 358.6601 Scope.

(a) An over-the-counter pediculicide drug product in a form suitable for topical application is generally

recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 358.603 Definitions.

As used in this subpart:

Pediculicide drug product. A drug product for the treatment of head, pubic (crab), and/or body lice.

§ 358.610 Pediculicide active ingredients.

The active ingredients of the product consist of the combination of pyrethrins (0.17 to 0.33 percent) with piperonyl butoxide (2 to 4 percent) in a nonaerosol dosage formulation.

§ 358.650 Labeling of pediculicide drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "pediculicide."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "For the treatment of head, pubic (crab), and body lice."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Use with caution on persons allergic to ragweed."

(2) "Do not use near eyes or permit contact with mucous membrances. If product should get into the eyes, immediately flush with water."

(3) "If skin irritation or infection is present of develops, discontinue use and consult a doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

"Apply to affected area until hair is thoroughly wet with product. Allow product to remain on area for 10 minutes but no longer. Wash area thoroughly with warm water and soap or shampoo. A fine-toothed comb may be used to help remove dead lice or their eggs (nits) from hair. A second treatment must be made in 7 to 10 days to kill any newly hatched lice."

(e) *Other required statements*—(1) *"HEAD LICE:* Head lice live on the scalp and lay small white eggs (nits) on the hair shaft close to the scalp. The nits are most easily found on the nape of the neck or behind the ears. All personal headgear, scarfs, coats, and bed linen should be disinfected by machine washing in hot water and drying, using the hot cycle of a dryer for at least 20 minutes. Personal articles of clothing or bedding that cannot be washed may be dry-cleaned or sealed in a plastic bag for a period of about 2 weeks. Personal combs and brushes may be disinfected by soaking in hot water (above 130° F) for 5 to 10 minutes. Thorough vacuuming of rooms inhabitated by infested patients is recommended.

(2) *"PUBIC (CRAB) LICE:* Pubic lice may be transmitted by sexual contact; therefore sexual partners should be treated simultaneously to avoid reinfestation. The lice are very small and look almost like brown or grey dots on the skin. Pubic lice usually cause intense itching and lay small white eggs (nits) on the hair shaft generally close to the skin surface. In hairy individuals, pubic lice may be present on the short hairs of the thighs and trunk, underarms, and occasionally on the beard and mustache. Underwear should be disinfected by machine washing in hot water; then drying, using the hot cycle for at least 20 minutes."

(3) *BODY LICE:* Body lice and their eggs are generally found in the seams of clothing, particularly in the wastline and armpit area. They move to the skin to feed, then return to the seams of the clothing where they lay their eggs. Clothing worn and not laundered before treatment should be disinfected by the same procedure as outlined for head lice, except that sealing clothing in a plastic bag is not recommended for body lice because the nits (eggs) from these lice can remain dormant for a period of up to 30 days.

(Interested persons may, on or before September 27, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before October 27, 1982. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 14, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: June 21, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

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federal register

Tuesday
June 29, 1982

Part VI

Department of Commerce

Patent and Trademark Office

Trademark Applications and Examination Proceedings; Trademark Interference, Concurrent Use, Opposition and Cancellation Proceedings; Trademark Post-Registration Proceedings

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 2512-96]

Trademark Applications and Examination Proceedings; Trademark Interference, Concurrent Use, Opposition and Cancellation Proceedings; Trademark Post-Registration Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rulemaking.

SUMMARY: Patent and Trademark Office proposes amendments of the rules of practice in trademark cases to clarify and to revise procedures for the examination of applications; appeals from final refusals of registration; the institution and conduct of trademark interference, concurrent use, opposition and cancellation proceedings; the examination of affidavits or declarations under § 8 of the Trademark Act; the examination of applications to renew registrations under 9 of the Trademark Act; amendments to registrations under 7(d) of the Trademark Act; and petitions to the Commissioner. The proposed procedures revise or codify existing practices, or simplify procedures, or establish periods of time, to assist the orderly and prompt resolution of issues.

DATE: Written comments by September 27, 1982. Hearing, beginning at 10:00 a.m. September 27, 1982

ADDRESSES: Address written comments to the Commissioner of Patents and Trademark, Washington, D.C. 20231. The hearing will be held in Room 11C24 of Building 3, Crystal Plaza, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and transcript of hearing will be available for public inspection in Room 11E10 of Building 3, Crystal Plaza, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Miss Janet E. Rice by telephone at (703) 557-3551 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office is considering amendments to the rules of practice in trademark cases to revise, simplify, rearrange, or delete existing rules, or to codify in rules certain practices which are currently in effect. The rules involved include those which concern the examination and amendment of ex parte applications; appeals to the Trademark Trial and Appeal Board from the final refusal of registration in ex parte applications; the institution and conduct of interference, concurrent use, opposition and cancellation proceedings before the Trademark Trial and Appeal Board; the examination of affidavits or declarations under § 8 of the Trademark Act and subsequent proceedings if an affidavit or declaration is refused; the examination of applications for the renewal of registrations under § 9 of the Trademark Act and subsequent proceedings if an application for renewal is refused; amendments of registrations under § 7(d) of the Trademark Act; and petitions to the Commissioner.

The rules for which amendments are proposed are discussed below. (The designation "S" is used in the Code of Federal Regulations to denominate a rule; lettered ["(a)", "(b)", etc.] subdivisions are subsections of rules; numbered ["(1)", "(2)", etc.] subdivisions are paragraphs within sections or subsections.)

In this preamble to the proposed rulemaking, "Patent and Trademark Office" is abbreviated as "PTO" and "Trademark Trial and Appeal Board" is abbreviated as "TTAB."

Section 2.20. Subsection (b) is proposed to be added to codify the practice whereby a nonofficer of a corporation or association who is authorized to sign a notice of opposition or petition for cancellation may verify the pleading by a declaration in lieu of an oath or affirmation.

Section 2.27(e) is proposed to be added to permit the PTO to retain in confidence, not available for public inspection, any fruits in discovery filed under seal [see proposed amended § 2.120(f)] pursuant to a protective order or any testimony filed under seal [see proposed amended § 2.125(e)]. Conforming amendments are made in subsections (b) and (d).

Section 2.63 is proposed to be clarified and designated as subsection (a).

Section 2.63(b) is proposed to be added to codify the practice of allowing an applicant to petition to the Commissioner for relief from either an examiner's repeated but nonfinal formal requirement or a final requirement which is limited to subject matter which is appropriate for petitions to the Commissioner, as an alternative to appeal to the TTAB. The proposed rule also requires that a petition be timely and sets a time limit for action after denial of a petition. See proposed § 2.146(b) for a description of nonpetitionable subject matter and proposed § 2.146(d) for the time limit (thirty days) for a petition.

Section 2.64 is proposed to be designated as subsection (a) and revised to agree with the provision in § 2.63(b), permitting petitions to the Commissioner concerning some requirements which have been made final.

Section 2.64(b) is proposed to be added to clarify the existing practice of replying to requests for reconsideration after final action, and to permit entry of amendments accompanying such requests if they place the application in condition for publication or in better form for appeal.

Section 2.65 is proposed to be ameded by the addition of a sentence to provide that a timely and proper petition under § 2.63(b) avoids the abandonment of an application. An additional provision is proposed to permit the examiner to allow an applicant additional time to explain and supply an inadvertent omission which would otherwise have resulted in the application being held abandoned.

Section 2.72 is proposed to be revised to allow non-material changes in the drawing to be supported by specimens which were not necessarily in use at the time the original application was filed.

Section 2.81 is proposed to be revised to clarify the language of the rule.

Section 2.83 is proposed to be deleted because requests to consolidate applications are very rare and the procedure is unworkable. See Official Gazette notice of July 19, 1981, 1009 TMOG 17.

Section 2.94 is proposed to be deleted because interferences are declared only upon petition [see § 2.91], which assumes proper review before an interference is declared, and existing § 2.94 is unnecessary.

Section 2.95 is proposed to be deleted because the deletion of § 2.94 makes § 2.95 unnecessary.

Section 2.96 is proposed to be amended to codify existing practice on the issues determinable in an interference and the order of the parties and burden of proof. The last sentence in the amended rule states who is the junior party if two applications have the same filing date but different dates of execution of the applications.

Section 2.97 is proposed to be deleted because it is unnecessary in view of the codification in § 2.96.

Section 2.98 is proposed to be amended to make the rule consistent with existing § 2.91.

Section 2.99 is proposed to be amended in several respects. The rule has been reorganized to describe the procedure more clearly and logically.

Subsection (a) of the proposed amended rule permits the examiner to require an applicant to make a prima facie showing of entitlement to a concurrent use registration if the application and other papers in the file do not show that there are conditions or limitations on the mode or place of use of the marks or the goods in connection with which the marks are used so as to make confusion, mistake, or deception not likely or that the applicant is relying upon a determination by a court of competent jurisdiction [see Trademark Act, § 2(d) proviso].

Section 2.99 (b), (c), and (d)(1), as proposed, describe the procedure to be used to institute a concurrent use proceeding.

Section 2.99(d) (2) and (3), as proposed, codify existing practice on who must file an answer to a notice of institution of a concurrent use proceeding and the effect of not filing an answer.

Section 2.99(e), as proposed, codifies existing practice on the order of the parties and the burden of proof and states who is the junior party if two applications have the same filing date but different dates of execution of the applications. A person specified as an excepted user but who has not filed an application is stated to be a senior party to every party that has an application involved in the proceeding because a party without an application is seeking no relief and therefore has no burden of proving entitlement to relief.

Section 2.99(f), as proposed, provides for the issuance of a concurrent use registration upon the basis of a court's determination of the right of the parties to use their marks in commerce, without the institution of a proceeding by the TTAB, when all of the conditions specified in the rule are fulfilled.

Section 2.99(g), as proposed, codifies existing law that registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings and implements § 26 of the Trademark Act, which provides, inter alia, that applications for and registrations on the Supplemental Register shall not be subject to § 17 of the Act, which is the statutory authority for a concurrent use registration proceeding [cf. existing § 2.91(b)].

Sections 2.101 and 2.102 are proposed to be interchanged so that those two rules begin with the provisions for obtaining extensions of time to file an opposition and then provide for filing an opposition, thereby describing the procedures in their chronological sequence.

Section 2.101 (a) and (b), as proposed, repeat, with revisions to clarify the provisions, existing § 2.102(a).

Section 2.101(c), as proposed, codifies the existing practice under existing § 2.102(b). In addition, proposed § 2.101(c) provides for a maximum extended period, not to exceed 120 days from the date of publication of an application, within which to file a notice of opposition, except when there is a written stipulation or a showing of extraordinary circumstances, so as to avoid inordinate delays caused by ex parte requests for extensions of time.

Section 2.101(d), as proposed, codifies an existing practice which expedites the notification of the TTAB's action on a request for an extension of time.

Section 2.102(a), as proposed, states when an opposition proceeding is commenced, which is important for the application of § 2.135.

Section 2.102(b), as proposed, indicates that a notice of opposition should be addressed to the TTAB, which helps to route mail within the PTO.

Section 2.102(c), as proposed, requires that a notice of opposition be filed within thirty days after publication of the application or prior to the expiration of a granted extension of time for filing a notice of opposition.

Section 2.102(d), as proposed, implements the requirement of 13 of the Trademark Act that a notice of opposition be verified, which requirement is contained in existing § 2.101(a).

Section 2.102(e), as proposed, requires the payment of the statutory fee for an opposition, provides for the allocation of the fees that are submitted if they are insufficient for the number of classes being opposed or for the number of persons joined as party opposer, and permits the payment of additional fees for additional persons joined as party opposer in the notice of opposition in the same manner as the payment of additional fees for opposing additional classes in the application.

Section 2.102(f), as proposed, provides for the late payment of the opposition fee or fees, subject to the payment of one service charge on behalf of each person joined as a party opposer, when a notice of opposition is not accompanied by at least one full fee to oppose one class by one person, thereby continuing the practice provided by existing § 2.101(c). Proposed § 2.102(f), further, codifies the practice that, when the notice of opposition is filed without any fee or with a fee insufficient for at least one person to oppose one class in the application, all of the required fees must be submitted within the time fixed by the notice of defect, which will be issued by the TTAB.

Section 2.103, as proposed, clarifies existing § 2.103.

Section 2.104, as proposed, clarifies existing § 2.104.

Section 2.105, as proposed, clarifies existing § 2.105 and codifies the practice thereunder.

Section 2.106(c), as proposed, codifies the practice under existing § 2.106(c) that, after an answer is filed, a notice of opposition may be withdrawn without prejudice only with the written consent of the applicant.

Section 2.107, as proposed, codifies the practice under existing § 2.107 whereby any pleading, including the answer, may be amended.

Section 2.111(a), as proposed, states when a cancellation proceeding is commenced, which is important for the application of § 2.134.

Section 2.111(b), as proposed, indicates that a petition for cancellation should be addressed to the TTAB, which helps to route mail within the PTO.

Section 2.111(c), as proposed, implements the requirement of 14 and 24 of the Trademark Act that a petition for concellation be verified, which requirement is contained in existing § 2.112.

Section 2.111(d), as proposed, states the requirement for the payment of the fee(s) due upon filing a petition for cancellation, and, parallel to proposed amended § 2.102(e), provides for the allocation of fees and payment of additional fees when more than one class is sought to be cancelled or more than one person is joined as a party petitioner or when both situations exist.

Section 2.112, as proposed, removes the reference to verification of a petition for cancellation, which is placed in proposed § 2.111(c), to clarify the language of the rule, and to state in proposed § 2.112(b) the conditions for filing a consolidated petition for cancellation of different registrations owned by the same party.

Section 2.113 is proposed, to be amended to describe the procedure for notifying a registrant of the filing of a petition for cancellation of his registration. The provision in existing § 2.113 for notifying a party of the need to correct a formally defective petition has been deleted. It is, and will continue to be, the practice of the TTAB to notify a party when he files a petition without the fee for cancelling at least one class in the registration sought to be cancelled or when a verification has been omitted or is defective. Problems arise when a defective petition for cancellation is filed near the end of the statute of

limitations provided by 14 (a) or (b) of the Trademark Act. If no fee, or a fee insufficient for a petition to cancel at least one class in respondent's registration, is received prior to the critical fifth anniversary, the TTAB is without jurisdiction to entertain the petition and the minimum jurisdictional fee cannot be paid after the five-year statuate of limitations is effective. Jurisdiction to accept provisionally a defectively excuted or verified petition and to prescribe a time to file a properly executed document resides exclusively with the Commissioner pursuant to 35 U.S.C. 26. A petition to the Commissioner is governed by existing § 2.146(a)(2) or proposed § 2.146(a)(2).

Section 2.115 is proposed, to be amended in the same manner as proposed amended § 2.107.

Section 2.116 (b) is proposed to be amended to clarify the language and intent of existing § 2.116(b).

Section 2.116(c) is proposed to be amended to clarify existing § 2.116(c). Any complaint filed by a party in an interference or concurrent use proceeding would be a petition for cancellation, and the position of the parties in the consolidated proceeding will be set by the TTAB as required.

Section 2.117 is proposed to be amended by the addition of subsections (b) and (c) to codify existing practice when a suspension of proceedings is considered.

Section 2.117(d) is proposed to be added to permit a party to move, or parties to stipulate, for suspension, which usually occurs when negotiations for settlement are undertaken and the parties want proceedings suspended for that purpose.

Section 2.120 is proposed to be amended in several respects commencing with a reorganization of the rule to state how discovery may be taken, then how discovery may be compelled, then how admissions may be requested and the sufficiency of admissions or objectives to requests therefor may be tested, and then how the results of discovery may be used in a proceeding.

Section 2.120(a), as proposed, clarifies the language of the introductory paragraph of existing § 2.120.

Section 2.120(b), as proposed, is made applicable to domestic parties, clarifies existing § 2.120(a) (1), and codifies the practice thereunder.

Section 2.120(c)(1), as proposed, restates in modified form the provisions of existing § 2.120(a)(2), and in addition, proposed § 2.120(c)(1) permits oral discovery depositions in foreign countries on motion for good cause or by stipulation of the parties.

Section 2.120(c)(2), as proposed, provides for oral discovery depositions within the United States of foreign parties or their officers, etc. if they will be in the United States during a discovery period.

Section 2.120(d), as proposed, makes specific provision for requests for production and codifies the practice for this kind of discovery.

Section 2.120(e)as proposed, clarifies existing § 2.120(c)(1) and codifies the practices on motions to compel discovery.

Section 2.120(f), as proposed, adds provisions pertaining to protective orders during discovery.

Section 2.1120(g), as proposed, clarifies existing § 2.120(c)(2) and codifies the practice on sanctions for failing to obey orders pertaining to discovery.

Section 2.120(h), as proposed, adds to the discovery rules provisions pertaining to requests for admissions and codifies the practice pertaining to requests for admissions.

Section 2.120(i), as proposed, codifies the practice on pre-trial conferences to resolve dispute over pre-trial questions or issues.

Section 2.120(j), as proposed, clarifies existing § 2.120(a)(3) and codifies the practice on the filing with the TTAB of matter obtained during discovery and the use thereof at trial.

Section 2.121, as proposed, clarifies existing § 2.121 and codifies the practice thereunder.

Section 2.122, as proposed, consolidates in one section the rules goverining the introduction and admission of evidence in inter partes proceedings before the TTAB.

Section 2.122(a), as proposed, identifies the sources of the law of evidence to be applied in inter partes proceedings.

Section 2.122(b)(1), as proposed, clarifies the language and codifies the practice under existing § 2.122(a).

Section 2.122(b) (2) and (3), as proposed, clarify existing § 2.126 and codify the practice under existing § 2.126.

Section 2.122(c)(1), as proposed, clarifies and adds to the provisions of existing § 2.122(c) relating to printed publications. Proposed § 2.122(c) would require that an official record or copy thereof offered under the rule be an authentic record or copy pursuant to the Federal Rules of Evidence and would also require that, when a copy of a relevant portion of a printed publication is offered, the copy include the title page and any other page needed to show the place and date of publication, the name and address of the publisher, and the name of the author or the editor, which information is intended to enable the party against whom the evidence is offered to identify what it is.

Section 2.122(c)(2), as proposed, would amend existing § 2.122(b) insofar as the existing rule governs the introduction of a copy of a registration owned by any party to a proceeding. An important change would be that a copy of a registration introduction by a party on his own behalf would have to be a certified copy (see 7(e) of the Trademark Act). A second important change would be the elimination of the practice, under existing § 2.122(b), of filing, as evidence in a proceeding, two copies showing status and title of a registration pleaded by an opposer or petitioner for cancellation, or filing an order for such copies, with the notice of opposition or petition for cancellation. The procedure whereby an opposer or cancellation petitioner could submit an order for copies of his registration for subsequent attaching to his pleading has not worked well in practice. As a result, a number of opposition and cancellation proceedings have gone to final hearing without a copy of the opposer's or cancellation petitioner's registration, which had to be obtained at that point, provided that the party relying thereon could show that a timely correct order has been sent to the PTO. Since, it is more likely than not that an order for two certified copies of a registration showing status and title would not be filled in time for filing with a notice of opposition or petition for cancellation, § 2.122 is proposed to be amended to provide for the filing thereof only with a notice of reliance during a testimony period. This would not preclude attaching a copy of a pleaded registration as an exhibit to a notice of opposition or petition for cancellation purely for informational purposes but not for evidentiary purposes.

Section 2.122 (d), as proposed, codifies the practice that copies of third-party registrations need not be certified to be offered in evidence.

Section 2.122 (e), as proposed, clarifies existing §2.122 (d) and codifies the practice under existing § 2.122 (d).

Section 2.123 (a) (1), as proposed, provides that testimony may be taken by depositions upon oral questions or upon written questions and further provides that a party against whom a testimonial deposition will be taken may move to have the deposition taken upon oral questons if the witness, even though he may be a foreign party or a person who usually resides in a foreign country, is, or at the time of the deposition will be, in the United States or any territory

under the control and jurisdiction of the United States.

Section 2.123 (a) (2), as proposed, provides that testimony in a foreign country is ordinarily to be taken by a deposition upon written questions but that the party against whom a testimonial deposition will be taken may move to have it taken by oral questions in a foreign country and further provides that the parties may stipulate to have testimony taken by an oral deposition in a foreign country.

Section 2.123 (e) (3), as proposed, codifies the practice that a party who did not receive a proper notice of the taking of a deposition with respect to any witness may cross-examine that witness under protest while preserving his right to move to strike the whole of the testimony of that witness.

Section 2.123 (k), as proposed, codifies the practice that objections to testimony on arounds of alleged lack of relevancy, materiality, or competency should be raised in a brief at final hearing but should not be raised by a motion to strike testimony regularly taken.

Section 2.124, as proposed, sets out the procedure to be followed in taking a discovery deposition or a testimonial deposition upon written questions.

Section 2.124 (a), as proposed, provides that a deposition upon written questions may be taken before any of the persons described in Rule 28 of the Federal Rules of Civil Procedure.

Section 2.124 (b) (1) as proposed, provides for the kind of notice which must be served by a party desiring to take a testimonial deposition upon written questions and further provides that a copy of the notice, without the questions; must be filed with the TTAB.

Section 2.124 (b) (2), as proposed, provides for the kind of notice which must be served by a party desiring to take a discovery deposition upon written questions and further provides that a copy of the notice, without the questions, must be filed with the TTAB. This paragraph also provides that, if the name of the person to be deposed is not known to the party who will take the deposition, a general description sufficient to identify the class or group to whom the prospective witness belongs shall be stated in the notice and the party to be deposed shall designate one or more discovery witnesses.

Section 2.124 (c), as proposed, requires that every notice of deposition upon written questions name or describe by title the officer before whom the deposition will be taken.

Section 2.124 (d) (1), as proposed, specifies the procedure and timetable for serving the questions, objections, and substitute questions for a deposition upon written questions.

Section 2.124 (d) (2), as proposed, provides that the TTAB may reset the times specified in proposed § 2.124 (d) (1) and, when a testimonial deposition is to be taken upon written questions, may suspend or reschedule other proceedings in the matter to allow for the completion of the deposition.

Section 2.124 (e), as proposed, provides the procedure for sending the notice and questions to the officer designated in the notice, the taking of the deposition, and the certification and mailing of the transcript to the party who took the deposition.

Section 2.124 (f), as proposed, provides for the service of copies of the transcript and exhibits, states that the party who took the deposition is responsible for the correctness of the transcript, permits the use of a discovery deposition as provided by proposed § 2.120 (j), and provides for the filing with the TTAB of a testimonial deposition, a copy thereof, and the exhibits.

Section 2.124 (g), as proposed, states that objections to questions and answers may be considered at final hearing.

Section 2.125 (a), as proposed, provides for the service of a transcript of an oral testimonial deposition and the exhibits, and, in respect of that requirement, continues the rule of existing § 2.125 (a).

Section 2.125 (b), as proposed, makes the party who took a deposition responsible for its correctness and for serving the adverse party with a corrected transcript or corrected pages.

Section 2.125 (c), as proposed, continues the requirement of existing § 2.125 (a) that a certified transcript, a copy of the transcript, and the exhibits be filed promptly with the TTAB and further provides that notice of filing be served on the adverse party and that a copy of the notice be filed with the TTAB.

Section 2.125 (d), as proposed, continues the requirements of existing § 2.125 (b).

Section 2.125 (e), as proposed, provides that the TTAB, on motion, may order that any part of a deposition transcript or exhibits that directly disclose a trade secret or other confidential research development, or commercial information may be filed under seal and kept confidential and provides for sanctions for failure to comply with the order.

Section 2.126 is proposed to be deleted because the substance of the existing section has been shifted to proposed § 2.122(b) (2) and (3).

Section 2.127 (a), (b), and (c), as proposed, clarify existing § 2.127 (a), (b), and (c) and codify the practice under existing § 2.127 (a), (b), and (c).

Section 2.127(d), as proposed, codifies the practice with respect to suspending all matters in a case not germane to a potentially dispositive motion until the determination thereof.

Section 2.128(a)(1), as proposed, clarifies existing § 2.128(a) except that the rule requiring copies of a brief is shifted to proposed § 2.128(b).

Section 2.128(a)(2), as proposed, codifies the practice of having the TTAB set the briefing schedule by order when proceedings are consolidated, or when there is a counterclaim, or when more than two parties are involved.

Section 2.128(a)(3), as proposed, contains a new provision enabling the TTAB to decide that a case has been conceded, resulting in an adverse judgment, when a party fails to file a brief at final hearing.

Section 2.128(b), as proposed, clarifies and codifies the practice under the last sentence of existing § 2.128(a) and existing § 2.128(b).

Section 2.129(a), as proposed, clarifies and codifies the practice under § 2.128(c) and existing § 2.129(a).

Section 2.129(b), as proposed, clarifies existing § 2.129(b).

Section 2.129(c), as proposed, clarifies existing § 2.129(c), from which the language referring to a decision on a motion which is finally dispositive of a case has been deleted because any requests for reconsideration or modification of a decision issued on a motion would be made under proposed § 2.127(b).

Section 2.131, as proposed, clarifies and codifies the practice under existing § 2.131. The effect is to eliminate the dichotomy between inter partes and ex parte issues and to provide for the determination by the TTAB of all issues that have been expressly pleaded by the parties or tried by their express or implied consent and to reserve for remand to the examiner for reexamination only issues neither pleaded nor tried but which appear to make the mark of an applicant unregistrable.

Section 2.132(a), as proposed, changes the practice under existing § 2.132(a) by eliminating the step of having the TTAB issue an order to the plaintiff to show cause why judgment should not be entered against him. Under the proposed § 2.132(a), the plaintiff will have fifteen days from the date of service of the defendant's motion for dismissal within which to show cause why judgment

should not be rendered against the plaintiff.

Section 2.132(b), as proposed, clarifies existing § 2.132(b).

Section 2.134(a), as proposed, codifies the practice under existing § 2.134 that the written consent of the adverse party is required to avoid judgment against a cancellation respondent who applies to cancel his registration under § 7(d) of the Trademark Act while the registration is involved in a proceeding.

Section 2.134(b), as proposed, provides that, after the commencement of a cancellation proceeding, if a respondent (registrant) permits his registration to be cancelled under § 8 of the Trademark Act or fails to renew his registration under § 9 of the Act, the resulting demise of the registration shall be deemed to be the equivalent of a cancellation of the registration by request of the respondent without the written consent of the adverse party and will result in judgment against the respondent. § 2.134(b) is proposed to avoid situations where a respondent in a cancellation proceeding may moot the case and avoid judgment because of the fortuitous circumstance that his registration happens to reach its sixth anniversary or twentieth anniversary while a proceeding is pending and the respondent exploits this situation by simply failing to file an affidavit under § 8 of the Act or a renewal application under § 9 of the Act.

Section 2.135, as proposed, codifies the practice under existing § 2.135, which is parallel to the parties under existing § 2.134 and proposed § 2.134(a), that the written consent of the adverse party is required to avoid judgment against an applicant who abandons his application or mark while the application is involved in an opposition.

Section 2.142(a), as proposed, clarifies existing § 2.142(a).

Section 2.142(b), as proposed, requires the examiner to file with the TTAB a statement answering every point in the appellant's brief and requires the examiner to file the statement within sixty days after appellant's brief is sent to the examiner by the TTAB.

Section 2.142(c), as proposed, codifies the practice that all requirements made by the examiner and not the subject of appeal shall be complied with prior to the filing of an appeal.

Section 2.142(d), as proposed, provides that the record in the application should be complete prior to the filing of an appeal, states that the TTAB will ordinarily not consider additional evidence filed with the TTAB by the appellant or by the examiner after an appeal is filed, and provides that either the appellant or the examiner may request the TTAB to suspend the appeal and remand the application for further examination if the appellant or the examiner desires to introduce additional evidence. The usual situations where additional evidence may be offered arise under 2(e) or 2(f) of the Trademark Act where the examiner desires to introduce more evidence to support a refusal of registration or the appellant desires to introduce more evidence in support of a claim of acquired distinctiveness (secondary meaning).

Section 2.142(e)(1), as proposed, amends existing § 2.142(c), and codifies the practice under the existing rule, by changing the due date for a request for an oral hearing on an appeal from the date when the appellant's brief is filed to a date ten days after the due date for a reply brief.

Section 2.142(e)(2), as proposed, requires the examiner to present an oral argment if an oral argument is requested by the appellant.

Section 2.142(e)(3), as proposed, allots twenty minutes to the appellant for oral argument and ten minutes to the examiner for oral argument.

Section 2.142(f), as proposed, provides for situations where, during an appeal, it appears to the TTAB that an issue not previously raised may render the mark of the appellant unregisterable, that is, when something on the face of the record on appeal indicates that a question concerning the registrability of the mark may exist but has not been considered. The proposed subsection provides the procedure to be followed by the TTAB, the examiner, and the appellant when the TTAB suspends an appeal and remands an application on the TTAB's own motion.

Section 2.146, as proposed, collects in one section the rules on petitions to the Commissioner in existing §§ 2.146, 2.147, and 2.148. For this reason it is proposed to delete §§ 2.147 and 2.148.

Section 2.142(a), as proposed, reflects the proposed change in § 2.63(b) permitting petitions concerning some requirements which have been made final.

Section 2.146(b), as proposed, delineates classes of questions which are not considered to be appropriate subject matter for petitions to the Commissioner. These questions are substantive issues of registrability of marks and are considered to be appropriate for appeal to the TTAB.

Section 2.146(c), as proposed, specifies the contents of a petition to the Commissioner, and in this respect clarifies existing § 2.146(b).

Section 2.146(d), as proposed, specifies the time limit for filing a petition on any matter except from a denial of a request for an extension of time to file an opposition, or from an interlocutory order of the TTAB, or from the refusal of an affidavit or declaration filed pursuant to § 8 of the Trademark Act, or from the refusal of an application for the renewal of a registration filed under § 9 of the Trademark Act.

Section 2.146(e), as proposed, provides time limits and specifies the procedure for a petition to the Commissioner from the denial of a request for an extension of time to file an opposition or from an interlocutory order of the TTAB. Proposed § 2.146(e)(1) contains a new requirement that a petition from the denial of a request for an extension of time to oppose must be served on the applicant or his attorney and provides for a response by the applicant to the petition.

Section 2.146(f), as proposed, clarifies existing § 2.146(c).

Section 2.146(g), as proposed, clarifies and codifies the practice under existing § 2.146(d) and, in addition, makes § 2.146 consistent with proposed §§ 2.63(b) and 2.65.

Section 2.146(h), as proposed, codifies the practice under existing § 2.146(e) whereby authority to act on classes of petitions, in addition to any particular petition, has been delegated.

Section 2.145, as proposed, specifies the procedure when an affidavit or declaration filed under § 8 of the Trademark Act is refused. The steps to be taken by the registrant to request reconsideration and to petition to the Commissioner and the time limits for such requests and petitions are stated.

Section 2.145(d), as proposed, states that a petition to the Commissioner for review of the action refusing the affidavit or declaration under the Trademark Act shall be a condition precedent to an appeal to or action for review by any court. This implements 21 (a)(1) and (b)(1) of the Act, which provide, inter alia, that a registrant who has filed an affidavit under § 8 of the Act who is dissatisfied with the decision of the Commissioner may appeal to the Court of Customs and Patent Appeals or may have remedy by a civil action.

Section 2.173(b), as proposed, clarifies the circumstances in which an amendment of the identification of goods or services of a registration is permitted. The proposed rule states that an identification of goods or services can be restricted or can be otherwise changed in ways that would not require republication of the mark.

Section 2.184, as proposed, specifies procedures and time limits for relief when an application for renewal of a

registration under § 9 of the Trademark Act is refused, in parallel with proposed § 2.165.

Section 2.184(d), as proposed, is parallel to proposed § 2.165(d) and has the same statutory basis.

Section 2.186, as proposed, clarifies and codifies the practice under existing § 2.186 that action with respect to an assigned application or registration may be taken by the assignee provided that the assignment has been recorded.

Environmental, energy, and other considerations: The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act. Pub. L. 96–354) for several reasons. The rule change includes no additional or increased fees. Substantive rights to use valuable trademarks are not adversely affected. In general, the rule change will expedite proceedings before the Patent and Trademark Office, changing existing procedures only where then can be made more equitable or simpler.

The proposed rule change does not impose a record keeping or reporting burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* No additional information is required from the public. No additional records are required to be maintained by the Patent and Trademark Office because there are no additional fees or proceedings to monitor.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no 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.

List of Subject Terms in 37 CFR Part 2:

Administrative practice and procedure, Courts, Lawyers, Trademarks.

Noticed is hereby given that pursuant to the authority contained in Section 41 of the Trademark Act of July 5, 1946, as amended, (60 Stat. 427, 88 Stat. 1949, 15 U.S.C. 1123, as amended), the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations by amending §§ 2.20, 2.27, 2.63, 2.64, 2.65, 2.72, 2.81, 2.96, 2.98, 2.99, 2.101, 2.102, 2.103, 2.104, 2.105, 2.106, 2.107, 2.111, 2.112, 2.113, 2.115, 2.116, 2.117, 2.120, 2.121, 2.122, 2.123, 2.124, 2.125, 2.127, 2.128, 2.129, 2.131, 2.132, 2.134, 2.135, 2.142, 2.146, 2.165, 2.173, 2.184, and 2.186, and by removing §§ 2.88, 2.94, 2.95, 2.97, 2.126, 2.147, and 2.148, as set forth below. Additions are indicated by arrows and deletions by brackets.

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK COVERS

1. Section 2.20 is proposed to be amended by designating the present section as subsection (a) and adding a new subsection (b) to read as follows:

§ 2.20 Declaration(s) in lieu of oath.

* * * * *

►(b) A notice of opposition or petition for cancellation signed on behalf of a corporation or an association by a person who is authorized to sign the document but who is not an officer may be accompanied by a declaration as provided in subsection (a).◄

2. Section 2.27 is proposed to be amended by revising subsections (b) and (d) and adding a subsection (e) to read as follows:

§ 2.27 Pending trademark application index; access to applications

* * * * *

(b) ►Except as provided in subsection (e),◄ access to the file of a particular pending application will be permitted prior to publication under rule 2.80 upon written request.

* * * * *

(d) ►Except as provided in subsection (e),◄ after a mark has been registered, or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

►(e) Any documents, tangible things, answer to interrogatories, or all or part of any discovery or testimonial deposition transcripts ordered to be filed under seal pursuant to a protective order issued or made by any court or by the Trademark Trial and Appeal Board in any proceeding involving an application or a registration shall be kept confidential and shall not be made available for public inspection or copying unless otherwise ordered by the court or the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto.◄

3. Section 2.63 is proposed to be revised to read as follows:

§ 2.63 ►Reexamination.◄ [Re-examination.]

►(a)◄ After response by the applicant, the application will be ►reexamined◄ [re-examined] or reconsidered ►If◄ [, and if the] registration is again refused or ►any◄ formal requirements[s] ►is repeated,◄ [insisted upon,] but ►the examiner's action is◄ not stated to be final ►,◄ the applicant may respond again.

►(b) After reexamination the applicant may respond by filing a timely petition to the Commissioner for relief from a formal requirement if: (1) The formal requirement is repeated but the Examiner's action is not made final; or (2) the examiner's action is made final and the action is limited to subject matter appropriate for petitions to the Commissioner (see § 2.146(b)). If the petition is denied, the applicant shall have until six months from the date of the Office action which repeated the requirement or made it final or thirty days from the date of the decision on the petition, whichever date is later, to comply with the requirement. A formal requirement which is the subject of a petition decided by the Commissioner may not subsequently be the subject of an appeal to the Trademark Trial and Appeal Board.◄

4. Section 2.64 is proposed to be amended by amending the present section and designating it as subsection (a) and adding a new subsection (b) to read as follows:

§ 2.64 Final Action.

►(a)◄ On the first or any subsequent reexamination or reconsideration the refusal of the registration or the insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal ►,◄ or to a compliance with any requirement ►, or to a petition to the Commissioner if permitted by § 2.63(b)◄.

►(b) During the period between a final action and expiration of the time for filing an appeal, the applicant may request the examiner to reconsider the final action. The filing of a request for reconsideration will not extend the time for filing an appeal or petitioning the Commissioner, but the examiner will reply to every request for reconsideration. Amendments accompanying requests for reconsideration after final action will be entered if they place the application in condition for publication or in better form for appeal.◄

5. Section 2.65 is proposed to be amended by revising the existing rule and identifying it as subsection (a) and

adding a subsection (b) to read as follows:

§ 2.65 Abandonment.

►(a)◄ If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed to have been abandoned. ►A timely petition to the Commissioner pursuant to § 2.63(b) is a response which avoids abandonment of an application.◄

►(b) When action by the applicant is a bona fide attempt to advance the examination of the application and is substantially a complete response to the examiner's action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.◄

6. Section 2.72 is proposed to be revised to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

Amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit or declaration in accordance with rule 2.20 alleging that the mark shown in the amended drawing ►is in use◄ [was in actual use prior to the filing date of the application]. Amendments may not be made if the ►character◄ [nature] of the mark is ►materially altered◄ [changed thereby].

7. Section 2.81 is proposed to be revised to read as follows:

§ 2.81 Allowance of application.

If no opposition is filed with the time permitted [(§§ 2.101 and 2.102),] or ►any opposition is◄ [if filed and] dismissed, and if no interference is declared ►and no◄ [, or] concurrent use proceeding ►is◄ instituted, the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

§ 2.88 [Removed]

8. It is proposed to remove § 2.88, Applications may be combined.

§ 2.94 [Removed]

9. It is proposed to remove § 2.94, Interference motions.

§ 2.95 [Removed]

10. It is proposed to remove § 2.95, Decision on motion to dissolve.

11. Section 2.96 is proposed to be revised to read as follows:

§ 2.96 Issue; burden of proof.

The issue in an interference between applications ►is normally priority of use, but the rights of the parties to registration may also be determined. The party whose application involved in the interference has the latest filing date is the junior party and has the burden of proof. When there are more than two parties in an interference, a party whose application involved in the interference has a filing date between the filing dates of the earliest involved application and the latest involved application is a junior party to every party whose involved application has an earlier filing date and has the burden of proof as against every party whose application has an earlier filing date. If any applications involved in an interference have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. The issue in an interference between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register.◄ [shall be the respective rights of the parties to registration. The issue in an interference between between an application and a registration shall be the same, but in the event the final decision is adverse to the registrant, a registration to the applicant will not be authorized so long as the interfering registration remains on the register. The party whose applications or registration involved in the interference has the latest filing date (the junior party) will be regarded as having the burden of proof.]

§ 2.97 [Removed]

12. It is proposed to remove Section 2.97, Enlargement of issue.

13. Section 2.98 is proposed to be revised to read as follows:

§ 2.98 Adding party to interference.

►A party may be added to an interference only upon petition to the Commissioner by that party.◄ [If, during the pendency of an interference, another case appears involving substantially the same registrable subject matter, the Examiner of Trademarks may request the suspension of the interference for the purpose of adding said case. Such suspension will be granted as a matter of course if no testimony has been taken. If any testimony has been taken or is about to be taken, the case will not be added except upon approval of a member of the Trademark Trial and Appeal Board.] If ►an application which is or might be the subject of a petition for addition to an interference◄ [the case] is not added, the ►examiner◄ [Examiner of Tradmarks] may suspend action on ►the application◄ [such case] pending termination of the interference proceeding.

14. Section 2.99 is proposed to be revised to read as follows:

§ 2.99 Application to register as concurrent user.

(a) An application for registration as a lawful concurrent user will be examined in the same manner as other applications for registration. ►The examiner may require an applicant for registration as a concurrent user to make a prima facie showing that the applicant is entitled to a concurrent use registration.◄ [When it is determined that the mark is ready for publication or allowance, except for questions relating to concurrent registration, the applicant may be required to furnish as many copies of his written application, specimens and drawing, as may be necessary. The Examiner of Trademarks shall prepare notices for the applicant and for each applicant, registrant, or user specified in the application for registration as a concurrent user. Such notices for the specified parties shall give the names and address of the applicant and of his attorney or other authorized representative, if any, together with the serial number and filing date of the application.]

(b) ►When it is determined that the mark is ready for publication, the applicant may be required to furnish as many copies of his application, specimens and drawing as may be necessary for the preparation of notices for each applicant, registrant or user specified as a concurrent user in the application for registration.◄ [The notices shall be sent to each of the parties, in care of their attorneys or other representatives, if they have attorneys or other representatives of record, and if one of the parties is a registrant, a notice shall also be sent to him or his assignee of record. A copy of the application shall be forwarded with the notices to the parties specified in the application. An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified in the application to register as concurrent user but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of other parties specified in the application to register as concurrent user, answer must be filed

within forty days after the mailing of the notice.]

(c) ►Upon receipt of the required by subsection (b), the examiner shall forward the application for concurrent use registration for publication in the Official Gazette as provided by § 2.80. If no opposition is filed, or if any opposition that is filed is dismissed or withdrawn, the Trademark Trial and Appeal Board shall prepare a notice for the applicant for concurrent use registration and for each applicant, registrant or user specified as a concurrent user in the application. The notices for the specified parties shall state the name and address of the applicant and of the applicant's attorney or other authorized representative, if any, together with the serial number and filing date of the application.◄ [The procedure shall follow the practice in interference proceedings insofar as it is applicable and the time limitations prescribed in such practice shall be applicable herein.]

(d) ►(1) The notices shall be sent to each applicant, in care of his attorney or other authorized representative, if any, to each user, and to each registrant. A copy of the application shall be forwarded with the notice to each party specified in the application.

(2) An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified as a concurrent user in the application, but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of any other party specified as a concurrent user in the application, an answer must be filed within forty days after the mailing of the notice.

(3) If an answer, when required, is not filed, judgment will be entered precluding the specified user from claiming any right more extensive than that acknowledged in the application(s) for concurrent use registration, but the applicant(s) will remain with the burden of proving entitlement to registration(s).◄ [When concurrent registration is sought on the basis of a court determination of the rights of the parties to use the marks in commerce, the application shall be examined by the Examiner of Trademarks. If the applicant is entitled to registration subject only to the concurrent lawful use of a party to the court proceeding, the Examiner of Trademark may publish or allow the application, provided the court decree specifies the rights of the parties.]

►(e) The applicant for a concurrent use registration has the burden of proving entitlement thereto. If there are two or more applications for concurrent use registration involved in a proceeding, the party whose application has the latest filing date is the junior party. A party whose application has a filing date between the filing dates of the earliest involved application and the latest involved application is a junior party to every party whose involved application has an earlier filing date. If any applications have the same filing date, the application with the latest date of execution will be deemed to have the latest filing date and that applicant will be the junior party. A person specified as an excepted user in a concurrent use application but who has not filed an application shall be considered a party senior to every party that has an application involved in the proceedng.◄

►(f) When a concurrent use registration is sought on the basis of a court's determination of the rights of the parties to use the marks in commerce, a concurrent use registration proceeding will not be instituted if all of the following conditions are fulfilled:

(1) The applicant is entitled to registration subject only to the concurrent lawful use of a party to the court proceeding; and

(2) The court decree specifies the rights of the parties; and

(3) A true copy of the court decree is submitted to the examiner; and

(4) The concurrent use application complies fully and exactly with the court decree; and

(5) The excepted use specified in the concurrent use application does not involve a registration.

If any of the conditions specified in this subsection is not satisfied, a concurrent use registration proceeding shall be prepared and instituted as provided in subsections (a) through (e).◄

►(g) Registrations and applications to register on the Supplemental Register and registrations under the Act of 1920 are not subject to concurrent use registration proceedings.◄

15. Section 2.101 is proposed to be revised to read as follows:

§ 2.101►Extension of time for filing◄ [Filing] an opposition.

(a) Any person who believes that he would be damaged by the registration of a mark ►on◄ [upon] the Principal Register may ►file a written request to extend the time for filing an opposition. The written request may be signed by the potential opposer or by an attorney at law or other person authorized to represent a party.◄ [oppose the same by filing an opposition in the Patent and Trademark Office within thirty days after publication of the mark sought to be registered (§ 2.80), or within an extension of the time for filing an opposition (§ 2.102). The opposition must be verified, or include a declaration in accordance with § 2.20, unless the opposition as filed by an attorney at law or other authorized representative in accordance with § 2.103.]

(b) ►The written request to extend the time for filing an opposition must identify the potential opposer with reasonable certainty. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person in whose name the extension was requested was misidentified through mistake or if the opposition is filed in the name of a person in privity with the person who requested and was granted the extension of time.◄ [An opposition must include the required fee for each class sought to be opposed in the application. If fees insufficient to cover all classes in the application are submitted, the particular class or classes in which opposition is sought should be specified. If persons are joined in an opposition, a fee for each class sought to be opposed in the application for each person so joined is required.]

(c) ►A written request to extend the time for filing an opposition must be filed in the Patent and Trademark Office before the expiration of thirty days from the date of publication or within any extension of time previously granted under this section, should specify the period of extension desired, and should be addressed to the Trademark Trial and Appeal Board. A first extension of time for not more than thirty days will be granted upon request. Further extensions of time may be granted by the Board for good cause. Extensions of time to file an opposition aggregating more than 120 days from the date of publication of the application will not be granted except upon written stipulation signed by the applicant and the potential opposer, or their authorized representatives, or upon a showing of extraordinary circumstances.◄ [If no fee, or a fee insufficient to cover at least one class, is filed within 30 days after publication of the mark to be opposed or within an extension of the time for filing an opposition, the opposition will not be refused if the required fee(s) and service charge (see § 2.6(g)) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. In situations covered by this paragraph, § 2.85(e) may not be utilized.]

►(d) Every request to extend the time for filing a notice of opposition should

be submitted in triplicate (original plus two copies).◄

16. Section 2.102 is proposed to be revised to read as follows:

§ 2.102 ►Filing an◄ [Extension of time for filing] opposition.

(a) ►An opposition proceeding is commenced by the filing of a notice of opposition in the Patent and Trademark Office.◄ [A request to extend the time for filing an opposition must be made by a person who believes that he would be damaged by the registration of the mark on the Principal Register, but an attorney at law or other person authorized to represent a party may file the request on behalf of a potential opposer. The potential opposer must be identified with reasonable certainty in the request. Any opposition filed during an extension of time should be in the name of the person to whom the extension was granted, but an opposition may be accepted if the person to whom the extension was granted was misidentified through mistake, or an opposition filed in a different name may be accepted if the person filing the opposition is in privity with the person to whom the extension was granted.]

(b) ►Any person who believes that he would be damaged by the registration of a mark on the Principal Register may oppose the same by filing a notice of opposition, which should be addressed to the Trademark Trial and Appeal Board.◄ [A written request to extend the time for filing an opposition must be received in the Patent and Trademark Office before the expiration of thirty days from the date of publication, and should specify the period of extension desired. A first extension of time will be granted upon request if the extension is for not more than thirty days. Other extensions of time may be granted by the Commissioner for good cause.]

►(c) The notice of opposition must be filed within thirty days after publication (§ 2.80) of the application being opposed or within an extension of time (§ 2.101) for filing an opposition.◄

►(d) The notice of opposition must be verified by oath or affirmation or by a declaration in accordance with § 2.20◄

►(e)(1) The notice of opposition must be accompanied by the required fee for each class in the application for which registration is opposed (see § 2.85(e)). If the fees submitted are insufficient for an opposition against all of the classes in the application, the particular class or classes against which the opposition is filed should be specified. If the class or classes are not specified, the opposition will be presumed to be against the class or classes in ascending order, beginning with the class having the lowest number, and including the number of classes in the application for which the fees submitted are sufficient to pay the fee due for each class.

(2) If persons are joined as party opposers, a fee is required for each person for each class for which registration is opposed. If the fees submitted are insufficient for each named party opposer, the first named party will be presumed to be the party opposer and additional parties will be deemed to be party opposers to the extent that the fees submitted are sufficient to pay the fee due for each party opposer. If persons are joined as parties opposer against the registration of a mark in more than one class and the fees submitted are insufficient, the fees submitted will be applied first on behalf of the first named opposer against as many of the classes in the application as the submitted fees are sufficient to pay, and any excess will be applied on behalf of the second named party to the opposition against the classes in the application in ascending order. The payment of fees for parties opposer in excess of one may be made as though they are the payment of fees for additional classes in accordance with § 2.85(e) subject to the exception that § 2.85(e) may not be utilized after a service charge is paid pursuant to § 2.6(g).◄

►(f) If no fee, or a fee insufficent to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an opposition, the opposition will not be refused if the required fee(s) and service charge (see § 2.6(g)) are submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office. In situations covered by this subsection, § 2.85(e) may not be utilized. Only one service charge need be paid by each party opposer regardless of the number of classes for which registration is opposed.◄

17. Section 2.103 is proposed to be revised to read as follows:

§ 2.103 Opposition filed by attorney at law or other authorized representative.

►A notice of◄ [An] opposition may be filed in the Patent and Trademark Office by an attorney at law or other person authorized to represent a party, either within thirty days after publication of the mark sought to be registered (§ 2.80) [,] or within an extension of the time for filing an opposition (§ ►2.101◄ [2.102]), but the opposition will be null and void unless ►verified◄ [confirmed] by the opposer by ►oath or affirmation◄ [verification,] or by ►a◄ declaration in accordance with § 2.20 [,] within thirty days after the filing of the ►notice of◄ opposition [,] or within such further time as may be fixed by the Commissioner upon request made before the expiration of the thirty days.

18. Section 2.104 is proposed to be revised to read as follows:

§ 2.104 Contents of ►notice of◄ opposition.

The ►notice of◄ opposition must set forth a short and plain statement showing how the opposer would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the ►notice of◄ opposition, including exhibits ►,◄ shall be filed ►with the notice of opposition◄.

19. Section 2.105 is proposed to be revised to read as follows:

§ 2.105 Notification of opposition proceeding[s].

►When a notice of opposition in proper form has been filed and the correct fee(s) (and service charge(s), if any) have been submitted, a notification shall be prepared by the Trademark Trial and Appeal Board, which shall identify the title and number of the proceeding and the application involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to the attorney or other authorized representative of the opposer, if any, or to the opposer. The duplicate copy of the notice of opposition and exhibits shall be forwarded with a copy of the notification to the attorney or other authorized representative of the applicant, if any, or to the applicant.◄ [A notification of an opposition which has been regularly filed shall be prepared, identifying the title and number of the proceeding and the application involved, and designating a time, not less than thirty days from the mailing date of such notification, within which answer must be filed. Copies of this notification shall be forwarded by the Trademark Trial and Appeal Board to the parties in care of their attorney or other representatives, if they have attorneys or other representatives of record. The duplicate copy of the opposition and exhibits shall be forwarded with the notification to the applicant.]

20. Section 2.106 is proposed to be amended by revising paragraph (c) to read as follows:

§ 2.106 Answer.

* * * * *

(c) The opposition may be withdrawn without prejudice before the answer is filed. After the answer is filed ►,◄ the opposition may not be withdrawn without prejudice except with the ►written◄ consent of the applicant.

21. Section 2.107 is proposed to be revised to read as follows:

§ 2.107 Amendment of ►pleadings in an◄ opposition ►proceeding◄.

►Pleadings in an◄ [An] opposition ►proceeding◄ may be amended in the same manner and to the same extent as [a complaint] in a civil action ►in◄ [before] a United States district court. [See Rule 15 of the Federal Rules of Civil Procedure.]

22. Section 2.111 is proposed to be revised to read as follows:

§ 2.111 ►Filing◄ [Time for filing] petition for cancellation.

►(a) A cancellation proceeding is commenced by the filing of a petition for cancellation, together with at least the fee for petitioning to cancel one class, in the Patent and Trademark Office.◄ [Any person who believes that he is or will be damaged by a registration may, upon payment of the required fee for each class sought to be cancelled in the registration, apply to the Commissioner to cancel said registration as to the specified class or classes. A petition to cancel which includes insufficient fees to cover all classes in the registration should specify the particular class or classes for which cancellation is sought. Such petition may be made at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under section 12(c) of the Act (§ 2.153), and in cases involving the grounds specified in section 14 (c), (d) and (e) of the Act. In all other cases such petition must be made within five years from the date of registration of the mark under the Act of 1946 or from the date of publication under section 12(c) of the Act.]

►(b) Any person who believes that he is or will be damaged by a registration may file a petition, which should be addressed to the Trademark Trial and Appeal Board, to cancel the registration in its entirety or for each class in the registration specified in the petition. The petition may be filed at any time in the case of registrations on the Supplemental Register or under the Act of 1920, or registrations under the Act of 1881 or the Act of 1905 which have not been published under § 12(c) of the Trademark Act of 1946, or on any ground specified in § 14 (c) or (e) of the Trademark Act of 1946. In all other cases the petition must be filed within five years from the date of registration of the mark under the Trademark Act of 1946 or from the date of publication under 12(c) of the Trademark Act of 1946.◄

►(c) The petition must be verified by oath or affirmation or by declaration in accordance with § 2.20.◄

►(d)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § 2.85(e)). If the fees submitted are insufficient for a cancellation against all of the classes in the registration, the particular class or classes against which the cancellation is filed should be specified. If the class or classes are not specified, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

((2) If persons are joined as party petitioners, each must submit a fee for each class for which cancellation is sought. If the fees submitted are insufficient for each named party petitioner, the first named party will be presumed to be the party petitioner and additional parties will be deemed to be party petitioners to the extent that the fees submitted are sufficient to pay the fee due for each party petitioner. If persons are joined as party petitioners against a registration sought to be cancelled in more than one class and the fees submitted are insufficient, the fees submitted will be applied first on behalf of the first-named petitioner against as many of the classes in the registration as the submitted fees are sufficient to pay, and any excess will be applied on behalf of the second-named party to the petition against the classes in the registration in ascending order. The payment of fees for additional party petitioners may be made as though they are the payment of additional fees for additional classes in accordance with § 2.85(e).◄

23. Section 2.112 is proposed to be revised to read as follows:

§ 2.112 ►Contents of petition◄ [Petition] for cancellation.

►(a)◄ The petition to cancel [which must be verified, or include a declaration in accordance with § 2.20], must set forth a short and plain statement showing how the petitioner is or will be damaged by the registration, state the grounds for cancellation, and indicate the respondent party to whom notification shall be sent. A duplicate copy of the petition, including exhibits, shall be filed with the petition. [Applications to cancel different registrations owned by the same party may be joined in one petition when appropriate, but the required fee must be included for each class sought to be cancelled in each registration against which each application to cancel is filed. If persons are joined in a petition to cancel, a fee for each class sought to be cancelled for each person so joined is required.]

►(b) Petitions to cancel different registrations owned by the same party may be joined in a consolidated petition when appropriate, but the required fee must be included for each party joined as petitioner for each class sought to be cancelled in each registration against which the petition to cancel is filed.◄

24. Section 2.113 is proposed to be revised to read as follows:

§ 2.113 Notification of ►cancellation proceeding◄ [filing of petition].

[(a)] When a petition for cancellation ►has been filed in proper form and the correct fee(s) have been submitted, a notification shall be prepared by the Trademark Trial and Appeal Board, which shall identify the title and number of the proceeding and the registration or registrations involved and shall designate a time, not less than thirty days from the mailing date of the notification, within which an answer must be filed. A copy of the notification shall be forwarded to the attorney or other authorized representative of the petitioner, if any, or to the petitioner. The duplicate copy of the petition for cancellation and exhibits shall be forwarded with a copy of the notification to the respondent.◄ [is filed, it shall be transmitted to the Trademark Trial and Appeal Board, which shall make examination thereof to determine if it is formally correct.] If the petition is found to be defective as to form, the party filing the ►petition◄ [same] shall be so advised and allowed a reasonable time for correcting the informality.

[(b) When the petition is correct as to form, a notification shall be prepared, identifying the title and number of the proceeding and the registration involved, and designating a time, not less than thirty days from the mailing date of such notification, within which answer must be filed. A copy of this notification shall be forwarded to the

petitioner in care of his attorney or other representative, if he has an attorney or other representative of record. The duplicate copy of the petition and exhibits shall be forwared with a copy of such notification to the respondent party.]

25. Section 2.115 is proposed to be revised to read as follows:

§ 2.115 Amendment of ►pleadings in a◄ [petition for] cancellation ►proceeding◄.

►Pleadings in a◄ [A petition for] cancellation ►proceeding◄ may be amended in the same manner and to the same extent as [a complaint] in a civil action ►in◄ [before] a United States district court. [See Rule 15 of the Federal Rules of Civil Procedure.]

26. Section 2.116 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 2.116 [Federal] Rules of [Civil] Procedure.

* * * * *

(b) ►The opposer in an opposition proceeding or the petitioner in a cancellation proceeding shall be in the position of plaintiff, and the applicant in an opposition proceeding or the respondent in a cancellation proceeding shall be in the position of defendant. A party that is a junior party in an interference proceeding or in a concurrent use registration proceeding shall be in the position of plaintiff against every party that is senior, and the party that is a senior party in an interference proceeding or in a concurrent use registration proceeding shall be a defendant against every party that is junior.◄ [The party having the latest filing date in an interference, the opposer in an opposition proceeding, the petitioner in a cancellation proceeding, and the applicant to register as a concurrent lawful user (or such applicant having the latest filing date), shall be deemed to be in the position of plaintiff, and the other parties to such proceedings shall be deemed to be in the position of defendants.]

(c) The ►notice of◄ opposition ►or◄ [and] the petition ►for cancellation◄ [to cancel,] and the ►answer◄ [answer thereto] correspond to ►the◄ complaint and answer in ►a◄ court proceeding[s]. [Such pleadings as may be filed in interference and concurrent registration proceedings will be treated as complaints or affirmative defenses, depending upon the party filing, but the filing of a pleading in such proceedings shall not operate to change the position of the parties as set forth in the preceding paragraph.]

* * * * *

27. Section 2.117 is proposed to be amended by designating the present section as subsection (a) and adding new subsections (b), (c) and (d), to read as follows:

§ 2.117 Suspension of proceedings.

* * * * *

►(b) Issue must be joined in the civil action and in the proceeding pending before the Trademark Trial and Appeal Board before the question of suspension of proceedings will be considered.◄

►(c) Whenever there is pending, at the time when the question of the suspension of proceedings is raised, a motion which is potentially dispositive of the case, the motion will be decided before the question of suspension will be considered.◄

►(d) Proceedings may also be suspended, for good cause, upon motion or a stipulation of the parties approved by the Board.◄

28. Section 2.120 is proposed to be revised to read as follows:

§ 2.120 Discovery [procedure].

►(a) *In general.* ◄ The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in ►opposition, cancellation, interference and concurrent use registration proceedings◄ [in inter partes trademark cases] except as otherwise provided in this section. The Trademark Trial and Appeal Board will specify the closing date for the taking of discovery.

►(b) *Discovery deposition within the United States.*◄ [(a) *Depositions for discovery—(1) Procedure.*] The deposition of a ►natural◄ person shall be taken in the Federal judicial district where ►the person◄ [he] resides or is regularly employed ►or at any place on which the parties agree by stipulation◄. The responsibility ►rest wholly with the party taking discovery to secure◄ [for securing] the attendance of a proposed deponent [,] other than a party or anyone who ►,◄ at the time set for the taking of the deposition ►, is◄ [was] an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) of Rule 31(a) of the Federal Rules of Civil Procedure ►.◄ [to testify on behalf of a party, rests wholly with the interested party] See 35 U.S.C. 24.

►(c)◄ [2] *Discovery ►disposition◄ in foreign countries.* ►(1)◄ The discovery deposition of a ►natural person residing in a foreign country who is a◄ party or ►who, at the time set for the taking of the deposition is◄ an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or ►Rule◄ 31(a) of the Federal Rules of ►Civil ◄ Procedure ►, shall if taken in a foreign country,◄ [to testify on behalf of a party, domiciled in a foreign country may] be taken in the manner prescribed by § 2.124[.]

►unless the Trademark Trial and Appeal Board, upon motion for good cause, orders or the parties stipulate, that the deposition be taken by oral examination.

(2) Whenever a foreign party is or will be, during a time set for discovery, present within the United States or any territory which is under the control and jurisdiction of the United States, such party may be deposed by oral examination upon notice by the party seeking discovery. Whenever a foreign party has or will have, during a time set for discovery, an officer, director, managing agent, or other person who consents to testify on its behalf, present within the United States or any territory which is under the control and jurisdiction of the United States, such officer, director, managing agent, or other person who consents to testify in its behalf may be deposed by oral examination upon notice by the party seeking discovery. The party seeking discovery may have one or more officers, directors, managing agents, or other persons who consent to testify on behalf of the adverse party, designated under Rule 39(b)(6) of the Federal Rules of Civil Procedure. The deposition of a person under this paragraph shall be taken in the Federal judicial district where the witness resides or is regularly employed, or, if the witness neither resides nor is regularly employed in a Federal judicial district, where the witness is at the time of the deposition. This paragraph does not preclude the taking of a discovery deposition of a foreign party by any other procedure provided by paragraph (1).◄ [(3) *Use of discovery depositions.* A discovery deposition shall not be considered as part of the record in the case unless the party offering the deposition, or any part thereof, files the same before the close of his testimony period (testimony-in-chief or rebuttal as appropriate) and also files a notice of reliance thereon. A discovery deposition should not be filed in the Patent and Trademark Office in the absence of a notice of reliance. Objections, including any made during the examination, will be considered only if made or renewed at the hearing.]

►(d) *Request for production.* The production of documents and things under the provisions of Rule 34 of the Federal Rules of Civil Procedure will be made at the place where the documents and things are usually kept, or where the parties agree, or where and in the manner which the Trademark Trial and

Appeal Board, upon motion, orders.◄ [(b) *Use of admission or answer to interrogatory.* No admission or answer to an interrogatory shall be considered as part of the record in the case unless the party propounding the request for admission or interrogatory files, before the close of his testimony period (testimony-in-chief or rebuttal, as appropriate), a copy of the admission and the request therefor and/or a copy of the interrogatory and its answer and also files a notice of reliance thereon.]

►(e) *Motion for an order to compel discovery.* If a party fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, or if a party, or such designated person, or an officer, director or managing agent of a party fails to attend a deposition or fails to answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion before the Trademark Trail and Appeal Board for an order to compel a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy. The motion shall include a copy of the request for designation or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection and copying. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.◄ [(c) *Failure to make discovery: Sanctions.* (1) If any party fails or refuses to answer any proper question in taking discovery depositions or fails or refuses to answer any proper question propounded by interrogatories or fails or refuses to comply with a request to produce and permit the inspection and copying of designated things, the party seeking discovery may file a motion with the Trademark Trial and Appeal Board for an order compelling discovery. Such a motion must be supported by a written statement by the attorney for the moving party that the moving party or its attorney has conferred with the opposing party or its attorney in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If issues raised by the motion are subsequently resolved between the parties, the attorney for the moving party should advise the Trademark Trial and Appeal Board in writing of the matters in the motion which no longer require decision by the Board.

(2) If a party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, fails to obey an order to provide or permit discovery, the Trademark Trial and Appeal Board may strike out all or any part of any pleading of that party, dismiss the action or proceeding, or deny any part thereof, enter judgment as by default against that party or take any such other action as may be deemed appropriate.]

►(f) *Motion for a protective order.* Upon motion by a party from whom discovery is sought, and for good cause, the Trademark Trial and Appeal Board may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the types of orders provided by clauses (1) through (8), inclusive, of Rule 26(c) of the Federal Rules of Civil Procedure. If the motion for a protective order is denied in whole or in part, the Board may, on such conditions (other than an award of expenses to the party prevailing on the motion) as are just, order that any party provide or permit discovery.◄

►(g) *Failure to comply with order.* If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board does not have authority to hold any person in contempt or to award any expenses to any party. The Board may impose against a party any of the sanctions provided by this subsection in the event that said party or any attorney, agent, or designated witness of that party fails to comply with a protective order made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.◄

►(h) *Request for admissions.* Requests for admissions shall be governed by Rule 36 of the Federal Rules of Civil Procedure except that the Trademark Trial and Appeal Board does not have authority to award any expenses to any party. A motion by a party to determine the sufficiency of an answer or objection to a request made by that party for an admission shall include a copy of the request for admission and any exhibits thereto and of the answer or objection. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.◄

►(i) *Pre-trial conference.* Whenever it appears to the Trademark Trial and Appeal Board that questions or issues arising during the interlocutory phase of an inter partes proceeding have become so complex that their resolution by correspondence or telephone conference is not practical and that resolution would be likely to be facilitated by a conference in person of the parties or their attorneys with a Member or Attorney-Examiner of the Board, the Board may at its discretion request that the parties or their attorneys, under circumstances which will not result in undue hardship for any party, meet with the Board at its offices for a pre-trial conference.◄

►(j) *Use of discovery deposition, admission, or answer to interrogatory.* (1) A party who took a discovery deposition, or who obtained an answer to an interrogatory, or who obtained an admission, may make the same of record in the case by filing the deposition or any part thereof with any exhibit identified in the part that is filed, or a copy of the interrogatory and the answer thereto with any exhibit made part of the answer, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from whom an admission was requested failed to respond thereto), together with a notice of reliance. The notice of reliance and the material submitted thereunder shall be filed during the testimony period of the party who files the notice of reliance. An objection made at a discovery deposition by a party

answering a question subject to the objection will be considered at final hearing.

(2) A discovery deposition or part thereof, or an answer to an interrogatory, or an admission, may be submitted and made part of the record by only the inquiring party except that, if only part of a discovery deposition, or fewer than all of the answers to interrogatories, or fewer than all of the admissions, are offered in evidence by the inquiring party, the responding party may introduce under a notice of reliance any other part of the discovery deposition, or any other answers to interrogatories, or any other admissions, which should in fairness be considered so as to make not misleading what was offered by the inquiring party.

(3) A deposition, taken during the discovery period, of a person who is not a party, or an officer, director or managing agent of a party, or a person designated by a party pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, shall not be offered in evidence except when the person whose discovery deposition was taken is, during the testimony period of the party offering the deposition: dead; or out of the United States (unless it appears that the absense of the witness was procured by the party offering the deposition); or unable to testify because of age, illness, infirmity, or imprisonment; or cannot be served with a subpoena to compel attendance at a testimonial deposition; or there is a stipulation by the parties; or upon a showing of extraordinary circumstances and necessity in the interest of justice. The use of a discovery deposition under this paragraph will be allowed only by order of the Trademark Trial and Appear Board on motion, which shall be filed promptly after the circumstances claimed to justify use of the deposition become known, or by stipulation of the parties approved by the Board.

(4) Subsection (j) will not be interpreted to preclude the reading or the use of a discovery deposition, or answer to an interrogatory, or admission as part of the examination or cross-examination of any witness during the testimony period of any party.

(5) Interrogatories, requests for production, requests for admissions, and materials or depositions obtained during the discovery period should not be filed with the Board except when submitted with a motion to compel discovery, or in support of or response to a motion for summary judgment, or under a notice of reliance during a party's testimony period.◄

29. Section 2.121 is proposed to be revised to read as follows:

§ 2.121 Assignment of times for taking testimony.

(a) ►(1) The Trademark Trial and Appeal Board will issue a trial order assigning to each party the time for taking testimony. No◄ [Times will be assigned for the taking of testimony in behalf of each of the parties, and no] testimony shall be taken except during the time assigned ►, unless by stipulation of the parties approved by the Board or, upon motion, by order of the Board. Testimony periods may be rescheduled by stipulation of the parties approved by the Board or, upon motion, by order of the Board. The resetting of the closing date for discovery will result in the recheduling of the testimony periods without anction by any party.

(2) The initial trial order will be mailed by the Board after issue is joined.◄ [If there be no more than two parties to an interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties, to rebut their evidence, and to meet the evidence of junior parties.]

(b) ►(1) The Trademark Trial and Appeal will schedule a testimony period for the plaintiff to present its case in chief, a testimony period for the defendant to present its case and to meet the case of the plaintiff, and a testimony period for the plaintiff, and testimony period for the plaintiff to present evidence in rebuttal.

(2) When there is a counterclaim, or when proceedings have been consolidated and one party is in the position of plaintiff in one of the involved proceedings and in the position of defendant in another of the involved proceedings, or when there is an interference or a concurrent use registration proceeding involving more than two parties, the Board will schedule testimony periods so that each party in the position of plaintiff will have a period for presenting its case in chief against each party in the position of defendant, each party in the position of defendant will have a period for presenting its case and meeting the case of each plaintiff, and each party in the postition of plaintiff will have a period for representing evidence in rebuttal.◄ [The times will ordinarily be assigned in the notices sent by the Patent and Trademark Office in interferences and in concurrent use proceedings, and in a notice sent after the answers have been filed in cases of opposition and cancellation.]

►(c) A testimony period which is solely for rebuttal will be set for thirty days. The periods may be extended by stipulation of the parties, approved by the Trademarak Trial and Appeal Board, or, upon motion, by order of the Board.◄

►(d) When parties stipulate to the rescheduling of testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, and submitted in one original plus as many photocopies as there are parties, will, if approved, be so stamped, signed, and dated, and the copies will be promptly returned to the parties.◄

30. Section 2.122 is proposed to be revised to read as follows:

§ 2.122 Matters in evidence.

(a) ►The rules of evidence for proceedings before the Trademark Trial and Appeal Board are the Federal Rules of Evidence, the relevant provisions of the Federal Rules of Civil Procedure, the relevant provisions of Title 28 of the United States Code, and the provisions of this Part of Title 37 of the Code of Federal Regulations.◄ [The files of the applications or registrations specified in the declaration of interference or in the notice in case of concurrent registration proceedings, of the application against which an opposition is filed, and of the registration against which a petition for cancellation or an affirmative defense requesting]

►(b)(1) The file of each application specified in a declaration of interference, of each application or registration specified in the notice of a concurrent use registration proceeding, of the application against which a notice of opposition is filed, or of each registration against which a petition or counterclaim for◄ cancellation is filed [,] ►forms◄ [form] part of the record of the proceeding without any action by the parties ►and reference may be made to the file◄ [, and may be referred to] for any relevant and competent purpose.

►(2) The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant; a date of use of a mark must be established by evidence. Specimens in the file of an application for registration, or in the file of a registration, are not evidence on behalf of the applicant or registrant unless identified and introduced in evidence as are other exhibits during the period for the taking of testimony.

(3) An exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached

unless identified and introduced in evidence as are other exhibits during the period for the taking of testimony.◄ [(b) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if two copies showing status and title of the printed registration or an order for such copies accompany the opposition or petition.]

(c) ►(1)◄ Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation ►among members of the public or that segment of the public which is relevant under an issue in a proceeding◄, and official records, if ►the publication or official record is◄ competent evidence and ►relevant◄ [pertinent] to ►an◄ [the] issue, may be introduced in evidence by filing [in the Patent and Trademark Office] a notice ►of reliance on the material being offered, which notice shall specify the printed publication or the official record and the pages to be read, indicate generally the relevance of the material being offered, and be accompanied by the official record or a copy thereof whose authenticity is established under the Federal Rules of Evidence, or by the printed publication or a copy of the relevant portion thereof, including the title page and any other page needed to show the place and date of publication, the name and address of the publisher, and the name of the author or the editor. The notice of reliance shall be filed during the testimony period of the party that files the notice.

(2) A registration owned by any party to a proceeding may be made of record in the proceeding by that party by filing a notice of reliance, which shall be accompanied by a certified copy of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration. For the cost of a certified copy of a registration showing status and title, see the second item under § 2.6(a). The notice of reliance shall be filed during the testimony period of the party that files the notice.◄ [to that effect during the period for the taking of the testimony of the party (during the period for taking of testimony-in-chief if such matters are not in rebuttal), specifying the record or the printed publication, the page or pages to be used, indicating generally, its relevance, and accompanied by the record or authenticated copy or the printed publication or a copy. When a copy of an official record of the Patent and Trademark Office is filed, it need not be a certified copy. The notice and copy of the record or publication must be served on each of the other parties].

(d) ►A copy of an official record of the Patent and Trademark Office other than a copy of a registration owned by a party to a proceeding need not be certified to be offered in evidence.◄ [Upon motion duly made and granted, testimony taken in another proceeding, or testimony taken in a suit between the same parties or those in interest, may be used in a proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall or demand the recall of witnesses whose testimony has been taken, and to take other testimony in rebuttal of the testimony.]

►(e) By order of the Trademark Trial and Appeal Board, on motion, testimony taken in another proceeding, or testimony taken in a suit or action in a court, between the same parties or those in privity may be used in a proceeding, so far as relevant and material, subject, however, to the right of any adverse party to recall or demand the recall for examination or cross-examination of any witness whose prior testimony has been offered and to rebut the testimony.◄

31. Section 2.123 is proposed to be amended by revising paragraphs (a), (e)(3), (j) and (k) to read as follows:

§ 2.123 Trial testimony in inter partes cases.

(a) (1) The testimony [*Manner of taking testimony.* Testimony] of witnesses in inter partes cases may be taken [:(1)] by depositions upon oral examination as provided by this section [,] or [(2)] by depositions upon written questions as provided by [in accordance with the requirements of this section and] § 2.124. If a party serves notice of the taking of a testimonial deposition upon written questions of a witness who is, or will be at the time of the deposition, present within the United States or any territory which is under the control and jurisdiction of the United States, any adverse party may, within fifteen days from the date of service of the notice, file a motion with the Trademark Trial and Appeal Board, for good cause, for an order that the deposition be taken by oral examination.

(2) A testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by § 2.124, unless the Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate.

* * * * *

(e) *Examination of witnesses* : [.]

* * * * *

(3) Every adverse [The opposing] party shall have full opportunity to cross-examine each witness. [the witnesses.] If the notice of examination of witnesses which is served pursuant to subsection (c) is improper or inadequate with respect to any witness, an adverse party may cross-examine that witness under protest while reserving the right to object to the receipt of the testimony in evidence. Promptly after the testimony is completed, the adverse party, if he wishes to preserve the objection, shall move to strike the testimony from the record, which motion will be decided on the basis of all of the relevant circumstances. A motion to strike the testimony of a witness for lack of proper or adequate notice of examination must request the exclusion of the entire testimony of that witness and not only a part of that testimony.◄ [opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice.]

* * * * *

(j) *Effect of errors and irregularities in depositions* ►:◄ [.] Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof. Rule 32(d) (1), (2), and (3) ►(A) and (B)◄ [(a) and (b)] of the Federal Rules of Civil Procedure shall apply to errors and irregularities in depositions.

(k) *Objections to admissibility* ►:◄ [.] Subject to the provisions of ►subsection◄ [paragraph] (j) [of this section], objection may be made to receiving in evidence any deposition ►,◄ or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence ►from consideration. Objections based on grounds of alleged lack of relevancy, materiality, or competency should be raised in the brief filed under § 2.128, but not by a motion to strike testimony regularly taken pursuant to these rules. Objections will be considered at final hearing.◄ [according to the established rules of evidence, which will be applied strictly by the Office.]

* * * * *

32. Section 2.124 is proposed to be revised to read as follows:

§ 2.124 ►Depositions◄ [Testimony by depositions] upon written questions.

(a) ►A deposition upon written questions may be taken before any person before whom depositions may be taken as provided by Rule 28 of the Federal Rules of Civil Procedure.◄[A party may take the testimony of a witness by written questions to be propounded by an officer before whom depositions may be taken. See Rule 28 of the Federal Rules of Civil Procedure. The questions shall be served upon the other party within 10 days after the opening date set for taking the testimony of the party submitting the questions, together with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter, a party so served may serve cross questions upon the party proposing to take the deposition. Within 5 days thereafter, the latter may serve redirect questions upon a party who has served cross questions. Within 3 days after being served with redirect questions a party may serve recross questions upon the party proposing to take the depositions. Written objections to questions may be served on the party propounding the questions, and in response thereto substitute questions may be served, within 3 days.]

(b) ►(1) A party desiring to take a testimonial deposition upon written questions shall serve notice thereof upon each adverse party within ten days from the opening date of the testimony period of the party who serves the notice. The notice shall state the name and address of the witness. A copy of the notice, but not copies of the questions, shall be filed with the Trademark Trial and Appeal Board.

(2) A party desiring to take a discovery deposition upon written questions shall serve notice thereof upon each adverse party and shall file a copy of the notice, but not copies of the questions, with the Board. The notice shall state the name and address, if known, of the person whose deposition is to be taken. If the name of the person is not known, a general description sufficient to identify him or the particular class or group to which he belongs shall be stated in the notice, and the party from whom the discovery deposition is to be taken shall designate one or more persons to be deposed in the same manner as is provided by Rule 30(b)(6) of the Federal Rules of Civil Procedure.◄ [A copy of the notice and copies of all questions served shall be delivered by the party taking the testimony to the officer designated in the notice, who shall proceed to take the testimony of the witness in response to the questions and to prepare each answer immediately preceded by its corresponding question, then certify, and file the deposition, attaching thereto the copy of the notice and the questions received by him. Such depositions are subject to the same rulings for filing and serving copies as other depositions.]

(c) ►Every notice given under the provisions of subsection (b) shall be accompanied by the name or descriptive title of the officer before whom the deposition is to be taken.◄ [On motion made within ten days after service of the notice and written questions, it may be ordered, for good cause shown, that the testimony be not taken in accordance with the section but by oral examination of the witness.]

(d) ►(1) Every notice served on any adverse party under the provisions of subsection (b) shall be accompanied by the written questions to be propounded on behalf of the party who proposes to take the deposition. Within twenty days from the date of service of the notice, any adverse party may serve cross questions upon the party who proposes to take the deposition; any party who serves cross questions shall also serve every other adverse party. Within ten days from the date of service of the cross questions, the party who proposes to take the deposition may serve redirect questions on every adverse party. Within ten days from the date of service of the redirect questions, any party who served cross questions may serve recross questions upon the party who proposes to take the depositon; any party who seves recross questions shall also serve every other adverse party. Written objections to questions may be served on a party propounding questions; any party who objects shall serve a copy of the objections on every other adverse party. In response to objections, substitute questions may be served on the objecting party within ten days of the date of service of the objections; substitute questions shall be served on every other adverse party.

(2) Upon motion for good cause by any party, or upon its own motion, the Trademark Trial and Appeal Board may extend any of the time periods provided by paragraph (1) of this subsection (d) and may, when one or more testimonial depositions are to be taken upon written questions, suspend or reschedule other proceedings in the matter to allow for the orderly completion of the depositions upon written questions.◄ [Testimony in foreign countries shall be taken only be depositions upon written questions unless the parties stipulate otherwise in writing. Rule 28(b) of the Federal Rules of Civil Procedure shall apply to the taking of testimony in foreign countries.]

►(e) Within ten days after the last date when questions, objections, or substitute questions may be served, the party who proposes to take the deposition shall mail a copy of the notice and copies of all the questions to the officer designated in the notice; a copy of the letter to the office shall be served on every adverse party. The officer designated in the notice shall take the testimony of the witness in response to the questions and shall record each answer immediately after the corresponding question. The officer shall then certify the transcript and mail the transcript and exhibits to the party who took the deposition.◄

►(f) the party who took the deposition shall promptly serve a copy of the transcript, copies of documentary exhibits, and duplicates or photographs of physical exhibits on every adverse party. It is the responsibility of the party who takes the deposition to assure that the transcript is correct. If the deposition is a discovery deposition, it may be made of record as provided by §2.120(j).

If the deposition is a testimonial depostion, the original and one copy, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be filed promptly with the Trademark Trial and Appeal Board.◄

►(g) Objections to questions and answers in depositions upon written questions may be considered at final hearing.◄

33. Section 2.125 is proposed to be revised to read as follows:

§2.125 δFILING AND SERVICE◄ [Copies] of testimony.

(a) One copy of the transcript of testimony [(] taken in accordance with § 2.123 [(e) through (h) or § 2.124)], together with copies of documentary exhibits ►and duplicates or photograpsh of physical exhibits◄, shall be served on each adverse party within ►thirty◄ [30] days after completion of the taking of ►that◄ [such] testimony. [The certified transcript and exhibits and one copy of the transcript shall be filed in the Patent and Trademark Office as promptly as possible.]

(b) ►The party who takes testimony is responsible for having all typographical errors in the transcript and all errors of arrangement, indexing and form of the transcript corrected, on notice to each adverse party, prior to the

filing of one certified transcript and one copy of the transcript with the Trademark Trial and Appeal Board. The party who takes testimony is responsible for serving on each adverse party one copy of the corrected transcript or, if reasonably feasible, corrected pages to be inserted into the transcript previously served.◄ [(b) Each transcript and the copies thereof shall comply with §2.123(g) as to arrangement, indexing and form.]

►(c) One certified transcript and exhibits and one copy of the transcript shall be filed promptly with the Trademark Trial and Appeal Board. Notice of such filing shall be served on each adverse party and a copy of each notice shall be filed with the Board.◄

►(d) Each transcript and the copies thereof shall comply with § 2.123(g) with respect to arrangement, indexing and form.◄

►(e) Upon motion by any party, for good cause, the Trademark Trial and Appeal Board may order that any part of a deposition transcript or any exhibits that directly disclose any trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential under the provisions of § 2.27(e). If any party or any attorney or agent of a party fails to comply with an order made under this paragraph, the Board may impose any of the sanctions authorized by § 2.120(g).◄

§ 2.126 [Removed].

34. It is proposed to remove § 2.126, Allegations in application not evidence on behalf of applicant.

35. Section 2.127 is proposed to be revised to read as follows:

§ 2.127 Motions.

((a) ►Every motion◄ [Motions] shall be made in writing ►,◄ [and] shall contain a full statement of the ►grounds, and shall embody or be accompanied by a brief.◄ [grounds therefor. Any brief or memorandum in support of a motion shall accompany or be embodied in the motion.] ►A brief in response◄ [Briefs in opposition] to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeals Board or the time is extended ►by order of the Board on motion for good cause.◄ [on request] ►When◄ [Where] a party fails to file a brief in ►response◄ [opposition] to a motion, the [Trademark Trial and Appeal] Board may treat the motion as conceded. ►An oral hearing◄ [Oral hearings] will not be held on ►a motion◄ [motions] except on order ►by◄ [of] the [Trademark Trial and Appeal] Board.

(b) Any request for [rehearing or] reconsidertion [,] or modification of ►an order or◄ [a] decision ►issued◄ [,] on a motion [which is not finally dispositive of the case,] must be filed within thirty days from the date thereof. ►A brief in response must◄ [Any brief in opposition shall] be filed within fifteen days ►from the date of◄ [after] service of the request.

(c) Interlocutory motions, requests, and other matters not ►actually or potentially dispositive of a◄ [finally determinative in the] proceeding may be acted upon by a ►single Member◄ [member] of the Trademark Trial and Appeal Board ►or by an Attorney-Examiner of the Board to whom authority so to act has been delegated◄.

►(d) When any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, or any other motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided. ◄

36. Section 2.128 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 2.128 ►Briefs at final hearing.◄ [Final hearings and briefs.]

(a) ►(1)◄ The brief of ►the◄ [a] party in the position of plaintiff shall be filed not later than sixty days after the [closing] date set for ►the close of◄ rebuttal testimony ►. The◄ [; the] brief of ►the◄ [a] party in the position of defendant ►shall be filed◄ not later than thirty days after the due date of the first brief ►. A◄[; a] reply brief by ►the◄ [a] party in the position of plaintiff ►may be◄ [, if] filed ►not later than◄ [, shall be due] fifteen days after the due date of the ►defendant's◄ brief [to which it is a reply]. [Three copies of all briefs should be filed.]

►(2) When there is a counterclaim, or when proceedings have been consolidated and one party is in the position of plaintiff in one of the involved proceedings and in the position of defendant in another of the involved proceedings, or when there is an interference or concurrent use registration proceeding involving more than the two parties, the Trademark Trial and Appeal Board will set the due dates for the filing of the main brief, and the answering brief, and the rebuttal brief by the parties.

(3) When a party in the position of plaintiff fails to file a main brief or a party in the position of defendant fails to file a brief, the Board may treat such failure as a concession of the case. ◄

(b) Briefs shall be submitted in typewritten or printed form, double spaced ►,◄ on letter or legal size paper. Without leave of the Trademark Trial and Appeal Board, no brief shall contain more than ►fifty◄ [50] pages of argument and, in the case of a reply brief, the entire brief shall not exceed ►twenty-five◄ [25] pages. Each brief shall not exceed ►twenty-five◄ [25] pages. Each brief shall contain an alphabetical index of cases ►cited◄ therein. ►One original and two legible copies, on good quality paper, of each brief shall be filed.◄

* * * * *

37. Section 2.129 is proposed to be revised to read as follows:

§ 2.129 Oral argument[s and] ►;◄ reconsideration.

(a) ►If a party desires to have an oral argument at final hearing, the party shall request such argument by a separate notice filed not later than ten days after the due date for the filing of the last reply brief in the proceeding.◄ Oral arguments will be heard by [at least] three Members of the Trademark Trial and Appeal Board at the time ►specified◄ [stated] in the notice ►of hearing◄. If any party appears at the specified time, ►that party◄ [he] will be heard. If the Board is prevented from hearing the case at the ►specified time,◄ [time specified,] a new ►hearing date will be set.◄ [assignment will be made, or the case will be continued from day to day until heard.] Unless otherwise permitted, oral arguments ►in an inter partes case◄ will be limited to ►thirty minutes◄ [one-half hour] for each party. ►A party in the position of plaintiff may reserve part of the time allowed for oral argument to present a rebuttal argument.◄

(b) ►The date of time of a hearing may be reset, so◄ [Hearings may be advanced or adjourned, as] far as is convenient and proper, to meet the wishes of the parties and their attorneys or other authorized representatives.

(c) Any request for rehearing or reconsideration [,] or modification of a decision ►issued after final hearing◄ [, including a decision on a motion which is finally dispositive of a case,] must be filed within thirty days from the date ►of the decision◄ [thereof]. ►A◄ [Any] brief in ►response must◄ [opposition shall] be filed within fifteen

days ►from the date of◄ [after] service of the request. The times specified [herein] may be extended by ►order of◄ the Trademark Trial and Appeal Board ►on motion for good cause◄ [upon a showing of sufficient cause].

38. Section 2.131 is proposed to be revised to read as follows:

§ 2.131 ►Remand after decision◄ [Ex parte matter] In [an] inter partes ►proceeding◄ [case].

►If, during an inter partes proceeding, facts are disclosed which appear to render the mark of an applicant unregistrable, but such matter has not been tried under the pleadings as filed by the parties or as they might be deemed to be amended under Rule 15(b) of the Federal Rules of Civil Procedure to conform to the evidence, the Tradmark Trial and Appeal Board, in lieu of determining the matter in the decision on the proceeding, may refer the application to the examiner for reexamination in the event the applicant ultimately prevails in the inter partes proceeding. Upon receiving the application, the examiner shall withhold registration pending reexamination of the application in the light of the reference by the Board.◄ [If, in considering an inter partes case involving an application, facts appear which, in the opinion of the Trademark Trial and Appeal Board, render the mark of the applicant unregistrable on one or more ex parte grounds, the Board shall in its decision on the inter partes issues in the case recommend that if the applicant finally prevails in the case, registration be withheld pending a reexamination by the Examiner to Trademarks of the application in the light of such facts.] If, upon [such] reexamination [following termination of the inter partes case], the ►examiner◄ [Examiner of Trademarks] finally refuses registration to the applicant, an appeal may be taken as provided by §§ 2.141 and 2.142.

39. Section 2.132 is proposed to be revised to read as follows:

§ 2.132 ►Involuntary dimissal for failure◄ [Failure] to take testimony.

(a) ►If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, more for dismissal on the ground of the failure of the plaintiff to prosecute. The party in the position of plaintiff shall be allowed fifteen days from the date of service of the motion to show cause why judgment should not be rendered against him. In the absence of a showing of good and sufficient cause, judgment may be rendered against the party in the position of plaintiff. If the motion is denied, testimony periods will be reset for the party in the position of defendant and for rebuttal.◄ [Upon the filling of a statement by any party in the position of defendant, that the time for taking testimony on behalf of any party in the position of plaintiff has expired and that no testimony has been taken by him and no other evidence offered, an order may be entered that such party show cause within a time set therein, not less than ten days, why judgment should not be rendered against him, and in the absence of a showing of good and sufficient cause judgment may be rendered as by default.]

(b) If no evidence other than a copy of copies of Patent and Trademark Office records is offered by ►any◄ [the] party in the position of plaintiff, any party in the position of defendant ►may◄ , without waiving the right to offer evidence in the event the motion is denied, [may] move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall be allowed fifteen days ►from the date of◄ [after] service of the motion to file ►a brief in response◄ [his argument in opposition] to the motion. ►The Trademark Trial and Appeal Board may render judgment◄ [Judgment may be rendered] against the party in the position of plaintiff, or the [Trademark Trial and Appeal] Board may decline to render judgment until all of the evidence is in ►the record◄.

►If judgment is not rendered,◄ [In the latter event,] testimony periods will be reset for the party in ►the◄ position of defendant and for rebuttal.

►(c) Any motion filed under subsection (a) or (b) must be filed before the opening of the testimony period of the moving party.◄

40. Section 2.134 is proposed to be revised to read as follows:

§ 2.134 Surrender or ►voluntary◄ cancellation of registration.

►(a) After the commencement of a cancellation proceeding, if the respondent◄ [If a registrant involved in a proceeding] applies ►for cancellation of the involved◄ [to cancel his] registration under ►§◄ [section] 7(d) of the ►Trademark◄ Act without [first obtaining] the written consent [thereto] of ►every◄ [the] adverse party, judgment shall be entered against ►the respondent◄ [him].

►(b) After the commencement of a cancellation proceeding, if the respondent permits his involved registration to be cancelled under § 8 of the Trademark Act or fails to renew his involved registration under § 9 of the Trademark Act, such cancellation or failure to renew shall be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and shall result in judgment against respondent as provided be subsection (a).◄

41. Section 2.135 is proposed to be revised to read as follows:

§ 2.135 Abandonment of application or mark.

►After the commencement of an opposition proceeding, if the◄ [If, in a proceeding, an] applicant files a written abandonment of the application or of the mark without the ►written◄ consent [thereto] of ►every◄ [the] adverse party, judgment shall be entered against ►the◄ [such] applicant.

42. Section 2.142 is proposed to be revised to read as follows:

§ 2.142 Time and manner of ex parte appeals.

(a) ►Any◄ [such] appeal ►filed under the provisions of § 2.141◄ must be ►filed◄ [taken] within six months from the date of final refusal or [from] the date of the action from which ►the◄ appeal is taken. ►An appeal◄ [Appeal] is taken [simply] by filing a notice of appeal and ►paying◄ [payment of] the appeal fee.

(b) The [appellant's] brief ►of appellant◄ shall be filed within sixty days ►from◄ [after] the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examiner ►shall◄ [may], within ►sixty days after the brief of appellant is sent to the examiner◄ [such time as may be directed by the Commissioner], ►filed with the Trademark Trial and Appeal Board◄ [furnish] a written statement ►answering every point in the brief of appellant and shall mail◄ [in answer to appellant's brief, supplying] a copy ►of the statement◄ to the appellant. The appellant may file a reply brief within twenty days from the date of ►mailing of the statement of the examiner◄ [such answer].

(c) ►All requirements made by the examiner and not the subject of appeal shall be complied with prior to the filing of an appeal.◄ [If the appellant desires an oral hearing, he should so state by separate notice filed not later than his brief; and due notice of the time for such hearing will be given. Oral argument will be limited to one-half hour unless otherwise permitted. If no request for

oral hearing is made, the appeal will be considered on brief.]

(d) ►The record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed. After an appeal is filed, if the appellant or the examiner desires to introduce additional evidence, the appellant or the examiner may request the Board to suspend the appeal and to remand the application for further examination.◄ [Applications which have been considered and decided on appeal will not be reopened except by order of the Commissioner, and then only for consideration of matters not already adjudicated, sufficient cause being shown.]

►(e)(1) If the appellant desires an oral hearing, a request therefor should be made by a separate notice filed not later than ten days after the due date for a reply brief. Oral argument will be heard by three Members of the Trademark Trial and Appeal Board at the time specified in the notice of hearing, which may be reset if the Board is prevented from hearing the argument at the specified time, or so far as is convenient and proper, to meet the wish of the appellant or his attorney or other authorized representative.

(2) If the appellant requests an oral argument, the examiner who issued the refusal of registration or the requirement from which the appeal is taken, or in lieu thereof another examiner from the same examining division as designated by the supervisory attorney thereof, shall present an oral argument.

If no request for an oral hearing is made by the appellant, the appeal will be decided on the record, briefs and statement.

(3) Oral argument will be limited to twenty minutes by the appellant and ten minutes by the examiner. The appellant may reserve part of the time allowed for oral argument to present a rebuttal argument.◄

►(f)(1) If, during an appeal from a refusal of registration, it appears to the Trademark Trail and Appeal Board that an issue not previously raised may render the mark of the appellant unregistrable, the Board may suspend the appeal and remand the application to the examiner for further examination within thirty days.

(2) If the further examination does not result in an additional ground for refusal of registration, the examiner shall promptly return the application to the Board, for resumption of the appeal, with a written statement that further examination did not result in an additional ground for refusal of registration.

(3) If the further examination does result in an additional ground for refusal of registration, the examiner and appellant shall proceed as provided by §§ 2.61, 2.62, 2.63, and 2.64. If the ground for refusal of registration is made final, the examiner shall return the application to the Board, which shall thereupon issue an order allowing the appellant sixty days from the date of the order to file a supplemental brief limited to the additional ground for the refusal of registration. If the supplemental brief is not filed by the appellant within the time allowed, the appeal may be dismissed.

(4) If the supplemental brief of the appellant is filed, the examiner shall, within sixty days after the supplemental brief of the appellant is sent to the examiner, file with the Board a written statement answering every point in the supplemental brief of appellant and shall mail a copy of the statement to the appellant. The appellant may file a reply brief within twenty days from the date of mailing of the statement of the examiner.

(5) If an oral hearing on the appeal had been requested prior to the remand of the application but not yet held, an oral hearing will be set and heard as provided in subsection (e). If an oral hearing had been held prior to the remand or had not been previously requested by the appellant, an oral hearing may be requested by the appellant by a separate notice filed not later than ten days after the due date for a reply brief on the additional ground for refusal of registration. If the appellant files a request for an oral hearing, one will be set and heard as provided in subsection (e).◄

►(g) An application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under § 6 of the Trademark Act or upon order of the Commissioner, but a petition to the Commissioner to reopen an application will be considered only upon a showing of sufficient cause for consideration of any matter not already adjudicated.◄

43. Section 2.146 is proposed to be revised to read as follows:

§ 2.146 ►Petitions◄ [Petition] to the Commissioner.

(a) Petition may be taken to the Commissioner:

(1) From any repeated ►or final formal◄ [action or]requirement of the ►examiner◄ [Examiner of Trademarks, not subject to appeal under § 2.141,] in the ex parte prosecution of an application ►if permitted by § 2.63(b)◄;

(2) IN ►any case for◄ [cases in] which the ►Trademark Act, or title 35 of the United States Code, or this Part of Title 37 of the Code of Federal Regulations specifies◄ [statute or the rules specify] that the matter is to be determined directly [by] or reviewed by the Commissioner; [and]

(3) To invoke the supervisory authority of the Commissioner in appropriate circumstances ►;◄ [.]

►(4) In any case not specifically defined and provided for by this Part of Title 37 of the Code of Federal Regulations;

(5) In an extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any requirement of the rules not being a requirement of the Trademark Act.◄

(b) ►Questions arising under §§ 2, 3, 4, 5, 6 and 23 of the Trademark Act during the ex parte prosecution of applications are not considered to be appropriate subject matter for petitions to the Commissioner.◄ [Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Any brief in support thereof should accompany or be embodied in the petition; in contested cases any brief in opposition shall be filed within fifteen days after service of the petition. Where facts are to be proved in ex parte cases (as in a petition to revive an abandoned application), the proof in the form of affidavits or declarations in accordance with § 2.20 (and exhibits, if any) must accompany the petition.]

(c) ►Every petition to the Commissioner shall include a statement of the facts relevant to the petition, the points to be reviewed, and the action or relief that is requested. Any brief in support of the petition shall be embodied in or accompany the petition. When facts are to be proved in ex parte cases (as in a petition to revive an abandoned application), the proof in the form of affidavits or declarations in accordance with § 2.20, and any exhibits, shall accompany the petition.◄ [An oral hearing will not be held except when considered necessary by the Commissioner.]

(d) ►A petition on any matter not specifically provided for by subsection (e) or by § 2.165(b) or § 2.184(b) shall be filed within sixty days from the date of mailing of the action from which relief is requested.◄ [The mere filing of a petition will not stay the period for replying to an examiner's action, nor stay other proceedings.]

(e) ►(1) A petition from the denial of a request for an extension of time to file

a notice of opposition shall be filed within fifteen days from the date of mailing of the denial of the request and shall be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition shall be made as provided by § 2.119(a). The applicant may file a response within fifteen days from the date of service of the petition and shall serve a copy of the response on the petitioner, with proof of service as provided by § 2.119(a). No further paper relating to the petition shall be filed.

(2) A petition from an interlocutory order of the Trademark Trial and Appeal Board shall be filed within thirty days after the date of mailing of the order from which relief is requested. Any brief in response to the petition shall be filed, with any supporting exhibits, within fifteen days from the date of service of the petition. Petitions and responses to petitions, and any papers accompanying a petition or response, under this subsection shall be served on every adverse party pursuant to § 2.119(a).◄ [Authority to act on a petition may, when appropriate, be delegated by the Commissioner.]

(f) ►An oral hearing will not be held on a petition except when considered necessary by the Commissioner.◄ [No fee is required for a petition to the Commissioner.]

►(g) The mere filing of a petition to the Commissioner will not act as a stay in any appeal or inter partes proceeding that is pending before the Trademark Trial and Appeal Board nor stay the period for replying to an Office action in an application except when a stay is specifically requested and is granted or when §§ 2.63(b) and 2.65 are applicable to an ex parte application.◄

►(h) Authority to act on petitions, or on any petition, may be delegated by the Commissioner.◄

§ 2.147 [Removed]

44. It is proposed to remove § 2.147 Cases not specifically defined.

§ 2.148 [Removed]

45. It is proposed to remove § 2.148 Commissioner may suspend certain rules.

46. Section 2.165 is proposed to be revised to read as follows:

§ 2.165 Reconsideration of affidavit or declaration.

(a) ►(1)◄ If the affidavit or declaration ►filed pursuant to § 2.612◄ is insufficient ►or defective, the affidavit or declaration will be refused and◄ [.] the registrant will be notified of the ►reason.◄ [reasons by the examiner.] Reconsideration of ►the◄ [such] refusal may be requested within six months from the date of the mailing of the ►action◄ [notice]. The request for reconsideration must state the grounds ►for the request. A◄ [therefore; a] supplemental or substitute affidavit or declaration required by ►§◄ [section] 8 of the ►Trademark◄ Act cannot be considered unless it is ►filed◄ [received] before the expiration of six years from the date of the registration [,] or from the date of publication under ►§◄ [section] 12(c) ►of the Act◄. ►The certificate of mailing procedure provided by § 1.8 does not apply to affidavits or declarations or to supplemental or substitute affidavits or declarations filed under § 8 (a) or (b) of the Act.

(2) A request for reconsideration shall be a condition precedent to a petition to the Commissioner to review the refusal of the affidavit or declaration unless the first action refusing the affidavit or declaration directs the registrant to petition the Commissioner for relief, in which event the petition must be filed within six months from the date of mailing of the action.◄

(b) ►If the refusal of the affidavit or declaration is adhered to, the registrant may petition the Commissioner to review the action under § 2.146(a)(2). The petition to the Commissioner requesting review of the action adhering to the refusal of the affidavit or declaration must be filed within six months from the date of mailing of the action which denied reconsideration.◄ [If the registrant is dissatisfied with the action of the examiner holding the affidavit or declaration insufficient, he may request the Commissioner to review the action under § 2.146. The decision of the Commissioner on such a request constitutes the final action of the Patent Trademark Office. If there is no review by the Commissioner, the Commissioner will notify the registrant of the insufficiency of the affidavit or declaration after the expiration of the sixth year, which notice will constitute such final action. See § 2.145 for appeal to or review by court.]

►(c) The decision of the Commissioner on the petition will constitute the final action of the Patent and Trademark Office. If there is no petition to the Commissioner, the Commissioner will notify the registrant of the refusal of the affidavit or declaration after the expiration of six years from the date of registration or from the date of publication under § 12(c) of the Trademark Act, and such notice will constitute the final action of the Office.◄

►(d) A petition to the Commissioner for review of the action shall be a condition precedent to an appeal to or action for review by any court.◄

47. Section 2.173 is proposed to be amended by revising paragraph (b) to read as follows:

§ 2.173 Amendment ►;◄ [and] disclaimer in part.

* * * * *

(b) ►No amendment in the identification of goods or services in a registration will be permitted except to restrict the identification or otherwise to change it in ways that would not require republication of the mark.◄ [Changes in the identification of goods other than in the nature of deletions will not be permitted except under the provisions of § 2.175.] No amendment seeking the elimination of a disclaimer will be permitted.

* * * * *

48. Section 2.184 is proposed to be revised to read as follows:

§ 2.184 Refusal of renewal.

(a) If the application for renewal is incomplete or defective, the renewal will be refused [by the Examiner of Trademarks]. The application may be completed or amended in response to a refusal, subject to the provisions of ►§◄ [§§ 2.62 and] 2.183. ►If a response to a refusal or renewal is not filed within six months from the date of mailing of the action, the application for renewal will be considered abandoned. A response to a refusal of renewal shall be a condition precedent to a petition to the Commissioner to review the refusal of renewal.◄

(b) ►If the refusal of renewal is adhered to, the registrant may petition the Commissioner to review the action under § 2.146(a)(2). The petition to the Commissioner requesting review of the action adhering to the refusal of the renewal must be filed within six months from the date of mailing of the action which adhered to the refusal. If a timely petition to the Commissioner is not filed, the application for renewal will be considered abandoned.◄ [If the registrant is dissatisfied with the action of the examiner considering the application for renewal incomplete or defective, he may request the Commissioner to review the action under § 2.146. If response to an adverse action of the examiner is not made within six months, the application for renewal will be considered abandoned.]

►(c) The decision of the Commissioner on the petition will constitute the final action of the Patent and Trademark Office.◄

►(d) A petition to the Commissioner for review of the action shall be a condition precedent to an appeal to or action for review by any court.◄

49. Section 2.186 is proposed to be revised to read as follows:

§ 2.186 Action may be taken by assignee of record.

Any action ►with respect to an assigned application or registration◄ which may or must be taken by a registrant or applicant may be taken by the assignee [,] provided ►that◄ the assignment has been recorded.

Dated: May 10, 1982.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 82-17525 Filed 6-28-82; 8:45 am]

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federal register

Tuesday
June 29, 1982

Part VII

Department of Energy

Conservation and Renewable Energy Office

Industrial Energy Conservation Program

DEPARTMENT OF ENERGY

Conservation and Renewable Energy Office

Industrial Energy Conservation Program; Notice of Identification of Corporations for Purposes of Industrial Energy Efficiency Improvement and Recovered Materials Utilization Reporting

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice of corporate identification.

SUMMARY: The Department of Energy (DOE) is identifying corporations which consumed at least one trillion British thermal units (Btu's) of energy in calendar year 1981 in any of the major energy-consuming industries, as required by DOE's regulations at 10 CFR 445.15(b) which implements section 373(b) of the Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act.

Section 445.12 of these regulations require certain corporations which consumed at least one trillion Btu's of energy in either calendar years 1980 or 1981 in any of the 20 major energy-consuming industries identified by DOE to file a certified statement with DOE. The deadline to file this report with DOE was February 28, 1982. Based on the reports filed in response to this requirement and reports filed previously, DOE identifies the corporations listed in the appendix to this notice.

A corporation may file a request with DOE to modify its identification on the grounds of technical or clerical error as provided in 10 CFR 445.16.

Identified corporations are required to report on energy efficiency improvements and, if appropriate, recovered materials utilization in calendar year 1981 either directly to DOE or to DOE-approved sponsors of reporting programs, pursuant Subpart C of 10 CFR part 445 which implements the requirements of sections 374A, 375 and 376 of EPCA.

FOR FURTHER INFORMATION CONTACT: Tyler E. Williams, Jr., Office of Industrial Programs, CE–122.1, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252–2371; or Office of General Counsel, GC–33, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C., June 21, 1982.

Howard S. Coleman,

Acting Assistant Secretary, Conservation and Renewable Energy.

List of Corporations Identified for Calendar Year 1981

SIC 20—Food and Kindred Products

A. E. Staley Manufacturing Company
Adolph Coors Company
Amalgamated Sugar Company
American Brands Inc.
American Crystal Sugar Company
American Home Products Corporation
American Maize-Products Company
AMFAC Inc.
AMPCO Foods Inc.
AMSTAR Corporation
Anderson Clayton & Company
Anheuser-Busch Inc.
Archer Daniels Midland Company
Beatrice Foods Company
Borden Inc.
Bunge Corporation
California & Hawaiian Sugar Company
California Canners and Growers Company
Campbell Soup Company
Campbell Taggert Inc.
Cargill Inc.
Carnation Company
Castle & Cooke Inc.
Central Soya Company Inc.
Coca Cola Company
Colonial Sugars Inc.
Conagra Inc.
Consolidated Foods Corporation
Continental Grain Company
CPC International Inc.
Curtice-Burns Inc.
Dubuque Packing Company
Eli Lilly and Company
Farmland Industries Inc.
Federal Company
Flowers Industries Inc.
Foremost-McKesson Inc.
G. Heileman Brewing Company Inc.
General Foods Corporation
General Host Corporation
General Mills Inc.
George A. Hormel & Company
Gerber Products Company
Gold Kist Inc.
Grain Processing Corporation
Grain Terminal Association
Great A & P Tea Company Inc.
Greyhound Corporation
H. J. Heinz Company
Hanson Industries Inc.
Hershey Foods Corporation
Heublein Inc.
Holly Sugar Corporation
Hunt International Resources Corporation
IC Industries Inc.
Imperial Sugar Company
International Telephone & Telegraph Corporation
Interstate Brands Corporation
Iowa Beef Processors Inc.
J. R. Simplot Company
Jos. Schlitz Brewing Company
Joseph E. Seagram & Sons Inc.
Keebler Company
Kellogg Company
Kraft Inc.
Kroger Company
Ladish Malting Company
Land O' Lakes Inc.
Lykes Brothers Inc.
Mars Incorporated
MBPXL Corporation
Michigan Sugar Company
Mid-America Dairyman Inc.
Midwest Solvents Company Inc.
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Moorman Manufacturing Company
Nabisco Inc.
National Distillers & Chemical Corporation
National Starch & Chemical Corporation
National Sugar Refining Company
Nestle Enterprises Inc.
Norton Simon Inc.
Olympia Brewing Company
Oscar Mayer & Company
Pabst Brewing Company
Pepsico Inc.
Perdue Inc.
Philip Morris Inc.
Pillsbury Company
Procter & Gamble Company
Quaker Oats Company
R. J. Reynolds Industries Inc.
Ralston Purina Co.
Rapid American Corporation
Rath Packing Company
Refined Syrups & Sugars Inc.
Revere Sugar Corporation
Riceland Foods Inc.
Safeway Stores Inc.
Savannah Foods & Industries Inc.
SCM Corporation
Southern Minnesota Sugar Cooperative
Standard Brands Inc.
Stokely-Van Camp Inc.
Stroh Companies Inc.
Sunkist Growers Inc.
Swift & Company
Thomas J. Lipton Inc.
Tri/Valley Growers Inc.
Twin City Foods Inc.
United Brands Company
Univar Corporation
Universal Foods Corporation
Wilson Foods Corporation

SIC 21—Tobacco Products

American Brands Inc.
Brown & Williamson Tobacco Corporation
Philip Morris Inc.
R. J. Reynolds Industries Inc.

SIC 22—Textile Mill Products

American Thread Company
Armstrong World Industries Inc.
Avondale Mills Inc.
Bibb Company
Burlington Industries Inc.
Cannon Mills Company
Coats & Clark Inc.
Colgate-Palmolive Company
Collins & Aikman Corporation
Cone Mills Corporation
Consolidated foods Corporation
Cranston Print Works Company
Crompton Company Inc.
Daisy Hosiery Mills Inc.
Dan River Inc.
Dixie Yarns Inc.
Fieldcrest Mills Inc.
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Graniteville Company
Greenwood Mills Inc.
Gulf & Western Industries Inc.
J. P. Stevens & Company Inc.
Johnson & Johnson
Kiddie Tot Hosiery Mills Inc.
Kimberly-Clark Corporation
M. Lowenstein & Sons Inc.
Milliken & Company
Mohasco Corporation
Northwest Industries Inc.
RCA Corporation
Reeves Brothers Inc.
Riegel Textile Corporation
Shaw Industries Inc.
Spartan Mills Inc.
Sperry and Hutchinson Company
Spring Mills Inc.
Standard Oil Company (Indiana)
Standard-Coosa-Thatcher Company
Thomaston Mills Inc.
Ti-Caro Inc.
United Merchants & Manufacturers Inc.
West Point-Pepperell Inc.
WWG Industries Inc.

SIC 23—Apparel and Other Textile Products

None

SIC 24—Lumber and Wood Products

Abitibi-Price Corporation
Bendix Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Jim Walter Corporation
Koppers Company Inc.
Louisiana-Pacific Corporation
Masonite Corporation
Potlatch Corporation
Weyerhaeuser Company
Willamette Industries Inc.

SIC 25—Furniture and Fixtures

None

SIC 26—Paper and Allied Products

Abitibi-Price Southern Corporation
Alaska Lumber & Pulp Company Inc.
Alton Box Board Company
American Can Company
Appleton Papers Inc.
Arcata Corporation
Armstrong World Industries Inc.
Austell Box Board Corporation
Bell Fibre Products Corporation
Bird & Son Inc.
Blandin Paper Company
Boise Cascade Corporation
Bowater Inc.
Certainteed Corporation
Champion International Corporation
Chesapeake Corporation
Clevepak Corporation
Consolidated Papers Inc.
Consolidated Packaging Corporation
Continental Group Inc.
Crown Zellerbach Corporation
Deerfield Specialty Papers Inc.
Dennison Manufacturing Company
Dexter Corporation
Diamond International Corporation
Eddy Paper Company Limited
Erving Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Flintkote Company
Fort Howard Paper Company
Fraser Paper, Limited
GAF Corporation
Garden State Paper Company Inc.
General Refractories Company
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hollingsworth & Vose Company
Howard Paper Mills Inc.
International Paper Company
International Telephone & Telegraph Corporation
Interstate Paper Corporation
James River Corporation of Virginia
Jim Walter Corporation
Johns-Manville Sales Corporation
Johnson & Johnson
Kimberly-Clark Corporation
Litton Industries inc.
Longview Fibre Company
Louisiana-Pacific Corporation
Macmillan Bloedel Inc.
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Minnesota Mining & Manufacturing Company
Mobil Oil Corporation
Mosinee Paper Corporation
National Gypsum Company
Newark Boxboard Company
Newton Falls Paper Mill Inc.
Olin Corporation
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc.
P. H. Glatfelter Company
Pacific Paperboard Products Inc.
Penntech Papers Inc.
Pentair Industries Inc.
Philip Morris Inc.
Pope and Talbot Inc.
Port Huron Paper Company
Potlatch Corporation
Procter & Gamble Company
SCM Corporation
Scott Paper Company
Simpson Paper Company
Sonoco Products Company
Sorg Paper Company
Southeast Paper Manufacturing Company
Southwest Forest Industries Inc.
St. Joe Paper Company
St. Regis Paper Company
Stone Container Corporation
Tenneco Inc.
Time Inc.
Times Mirror Company
Union Camp Corporation
United States Gypsum Company
Virginia Fibre Corporation
Wausau Paper Mills Company
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries Inc.

SIC 27—Printing and Publishing

Arcata Corporation
City Investing Company
Moore Business Forms Inc.
R. R. Donnelley & Sons Company
W. F. Hall Printing Company

SIC 28—Chemicals and Allied Products

Abbott Laboratories
Air Products & Chemicals Inc.
Airco Inc.
Akzona Inc.
Allied Chemical Corporation
Aluminum Company of America
AMAX Inc.
Amerada Hess Corporation
American Can Company
American Cyanamid Company
American Hoechst Corporation
American Home Products Corporation
American Petrofina Inc.
American Synthetic Rubber Corporation
Arizona Chemical Company
Asarco Incorporated
Ashland Oil Inc.
Atlantic Richfield Company
Avtex Fibers Inc.
B. F. Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Baxter-Travenol Laboratories Inc.
Beker Industries Corporation
Big Three Industries Inc.
Borden Inc.
Borg-Warner Corporation
Bristol-Myers Company

Buffalo Color Corporation
C. F. Industries Inc.
Cabot Corporation
Cargill Inc.
Carus Chemical Company Inc.
Celanese Corporation
CIBA-GEIGY Corporation
Cities Service Company
Coastal Corporation
Colgate-Palmolive Company
Cominco American Inc.
Commonwealth Oil Refining Company
Conoco Inc.
Copolymer Rubber & Chemical Corp.
CPC International Inc.
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company
Dow Corning Corporation
E. I. DuPont De Nemours & Company
Eagle Picher Industries Inc.
Eastman Kodak Company
El Paso Products Company
Eli Lilly and Company
Estech General Chemicals Corporation
Ethyl Corporation
Exxon Corporation
Farmland Industries Inc.
Felmont Oil Corporation
Ferro Corporation
Firestone Tire & Rubber Company
First Mississippi Corporation
FMC Corporation
Freeport Minerals Company
GAF Corporation
Gardinier Big River Inc.
General Electric Company
General Host Corporation
General Tire & Rubber Company
Georgia-Pacific Corporation
Getty Oil Company
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Green Valley Chemical Corporation
Greyhound Corporation
Gulf & Western Industries Inc.
Gulf Oil Corporation
Gulf Resources & Chemical Corporation
Hardy Salt Company
Henkel Corporation
Hercules Incorporated
Hoffmann-La Roche Inc.
ICI Americas Inc.
International Minerals & Chemicals Corporation
Inter North Inc.
J. M. Huber Corporation
J. R. Simplot Company
Johnson & Johnson
Kaiser Aluminum & Chemical Corporation
Kerr-McGee Corporation
Koppers Company Inc.
Lever Brothers Company
Linden Chemicals & Plastics Inc.
Lubrizol Corporation
Mallinckrodt Inc.
Merck & Company, Inc.
Merichem Company
Miles Laboratories Inc.
Minnesota Mining & Manufacturing Company
Mississippi Chemical Corporation
Mobay Chemical Corporation
Mobil Oil Corporation
Monsanto Company
Morton-Norwich Products Inc.
N-Ren Corporation
Nalco Chemical Company
National Distillers & Chemical Corporation
Newmont Mining Corporation
NIPRO Inc.
NL Industries Inc.
North American Rayon Corporation
Northwest Industries Inc.
Occidental Petroleum Corporation
Olin Corporation
Pennwalt Corporation
Pfizer Inc.
Phillips Petroleum Company
PPG Industries Inc.
PQ Corporation
Procter & Gamble Company
Publicker Industries Inc.
Purex Industries Inc.
Quaker Oats Company
Reichhold Chemicals Inc.
Reilly Tar & Chemical Corporation
Reynolds Metals Company
Richardson-Vicks Inc.
Rohm and Haas Company
SCM Corporation
Shell Oil Company
Sherex Chemical Company Inc.
Sherwin-Williams Company
Signal Companies Inc.
SimCal Chemical Company
Soltex Polymer Corporation
Squibb Corporation
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Standard Oil Company of California
Stauffer Chemical Company
Sterling Drug Inc.
SunOlin Chemical Company
Tenneco Inc.
Terra Chemicals International Inc.
Texaco Inc.
Texasgulf Inc.
Thiokol Corporation
Tyler Corporation
Union Camp Corporation
Union Carbide Corporation
Union Oil Company of California
Uniroyl Inc.
United States Borax & Chemical Corporation
United States Steel Corporation
United Technologies Corporation
Upjohn Company
Vertac Inc.
Virginia Chemicals Inc.
Vulcan Materials Company
W. R. Grace & Company
Warner-Lambert Company
Westvaco Corporation
Weyerhaeuser Company
Williams Companies
Witco Chemical Corporation

SIC 29—Petroleum and Coal Products

Agway Inc.
Amerada Hess Corporation
American Petrofina Inc.
Asamera Oil (U.S.) Inc.
Ashland Oil Inc.
Atlantic Richfield Company
Beacon Oil Company
Bird & Son Inc.
Certainteed Corporation
Champlin Petroleum Company
Charter International Oil Company
Cities Service Company
Clark Oil & Refining Corporation
Coastal Corporation
Commonwealth Oil Refining Company
CONOCO Inc.
Crown Central Petroleum Corporation
Crystal Oil Company
Diamond Shamrock Corporation
Dorchester Gas Corporation
Dow Chemical Company
Earth Resources Company
Edgington Oil Company
Energy Cooperative Inc.
Exxon Corporation
Farmers Union Central Exchange Inc.
Farmland Industries Inc.
Fletcher Oil & Refining Company
GAF Corporation
Getty Oil Company
Great Lakes Carbon Corporation
Gulf Oil Corporation
Holly Corporation
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Jim Walter Corporation
Johns-Manville Sales Corporation
Kern County Refinery Inc.
Kerr-McGee Corporation
Koch Industries Inc.
Koppers Company Inc.
Little America Refining Company
Louisiana Land & Exploration Company
Marathon Oil Corporation
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association
OKC Corporation
Oklahoma Refining Company
Owens-Corning Fiberglass Corporation
Pennzoil Company
Petrolite Corporation
Phillips Petroleum Company
Placid Refining Company
Powerine Oil Company
Pride Refining Inc.
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Southern Union Company
Southland Oil Company

Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Standard Oil Company of California
Sun Company Inc.
Tenneco Inc.
Tesoro Petroleum Corporation
Texaco Inc.
Texas Eastern Transmission Corporation
Time Oil Company
Tosco Corporation
Total Petroleum Inc.
Union Oil Company of California
United Refining Company
USA Petroleum Corporation
Winston Refining Company
Witco Chemical Corporation

SIC 30—Rubber and Miscellaneous Plastics Products

Amerace Corporation
American Cyanamid Company
Armstrong Rubber Company
B. F. Goodrich Company
Baxter-Travenol Laboratories Inc.
Budd Company
Carlisle Corporation
Continental Group Inc.
Cooper Tire & Rubber Company
Dart Industries Inc.
Dayco Corporation
Dunlop Tire & Rubber Corporation
Eagle Picher Industries Inc.
Ethyl Corporation
Exxon Corporation
Firestone Tire & Rubber Company
Gates Rubber Company
General Electric Company
General Motors Corporation
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Michelin Tire Corporation
Minnesota Mining & Manufacturing Company
Owens-Illinois Inc.
Union Carbide Corporation
Uniroyal Inc.
W. R. Grace & Company
Westinghouse Electric Corporation

SIC 31—Leather and Leather Products

None

SIC 32—Stone, Clay and Glass Products

AFG Industries Inc.
Alamo Cement Company
Allied Chemical Corporation
Allied Products Company
Alpha Portland Cement Company
American Standard Inc.
Amsted Industries Inc.
Anchor Hocking Corporation
Arkansas Louisiana Gas Company
Armco Inc.
Armstrong World Industries Inc.
Ash Grove Cement Company
Austin White Lime Company
Ball Corporation
Belden Brick Company
Bethlehem Steel Corporation
Bickerstaff Clay Products Company Inc.
Boren Clay Products Company
Brockway Glass Company Inc.
California Portland Cement Company
Can-Am Corporation
Capitol Aggregates Inc.
Centex Corporation
Certainteed Corporation
Citadel Cement Corporation
CLM Corporation
Coors Container Company
Coplay Cement Manufacturing Company
Corning Glass Works
Crane Company
Cyprus Hawaiian Cement Company
Delta Macon Brick & Tile Company
Dickey Company
Domtar Industries Inc.
Dorsey Corporation
Dravo Corporation
Dresser Industries Inc.
Dundee Cement Company
Eagle Picher Industries Inc.
Edw. C. Levy Company
Engelhard Corporation
Ferro Corporation
Filtrol Corporation
Flintkote Company
Florida Mining & Materials Corporation
Ford Motor Company
GAF Corporation
Gallo Glass Company
General Telephone & Electronic Corporation
General Dynamics Corporation
General Electric Company
General Portland Inc.
General Refractories Company
General Shale Products Corporation
Georgia-Pacific Corporation
Giant Portland & Masonry Cement Company
Gifford-Hill & Company Inc.
Glen-Gery Corporation
Glenshaw Glass Company Inc.
Guardian Industries Corporation
Gulf & Western Industries Inc.
Harsco Corporation
Ideal Basic Industries Inc.
Independent Cement Corporation
Indian Head Inc.
Interface Corporation
J. E. Baker Company
Jim Walter Corporation
Johns-Manville Sales Corporation
Justin Industries Inc.
Kaiser Aluminum & Chemical Corporation
Kaiser Cement & Gypsum Corporation
Kennecott Corporation
Kerr Glass Manufacturing Corporation
Keystone Portland Cement Company
Kohler Company
Lancaster Colony Corporation
Latchford Glass Company
Lehigh Portland Cement Company
Libbey-Owens-Ford Company
Liberty Glass Company
Lone Star Industries Inc.
Louisville Cement Company
Martin-Marietta Corporation
McDermott Inc.
McDonough Company
Midland Glass Company Inc.
Minnesota Mining & Manufacturing Company
Mississippi Lime Company
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
National Bottle Manufacturing Company
National Can Corporation
National Cement Company
National Gypsum Company
Newmont Mining Corporation
Northwestern State Portland Cement Company
Norton Company
Norton Simon Inc.
Oregon Portland Cement Company
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc.
Pacific Coast Building Products Company
Pacific Holding Corporation
Penn-Dixie Industries Inc.
Pfizer Inc.
Philip Morris Inc.
Pomona Corporation
PPG Industries Inc.
Puerto Rican Cement Company Inc.
Rangaire Corporation
Raybestos Manhattan Inc.
Reichhold Chemicals Inc.
Republic Steel Corporation
Rinker Portland Cement Corporation
River Cement Company
Rockwool Industries Inc.
Round Rock Lime Company
Solite Corporation
South Dakota Cement Company
Southdown Inc.
St. Clair Lime Company
Texas Industries Inc.
Thatcher Glass Corporation
United States Gypsum Company
United States Steel Corporation
Vulcan Materials Company
Warner Company
Weyerhaeuser Company
Wheaton Industries
Whitehall Cement Manufacturing Company
Woodville Lime & Chemical Company

SIC 33—Primary Metal Industries

A. Finkl & Sons Company
Alcan Aluminum Corporation
Allegheny Ludlum Industries Inc.
Allied Chemical Corporation
Alumax Inc.
Aluminum Company of America
Amax Inc.
American Can Company
American Cast Iron Pipe Company

American Telephone & Telegraph Company
Amsted Industries Inc.
Armco Inc.
Asarco Inc.
Athlone Industries Inc.
Atlantic Richfield Company
Atlantic Steel Company
Bethlehem Steel Corporation
Budd Company
Cabot Corporation
Cargill Inc.
Carpenter Technology Corporation
Caterpillar Tractor Company
Ceco Corporation
Century Brass Products Inc.
Chromium Mining & Smelting Corporation
Clow Corporation
Colt Industries Inc.
Connors Steel Company
Consolidated Aluminum Corporation
Copperweld Corporation
Crane Company
Cyclops Corporation
Dana Corporation
Dayton Malleable Inc.
Dow Chemical Company
Eastmet Corporation
Elkem Metals Company
Ethyl Corporation
Evans Products Company
Florida Steel Corporation
Ford Motor Company
General Electric Company
General Motors Corporation
Great Lakes Carbon Corporation
Grede Foundries Inc.
Gulf & Western Industries Inc.
Gulf Resources & Chemical Corporation
Guterl Special Steel Corporation
Hanna Mining Company—Silicon Division
Hanna Nickel Smelting Company
Hayes-Albion Corporation
Huntington Alloys Inc.
IC Industries Inc.
Inland Steel Company
Inspiration Consol Copper Company
Interlake Inc.
International Minerals & Chemical Corporation
Jim Walter Corporation
Jones & Laughlin Steel Corporation
Kaiser Aluminum & Chemical Corporation
Kaiser Steel Corporation
Kennecott Corporation
Keystone Consolidated Industries Inc.
Korf Industries Inc.
Laclede Steel Company
Louisiana Land & Exploration Company
Lukens Steel Company
Macalloy Corporation
Martin Industries Inc.
Martin Marietta Corporation
McDermott Inc.
McLouth Steel Corporation
Mead Corporation
Midland-Ross Corporation
National Distillers & Chemical Corporation
National Steel Corporation
National-Standard Company
Newmont Mining Corporation
NL Industries Inc.
Noranda Aluminum Inc.
Northwest Industries Inc.
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Ogden Corporation
Ohio Ferro-Alloys Corporation
Olin Corporation
Outboard Marine Corporation
Pechiney Ugine Kuhlman Corporation
Penn-Dixie Steel Corporation
Phelps Dodge Corporation
Phoenix Steel Corporation
Quanex Corporation
Republic Steel Corporation
Revere Copper and Brass Inc.
Reynolds Metals Company
Roane Electric Furnace Company Inc.
RSR Corporation
Satralloy Inc.
Sharon Steel Corporation
Shenango Inc.
SKW Alloys Inc.
Southwire Company
St. Joe Minerals Corporation
Structural Metals Inc.
Teledyne Inc.
Tenneco Inc.
Textron Inc.
Timken Company
Tyler Corporation
Union Carbide Corporation
United States Steel Corporation
United Technologies Corporation
Vulcan Materials Company
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation
White Consolidated Industries Inc.

SIC 34—Fabricated Metal Products

Allegheny Ludlum Industries Inc.
Aluminum Company of America
American Can Company
American Standard Inc.
Ampco-Pittsburgh Corporation
Amsted Industries Inc.
Bethlehem Steel Corporation
Budd Company
Cameron Iron Works Inc.
Canton Drop Forging & Manufacturing Company
Combustion Engineering Inc.
Continental Group Inc.
Crown Cork & Seal Company Inc.
Cyclops Corporation
General Motors Corporation
Gulf & Western Industries Inc.
Harsco Corporation
Inland Steel Company
International Telephone & Telegraph Corporation
Jos. Schlitz Brewing Company
Kaiser Aluminum & Chemical Corporation
Kohler Company
Ladish Company
Martin Marietta Corporation
McDermott Inc.
National Can Corporation
National Steel Corporation
Remington Arms Company Inc.
Reynolds Metals Company
Rockwell International Corporation
Signal Companies Inc.
SKF Industries Inc.
Stanley Works Inc.
Textron Inc.
TRW Inc.
United States Steel Corporation
Wallace Murray Corporation
Wyman-Gordon Company

SIC 35—Machinery, Except Electrical

Allis-Chalmers Corporation
Arkansas Louisiana Gas Company
Borg-Warner Corporation
Briggs & Stratton Corporation
Bucyrus-Erie Company
Caterpillar Tractor Company
Clark Equipment Company
Colt Industries Inc.
Control Data Corporation
Cooper Industries Inc.
Cummins Engine Company Inc.
Dana Corporation
Datapoint Corporation
Deere & Company
Digital Equipment Corporation
Dresser Industries Inc.
Eaton Corporation
Emerson Electric Company
Federal-Mogul Corporation
FMC Corporation
Ford Motor Company
General Electric Company
General Motors Corporation
Harnischfeger Corporation
Hughes Tool Company
IC Industries Inc.
Ingersoll-Rand Company
International Harvester Company
International Business Machines Corporation
Outboard Marine Corporation
Rexnord, Inc.
Rockwell International Corporation
SKF Industries Inc.
Sperry Rand Corporation
Tenneco Inc.
Timken Company
Trane Company
TRW Inc.
United Technologies Corporation
Xerox Corporation
Westinghouse Electric Corporation
White Consolidated Industries Inc.

SIC 36—Electric, Electronic Equipment

A. O. Smith Corporation
Airco Inc.
Allied Chemical Corporation

American Telephone & Telegraph Company
Emerson Electric Company
GK Technologies Inc.
General Electric Company
General Motors Corporation
General Telephone & Electronic Corporation
Great Lakes Carbon Corporation
Harvey Hubbell Inc.
Hughes Aircraft Company
Johnson Controls Inc.
Maytag Company
McGraw-Edison Company
Minnesota Mining & Manufacturing Company
Raytheon Company
RCA Corporation
Reliance Electric Company
Rockwell International Corporation
Square D Company
Stackpole Carbon Company
Sunbeam Corporation
Texas Instruments Inc.
Union Carbide Corporation
Westinghouse Electric Corporation
Whirlpool Corporation
White Consolidated Industries Inc.

SIC 37—Transportation Equipment

A. O. Smith Corporation
American Motors Corporation
Avco Corporation
Bendix Corporation
Bethlehem Steel Corporation
Boeing Company
Borg-Warner Corporation
Budd Company
Chrysler Corporation
Dana Corporation
Dayton-Walther Corporation
Eaton Corporation
Ford Motor Company
Fruehauf Corporation
General Dynamics Corporation
General Electric Company
General Motors Corporation
Goodyear Tire & Rubber Company
Grumman Corporation
Hercules Inc.
Hughes Aircraft Company
Lockheed Corporation
Martin-Marietta Corporation
McDonnel Douglas Corporation
Northrop Corporation
Pullman Inc.
Rockwell International Corporation
Signal Companies Inc.
Tenneco Inc.
Textron Inc.
Thiokol Corporation
TRW Inc.
United Technologies Corporation
Vought Corporation

SIC 38—Instruments and Related Products

Eastman Kodak Company
GAF Corporation
Johnson & Johnson
Minnesota Mining & Manufacturing Company
Polaroid Corporation
Warner-Lambert Company

SIC 39—Miscellaneious Manufacturing Industries

Armstrong World Industries Inc.
Congoleum Corporation

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Industrial Energy Conservation Program; Notice of Proposed Exempt Corporations and Adequate Reporting Programs

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice of proposed exempt corporations and adequate reporting programs.

SUMMARY: As an annual part of the Departmental of Energy's (DOE) Industrial Energy Conservation Program, as set forth at 10 CFR Part 445, DOE is proposing to exempt certain corporations from the requirement of filing corporate reporting forms directly with DOE and to determine as adequate certain industrial reporting programs for sponsor reporting. This notice is required pursuant to section 376(g)(1) of the Energy Policy and Conservation Act and DOE's regulations set forth at 10 CFR Part 445, Subpart D. The proposed exempt corporations and the respective sponsors of proposed adequate reporting programs are listed alphabetically in industry in the appendix to this notice.

DOE will receive written comments with respect to this proposed list and will issue a final list of exempt corporations and adequate reporting programs.

Identified corporations are required to report on energy efficiency improvements and, if appropriate, recovered materials utilization in calendar year 1981 either directly to DOE or to DOE-approved sponsors of reporting programs, pursuant Subpart C of 10 CFR Part 445 which implements the requirements of sections 374A, 375 and 376 of EPCA.

DATE: Written comments must be received by July 29, 1982.

ADDRESS: Comments should be addressed to: Office of Hearings & Dockets, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station 6B-025, Room 5F078, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C., June 21, 1982.

Howard S. Coleman,

Acting Assistant Secretary, Conservation and Renewable Energy.

Final Exempt Corporations and Sponsors of Adequate Reporting Programs

SIC 20—Food and Kindred Products

American Bakers Association
  Campbell Soup Company (partial)
  Campbell Taggart, Inc.
  Consolidated Foods Corporation (partial)
  Flowers Industries Inc.
  G. Heileman Brewing Company, Inc. (partial)
  ITT Continental Baking Company Inn. (partial)
  Interstate Brands Corporation
American Feed Manufacturers Association
  Archer Daniels Midland Company (partial)
  Cargill Inc.
  Central Soya Company Inc. (partial)
  Farmers Union Grain Terminal Association (partial)
  Gold Kist Inc.
  Land O'Lakes, Inc. (partial)
  Moorman Manufacturing Company
  Ralston Purina Company (partial)
American Frozen Food Institute
  Campbell Soup Company (partial)
  Con Agra Inc. (partial)
  J. R. Simplot Company
  Pillsbury Company (partial)
  Twin City Foods Corporation
American Meat Institute
  Beatrice Foods Company (partial)
  Consolidated Foods Corporation (partial)
  Farmland Industries Inc.
  Geo. A. Hormel & Company
  General Host Corporation (partial)
  Greyhound Corporation
  ITT Continental Baking Company Inc. (partial)
  Oscar Mayer & Company
  Rath Packing Company
  Swift & Company
  United Brands Company
  Wilson Foods Corporation
Biscuit & Cracker Manufacturers Association
  American Brands Inc. (partial)
  Keebler Company
  Nabisco Inc. (partial)
Chemical Manufacturers Association
  National Distilers Products Company
Corn Refiners Association
  A. E. Staley Manufacturing Company (partial)
  American Maize-Products Company
  Anheuser-Busch Inc. (partial)
  CPC International Inc.
  Grain Processing Corporation

H. J. Heinz Company (partial)
National Starch & Chemcial Corporation
Grocery manufactuers of America, Inc.
A. E. Staley Manufacturing Company (partial)
American Home Products Corporation
Ampco Foods Inc.
Amstar Corporation
Anderson Clayton & Company
Archer Daniels Midland Company (partial)
Beatrice Foods Company (partial)
Borden Inc.
Carnation Company
Central Soya Company, Inc. (partial)
Coca-Cola Company
Consolidated Foods Corporation (partial)
General Foods Corporation
General Mills Inc.
Great A & P Tea Company Inc.
H. J. Heniz Company (partial)
Hershey Foods Corporation
Heublein Inc.
I. C. Industries Inc. (partial)
ITT Continental Baking Company Inc. (partial)
Kellogg Company
Kraft Inc.
Kroger Company
Mars Inc.
Nabisco Inc. (partial)
Pepsico Inc.
Pillsbury Company
Procter & Gamble Company
Quaker Oats Company
Ralston Purina Company (partial)
Savannah Foods & Industries Inc. (partial)
Standard Brands Incorporated
Thomas J. Lipton Inc.
Universal Foods Corporation
National Food Processors Association
California Canners and Growers Company
Campbell Soup Company (partial)
Castle & Cooke Inc.
Curtice-Burns Inc.
Gerber Products Company
H. J. Heinz Company (partial)
Norton Simon Inc.
R. J. Reynolds Industries, Inc.
Stokely-Van Camp Inc.
Sunkist Growers Inc.
Tri/Valley Growers Inc.
National Frozen Food Association
ITT Continental Baking Company Inc. (partial)
National Meat Association
Dubuque Packing Company
Iowa Beef Processors Inc.
MBPXL Corporation
Pharmaceutical Manufacturers Association
Eli Lilly and Company
U.S. Beet Suger Association
Amalgamatd Suger Company
American Crystal Sugar Company
Consoldiated Foods Corporation (partial)
Holly Sugar Corporation
Michigan Sugar Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Southern Minnesota Sugar Cooperative
U.S. Brewers Association
Adolph Coors Company
Anheuser-Busch Inc. (partial)
Archer Danials Midland Company (partial)
Grain Terminal Association (partial)
G. Heileman Brewing Company, Inc. (partial)
Jos. Schlitz Brewing Company
Ladish Malting Company
Olympia Brewing Company
Pabst Brewing Company
Philip Morris, Inc. (partial)
The Stroh Companies Inc.
U.S. Cane Sugar Refiners Association
Archer Daniels Midland Company (partial)
California & Hawaiian Sugar Company
Colonial Sugars Inc.
Imperial Sugar Company
National Sugar Refining Company
Refined Syrups & Sugars Inc.
Revere Sugar Corporation
Savannah Foods & Industries Inc. (partial)

SIC 22—Textile Mill Products

American Textile Manufacturers Institute
American Thread Company
Avondale Mills Inc.
Bibb Company
Burlington Industries Inc.
Cannon Mills Company
Clinton Mills Inc.
Coats & Clark Inc.
Colgate-Palmolive Company
Collins & Aikman Corporation
Cone Mills Corporation
Cranston Print Works Company
Crompton Company Inc.
Dan River Inc.
Dixie Yarns Inc.
Fieldcrest Mills Inc.
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Graniteville Company
Greenwood Mills Inc.
J. P. Stevens & Company Inc.
Johnson & Johnson
Kimberly-Clark Corporation
M. Lowenstein & Sons Inc.
Milliken & Company
Northwest Industries Inc.
Reeves Brothers Inc.
Riegel Textile Corporation
Spartan Mills Inc.
Sperry and Hutchinson Company (partial)
Springs Mills Inc.
Standard-Coosa-Thatcher Company
Thomaston Mills Inc.
Ti-Caro Inc.
United Merchants & Manufacturers Inc.
West Point-Pepperell Inc.
Carpet & Rug Institute
Mohasco Corporation
Shaw Industries Inc.
Sperry and Hutchinson Company (partial)
Standard Oil Company (Indiana)
WWG Industries Inc.

SIC 24—Lumber and Weed Products

National Forest Products Association
Abitibi-Price Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Koppers Company Inc.
Louisiana-Pacific Corporation
Masonite Corporation
Potlatch Corporation
Weyerhaeuser Company
Willamette Industries Inc.

SIC 26—Paper and Allied Products

American Paper Institute
Abitibi-Price Southern Corporation
Alton Box Board Company
American Can Company
Appleton Papers Inc.
Arcata Corporation
Austell Box Board Corporation
Bell Fibre Products Corporation
Blandin Paper Company
Boise Cascade Corporation
Bowater Incorporated
Champion International Corporation
Chesapeake Corporation
Clevepak Corporation
Consolidated Packaging Corporation
Consolidated Papers Inc.
Continental Group Inc.
Crown Zellerbach Corporation
Deerfield Specialty Papers, Inc.
Dennison Manufacturing Company
Dexter Corporation
Diamond International Corporation
Eddy Paper Company Limited
Erving Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Fort Howard Paper Company
Fraser Paper, Limited
GAF Corporation
Garden State Paper Company Inc.
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hollingsworth & Vose Company
International Paper Company
International Telephone & Telegraph Corporation

James River Corporation of Virginia
Johnson & Johnson
Kimberly-Clark Corporation
Litton Industries Inc.
Longview Fibre Company
Macmillan Blodedel Inc.
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Mobile Oil Corporation (partial)
Mosinee Paper Corporation
National Gypsum Company
Newark Boxboard Company
Newton Falls Paper Mill Inc.
Olin Corporation
Owens-Illinois Inc.
PH Glatfelter Company
Pacific Paperboard Products Inc.
Penntech Papers Inc.
Pentair Industries Inc.
Pope and Talbot Inc.
Port Huron Paper Company
Potlatch Corporation
Procter & Gamble Company
Scott Paper Company
Simpson Paper Company
Sonoco Products Company
Southeast Paper Manufacturing Company
Southwest Forest Industries Inc.
St. Joe Paper Company
St. Regis Paper Company
Sorg Paper Company
Stone Container Corporation
Tenneco Inc.
Time Inc.
Times Mirror Company
Union Camp Corporation
Virginia Fibre Corporation
Wausau Paper Mills Company
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaueser Company
Willamettea Industries Inc.
Chemical Manufacturers Association
Minnesota Mining & Manufacturing Company
Moblie Oil Corporation (partial)
Glass—Pressed & Blown (Battelle Institute)
Owens-Corning Fiberglas Corporation

SIC 28—Chemicals and Allied Products

Aluminum Association
Aluminum Company of America
Reynolds Metals Company
American Feed Manufacturers Association
Cargill Inc.
Chemical Manufacturers Association
Air Products & Chemicals Inc.
Airco Inc.
Akzona Inc.
Allied Chemical Corporation
American Can Company
American Cyanamid Company
American Hoechst Corporation
American Petrofina Inc.
Arizona Chemical Company
Ashland Oil Inc.
Atlantic Richfield Company
Avtec Fibers Inc.
B F Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Big Three Industries Inc.
Borden Inc. (partial)
Borg-Warner Corporation
Buffalo Color Corporation
Cabot Corporation
CARUS Chemical Company Inc.
Celanese Corporation
CIBA-GEIGY Corporation
Cities Service Company
Commonwealth Oil Refining Company
CONOCO Inc.
CPC International Inc.
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company
Dow Corning Corporation
E I Du Pont De Nemours & Company
Eastman Kodak Company
El Paso Products Company
Ethyl Corporation
Exxon Corporation
Farmland Industries Inc. (partial)
Firestone Tire & Rubber Company
FMC Corporation
Freeport Minerals Company
GAF Corporation
General Tier & Rubber Company
Georgia-Pacific Corporation
Getty Oil Company
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Greyhound Corporation
Gulf Oil Corporation
Henkel Corporation
Hercules Incorporated
ICI Americas Inc.
International Minerals & Chemicals Corporation (partial)
Inter North Inc.
Kaiser Aluminum & Chemical Corporation
Kerr-McGee Corporation
Koppers Company Inc.
Lever Brothers Company
Linden Chemicals & Plastics Inc.
Lubrizol Corporation
Mallinckrodt Inc.
Merichem Company
Minnesota Mining & Manufacturing Company
Mobay Chemical Corporation
Mobil Oil Company
Monsanto Company
Morton Norwich Products Inc.
Nalco Chemical Company
National Distillers & Chemical Corporation
NIPRO Inc.
NL Industries Inc.
Occidental Petroleum Corporation (partial)
Olin Corporation
Pennwalt Corporation
Pfizer Inc.
Phillips Petroleum Company
PPG Industries Inc.
PQ Corporation
Procter & Gamble Company
Reichhold Chemicals Inc. (partial)
Reilly Tar & Chemical Corporation
Rohm and Haas Company
Shell Oil Company
Sherex Chemical Company Inc.
Soltex Polymer Corporation
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
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SunOlin Chemical Company
Tenneco Inc.
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Texasgulf Inc.
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Union Carbide Corporation
Uniroyal Inc.
United States Borax & Chemical Corporation
United States Steel Corporation (partial)
Upjohn Company (partial)
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Virginia Chemicals Inc.
Vulcan Materials Company
W. R. Grace & Company
Westvaco Corporation
Weyerhaeuser Company
Witco Chemical Corporation
Fertilizer Institute
Beker Industries Corporation
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C F Industries Inc.
Coastal Corporation (Wycon Chemical Company)
Cominco America Inc.
Estech General Chemicals Corporation
Farmland Industries Inc. (partial)
First Mississippi Corporation
Gardinier Big River Inc.
Getty Oil Company
Green Valley Chemical Company
International Minerals & Chemical Corporation (partial)
J. R. Simplot Company
Mississippi Chemical Corporation
Occidental Petroleum Corporation (partial)
Reichhold Chemicals Inc. (partial)
Terra Chemicals International Inc.
Tyler Corporation (Atlas Powder Company)
Union Oil Company of California
United States Steel Corporation (partial)
Vertac Inc. (partial)
The Williams Companies
Pharmaceutical Manufacturers Association
Abbott Laboratories

American Home Products Corporation (partial)
Baxter-Travenol Laboratories
Eli Lilly & Company
Hoffmann-La Roche Inc.
Johnson & Johnson
Merck & Company Inc.
Miles Laboratories Inc.
Richardson Vicks Inc.
Squibb Corporation
Upjohn Company (partial)
Warner-Lambert Company

SIC 29—Petroleum and Coal Products

American Petroleum Institute
Agway Inc.
American Petrofina Inc.
Asamera Oil (US) Inc.
Ashland Oil Inc.
Atlantic Richfield Company
Beacon Oil Company
Champlin Petroleum Company
Charter International Oil Company
Cities Service Company
Clark Oil & Refining Corporation
Coastal Corporation
Commonwealth Oil Refining Company
CONCOCO Inc.
Crown Central Petroleum Corporation
Crystal Oil Company
Diamond Shamrock Corporation
Dorchester Gas Corporation
Dow Chemical Company
Earth Resources Company
Energy Cooperative Inc.
Exxon Corporation
Farmers Union Central Exchange Inc.
Farmland Industries Inc.
Fletcher Oil & Refining Company
Getty Oil Company
Gulf Oil Corporation
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Kerr-McGee Corporation
Koch Industries Inc.
Little America Refining Company
Marathon Oil Company
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association
OKC Corporation
Pacific Resources Inc.
Pennzoil Company
Phillips Petroleum Company
Placid Refining Company
Powerine Oil Company
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Southern Union Company
Southland Oil Company
Standard Oil Company (Indiana)
Standard Oil Company (Ohio)
Standard Oil Company of California
Sun Company Inc.
Tenneco Inc.
Tesoro Petroleum Corporation
Texaco Inc.
Texas Eastern Transmission Corporation
Time Oil Company
Tosco Corporation
Total Petrolum Inc.
Union Oil Company of California
USA Petroleum Corporation
Winston Refining Company
Witco Chemical Corporation
Chemical Manufacturers Association
GAF Corporation
Great Lakes Carbon Corporation
Koppers Company Inc.
GLASS—Pressed and Blown (Battelle Institute)
Owens-Corning Fiberglas Corporation

SIC 30—Rubber and Miscellaneous Plastic Products

Chemical Manufacturers Association
American Cyanamid Company
Dart Industries Inc.
Ethyl Corporation
Exxon Corporation
Minnesota Mining & Manufacturing Company
Union Carbide Corporation
W. R. Grace & Company
Pharmaceutical Manufacturers Association
Baxter-Travenol Laboratories
Rubber Manufacturers Association
Armstrong Rubber Company
B. F. Goodrich Company
Carlisle Corporation
Cooper Tire & Rubber Company
Dayco Corporation
Dunlop Tire & Rubber Corporation
Firestone Tire & Rubber Company
Gates Rubber Company
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Owens-Illinois Inc.
Uniroyal Inc.

SIC 32—Stone, Clay and Glass Products

Brick Institute of America
Belden Brick Company
Bickerstaff Clay Products Company Inc.
Boren Clay Products Company
Delta Brick & Tile Company
General Dynamics Corporation (partial)
General Shale Products Corporation
Glen-Gery Corporation
Justin Industries Inc.
Chemical Manufacturers Association
Engelhard Corporation
GAF Corporation
Minnesota Mining & Manufacturing Company
Reichhold Chemicals Inc.
Vulcan Materials Company
Expanded Shale Clay and Slate Institute
Lehigh Portland Cement Company (partial)
Solite Corporation
Glass—Flat (Eugend L. Stewart)
AFG Industries Inc.
Ford Motor Company
Guardian Industries Corporation
Libbey-Owens-Ford Company
PPG Industries Inc.
Glass Packaging Institute
Anchor Hocking Corporation (partial)
Ball Corporation
Brockway Glass Company Inc. (partial)
Coors Container Company
Dorsey Corporation
Gallo Glass Company
Glenshaw Glass Company Inc.
Indian Head Inc.
Kerr Glass Manufacturing Corporation
Latchford Glass Company
Liberty Glass Company
Midland Glass Company Inc.
National Bottle Manufacturing Company
National Can Corporation
Norton Simon Inc.
Owens-Illinois Inc. (partial)
Philip Morris Inc.
Thatcher Glass Corporation
Wheaton Industries
Glass—Pressed & Blown (Battelle Institute)
Anchor Hocking Corporation (partial)
Brockway Glass Company Inc. (partial)
Certainteed Corporation
Corning Glass Works (partial)
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc. (partial)
Gypsum Association
Domtar Industries Inc. (partial)
Flintkote Company (partial)
Georgia-Pacific Corporation
Jim Walter Corporation (partial)
National Gypsum Company (partial)
Pacific Coast Building Products Company (partial)
United States Gypsum Company (partial)
National Lime Association
Ash Grove Cement Company (partial)
Bethlehem Steel Corporation (partial)
Can-Am Corporation
Cutler-Magner Company
Domtar Industries Inc. (partial
Dravo Corporation
Edw. C. Levy Company
Flintkote Company (partial)
General Dynamics Corporation (partial)
J. E. Baker Company (partial)
Martin Marietta Corporation (partial)
National Gypsum Company (partial)
Pfizer Inc. (partial)
Round Rock Lime Company
St. Clair Lime Company
United States Gypsum Company (partial)
Vulcan Materials Company (partial)

Warner Company
Portland Cement Association
Alamo Cement Company
Alpha Portland Cement Company
Arkansas Louisiana Gas Company
Ash Grove Cement Company (partial)
California Portland Cement Company
Capitol Aggregates Inc.
Centex Corporation
Citadel Cement Corporatioin
Coplay Cement Manufacturing Company
Crane Company
Cyprus Hawaiian Cement Company
Dundee Cement Company
Filtrol Corporation
Flintkote Company (partial)
Florida Mining & Materials Corporation
General Portland Cement Company
Giant Portland & Masonry Cement Company
Gifford-Hill & Company Inc.
Gulf & Western Industries Inc. (partial)
Ideal Basic Industries Inc.
Independent Cement Corporation
Kaiser Cement & Gypsum Corporation
Keystone Portland Cement Company
Lehigh Portland Cement Company (partial)
Lone Star Industries Inc.
Louisville Cement Company
Martin Marietta Corporation (partial)
McDonough Company
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
National Cement Company
National Gypsum Company (partial)
Newmont Mining Corporation
Northwestern St. Portland Cement Company
Oregon Portland Cement Company
Penn-Dixie Industries Inc.
Rinker Portland Cement Corporation
River Cement Company
South Dakota Cement Company
Southdown Inc.
Texas Industries Inc. (partial)
Whitehall Cement Manufacturing Company
Refractories Institute
Allied Chemical Corporation
Combustion Engineering Inc. (partial)
Corning Glass Works (partial)
Dresser Industries Inc. (partial)
Ferro Corporation (partial)
General Refractories Company (partial)
Interpace Corporation (partial)
J. E. Baker Company (partial)
Kaiser Aluminum & Chemical Corporation
Kennecott Corporation
Martin Marietta Corporation (partial)
McDermott Inc.
Norton Company (partial)
Pfizer Inc. (partial)
United States Gypsum Company (partial)
Tile Council of America
National Gypsum Company (partial)

SIC 33—Primary Metal Industries

Aluminum Association
Alcan Aluminum Corporation
Alumax Inc.
Aluminum Company of America
American Can Company
Atlantic Richfield Company (partial)
Cabot Corporation
Consolidated Aluminum Corporation
Ethyl Corporation
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
National Steel Corporation (partial)
Noranda Aluminum Inc.
Pechiney Ugine Kuhlmann Corporation (partial)
Revere Copper and Brass Inc. (partial)
Reynolds Metals Company
Southwire Company
American Die Casting Institute
Hayes-Albion Corporation (partial)
American Foundrymen's Society
American Cast Iron Pipe Company
Clow Corporation
Dayton Malleable Inc.
Grede Foundries Inc.
Jim Walter Corporation (partial)
Mead Corporation
Teledyne Inc. (partial)
American Iron & Steel Institute
A. Finkl & Sons Company
Allegheny Ludlum Industries Inc.
Armco Inc.
Athlone Industries Inc.
Atlantic Steel Company
Bethelem Steel Corporation
Cargill Inc.
Carpenter Technology Corporation
Ceco Corporation
Colt Industries Inc.
Crane Company
Cyclops Corporation
Eastmet Corporation
Florida Steel Corporation
Ford Motor Company
Guterl Special Steel Corporation
Inland Steel Company
Interlake Inc. (partial)
Kaiser Steel Corporation
Keystone Consolidated Industries Inc.
Korf Industries Inc.
Laclede Steel Company
LTV Corporation
Lukens Steel Corporation
McDermott Inc.
McLouth Steel Corporation
National Steel Corporation (partial)
Northwest Industries Inc. (partial)
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Phoenix Steel Corporation
Republic Steel Corporation
Sharon Steel Corporation
Shenango Inc.
Teledyne Inc. (partial)
Timken Company
United States Steel Corporation
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation
American Mining Congress
Amax Inc.
Asarco Inc.
Inspiration Consol Copper Company
Kennecott Corporation (partial)
Louisana Land & Exploration Company (partial)
Newmount Mining Corporation (partial)
Phelps Dodge Corporation (partial)
St. Joe Minerals Corporation
Chemical Manufacturers Association
Allied Chemical Corporation
Great Lakes Carbon Corporation
Construction Industry Manufacturers Association
Caterpillar Tractor Company
Tenneco Inc.
Cooper & Brass Fabricators Council
Atlantic Richfield Company (partial)
Century Brass Products Inc.
Kennecott Corporation (partial)
Louisiana Land & Exploration Company (partial)
National Distillers & Chemical Corporation
Olin Corporation
Phelps Dodge Corporation (partial)
Revere Copper & Brass Inc. (partial)
Ferroalloys Association
Chromium Mining & Smelting Corporation
Dow Chemical Corporation
Elkem Metals Company
Hanna Mining Company—Silicon Division*
Hanna Nickel Smelting Company
Interlake Inc. (partial)
International Minerals & Chemical Corporation
MacAlloy Corporation
Newmont Mining Corporation (partial)
Ohio Ferroalloys
Roane Electric Furnace Company
Satralloy Inc.
SKW Alloys
Union Carbide Corporation

SIC 34—Fabricated Metal Products

Aluminum Association
Aluminum Company of America
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
Reynolds Metals Company
American Boiler Manufacturers Association
Combustion Engineering Inc.
McDermott Inc.
Can Manufacturers Institute
American Can Company

Continental Group Inc.
Crown Cork & Seal Company Inc.
Jos Schlitz Brewing Company
National Can Corporation
Chemical Manufacturers Association
Olin Corporation
Remington Arms Company Inc.

SIC 35—Machinery, Except Electrical

Air Conditioning & Refrigeration Institute
Emerson Electric Company
IC Industries
Trane Company
Computer & Business Equipment Manufacturers Association
Control Data Corporation
Digital Equipment Corporation
International Business Machines Corporation
Sperry Rand Corporation
TRW Inc.
Xerox Corporation
Construction Industry Manufacturers Association
Bucyrus-Erie Company
Caterpillar Tractor Company
Clark Equipment Company
Cummins Engine Company Inc.
FMC Corporation
Ford Motor Company
Harnischfeger Corporation
Ingersoll-Rand Company
Tenneco Inc.

SIC 36—Electric, Electronic Equipment

Chemical Manufacturers Association
Great Lakes Carbon Corporation
Minnesota Mining & Manufacturing Company
National Electrical Manufacturers Association
Airco Inc.
Allied Chemical Corporation
Emerson Electric Company
Harvey Hubbel Inc.
Johnson Controls Inc.
McGraw-Edison Company
Reliance Electric Company
Square D Company
Union Carbide Corportion

SIC 37—Transportation Equipment

Aerospace Industries Association of America
Boeing Company
General Dynamics Corporation (partial)
Grumman Corporation
Huges Aircraft Corporation
Lockheed Corporation
Martin Marietta Corporation
McDonnell Douglas Corporation
Northrop Corporation
Textron Inc. (partial)
Thiokol Corporation
TRW Inc.
Vought Corporation
Chemical Manufacturers Association
Hercules Incorporated
Tenneco Inc.
Motor Vehicle Manufacturers Association
American Motors Corporation
Chrysler Corporation
Ford Motor Company (SIC Code 33, Recovered Materials)
General Motors Corporation (SIC Code 30, 33, Recovered Materials)

SIC 38—Instruments and Related Products

Chemical Manufacturers Association
Eastman Kodak Company
GAF Corporation
Minnesota Mining & Manufacturing Company
Pharmaceutical Manufacturers Association
Johnson & Johnson
Warner-Lambert Compay

[FR Doc. 82-17536 Filed 6-28-82; 8:45 am]
BILLING CODE 6450-01

federal register

Tuesday
June 29, 1982

Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program; Support Facilities, Other Transportation Facilities, Utility Installations, and Coal Processing Plants

Part VIII

Department of the Interior

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 816

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program; Support Facilities, Other Transportation Facilities, Utility Installations, and Coal Processing Plants

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

ACTION: Correction to a proposed rule.

SUMMARY: On June 25, 1982, the Office of Surface Mining (OSM) published as a proposed rule in the **Federal Register** (47 FR 27688): Support Facilities, other Transportation Facilities, Utility Installations and Coal Processing Plants. OSM inadvertently omitted portions of 30 CFR 816.180—Support Facilities and 30 CFR 816.181 on page 27693 of that publication. To correct that omission OSM is now publishing sections 30 CFR 816.180 and 30 CFR 816.181 in their entirety.

FOR FURTHER INFORMATION CONTACT:
Public hearings and information: Arthur Anderson, Division of Technical Assistance, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–5954.
Public meetings: Jose del Rio, 202–343–4022.

List of Subjects in 30 CFR Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

Accordingly, for the reasons set forth above, Part 816 is proposed to be amended as follows.

Dated: June 25, 1982.

Dean Hunt,

Assistant Director, Office of Surface Mining.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. Section 816.180 is revised to read as follows:

§ 816.180 Support facilities.

Support facilities shall be located, maintained, and used—

(a) In a manner which prevents or controls erosion and siltation, water pollution, and damage to public or private property;

(b) To the extent possible using the best technology currently available, in a manner that—

(1) Minimizes damage to fish, wildlife, and related environmental values; and

(2) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law; and

(c) In a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.

2. Section 816.181 is removed.

§ 816.181 [Removed]

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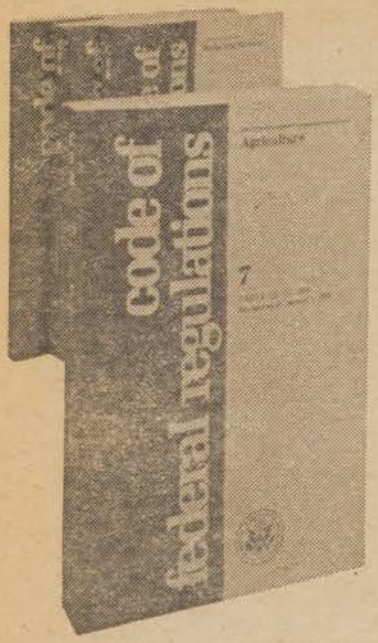
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